

COMPLIANCE WITH EPA's RRP Rule (40 CFR 745)
(Renovation, Repair and Painting)
...And the Real World

By

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Contents

What's the issue	1
The Law	5
Table I, Population Younger Than 6 Years of Age	7
Jurisdiction Details from Table 1, Online.....	8
What If... 1	9
What If... 2	9
Let The Debates Begin!	10
Fines & Other Penalties	13
Conclusion	15
BIO.....	16

What's the issue

By now, you have probably heard about the rules that tell us how to properly manage lead-based paint under the U.S. EPA, the U.S. Dept. of Housing and Urban Development (HUD), the Occupational Health and Safety Administration (OSHA), and most State, County, and Local governments. We are concerned about the issue of lead-based paint, among the wide diversity of building issues and standards since both our Construction Expert Practice address them, and our remodeling division performs a significant amount of work on older buildings.

Though this is obviously a generalization, basically, if a building was constructed before 1978 and it has not been certified free of lead-based paint by a certified assessor, work on it must comply with EPA, Title X. From the perspective of a construction expert witness practice, most construction trade professionals, as well as apartment building owners, and many others may be held liable for failure to comply, and those who do comply must be held harmless despite a subsequently-discovered incident of a high blood lead level in an occupant if they do comply.

So what is the problem? Profit margins in small and large businesses alike are so tight due to economic conditions that their owners are reluctant to add any costs to construction work, even though it is required legally and in the best interest of people's

health. Politics has created a level of cynicism in some people so that Title X is simply seen as more governmental intrusion. Their retort is a thought to the effect of, "C'mon, it's just dust! Just sweep or vacuum it, or whatever."

Yes, the Renovate-Repair-Paint (RRP) curriculum includes data about the percentages of homes that are contaminated with lead-based paint from 1940-1959, 1960-1978, and All Housing. According to the U.S. National Institutes of Environmental Health Sciences (NIEHS), the "Confirmed elevated blood lead levels (EBLLs) as a Percent of Children Tested" had dropped in every State, NY City, and Nationwide from 1997 through 2007. You probably also played with mercury in your bare hand and rode your bicycle without a helmet! However...

What is Lead? Lead is a highly toxic metal that remains in the environment after use. Lead has been used in the manufacturing of many products for centuries. Until the 1970's, lead could be found almost everywhere in the United States. Homes were covered with lead paint. Cars used leaded gasoline. Water pipes, ink, batteries, crayons and many other household goods had lead in them. Since The Artisans Group works on so many older homes, we became certified to properly take samples for testing to determine whether lead remediation is necessary.

What is Lead Poisoning? Lead poisoning is a serious medical problem that occurs when too much lead accumulates in the body. When eaten or inhaled, lead is easily absorbed into the body and can cause developmental and neurological problems. Anyone can become lead poisoned, but children under the age of six and pregnant women are at greatest risk.

Why Be Concerned? As a state with one of the oldest and most extensive industrial heritages, New Jersey contains a substantial amount of lead, subjecting its residents to the dangers of lead poisoning. A legacy of lead in housing, soil, and water often creates unacceptably high exposure levels to children, adults, pets and wildlife. Today, the primary cause of lead poisoning in children is lead-based paint. Lead-based paint was banned from residential use in New Jersey in 1971 and nationally in 1978. However, housing built prior to 1978 may be contaminated. Houses built prior to 1950 present the greatest risk due to the high percentage of lead contained in older paint. More than 30% of the housing in New Jersey was built before 1950. In addition, every county in the State has more than 9,000 housing units built before 1950. For these reasons, lead poisoning prevention is of significant importance to the people of New Jersey.

Where is Lead Found? Lead-Based Paint Lead is often found in peeling and chipping lead-based paint and dust located in houses and apartments built before 1978. Although lead-based paint for residential use was banned in New Jersey in 1971 it was still widely available until the national ban on sales in 1978. However, lead is currently used in industrial paints.

- **Dust and Debris** Standard maintenance and remodeling practices in old homes may release lead through dust and debris. This is also true for renovation of other structures, such as schools and bridges.
- **Soil** may contain lead from paint fallen from older buildings, industrial pollution, and waste from batteries. Also, until the 1980's, lead was used in gasoline, and lead exhaust from passing vehicles was deposited on the ground. Consequently, a great portion of land, including playgrounds and schoolyards, has lead-contaminated soil.

Soil around newer homes that were constructed on orchard sites may be contaminated with lead arsenate that was formerly used on crops.

