

LeadPaint-EPA regulations Effective 4/22/10

CONTRACTORS –Renovating, Repair & Painting

The EPA has introduced new Lead Paint regulations imposing numerous obligations on contractors that are performing work of any type on buildings that were constructed prior to 1978 and which may house children (including day care facilities, schools, apartments, etc.).

Effective April 22, 2010 will be the first day that you will be liable for prosecution or fines that could equal as much as \$37,500 per day for a civil penalty for failure to comply with new EPA regulations, plus an additional \$37,500 criminal penalty and possible jail time for willfully or wantonly ignoring the new requirements.

There has been a strong government involvement in play since at least 1995 in controlling and containing the ill effects of Lead Paint Disturbance, referred to as “Renovating, Repair, and Painting (RRP)”. Accepting all the known concerns about lead and how it dramatically affects the human body especially that of young children, it is not wrong to try and change the way we deal with lead paint and its ill effects. The problem is the new legislation that goes into effect this April is draconian and overly Oppressive to those who must follow it.

Imagine that your company is suddenly hit with a civil suit. The suit is filed under the Consumer Protection Act for violating Environmental Protection Agency (EPA) safe lead-paint-removal regulations. It alleges that unsafe work practices by those in your employ left a child severely learning-impaired. The client seeks punitive damages and medical costs totaling \$1 million.

With lead safe work rules changing on April 22, lawsuits are likely to be more prevalent and based on the charge that the work done in the course of a renovation project disturbed lead-based paint, releasing toxic dust into the air, which was then not contained or cleaned and resulted in lead poisoning. Poisoning would be proved by a blood test.

If your company performs works in homes, residential or commercial buildings where children occupy and were built prior to 1978, you must be certified by the EPA to perform lead-safe renovation. You must also test for lead, contain and clean dust in pre-1978 buildings. IF you don't, you could be setting yourself up for just such a suit. A renovation project can lead to lead poisoning when painted surfaces are disturbed, dust is generated, and the dust is released into the air and ingested.

And even if your company is EPA-certified to remove lead paint safely and practices lead-safe renovation, there is nothing to prevent a homeowner from filing a suit. Lead-safe certification and practices only make it less likely that such a suit would prevail. In the event of a negotiated settlement or a verdict for punitive and other damages, you probably wouldn't be covered by your **general liability insurance**.

Your **general liability** insurance coverage excludes most if not all pollution liability! That leaves contractors who wish to be covered obliged, to purchase pollution insurance as an additional coverage or policy. Pollution insurance covers damage done by mold, asbestos, and other toxic substances, including lead.

Almost anyone dealing in the remodeling industry has to ramp up quickly just to be legal, an almost impossible task. This new legislation affects builders and contractors, carpenters, painters, sheetrockers, plumbers, electricians, those who do windows, siding, roofing, HVAC, and more.

The way the law reads, where lead paint exists, if you must disturb a total area of more than 6 square feet of an interior remodeling project or 20 square feet of an exterior project, you must notify your customer with an EPA pamphlet that explains the dangers of lead paint.

As of April 22, 2010, (not by coincidence, Earth Day) your business must be registered with the EPA, and at least one of your workers must be properly trained and certified by a government certified training company in order to work on homes built prior to 1978... Except for certified lead paint free buildings or qualify for an opt out if no children are living in the home or will be visiting on a constant basis, i.e.; a grandparent babysitting daily for a child. IF your company does this work and you are not certified by 4/22/10. you will be subject to fines of up to \$37,500 per day per incident.

An EPA lead hazard information **pamphlet**: *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*, must be given to owners and occupants of any home built before 1978 that will be receiving renovation of "six square feet or more of painted surfaces in a room for interior projects, or more than 20 square feet of painted surfaces for exterior projects in housing, child care facilities, and schools built before 1978".

More information is available at www.epa.gov (search "lead paint) or (800) 424-LEAD.

