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THE EPA'S LEAD PAINT RENOVATION, REPAIR AND PAINTING RULE: A FOLLOW UP - NOW THERE IS MORE TIME TO GET CERTIFIED

By: William J. Taylor, Esquire

In our April 1, 2010 Construction Practices News Alert, we wrote about the Environmental Protection Agency's new lead paint Renovation, Repair and Painting (RRP) Rule, which went into effect on April 22 of this year. The RRP Rule proscribes specific lead dust containment procedures that must be followed for any renovation work taking place in homes, child-care facilities and schools constructed before 1978 that disturbs more than six square feet of any painted surface. Further, the Rule mandates that these renovations, even though common in nature, be supervised by an EPA-certified renovator and conducted by an EPA-certified renovation firm. In order to become certified, contractors must submit an application and a fee to EPA, and complete a training course for instruction on lead-safe work practices. However, following a substantial backlash from the construction industry and from Congress, the EPA has now extended the time periods for firms and individuals to obtain the necessary government certifications that are needed for performing this regulated lead paint renovation work under the RRP Rule.

On June 18, the EPA's Assistant Administrator for the agency's Office of Enforcement and Compliance Assurance wrote that the EPA will not take enforcement action for violations of the RRP Rule's firm certification requirement until October 1, 2010. Further, the EPA will not enforce the Rule's individual certification requirements against any worker as long as the worker has applied to enroll in, or has enrolled in, by not later than September 30, 2010, a certified renovator class to train contractors in the practices necessary for compliance with the RRP Rule (provided that individual renovators complete the training by December 31, 2010).

The EPA's action came in response to complaints from Congress regarding difficulties in obtaining certification and worker renovation training. While the RRP Rule applies to anybody who disturbs paint in covered buildings, including painters, electricians, plumbers and carpenters in addition to

general contractors and property owners, there were some reports that as of April 22, the EPA had only certified 204 trainers nationwide. Some states – Louisiana, Wyoming and South Dakota – had no EPA-certified trainers at all, while Maine had only three throughout the entire state. The Senate, in a measure pushed by Republican Senators James Inhofe of Oklahoma and Susan Collins of Maine, passed an amendment to an appropriations bill that blocked funds from being used to “levy against any person any fine, or to hold any person liable for construction or renovation work performed by the person.” The Inhofe-Collins amendment passed the Senate on a 60-37 vote and effectively blocked enforcement of the RRP Rule's certification requirements. “I am pleased that the EPA listened to the clear bipartisan message sent by the Senate that the implementation of the lead-based paint rule was a disaster,” Inhofe said. “EPA has finally recognized the extreme difficulty in obtaining certification and worker renovation training. Thanks to the efforts of my colleagues, EPA has now promised to allow additional and sufficient time for workers to obtain the necessary training and certification to comply with the rule.” According to Inhofe, the EPA has also agreed to work to provide additional trainers in areas of need.

While additional time has been granted in regard to the RRP Rule's certification requirements, the work practice requirements of the Rule, including posting of warning signs, use of containment barriers, and detailed cleaning and waste disposal procedures, remain in effect.

For more information regarding the EPA RRP Rule, please contact Bill Taylor, co-chair of the firm's Construction Practices Group, at 215-864-6305 or taylorw@whiteandwilliams.com.

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