- **Drinking Water** If an older home or facility was constructed using pipes soldered or welded together with metals containing lead, drinking water may be contaminated. When water sits in the pipes for several hours, the lead is released and contaminates the water.
- **Work Place Exposure** People whose occupations or hobbies involve lead may carry lead residue on their clothing or other objects, and unknowingly expose their families. Some work places where it is common to be exposed to lead include auto body repair shops, bridge and water tank painting and sanding, marine painting and sanding, radiator work, demolition of older buildings and cars, and battery manufacturing.
- **Food and Household Items** Imported food may contain lead if it was stored in lead soldered cans or kept or cooked in pottery, ceramic, or crystal containers made with lead. Pottery is often covered with glazes that contain lead. This is primarily a problem in industries that do not have the resources to ensure their kilns are hot enough to seal in any lead toxins. Also, imported candles that have metal wicks may contain lead. Pigments used in plastics and labels may increase exposures to lead. Products can include imported mini-blinds, toys, candy labels, shellacs and clear coatings.
- **Cosmetics** or make-up from other countries often contain lead, and are commonly used in Middle Eastern and South Asian cultures.
- **Home Remedies** Many home remedies used by cultures throughout the world contain lead and are particularly dangerous as they are ingested. These remedies include Payloah from Southeast Asia, Azarcon from Mexico, and others such as Greta, Ruedo, Alacron Kohl, Ghassard, and Kandou.

More information is available from the following resources:

- *The Residential Lead-Based Paint Hazard Reduction Act of 1992*
- *Lead-based paint is only one of the many materials and issues that the The US Department of Environmental Protection manages.*

SOURCE: New Jersey Dept. of Community Affairs, Division of Codes & Standards

The Federal government, under the provisions of the Lead-Based Paint Hazard Reduction Act of 1992, carries out an extensive program of regulation, outreach, and research to reduce lead hazards and to eliminate childhood lead poisoning. Many state and tribal governments have lead programs as well.

Lead poisoning can affect people of any age, race, geographic region, or socioeconomic level. Anyone who is exposed to lead and who unknowingly ingests or breathes it may develop an elevated blood lead level, but the effect of over exposure to lead is greatest on children. Children living at or below the poverty level, urban children, and children living in older houses with deteriorating lead-based paint, or where renovation is in progress are at highest risk. Also, children of some racial and ethnic groups living in older housing are disproportionately affected by lead. For example, 22% of black children and 13% of Mexican-American children living in housing built before 1946 have elevated blood lead levels compared with 6% of white children living in comparable types of housing.

Children are at a greater risk from exposure to lead than adults for several reasons, including:

- Children are more vulnerable to damage because their bodies and nervous systems are still developing.
- Frequent hand-to-mouth activity brings children into greater contact with lead in the environment, especially in lead dust and soil.
- Children absorb and retain a larger percentage of ingested lead per unit of body weight than adults, which increases the toxic effects of the lead.

The de-leading of gasoline and food containers in the United States was successful in reducing average blood-lead levels by 70 percent between 1970 and 1990. In addition, the Consumer Product Safety Commission banned the sale and use of lead in residential paint over 0.06 percent in 1978.

However, even with these aggressive actions to reduce the amount of lead in a child's environment, many continue to have blood-lead levels that exceed the level of concern of 10 micrograms per deciliter of blood set by the Centers for Disease Control and Prevention (CDC). Data from phase two of the Third National Health Evaluation and Nutrition Survey (1991-1994) indicate that 4.4% of U.S. children - about one million between one and five years of age have elevated blood-lead levels at or greater than 10 micrograms/deciliter (ug/dl). Blood-lead levels were highest among one to two year olds with 5.9 % having elevated blood-lead levels. Many population groups that have been poisoned most by lead in the past continue to be at risk; for example, the incidence of lead poisoning is 2.3% among Caucasian children, 4.0% among Mexican American children and 11.2% among African American children. Results of NHANES data collected in 1999, 2000, and 2001 regarding the number of children with elevated blood lead levels are not yet available to update the estimates from the 1991-1994 NHANES. Source: Phase 2 of the Third "Blood Lead Levels in the U.S. Population," Morbidity and Mortality Weekly Report, February 21, 1997.

Adults

- Approximately 10 adults die each year from lead poisoning. Almost all people have some lead in their blood (the adult average is less than 5 mg/dL).
- Adults living next to smelters, mines, and similar industrial enterprises should be concerned about exposure levels. High concentrations of lead can be found in soils of many orchards where pesticides were used for an extended period of time. Recycling batteries at home is very dangerous. During the process, some lead becomes airborne, and airborne lead can be absorbed in high quantities.
- Adults who live in homes containing lead-based paint can be exposed when they do renovation or remodeling work that disturbs lead-based painted surfaces. It is safest to assume that all paint in a house built before 1978 is lead-based until testing has shown otherwise.

If you would like to have a further discussion or need further information, call 1-800-424-LEAD. For further information there are a number of informational documents available on the EPA website (www.epa.gov/lead) under the additional resources link.

