

Lead-based Paint Information Pamphlet Today Keeps Penalties Away

November 16, 2011

Sticks & Bricks Newsletter - Fall 2011 Edition

The Environmental Protection Agency (EPA) is stepping up efforts to police lead based paint exposure in homes and contractors stand to face serious financial penalties.

In March 2011, a Connecticut contractor conducting spray-on vinyl siding projects and window and door replacements paid \$30,702 to settle an EPA enforcement action for violating lead-based paint rules. Many construction contractors have been caught up in the EPA's nationwide dragnet for these claims.

Prior to 1978, paints contained lead. Renovation, repair and painting projects in pre-1978 buildings have the potential of releasing lead, which is especially harmful to small children. The Toxic Substances Control Act (TSCA) allows the EPA to regulate lead-based paint activities.

TSCA requires the EPA to regulate those renovating, repairing or painting in pre-1978 buildings. Under the EPA's Renovation, Repair and Painting Rule, renovators must give occupants a lead-based paint information pamphlet.

When working with lead-based paint, contractors must use work practices that eliminate exposure to lead dust. Most violations pertain to either having non-certified workers working on these types of projects or failure to provide the lead-based paint hazards pamphlets. Penalties are up to \$37,500 per violation, per day.

Certification

Firms renovating pre-1978 buildings must be certified. "Renovation" is defined as follows:

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part. The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (i.e., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (i.e., walls, ceilings, plumbing, windows); weatherization projects (i.e., cutting holes in painted surfaces to install blown-in insulation or to gain

access to attics, planning thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Virtually any activity that potentially disturbs paint qualifies as “renovation.” “Minor repairs and maintenance activities” are exempted:

activities, including minor heating, ventilation or air conditioning work, electrical work and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days, must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Renovation firms must become certified to handle lead-based paint, while the individuals who work on renovation projects must be trained. Some states are authorized to conduct their own certification: Alabama, Georgia, Iowa, Kansas, Massachusetts, Mississippi, North Carolina, Oregon, Rhode Island, Utah, Washington and Wisconsin. Contractors in other states can certify through the EPA.

Covered Buildings

TSCA defines “target housing:”

The term “target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

The rule focuses on housing containing small children. In the event the EPA claims a violation has occurred, each child in the residence represents a separate and distinct violation, multiplying the potential penalty.

Conducting Work

For a regulated renovation project, contractors must first provide to the owners and occupants of the target housing a pamphlet which is available online in English.

Contractors must also prove that they have provided the notices, by having a responsible owner sign and date a receipt. The document must be kept for three years. This provides the only evidence in the event the EPA accuses a contractor of not providing the correct documentation. Failure to have a

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signed receipt, dated before work has commenced, is evidence of noncompliance.

Alternatively, a contractor may provide the pamphlet using certified mail, dated at least seven days prior to beginning work. If the owner does not occupy the building, an adult occupant should receive the pamphlet. Emergency renovations from a sudden, unexpected event that presents an immediate harm are exempted from the notice requirement.

To demonstrate that you have complied with the requirements for handling lead-based paint, maintain a renovation checklist.

Penalties

The EPA aggressively prosecutes these actions and often obtains substantial fines. The EPA's policy directs its employees to determine the amount of penalties based on various levels of severity. There are discounts for cooperating.

If you are notified of a potential violation of the renovation requirements, hire counsel experienced with the EPA's regulations and penalty policies immediately. An experienced attorney can negotiate with the EPA and reduce the proposed penalty substantially. Failure to respond to the EPA's notice of violation is very serious. Eventually, the EPA will get back to you and you may have jeopardized an opportunity to reduce your financial exposure.

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