



Home Tips



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Q & A

New EPA Rule Is An Unrealistic Way To Protect Homeowners From Lead

By Keith Coleman

Unless you're a building professional or in a related field, chances are you have no idea about a federal law enacted April 22, 2010. In all probability, if your home was built before 1978, the law just further reduced the value of your home.

The federal Environmental Protection Agency (EPA) enacted *The Renovation, Repair, and Painting (RRP)* rule to protect individuals from lead, a component of paint that was used in more than 38 million homes until it was banned for residential use in 1978.

The initial intentions of the agency were admirable – to inform the public of the issue and to protect those most vulnerable to lead exposure, specifically children under age 6 and those still in the womb.

Understanding and accepting that lead can affect children's brains and developing nervous systems, I and other members of the New Jersey Building Materials Dealers Association (NJBMDA) believe we should take reasonable precautions. After all, some 32 years after lead was banned, virtually no enforcement of lead-safe work practices has been in place.

On April 22, 2008, the EPA issued a rule requiring the use of lead-safe practices. Under the rule, beginning April 22 of this year, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.

The rule only applies to professionals. When homeowners do work on their own homes, they are not required to be trained or to follow the lead-safe practices.

An important component of the original law was something called an Owner-Occupant Opt-out Acknowledgment (Opt-out). What the Opt-out stipulated was that if (1) no child under the age of 6 resides in the structure and if (2) no pregnant woman resides in the structure and if (3) the property is not a child-occupied facility (like a day care or a school), then (and only then), could the homeowner allow the

professional contractor to not use the lead-safe work practices. If any of the above conditions existed, the contractor would be required to follow the lead-safe work practices.

This is important because the lead-safe work practices are not only expensive and time consuming to implement, but nearly impossible to follow in a real world situation. Nevertheless, the RRP Rule with Opt-out clause became the law of the land on April 22, 2010.

But then something happened that few expected. The EPA removed the Opt-out provision on May 6. In other words, the RRP rule would have to be followed on every job where lead paint possibly existed or the professional carpenters, electricians, plumbers, and painters would open themselves up to fines in excess of \$ 30,000 per day.



With the Opt-out removed, the resulting rule is beyond unreasonable and will likely stop (legal) renovation and remodeling, further hurting an industry that has already been deeply affected by the economy.

What's more, it will largely inhibit the energy conservation movement as older homes tend to waste more energy and need more renovations than newer homes. Living in the Northeast, or Middle Atlantic region, we also pay a higher price under this federal mandate because our housing is older than the national average.

When it comes to waste, the new RRP Rule without Opt-out will create mountains of it, including plastic sheeting, plastic bags, duct tape, blue tape, spent test rods, and a whole host of other supplies that are only good for a single use.

Forget about being green and re-using that door that you were planning to put a fresh coat of non-lead-based paint on. Instead, wrap it in plastic, duct tape it like a Christmas gift, put it in the lined dumpster, and cart it off to the landfill.

I don't have the space here to describe how impossible it is to comply with this law. But let me hit the hot spots: Stipulations include capturing the water used when power-washing the exterior of a home to cutting out nice, neat little squares of plastic so that a ladder can somehow be safely placed on a floor covered in polyethylene, to stopping the wind from carrying lead dust away from a window unit replacement.

I certainly recognize that precautions need to be taken to protect small children and pregnant women. But this notion of treating every single job like it involves life-threatening, hazardous waste material is unconscionable and unrealistic.

And what s'to stop a homeowner who first undertakes a remodeling job himself (and doesn't follow the RRP rule), but, after four or five weeks, decides to call in a professional who does follow the RRP rule. Perhaps the previous unprotected exposure results in an elevated lead level of the homeowner that s' discovered several months after the remodeling job is complete.

The lawyers will likely point to a professional remodeling contractor who disturbed lead paint and conclude that he/she must have had some level of negligence. In any event, the contractor can be facing expensive litigation.

Without extensive testing of all family members before, during, and immediately after a renovation project, there is no way to precisely determine the source, or timeframe, of lead contamination. But you can bet the professional contractor (the one who s'probably dealt with this material for the better part of his career yet does not possess elevated lead levels) will be deemed the villain.

Here s'the bottom line. If you own a pre-1978 home, it is now worth less (a lot less) now than it was in March of this year. Not because of the economy, but because every time a contractor replaces a window or disturbs a potentially lead-based painted surface, you must pay for testing and compliance with work practices beyond your imagination.

Once again, government bureaucracy has run amuck. I, as well as the NJBMDA membership, am a firm believer of aggressively protecting young children and pregnant women from needless or excessive lead exposure. And in those situations where either is present, precautions should be taken and strictly enforced. That s'what this rtle originally did.

As for the majority of all other situations, however, it must be incumbent upon the professionals and homeowners to exercise levels of personal responsibility and reason, as they are the ones who potentially expose themselves to lead in the course of the renovation project.

Like it or not, the government cannot protect everyone from everything. If it attempts to, it will prevent us from the

progress that s'so desperately needed in our housing industry and economy as a whole.

Everyone is interested in safety, but removal of the Opt-out clause goes way over the line. Contact your elected officials and demand that the Opt-out clause be re-instated so that reasonable procedures and processes can be used to renovate and service homes.

Source: Keith Coleman, of West Windsor, is a member of the New Jersey Association of Building Materials Dealers Association and owner of Hamilton Building Supply in Hamilton, New Jersey.



Quote Of The Month

"The quality of a man's life is in direct proportion to his commitment to excellence, regardless of his chosen field of endeavor."

Vince Lombardi

A Tip Of The Hat To:



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