SOURCE: U.S. EPA

The Law

The New EPA Lead Rules and You - In 2008, the Environmental Protection Agency (EPA) updated its lead rules. As a professional builder and remodeler, we are required to use prescribed techniques to protect you, our staff, your home, institution, or child care or commercial building, and the outdoor environment. As a result, we are now certified by the U.S. EPA and Dept. of HUD, and NJ DCA , and follow specific work practices to prevent lead contamination..

Regulations for landlords; remodelers, painters, and others who perform work on older homes... (<http://www.epa.gov/reg5rcra/ptb/lead/>)

Renovation, Repair and Painting Rule Section §402(c)(3) of the Toxic Substances Control Act - On March 31st, 2008, the U.S. EPA issued a new rule requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting (RRP) activities that disturb lead-based paint. The rule will address hazards created by renovation, repair and painting activities that disturb lead-based paint in "target housing" and "child-occupied facilities". The RRP rule will establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and for renovation work practices.

Residential Lead-Based Paint Disclosure Rule/Section § 1018 of Title X - Although highly toxic lead based paint was banned in 1978; homes built in 1978 and before may still contain paint containing lead. Deteriorating paint in such homes present a lead hazard through inhalation and ingestion of paint chips and lead contaminated dust and soil. Lead may also be present in varnish, caulk, and other materials. It is important to find out if your home has lead in it or around it. Because of these threats, U.S. EPA has regulations to protect both renters and buyers.

Under the U.S. EPA Residential Lead-Based Paint Disclosure Rule/Section 1018 , the landlord or rental agent must give the prospective tenant a copy of the pamphlet, "Protect Your Family from Lead in Your Home", and must inform them of any known lead-based paint hazards in the residential unit and common areas. The landlord is not required to test for lead paint or remove it.

If buying a home, the seller or agent must give the buyer a copy of "Protect Your Family from Lead in Your Home", and inform the buyer of any known lead based paint hazards. The seller is not required to test for lead. The seller must offer the prospective buyer a 10-day opportunity to have a lead inspection or risk assessment performed. The buyer cannot be obligated to sign a contract until given this opportunity. The parties may agree to adjust the 10 day period.

Copies of the "Protect Your Family from Lead in Your Home" in both English and Spanish are provided through the web links below <http://www.epa.gov/lead/>.

The Pre-Renovation Education Rule/Section §406(b) - If the homeowner hires a contractor to renovate a home built before 1978, the contractor must provide a copy of "Protect Your Family from Lead in Your Home" before work begins. The Pre-Renovation Education Rule/Section §406(b) of TSCA requires renovators of most housing built

before 1978 working for compensation to provide the owner and occupant of the housing the pamphlet "Protect Your Family From Lead In Your Home" before beginning the renovation. If the owner does not live in the housing, the owner must be provide the occupant information regarding the nature and timing of the renovation. The renovator is required to keep specific notification documentation.

If homeowners decide to renovate or rehab their home themselves, U.S. EPA suggest the individuals practice lead safe work practices. When renovating homes built before 1978, homeowners must take precautions when disturbing old paint. U.S. EPA suggests homeowners read the following brochures before doing any home renovation project that may disturb old paint. "Reducing Lead Hazards When Remodeling Your Home" and Don't Spread Lead: A Do-It-Yourselfer's Guide to Lead-Safe Painting, Repair, and Home Improvement (booklet). Go to the National Lead Information Center web page or contact the Lead Hotline at 1-800-424-LEAD for more information on lead hazards and their prevention.

SOURCE: U.S. EPA

Table I, Population Younger Than 6 Years of Age

Number of Children Tested and Confirmed EBLLs by State, Year, and BLL Group, Children < 72 Months Old

http://www.cdc.gov/nceh/lead/data/StateConfirmedByYear_1997_2007Web.htm

Number of Confirmed Children By Highest Blood Lead Level (µg/dL) at or Following Confirmation

Years 1997-2007	U.S. Total, State, & NY except NYC, NY City**	Pop. < 72 months old	Number of Children Tested	Total Confirmed Children	Confirmed EBLLs % of Children Tested	Number of Confirmed Children By Highest Blood Lead Level (µg/dL) at or Following Confirmation					
						10-14 µg/dL	15-19 µg/dL	20-24 µg/dL	25-44 µg/dL	45-69 µg/dL	>=70 µg/dL
1997	U.S. Totals	23,345,397	1,611,569	122,641	7.61%	67,793	28,312	13,473	11,693	1,170	200
1998		23,143,133	1,761,674	114,571	6.50%	66,305	25,636	11,498	9,896	1,076	160
1999		23,023,683	1,875,500	94,292	5.03%	55,538	20,782	9,120	7,903	839	110
2000		23,304,631	2,216,700	87,782	3.96%	51,639	18,921	8,512	7,748	814	148
2001		23,380,551	2,538,008	76,992	3.03%	45,856	16,502	7,060	6,647	800	127
2002		23,380,855	2,652,964	67,914	2.56%	41,160	14,592	5,958	5,475	628	101
2003		23,612,242	3,092,229	70,236	2.27%	43,214	14,301	5,760	5,496	601	864
2004		23,903,723	3,250,848	57,204	1.76%	34,996	11,490	4,612	4,363	532	1,211
2005		24,204,520	3,529,634	54,051	1.53%	32,594	10,743	4,628	4,467	502	1,117
2006		24,507,506	3,578,103	46,912	1.31%	28,522	9,328	3,955	3,659	448	1,000
2007	24,761,587	3,136,843	31,524	1.00%	19,078	6,410	2,771	2,635	340	290	

