

The Top 10 Things to Know About the EPA RRP Rule

BY STEVEN J. O'NEILL, ATTORNEY AT LAW

- 10 Lead-based paint is a poison. Harmful dust can be invisible. According to OSHA, with severe exposure, symptoms can progress to drowsiness, stupor, hallucinations, delirium, convulsions and coma. Children are most susceptible to harm. Lead-based paint was banned from residential use in 1978. The RRP Rule is designed to minimize lead poisoning.
- 9 What buildings are covered? The RRP Rule (Renovation, Repair & Painting) applies to "target housing" and COFs. Target housing is defined as all residential structures built prior to 1978 that *could be* occupied by a child under the age of six. Approximately 68 percent of the existing housing stock meets this definition. Child-occupied facilities (COFs) include child-care centers, preschools, and kindergarten classrooms, and may be located in private homes and apartments, as well as in public or commercial buildings.
- 8 What activity is covered? In general, any activity that disturbs paint in pre-1978 housing and COFs, including: remodeling and repair/maintenance, electrical work, plumbing, painting and window replacement.
- 7 Requirements. As of April 2010, renovators must be trained and certified. Firms must be certified. Lead-safe work practices must be followed. Residents and tenants must be provided with specific pre-renovation educational materials. Trained renovators must post warning signs, restrict occupants from work areas, contain work areas to prevent dust and debris from spreading, conduct a thorough cleanup, verify that the cleanup was effective, and keep special records.
- 6 Who must follow the RRP Rule? In general, anyone who is paid to perform work (or otherwise derives compensation - e.g., flip that house) that disturbs paint in target housing and child-occupied facilities is covered. This includes, but is not limited to: general contractors, trade contractors, and residential rental property owners & managers.
- 5 The Law. The RRP Rule is probably here to stay. Authorized by the Toxic Substances Control Act, Title IV, the regulations (40 CFR Part 745) contain The Lead Health Standard (Subpart D); The Lead-Based Paint Activities, Certification, and Training Rule (LBP Activities Rule) (Subpart L); Regulations for State and Indian Tribal Programs (Subpart Q); The Pre-renovation Education Rule (PRE Rule) (Subpart E); and The Renovation, Repair, and Painting Rule (RRP Rule) (Subparts E, L, and Q).
- 4 Exemptions. There are limited exemptions, including but not limited to: minor repair and maintenance activities that disturb 6 square feet or less of paint per room inside, or 20 square feet or less on the exterior of a home or building; housing or components declared lead-free by a certified inspector or risk assessor; and zero-bedroom dwellings.
- 3 The RRP Rule does not supersede more stringent federal, state, or local requirements for renovations. For example, Massachusetts is one of a handful of states authorized to enforce the RRP Rule. Firms certified by the EPA prior to 7/9/10, must secure a waiver under the Massachusetts' regulations (454 CMR 22.00). Existing Connecticut state law strengthens some of the RRP Rule testing requirements.
- 2 Fines and enforcement. The EPA may assess civil fines of \$37,500 *per violation* and bring criminal charges. Massachusetts fines are lower (\$5,000) but the on-site enforcement effort is much more robust.
- 1 Records, Contracts and Insurance. EPA enforcement will focus on recordkeeping audits. Contracts and subcontracts should be updated to limit and allocate substantial risks. CGL insurance policies typically exclude coverage for lead and other environmental hazards. Pollution insurance should be obtained.



ABOUT THE AUTHOR

Steven J. O'Neill is a former contractor with over two decades of experience as a construction lawyer. He authored a book on the Legal Implications of Managing Construction Projects. He has also presented several public seminars to contractors and others concerning the legal implications of the EPA RRP Rule. His practice focuses on construction law, business law, litigation and technology law. He is admitted to practice in the state and federal courts of MA and CT.

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