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EPA's Renovation, Repair & Painting Rule (RRP)

Lead Paint Guidelines Overview:

The Environmental Protection Agency's (EPA) Renovation, Repair and Painting Rule (RRP) requires renovators to be certified and use lead-safe practices when working in pre-1978 properties, which will increase costs for renovation contractors and homeowners. Previous abatement regulations passed in the mid-1990s were followed only when lead-paint hazards, such as chipping, flaking or cracking, were already present in the structure. The new RRP rule applies to all housing and child-occupied facilities built prior to 1978.

An estimated 69 percent of the housing structures in the US built before 1960 contain Lead Paint, according to the US EPA, many of which fall under the EPA's target properties requiring the use of the new RRP rules.

1. Prior to 1978 Lead paint was often used in single and multi-family houses to improve the performance of the paint (drying time, durability, etc.); however, inhalation or ingestion of lead paint can be harmful to adults and young children. Consequently, Lead Paint was banned from use in consumer products in 1978.
2. To reduce the exposure to lead paint during remodeling projects, the EPA requires that contractors inform their customers about lead paint and its associated hazards. Beginning April 22, 2010, a contractor will be required to provide homeowners with a pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."
(Enclosed/attached is a specimen of the 18 page pamphlet)
3. Beginning April 22, 2010, if a remodeling project is planned for a habitational (or day care or school) structure built prior to 1978, and the work involves disrupting a painted surface, the contractor is required to take paint samples for from the work area and test for lead paint. The lead paint test and sampling can only be performed by a EPA-approved Certified Renovator. Many renovation contractors will have a certified professional on staff or they will have to use a third-party for the testing and lab analysis.

4. If lead paint is detected in the work space then the contractor will be required to implement specialized “lead-safe work practices” in performing the remodeling project. These required safeguards/practices can include specialized clothing, equipment, procedures and clearance testing to mitigate the risk of lead paint and dust resulting from the project. Only contractors that have registered with the EPA are permitted to perform these operations and only Certified Renovators can perform “lead-safe work practices.”
5. Testing and implementing “lead-safe work practices” will increase the liability, time and expense incurred by renovation contractors performing a remodeling project.
6. Renovation contractors should also procure Contractors Pollution Liability and perhaps even Professional Liability to address the new exposures imposed on them by the Renovation, Repair and Painting Rule. Renovation contractors should also request certificates of insurance from subcontractors validating that they are insured to perform the required sampling, testing and abatement/containment of lead paint.

Environmental Exposures:

Renovation Contractors can be exposed to environmental liabilities for bodily injury, property damage, and cleanup costs stemming from operations performed by the Contractor or operations performed on the Contractor’s behalf (subcontractors). The liabilities imposed by environmental laws and regulations may be classified into the following categories:

1. Cleanup liability imposed for contamination to the land, air, water, and structures;
2. Corporate liability for noncompliance/violation of environmental laws;
3. Personal liability for noncompliance/violation of environmental laws or common law theories of liabilities such as negligence, strict liability, trespass, and nuisance.
4. Diminished value of business assets from environmental degradation;
5. Disruption of business operations from failure to obtain appropriate permits, licenses, and registrations.

A typical **Commercial General Liability** policy contains, or is endorsed with, an absolute or total pollution exclusion. The interpretation of the exclusion and the definition of "pollutants" have been broad, leaving Insured's without coverage for pollution-related losses. Contractors Pollution Liability insurance fills the environmental-related coverage gaps within CGL policies. Some of these potential environmental exposures include:

- Spills or releases resulting from the Insured's operations
- Small spills that are exacerbated by rain events and surface water runoff can cause contamination or spread contamination to neighboring properties
- Operations may aggravate or exasperate known or unknown historical contamination
- Loading and unloading operations performed at the jobsite
- Transportation of materials that may contain contamination or cause contamination as a result of upset, overturn or collision of the transport vehicle.
- Product Pollution Liability associated with Products installed by you or on your behalf
- Loss resulting from disposal activities associated with disposal of the lead paint residue.

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PLEASE NOTE:

The comments and observations noted above with regard to the subject insurance policy(ies) have been provided for general information & discussion purposes only. None of the comments or observations are intended to constitute legal advice. To obtain a legal opinion on the above issues, please consult with competent legal counsel.

ARTICLE - LeadPaint EPA regulations & Coverages required (4/12/10)