** The online data set contains the additional State, D.C., and NY City details.

NOTE: State data and analysis may vary from CDC data due to strict CDC guidelines and criteria

This data shows, among other information, that the numbers of children in the test group with elevated blood lead levels declined from 1997 through 2007, but that today, approximately 31,524 children from the ages of four to ten have a blood lead level of at least 10 micrograms/deciliter.

1. What is the actual effect of lead on learning and other physical and psychological disabilities among those children?
2. If paint in their homes and other buildings to which they have been exposed contains lead and has alligatored, cracked, chipped, ground into dust, or peeled, what effects would an epidemiologist find in other family members, occupants, and/or pets?
3. What are the financial, time, stress, lost productivity, and other costs to families, businesses, taxpayers, and/or other occupants?

Jurisdiction Details from Table 1, Online

Among other information in this table, column 5 shows that High BLL's have declined by as much as 95%, thanks to elimination of lead in numerous products, nationwide.

Confirmed EBLLs as % of Children Tested 1997-2007 (by State)					
STATE, NYC, DC	AVERAGE	MAXIMUM	MINIMUM	COL C-D (by State)	Cases < 6 YO of High BLL as of 2007
U.S. Totals	3.32%	7.61%	1.00%	6.61%	31,524
Pennsylvania	9.83%	24.19%	3.04%	21.15%	4,094
Illinois	8.48%	17.52%	3.50%	14.02%	3,521
New Jersey	7.20%	23.22%	1.26%	21.96%	2,539
Michigan	5.90%	17.06%	1.49%	15.56%	2,073
California	7.44%	18.33%	0.40%	17.94%	1,956
Massachusetts	1.50%	3.23%	0.69%	2.54%	1,589
Wisconsin	4.68%	10.24%	1.72%	8.52%	1,575
New York City	1.75%	3.41%	0.75%	2.66%	1,261
Connecticut	2.48%	3.97%	1.33%	2.64%	1,016
Missouri	5.68%	12.12%	1.06%	11.06%	935
New York State (except NYC)	3.15%	6.31%	1.59%	4.72%	843
Maryland	24.04%	88.10%	0.79%	87.32%	832
Texas	1.87%	6.35%	0.35%	6.00%	757
Iowa	2.99%	5.61%	1.20%	4.42%	722
Florida	2.07%	6.35%	0.24%	6.11%	596
Indiana	1.98%	3.12%	1.06%	2.06%	592
Virginia	1.91%	6.73%	0.55%	6.18%	466
Minnesota	2.14%	5.00%	0.60%	4.40%	441
North Carolina	0.79%	1.30%	0.27%	1.02%	387
Rhode Island	5.11%	8.81%	2.34%	6.47%	331
Vermont	6.62%	13.27%	2.21%	11.05%	308
Kansas	2.76%	8.33%	0.97%	7.36%	278
Alabama	3.02%	6.56%	0.74%	5.82%	269
New Hampshire	2.86%	3.87%	1.69%	2.18%	263
Mississippi	15.50%	95.41%	0.62%	94.79%	224
Maine	2.60%	3.97%	1.43%	2.54%	201
Oklahoma	1.46%	3.72%	0.78%	2.94%	177
Louisiana	1.80%	3.32%	0.37%	2.95%	176
Georgia	1.04%	2.49%	0.26%	2.23%	172
Arizona	5.86%	32.48%	0.24%	32.24%	96
District of Columbia	7.94%	71.58%	0.77%	70.81%	73

Kentucky	0.79%	1.30%	0.29%	1.01%	72
Tennessee	2.52%	7.64%	0.42%	7.23%	49
Nebraska	5.04%	29.84%	1.38%	28.46%	42
Oregon	1.05%	1.82%	0.38%	1.44%	40
Delaware	6.41%	53.57%	0.20%	53.37%	19
Washington	0.84%	1.22%	0.56%	0.66%	0
West Virginia	1.40%	2.26%	0.83%	1.43%	0

What If...1

Based on the facts that

- 3.1 million out of a total 24.7 million population of children were tested,
 - 1% of those in the sample population had high BLL's, and
 - 0.13% of the whole population under six years of age have a high BLL,
- how many children would be shown to have lead toxicity if all 24.7 million were tested?

