



White and Williams LLP



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COMING SOON: THE ENVIRONMENTAL PROTECTION AGENCY'S LEAD PAINT RENOVATION, REPAIR AND PAINTING RULE

HOW THE RRP RULE WILL IMPACT REPAIRS AND RENOVATIONS OF PRE-1978 HOMES AND CHILD-OCCUPIED FACILITIES

By: William J. Taylor, Esq.

The United States Environmental Protection Agency's lead paint Renovation, Repair and Painting (RRP) rule will take effect on April 22, 2010, requiring contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 to be certified by the EPA and to follow specific mandated work practices to prevent lead contamination. The Rule is aimed at the work of professional remodelers and contractors in homes and child-occupied facilities where there is a likelihood of the presence of lead-based paint, based upon the EPA's finding that "common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children." The penalties for violations of the Rule are severe. Even without penalties, the Rule can add significant costs to otherwise routine remodeling or renovation projects.

The manufacture of lead-based paint was discontinued in 1978, however, the use of existing product continued until 1982. The EPA estimates that lead-based paint can still be found in 50 percent of U.S. homes built before 1978 (if a house was built before 1940 that percentage goes up to 86 percent). The EPA RRP Rule addresses remodeling and renovation projects that disturb¹ more than six square feet of potentially contaminated painted surfaces for all residential and multifamily structures built prior to 1978 that are inhabited or frequented by pregnant women and children under the age of six. The term "renovation" is broadly defined, and includes such activities as modification of painted doors, window repair, and weatherization projects.²

The full rule and brochures for consumers and renovators can be downloaded from the EPA web site. The basic requirements of the Rule are as follows:

APPLICABILITY OF THE RULE

The RRP Rule applies to all firms and individuals who are paid to perform renovation, repair, and painting projects that disturb paint in pre-1978 housing and child-occupied facilities. This includes home improvement contractors, maintenance workers, painters and other specialty trades. The Rule applies also to property owners of rental housing, owners of condominiums and co-ops, tenants, realtors and property management firms.

NOTICE TO HOMEOWNERS

Before starting any work, remodelers and contractors covered by the Rule must distribute the EPA lead paint pamphlet, *Renovate Right – Important Lead Hazard Information for Families, Child-Care Providers and Schools*, to the owners and occupants of the building.

TRAINING AND CERTIFICATION

Once the Rule takes effect, construction and remodeling firms working in pre-1978 homes will need to be EPA certified. Along with the firm certification itself, an employee of the firm will also need to be certified as a "Certified Renovator." This certified employee will be responsible for training other employees and overseeing required work practices and cleaning. Certified firms performing renovations must ensure that all individuals performing activities that disturb painted surfaces on behalf of the firm are either Certified Renovators or have been trained by a Certified Renovator. The training curriculum is an eight-hour class, with two hours of hands-on training. Both firm and Certified Renovator certifications are valid for five years. The EPA website contains a list of approved trainers.

A general contractor firm needs to be certified under this Rule even if it has no employees performing the work, and instead subcontracts out all of the work to subcontractors. The Rule applies to any firm that enters into a contract or is paid to perform a renovation. However, a certified general contractor may use a Certified Renovator employed by a subcontractor to perform the work. The work practice requirements of the Rule, including cleaning and post-renovation cleaning verification, can be performed by any properly qualified individuals, without regard to whether they are employees of the general contractor or a subcontractor. Further, both the general contractor and any subcontractors performing work within the work area established for the containment of lead dust and debris are responsible for compliance with the Rule, regardless of any agreements that they may have among themselves.

WORK PRACTICES

Before the actual work starts, the Certified Renovator is required to post warning signs outside the work area and supervise setting up containment barriers to prevent spreading dust. The Rule sets forth

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specific containment procedures for both interior and exterior projects, using disposable plastic drop cloths, cleaning the work area with HEPA vacuuming, and wet washing. It forbids certain work practices, including open flame or torch burning, use of a heat gun that exceeds 1100°F, and high-speed sanding and grinding unless the tool is equipped with a HEPA exhaust control. Once the work is completed, the Rule specifies cleaning and waste disposal procedures. Clean up procedures must be supervised by a Certified Renovator.

VERIFICATION AND RECORD KEEPING

After clean up is complete, the Certified Renovator must verify the cleaning by matching a cleaning cloth with an EPA verification card. If the cloth appears dirtier or darker than the card, the cleaning must be repeated.

A complete file of records on the project must be kept by the Certified Renovator for three years. These records include, but are not limited to, verification of owner/occupant receipt of the *Renovate Right* pamphlet (or comparable attempt to inform), documentation of work practices, Certified Renovator certification, and proof of worker training.

EXEMPTIONS FROM THE RULE

The requirements of the EPA RRP Rule are inapplicable in certain instances, including when:

- the home or child occupied facility was built after 1978;
- the building is a zero-bedroom dwelling (studio apartments, dormitories, etc.);
- the repairs are minor, with interior work disturbing less than six square feet of painted surfaces or exterior work disturbing less than 20 square feet;
- the homeowner signs a waiver certifying that there are no children under age six frequently visiting the property, that no one in the home is pregnant, or that the property is not a child-occupied facility; or
- the house or components test lead free by a certified risk assessor, certified lead inspector, or Certified Renovator.

PENALTIES FOR NON-COMPLIANCE

The penalties for non-compliance with the Rule are quite severe - \$32,500 per day, per violation, and possible jail time.

The attorneys of the White and Williams Construction Practices Group can assist you in complying with the new EPA lead-based paint rule. For more information, please contact a member of the group.

¹ The EPA agrees that leaving lead-based paint undisturbed if it is in good condition is still one of the best ways to reduce the risks from lead-based paint.

² Under the Rule, "renovation" means the modification of any existing structure that results in the disturbance of painted surfaces, and includes the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, and surface preparation activity - such as sanding, scraping, or other such activities that may generate paint dust). Arguably, a very simple project that merely paints over existing lead-based paint, with no cutting, sanding or other disturbance of the existing paint, does not invoke the requirements of the Rule.

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