

Enforcement of EPA's Renovation, Painting & Repair Regulation



Audit. The very word sends shivers down most spines. Now there is a new source of audits - the federal Environmental Protection Agency (EPA), and fines can be just as devastating as those levied by the IRS. Perhaps more so, as few apartment owners and managers are in compliance with the lead regulations, while most people pay their taxes. In March of 2012, Juan Hernandez was fined \$127,150 just for paperwork violations on his 7 unit building - \$18,164 per unit!

A company was recently fined almost \$4 million mainly for failing to hand out the new booklets and keep the detailed records required by the EPA's Renovation, Painting & Repair Regulation (RRP) at 82 sites. We expect announcement of more large fines in coming months, as EPA's audit machine is now operating at full speed. Time in federal prison is also possible. Fines can be levied even if lead-based paint is not actually present in pre-1878 buildings,

since it must be assumed to be present unless a California certified lead inspector/risk assessor has prepared a formal report showing otherwise. EPA is especially concerned about lead hazards in residences occupied by infants and toddlers. Fortunately, avoiding costly violation is easy.

Feeling Lucky?

With the federal government massively in debt (over \$146,000 per taxpayer as of this writing),

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stepped-up enforcement would be no surprise. The key fact that many apartment owners and managers do not know is that most people are being caught by audits, not during work on their buildings. The RRP regulation has very specific requirements for notification and documentation which would be essentially impossible to create for an audit months or years after the work was performed.

The new Renovate Right

pamphlet is an important part of the notifications process. Obtaining signatures or other required proof of notification, or acceptable attempts to notify, is also easy when it is made a routine part of jobs. Reports from lead consultants showing that lead-based paint is not present must also be kept, an easy task since they are digital, not paper. Photos with digital cameras, or quality cell phone cameras, cost almost nothing. Notes about what

was done, how it was done, and who did it are easy to write, but supervisors who

are not experienced at writing reports may need some training. The records to be retained should show compliance with the specific requirements of the RRP regulation. It is helpful to go through RRP sentence by sentence, to determine what information is needed. This may be used to create electronic forms. Besides demonstrating compliance with RRP, good notes and photos are very helpful in refuting any claims that the work was not done properly.

Consulting Assistance Is Vital

Working with a good consultant is essential. The consultant will test the paint and ceramic tile with a portable X-Ray Fluorescence (XRF) machine. Verbal results are available immediately, and the testing is non-destructive, not even leaving a mark. The formal report should be received by E-mail later the same day, or the following day. While legal XRF machines for paint testing are expensive (\$20,000 to \$30,000), testing for lead is not expensive (typical costs for apartment buildings 20 units or larger is \$45 per unit, with discounts for portfolios).

Lead-Based Paint Is Not Everywhere

Half of the residential buildings built 1960 to 1978 have no lead-based paint, and the other half have just a little lead-based paint. Even in much older buildings, lead-based paint is generally not everywhere. For example, a 1928 stucco apartment building we tested had it on exterior wood, interior wood, and just 19% of the walls and ceilings. We recently tested a 1925 brick apartment building where it was only on the basement door and frame (most windows had been replaced during a seismic retrofit project). The oldest building we have tested with none was built in 1955. Of course, some buildings are loaded with it, especially in fancier neighborhoods, as it was the best, most expensive paint. This is my company's 22nd year in business, and we have inspected thousands of buildings, but we

have never found one with lead-based paint everywhere, and doubt we ever will. Thus, lead-based paint inspections are the way to back down from the government's false required assumption that all of the paint is lead-based paint to listing just those places where it is actually present, or to learning that none is present.

Sales Techniques For Property Managers

Managers are between the rock of losing owner clients who do not want to comply, and the hard place of massive fines and possible jail time. Those who whine about the regulations with potential customers are making a basic sales error, as they appear weak and without good solutions. They should instead treat compliance

with RRP and testing as routine, just as they do compliance with building codes. They should also make sure that potential customers understand that competitors who would avoid testing and compliance may also be ignoring building codes and otherwise be performing shoddy work. A good salesman might also emphasize that hiring the wrong competitor may result in lead poisonings, and that owners are the real "deep pocket" which all liability will seek.

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