2007 Pop. < 72 months old	24,761,587	If x% Of All Children Have EBLL's	
# Children Tested	3,136,843	0.25%	61,904
Cases of EBLL's	31,524	0.50%	123,808
% of < 72 Months	1.0050%	0.75%	185,712
% of All Children	0.12731%	1.00%	247,616

What If...2

Especially since lead exposure is cumulative, how many of us in other population segments have high BLL's at 0.1, 0.25, 0.5, and 0.75 percent of that older age group?

Table 1: Estimates of the Population by Selected Age Groups for the United States (incl Puerto Rico): July 1, 2007 (http://www.census.gov/popest/states/asrh/SC-EST2007-01.html)					
		If x% by Selected Age Group Have EBLL's			
		0.10%	0.25%	0.50%	0.75%
U.S. Total	301,621,157	301,621	754,052	1,508,105	2,262,158
Under 5 Years	20,724,125	20,724	51,810	103,620	155,430
5 to 13 Years	35,970,646	35,970	89,926	179,853	269,779
14 to 17 Years	17,206,962	17,206	43,017	86,034	129,052
18 to 24 Years	29,492,415	29,492	73,731	147,462	221,193
>=16 Years	236,468,212	236,468	591,170	1,182,341	1,773,511
>=18 Years	227,719,424	227,719	569,298	1,138,597	1,707,895
15 to 44 Years	126,258,301	126,258	315,645	631,291	946,937
45 to 64 Years	76,586,836	76,586	191,467	382,934	574,401
>=65 Years	37,887,958	37,887	94,719	189,439	284,159
>=85 Years	5,512,298	5,512	13,780	27,561	41,342

Let The Debates Begin!

Senators Challenge EPA on RRP Expansion, Ask for Oversight Hearings

WASHINGTON, April 19, 2011 - U.S. Sen. Jim Inhofe, who battled a federal agency over lead paint removal rules last year, joined other senators Monday in raising new concerns over the matter. As the ranking member of the Senate Environment and Public Works Committee, the Oklahoma Republican also called for oversight hearings on the U.S. Environmental Protection Agency's approach. "Once again, EPA is fumbling implementation of this rule, to (the) point that it will cost jobs and fall far short of fully realizing the rule's laudable public health goals," Inhofe said. "When EPA mismanaged implementation of the first phase of this rule, more than 60 senators - Democrats and Republicans - voted to hold EPA accountable to fix its mistakes."

Unfortunately, he said, the EPA appears to be heading down a similar path with its current effort. "I hope in due course the agency will heed the Senate's concern and ensure the rule is carried out efficiently and effectively to protect public health," Inhofe said. He said oversight hearings would allow senators to identify the EPA's errors, correct them immediately and realize the full public health benefits of the rule.

NAHB Files Brief in Lead Opt-Out Lawsuit – Explains why it is suing the EPA for eliminating opt-out provision

WASHINGTON – April 4, 2011 -- NAHB has filed an opening brief explaining why it is suing the Environmental Protection Agency for eliminating a provision in its lead rule that allowed home owners to opt out of some of the rule's renovation requirements. When it was first issued by the EPA in 2008, the Lead: Renovation, Repair & Painting Program (RRP) rule included an opt-out provision that allowed owner-occupant home owners without children under age six or pregnant women living in the home to authorize their contractor to forego adherence to some aspects of the rule.

- The opt-out provision was a common-sense means to minimize the burden on home owners and support housing affordability while still being protective of young children and pregnant women, said Bob Peterson, chairman of NAHB Remodelers and a remodeler from Fort Collins, Colo.
- But after EPA entered into a legal settlement with public interest groups, Peterson said, it abruptly changed course and removed the opt-out provision, despite a lack of any new data or information to support the about-face.
- NAHB supports the goals of the RRP rule, and the vast majority of remodelers have for years been using the best practices called for in the rule.
- NAHB and its partners have taken issue with the elimination of the opt-out provision because the revised rule makes millions of additional projects involving no young children or pregnant women in the home subject to the rule.
- NAHB, along with the Hearth, Patio, and Barbecue Association; the Window and Door Manufacturers Association, and the National Lumber and Building Material Dealers Association initiated the lawsuit in July 2010 in the U.S. District Court for the District of Columbia.

In an opening brief filed on March 30, the NAHB-led coalition claims that the EPA:

1. Violated the Administrative Procedure Act by failing to offer reasoned explanations for the removal of the opt-out provision.
2. Failed to point to any new data that was not available at the time it issued the 2008 RRP rule. Moreover, the EPA summarily discounted numerous comments submitted to the agency that offered new and compelling information on the real-world costs of compliance.
3. Grossly underestimated the costs of compliance at \$35 a job, when real-cost estimates submitted in the comments ranged from \$1,800 to more than \$6,000 per job.
4. Provided cursory explanations for why it changed its position on the opt-out, none of which were supported by new data and some of which were outside the scope of the statute authorizing the EPA to issue the RRP rule.
5. Failed to comply with the Regulatory Flexibility Act, which affords vital protections to small businesses.

