

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## Environmental LAW

### New EPA rules for lead-based paint

In an apparent attempt to reduce health risks, the U.S. Environmental Protection Agency issued a new rule requiring the use of lead-safe work practices during renovation activities at residential homes, schools and daycare centers.

The Lead-Based Paint Renovation, Repair and Painting Rule, 40 CFR Part 745, was issued under the Residential Lead-Based Paint Hazard Reduction Act of 1992 and applies to any contractor, including renovators, electricians, HVAC contractors, plumbers, painters and maintenance staff who disrupt more than six square feet of lead paint in pre-1978 homes, schools and daycare centers, as well as other areas where children gather.

The new rule — which became effective April 22 — is aimed at eliminating instances of childhood lead poisoning.

In practice, at least to date, the rule is catching many contractors by surprise and creating a great deal of concern about traditional renovation and remodeling projects. Some contractors even have decided to avoid working on structures covered by the rule due to the regulatory headache and enforcement risk.

As an overview, the RRP rule requires contractors performing renovation activities in subject structures to first submit an application and pay a fee to the EPA for certification. Contractors also are required to attend a one-day class to have renovators certified. Both the certification application and training are valid for five years.

In Western New York, the training course costs about \$150 per attendee. As part of the required training, the RRP rule specifies lead-safe work practices aimed at minimizing dust and debris. The contractor must have at least one certified renovator in charge of each project where lead paint is disturbed.

EPA's RRP rule does not apply to homeowners performing their own renovations, repairs or painting work. There also are certain limited regulatory exceptions to the application of the rule, the first of which is that a written determination has been made by a certified inspector and provided to the contractor stating the structural components to be renovated are free of lead paint or fall below regulatory standards. Certified contractors may use an EPA-approved test kit to test the structural components and determine whether they fall below regulatory standards.

Another exemption permits property owners to provide contractors with written certification that no children younger than

six and no pregnant women reside in the owner's residence, that the house is not a child-occupied facility and that the owner acknowledges the renovation firm will not be required to use RRP work practices.

Prior to beginning renovation work, contractors are required to provide owners, tenants and child-care facilities with the pamphlet "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools," and document compliance with the notice.

Lead-safe work practices generally consist of:

- containment of the work area, including taping and sealing off the area with plastic sheeting, covering floors and furniture that cannot be moved, and sealing off doors and HVAC systems;
- avoiding renovation activities that generate excessive dust, such as burning and torching, as well as using power equipment with HEPA vacuum attachments; and
- thoroughly cleaning the work area after the renovation with HEPA vacuum equipment, followed by wet wiping and wet mopping with adequate quantities of rinse water.

The work area must be cleaned daily. Contractors also must also perform a final clean-up verification.

The work area must be re-cleaned if necessary to meet clearance standards.

Contractors also are required to retain all documents for three years after a covered project is completed. In an effort to simplify contractors' compliance with the RRP rule, the EPA released a handbook "Small Entity Compliance Guide to Renovate Right."

As with most EPA rules, failure to follow the RRP rule can subject contractors to significant fines and penalties ranging from \$10,000 per violation. Although the EPA supposedly has done outreach to advise the public and contractors about the new RRP rule, it is still catching many by surprise. Many firms that applied for certification prior to the April 22 effective date are still awaiting approval. According to an EPA enforcement memo, if a firm applied prior to the effective date, the EPA will not disrupt ongoing renovations over certification, but it will demand compliance with the training and lead-safe work practices.

Although the apparent regulatory purpose may be laudable, it remains to be seen whether the new rule actually will produce a

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reduction in childhood lead poisoning. Given the magnitude of the regulation, it seems the EPA's action will have a significant impact on the residential remodeling industry for older homes. It appears the EPA did not account for the impact of the new regulation, certification and cost impacts on residential remodeling projects.

Many homeowners undoubtedly will be surprised by the increased costs for once-routine painting, renovation and repair

activities as contractors attempt to comply with the new rule, which has mandated new and unprecedented regulatory and paperwork requirements on the remodeling industry.

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