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**EPA STEPS UP
LEAD PAINT
*ENFORCEMENT***

Noncompliance carries hefty fines—and even the threat of prison—but it's not difficult to follow the rules

By F. Stephen Masek



A

udit. 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 Internal Revenue Service. A contractor was recently fined almost \$4 million, mainly for failing to hand out the new booklets required by the EPA's Renovation, Repair and Painting regulation (RRP) at 82 job sites. Fines can be levied even if lead-based paint is not actually present, since contractors must now assume it to be present in residences built before 1978. Time in federal prison is also possible.

The EPA is especially concerned about lead hazards in residences occupied by infants and toddlers. While RRP focuses on lead-based paint, lead from demolition of lead-glazed ceramic tile could also create a lead dust hazard. Fortunately, avoiding costly violations is easy.

With the federal government massively in debt (more than \$146,000 per taxpayer as of this writing), stepped-up enforcement would be no surprise. The probability of being caught may be low, but those contractors who are caught will pay dearly. It is definitely unfair, but so is competing with unlicensed, poorly equipped and poorly trained “hacks,” a long-time problem for all good contractors. The solutions are the same: Be a well-organized, well-trained and well-equipped professional to attract good customers, build a valuable reputation and work with other reputable professionals.


CONSULTING ASSISTANCE IS VITAL

On jobs where more than a small amount of paint or ceramic tile needs to be disturbed, restoration contractors may find it beneficial to work with an environmental consultant. 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 leaves no marks. The formal report should be received by email later the same day or the following day. In most states, there is a state certification for performing such lead surveys (also called inspections). Most lead consultants also provide asbestos surveys, mold surveys, indoor air quality investigations and Phase I environmental site assessments.

Testing for lead is not expensive. It should add little cost if the consultant is already present and if the entire building does not need to be tested. In those cases, the key to paying less is saving the consultant's time. Be flexible on scheduling so the consultant is able to avoid a special trip. In crowded urban areas and spread-out rural areas, the travel time may equal or exceed the time on site. Providing your consultant with a group of job sites that can be tested the same day in an efficient route is another good approach.

little lead-based paint. What about buildings built before 1960? That's a mix of good and bad news. Even in much older buildings, lead-based paint is generally not everywhere. For example, a 1928 stucco apartment building we tested had lead-based paint on exterior wood, interior wood, and just 19 percent of the walls and ceilings. We recently tested a 1925 brick apartment building where lead-based paint 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.

Contractors 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 avoid testing and compliance may be ignoring building codes and otherwise performing shoddy work. A good salesman might also emphasize that hiring the wrong contractor may result in lead poisonings.



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EPA's RRP rule requires that a contractor obtain the owner's permission prior to testing. Sometimes this simply is done with a sentence added to the contract boilerplate. Other times, the consultant works for the owner. Many consultants prefer the latter approach because it avoids any appearance of a conflict of interest.

LEAD-BASED PAINT IS NOT EVERYWHERE

This is my company's 22nd year in business. 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 may be thought of as the process of backing down from the required assumption that all of the paint is lead-based to listing just those places where it is actually present—or to learning that none is present.

Half of the residential buildings built from 1960 to 1978 have no lead-based paint, and the other half have just a

THE ONE-RENOVATOR MYTH

Some contractors mistakenly think that just one employee needs to attend the eight-hour RRP renovator training class. If you examine the long list of tasks a renovator must perform, and the times when a renovator must be present at a job site, it is clear that every on-site work crew supervisor should be trained to avoid costly violations.

RRP renovators must train all of the other employees on the job and document that they did so. They must direct the work, keep records, and be present when the warning signs are up, when the containments are being built and when cleaning is being performed. The renovator must also be available, either on site or by telephone, at all times that repairs are being conducted and must carry copies of the training course completion certificate.

Much of the material in the eight-hour RRP renovator class will be unfamiliar to those attending; simply sending employees to one class is not enough to avoid

violations, which may not be discovered until an audit occurs. Managers and owners who do not perform field work should also be trained so that they understand what RRP renovators working for them must do and are able to put procedures in place to help their crews with compliance and documentation.

THE PAPERWORK IS EASY

The RRP regulation has very specific requirements for documentation; this would be difficult or impossible to create for an audit months or years after the work was performed. EPA requires that all documents must be retained for three years following the completion of a renovation, but prudent contractors may choose to keep them for many years.

The records to be retained should show compliance with the requirements of the RRP regulation. Reports from lead consultants showing that lead-based paint is not present must also be kept. By using digital cameras or quality cell phone cameras, it costs almost nothing to keep photo records.

The notes documenting what was done, how it was done, and who did it are easy to write, but contractors may need to train supervisors who are not experienced at writing reports. It is helpful to go through the RRP regulations 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.

Audited contractors who did not follow the simple notification protocols will suffer needlessly, as compliance is easy. The new "Renovate Right" pamphlet is an important part of the notification process. It is easy to obtain signatures or other required proof of notification—or acceptable attempts to notify—when it is made a routine part of jobs. Besides notes indicating that signs were posted, a photo is an easy way to document compliance.

RRP allows contractors to perform their own lead cleaning verification. They can also hire a state-certified consultant to collect clearance dust wipe samples. These samples provide an indication that the work was properly completed and that no lead dust hazard remains. There's no need to try to find a lead-only consultant; a full-service consultant will provide clearance inspection and testing services for mold, lead and other contaminants.

NO NEW EQUIPMENT NEEDED

Restoration contractors are many steps ahead of most painters, plumbers and other trades because they already have most of the equipment and supplies needed for compliance with RRP. HEPA vacuums, polyethylene sheeting, respirators and negative air machines are routinely used on their job sites. Still, crews need to take special care to understand the differences in procedures when lead-based paint is present.

Compliance with the EPA's RRP program is not optional, and contractors who believe they will not be caught will pay a much higher price in the end. Knowing what to look for, when and where to test, and when to call in a consultant will help avoid fines and endangering others needlessly. For more information on the RRP, visit www.epa.gov/lead/rrp/index.html.

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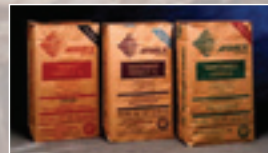
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