Furthermore, while the EPA recognized that the removal of the opt-out provision would have a substantial impact on small businesses, it nonetheless refused to convene a new advisory panel as required by law, which would have provided it with critical information about the renovation and remodeling industry as it exists today, the lawsuit contends.

Instead, the agency relied on the findings of a panel held more than a decade earlier. The EPA will have an opportunity to respond to the coalition's brief in June, and the coalition can reply in July. If the D.C. Circuit requests oral arguments, they will likely occur late in 2011 or in the first half of 2012.

Seven Debates of RRP

<http://www.forrenovationpros.com/blog/2011/04/seven-debates-of-rrp/>

In the 12 months since RRP has been in effect, I've noted seven areas of discussion that have emerged.

1. RRP is still in flux. As evidenced by changing rules and regulations, the instability of RRP has most of the contractors who are willing to comply, still confused. If they were trained early on in the RRP process, they could be behind in the most up-to-date directives on how to conduct proper RRP (i.e. opt-out provision).
2. RRP is being largely ignored. From comments I've received from contractors and renovators, I sense that there are a number of homeowners who are contracting with non-lead-safe certified contractors purely based on cost. I have also heard from contractors who are just flat out refusing to work on pre-1978 residences. I would not be surprised if some contractors are acting as if the opt-out is still in effect.
3. Contractors are still waiting for a stay of execution on appeal. As each story of a lawsuit, letter, or group action hits the media, it seems to serve as de-facto permission to wait while the industry appeals the decision.
4. Records are the least understood aspect, raising the most questions. I continue to have contractors ask questions about record-keeping. Our ForRenovationPros.com webinar last month drew tremendous interest and many questions about record-keeping. If you missed our webinar, you can access it here from our home page/archives.
5. Fines for failure to properly notify residents of target housing are the primary enforcement threat. Over the last few weeks, ForRenovationPros.com has published news accounts of contractors receiving EPA fines for non-compliance with the notification requirements. The distribution of Renovate Right is such an easy step to complete. You can even provide it in an email, as we described in one of our Dec. issue.

6. EPA seems understaffed, and is making the conscientious effort to turn this program over to any state that will take it on. There are now 11 states that have obtained EPA authorization and are implementing their own RRP program. For more information and links to the state information, visit the EPA lead-safe site and to EPA Authorized State Programs.
7. The industry is missing a positive result test. Even though the industry is still striving to have a test process that will prove the positive presence of lead, the EPA is wanting to demand higher standards of clearance testing, matching those tests of HUD and OSHA.

Concerned About RRP Expansion? You've Got Friends in DC

<http://www.forrenovationpros.com/blog/2011/04/concerned-about-rrp-expansion-youve-got-friends-in-dc/>

EPA has agreed to expand several facets of RRP due to a legal settlement of a lawsuit brought by six special interest groups. The groups claimed the original residential RRP did not go far enough in protecting the public health.

As reported in our previous posting *Around the Corner*, RRP Expansion to Commercial Buildings, two key components of this agreement are additional clearance testing requirements and the expansion of RRP to all pre-1978 commercial and public buildings. For those concerned about the RRP expansion, you have some friends in Washington, D.C. On Friday, April 15, 2011, U.S. Senator James Inhofe (R-Okla.), Ranking Member of the Senate Committee on Environment and Public Works, called for EPW Committee oversight hearings on EPA's Lead-Based Paint rule. Sen. Inhofe joined several Senators who sent letters to the EPA identifying problems with the aspects of the EPA settlement agreement, including the clearance testing change to take effect in July of this year, and the expansion of RRP to all pre-1978 buildings. The letter questioning the need for clearance testing notes that the requirement will likely impose significant confusion and complication for renovators and remodelers who have already completed their LRRP training and result in additional costs for homeowners and renovators to pay for the clearance testings.

The senators note that the new requirement is a clear violation of congressional intent under the Toxic Substances Control Act (TSCA) as renovation and abatement activity are separate and governed by different sections of the TSCA. Lastly, they note that this requirement will make renovators liable for existing lead in the home. The letter to the EPA questions:

1. Where is the additional data regarding LRRP and health data to justify expansion?
2. What authority does the EPA have under TSCA to require remodelers to use clearance testing or dust wipe testing?
3. None of the next generation of testing kits have been approved. Given the unavailability of new testing kits, and the higher number of jobs that require lead safe work practices, will the EPA revised its economic analysis of the rule?

In a second letter, senators also questioned the expansion of LRRP to all pre-1978 commercial and public buildings. They note insufficient data to support the expansion and a lack of understanding about the activities in these buildings that would affect lead levels. It is pointed out that:

1. EPA recognized in 2010 the scarcity of data related to dust exposures in public and commercial buildings and other non-residential settings and after extensive research, revealed relatively little information concerning typical levels of floor and window sill dust lead in public and commercial buildings.

2. EPA seems to believe it can easily apply what it has done under residential LRRP to commercial buildings, without consideration that homeowners may renovate every 10 years, but commercial properties are renovating continuously.

Senator Inhofe summarizes by stating, EPA's latest proposal governing how renovators and remodelers handle lead-based paint is impractical, confusing, costly, and not based on the best available science.

He continues, "Once again, EPA is fumbling implementation of this rule, to the point that it will cost jobs and fall far short of fully realizing the rule's laudable public health goals." Sen. Inhofe is calling for oversight hearings to explore this subject and ensure that the public health goals are being met. You can contact Sen. Inhofe by emailing or call one of his senate offices.

SOURCE: <http://www.forrenovationpros.com>

Fines & Other Penalties

As we expected, those who violate EPA, OSHA, HUD, States, and other jurisdictions' regulations on lead-based paint are being called on the carpet, and as most of you know, the penalties can be as high as \$32,500 per incident, with the possibility of double that amount, and even jail time.

College Works Painting, a company operating in Oregon, has agreed to pay a \$32,508 penalty for alleged violations of the federal pre-renovation rule.

The U.S. Environmental Protection Agency alleged that the company – based in Irvine, Calif., – violated the federal pre-renovation rule while renovating nine properties in Portland, McMinnville, and Hillsboro, Ore.

The violations alleged in this case took place during renovation work done in 2008. College Works failed to establish and maintain records necessary to demonstrate compliance with Toxic Substances Control Act regulations, according to the EPA. College Works has corrected the violations and is now in compliance with the Pre-Renovation Education Rule.

Maine Property Management Company Settles EPA Claims of Lead Paint Notification Violations, Release date: 04/12/2011, Contact Information: David Deegan, (617) 918-1017

(Boston, Mass. – April 12, 2011) – A residential property management company based in South Portland, Maine has agreed to pay a penalty of \$3,542 and will perform a lead abatement project valued at \$31,884 to settle EPA claims that it violated federal lead-based paint disclosure requirements at buildings in Freeport and Portland. These violations potentially put tenants at risk of exposure to lead hazards.

Preservation Management, Inc. provides residential property management services at approximately 70 properties, totaling about 7,000 housing units, in 13 states. The company manages almost 700 pre-1978 housing units in the New England states of Connecticut, Maine and New Hampshire.

According to allegations in a recent agreement, Preservation Management violated the federal Lead Disclosure Rule when it failed to disclose information about lead paint to eight tenants when leasing units at its Lafayette Square apartment building in Portland, and its Maplewood

Terrace complex in Freeport. Specifically, Preservation Management failed to provide records or reports regarding lead hazards and to make sure that the lease included a statement disclosing the known or unknown presence of lead-based paint. In addition, EPA alleged that, also at Lafayette Square, Preservation Management failed to provide a tenant with required information prior to renovation taking place.

In addition to paying the fine, Preservation Management will perform a lead abatement project at Lafayette Square, a 97-unit facility that has significant lead paint in its common areas. Specifically, the project will include removal of the trim from the 14 elevator doors, and removal of the interior trim from the 10 common area hallway windows. All abatement work will be performed in accordance with all applicable laws and regulations.

Window World to pay \$40,000 in lead paint settlement, St. Louis Business Journal, Thursday, March 31, 2011, 11:27am CDT - Last Modified: Thursday, March 31, 2011, 11:46am CDT Window World of St. Louis Inc. has agreed to pay a \$19,529 civil penalty to the United States to settle allegations that it failed to notify owners and occupants of at least 20 St. Louis-area residential properties built before 1978 of lead-based paint risks prior to performing renovation work at those locations.

The window replacement company, located in Maryland Heights, was legally required to provide owners and residents of the properties with a regulator-approved lead hazard information pamphlet before starting renovations at the properties, the U.S. Environmental Protection Agency said Thursday.

As part of its settlement with EPA, and in addition to paying the \$19,529 civil penalty, Window World of St. Louis also has agreed to spend an estimated \$20,048 to replace a total of 73 old windows contaminated with lead paint at three group homes operated by the nonprofit social services organization Youth in Need. Those facilities are located at 1420 N. Third St., 516 Jefferson St. and 529 Jefferson St. in St. Charles, Mo.

Inspector requires lead paint process followed after site visit, Friday April 22, 2011 Neal Goswami, BENNINGTON, VT -- A Safford Street apartment is being worked on with appropriate safeguards, after a young child showed elevated levels of lead, according to a town official.

- Larry McLeod, the town's health officer and building inspector, said the apartment, owned by John and Trish Mahar, is now being worked on by a contractor trained in lead abatement.
- He said a child living in the apartment showed an elevated level of lead following a recent test, but not at a reportable level. "If it comes above a certain level the doctor is obligated to notify the state. This wasn't that, but the tenants were concerned," McLeod said.
- A contractor was doing work in the apartment but was not trained in lead abatement, as is required by the state, McLeod said. The training lays out how lead paint and other hazards must be dealt with, he said.
- "The assumption, of course, especially in pre-1978 apartments, is that it has lead," McLeod said. "This guy was not trained for that and the tenants expressed a concern about that and I went over as the health officer to do an inspection."
- McLeod said the apartment did not pass the inspection he conducted on April 13. A trained contractor was then brought in, and the tenants were put up by the landlords in a local motel while work was completed, he said.

- A follow up inspection on Thursday showed significant progress, McLeod said. "I've been back to do a follow-up and everything has been taken care of except for the exterior, which will have to be followed up," he said.
- Any evidence of peeling or chipping paint larger than one square foot requires abatement, according to McLeod.

He said the situation has been handled appropriately, according to the town. The landlords are still working with the state to meet all requirements, McLeod said.

R.I. AG files lead paint complaint, BY BRYAN COHEN, THUR., APRIL 07, 2011 3:19:00 PM PROVIDENCE, R.I. (Legal Newsline) -- Rhode Island Attorney General Peter Kilmartin and the Rhode Island Department of Health filed a lead paint complaint on Wednesday in Providence County Superior Court against a Massachusetts-based landlord.

George Homsey Jr. owns property at 87 Barstow Street in Providence, R.I. The suit asks for the property to be declared a public nuisance and for the immediate abatement of all lead hazard nuisances. Kilmartin is also seeking a maximum penalty of \$100 per day from January 6, 2010, the date of the second notice of violation of lead paint laws, and all of the state's costs connected to the complaint.

This new complaint was filed after Homsey allegedly ignored notices of violations by the Department of Health, which date back to November 2009. Homsey has 20 days to respond to the complaint. The action has been brought pursuant to the Lead Poisoning Prevention Act, the Rules and Regulations for Lead Poisoning Prevention and the Housing

Maintenance and Occupancy Code. The Lead Poisoning Act is meant to reduce exposure to environmental lead and to prevent childhood lead poisoning, which has been labeled as one of the most severe environmental health problems in Rhode Island.

Of the 12,384 children in the state who will enter kindergarten in 2011, 2.4 percent, or 302, have had an elevated blood lead level. Lead poisoning can result in learning disabilities, nervous system disorders and impaired coordination. In high levels, lead may lead to mental retardation, brain damage and possibly even death.

SOURCE: <http://www.forrenovationpros.com>

Conclusion

Yes, 40 CFR 745 is real, as are the penalties for violating its provisions. Compliance is not difficult as long as we make a best effort to provide proper notifications and training, use prescribed techniques, and teach our clients and others skillfully about these issues. For those who doubt the importance of dealing properly with lead, non-compliance can

- Break or financially damage an A/E/C company; its owners and other stakeholders, and
- Cause any illness that a neurotoxin can create, including death.

As in all of our work in architecture, engineering, and construction, knowledge, skills, and excellence are/should be a way of life. The Artisans Group's Construction Expert Practice works with owners, other A/E/C professionals, attorneys, and prosecutors to help ascertain the facts of alleged complaints versus standards of performance, legality, building code and related

ordinances, manufacturers' specifications, and compliance with architectural/engineering plans and the contract. A conscientious best effort at mutuality, legality, and artisanship is obviously key to project success for owners and/or our fellow A/E/C colleagues.

BIO

Wayne Baruch is President of Wayne Baruch Artisans Group, LLC,

- A full-service Remodeler, specializing in historic restoration & repairing structural, insect, & water damage,
- An expert witness & an adjunct instructor in construction-related topics.

His audiences have included several colleges and universities, the local Realtors association, the NY Real Estate Investors Assn., and he has been a repeat guest on WDVR-FM, among others. In addition to being a hands-on craftsman, he holds an MBA from Temple Univ., is a HUD/EPA/NJ Certified Renovator, Lead-Safe Certified Firm NAT-20233-1, & a Title X Instructor. The Bucks County, PA Chamber of Commerce honored Baruch, & three others with its 2009 Humanitarian Award for their work rebuilding in MS in the aftermath of Katrina, Rita, & Gustav.

Baruch is past Vice Chair of PMI's Design-Procurement-Construction Group, was the #5-ranked Builder for Lennar Corp's NJ Div. in 2003, & has earned awards from the NJ Community Builder's Assn. & the Central Jersey Chap. of NARI.