

BUSINESS LITIGATION ALERT

MAY 2010

Contractors Take Notice

EPA Issues Lead Paint Regulations with Stringent Requirements for Renovations

The EPA's new "Lead-Safe Practices Law" strictly regulates renovations on structures containing lead-based paint. The Law will have substantial effect on construction. Contractors must comply with the new requirements or face stiff penalties. Non-compliance may result in EPA fines up to \$37,500 per violation per day. The Law even provides for imposition of criminal penalties, including imprisonment, for knowing or willful violations.

Beginning on April 22, 2010, contractors may not perform renovations that disturb lead-based paint on residential homes or child-occupied facilities built prior to 1978 unless those performing such renovations are certified and the renovations conform to EPA-defined work practice standards. At all times during a renovation, at least one person for each site must be EPA-certified, including sub-contractors, that is, any plumber, HVAC contractor, electrician, or other trade contractor on the renovation must also be EPA-certified. ■

New Certification Requirements

Firms

A firm that performs renovations for compensation on structures containing lead-based paint must apply to the EPA for certification. The firm must submit to the EPA a completed "Application for Firms" and pay a fee of \$550. With the application, the firm must submit a letter attesting that it will employ only EPA-certified employees to conduct lead-based activities and that its employees will follow the work practice standards outlined herein. Within ninety (90) days of the application, the EPA will approve, disapprove, or request supplementary information for the application.

Once certified, a firm must be re-certified by the EPA and submit a fee of \$550 every three years. The firm must ensure that: (1) all workers performing a renovation are certified renovators or have been trained by a certified renovator; (2) a certified renovator assigned to each project and delegates the duties to the other workers; (3) EPA work practice standards are observed; and (4) copies of all documents are kept for a period of three years following the completion of a renovation.

Individuals

To become certified for any particular discipline¹ under the Lead-Safe Practices Law, one must complete an EPA-certified training course at a fee of \$870. The training hours of the courses

¹ One may apply to be an inspector, risk assessor, supervisor, abatement worker, or project designer.

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During the renovation, the renovator must ensure that the containment material is not torn or displaced, that workers have access to emergency exits, and that all work materials and tools are free of dust or debris before leaving the work area.

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differ by discipline: inspector, 24 hours; risk assessor, 16 hours; supervisor, 32 hours; project designer, 8 hours; abatement worker, 16 hours; renovator, 8 hours; dust sampling technician, 8 hours. At the completion of the course, the applicant must take and pass either a course test or a proficiency test. Each certification test requires payment of a \$70 fee.

Upon completion of the course and passing of the test, the applicant must submit to the EPA (i) proof of completion of the requirements for the discipline applied for, and (ii) a fee ranging from

\$310 to \$410. Each discipline requires certain experience in the field and specific education and training.

Maintaining certification requires application to the EPA either: (1) every 3 years if the applicant completed a training course with a test and hands-on assessment; or (2) every 5 years if the applicant completed a training course with a proficiency test. The process requires payment of a fee ranging from \$310 to \$410. ■

New Work Practice Requirements

The Lead-Safe Practices Law requires contractors to provide the property owner, or an adult occupant if the owner does not live on the property, with an EPA pamphlet, entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* no more than sixty (60) days before beginning a renovation project. The renovator must obtain a written acknowledgement or a certificate of mailing [showing that the pamphlet was received] at least seven (7) days prior to the renovation.

Prior to starting, the work area must be contained with plastic or similar material so that no dust or debris can leave the work area.

Further, the renovator must post warning signs and signs defining the work area, which must stay posted until after the post-renovation cleaning verification is complete.

Prior to construction on interior renovations, a renovator must: (1) remove all objects from the work area or cover them with taped down plastic sheeting; (2) close and seal all ducts; (3) close and seal all windows and doors within the work area; and (4) cover and seal the floor surface six feet beyond the perimeter of the work area. During the renovation, the renovator must ensure that the containment material is not torn or displaced, that workers have access to emergency exits, and that all work materials and tools are free of dust or debris before leaving the work area.

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In performing exterior renovations, renovators must: (1) close all doors and windows within twenty feet of the renovation; (2) cover the ground with plastic sheeting extending ten feet beyond the perimeter of the work area; and (3) seal all doors within the work area in a manner that allows workers to pass through.

The Lead-Safe Practices Law forbids renovators to use on lead paint: an open torch, sanders, power planers, needle guns, or sand blasters unless they are equipped with a high-efficiency particulate air ("HEPA") exhaust control.

Upon completion of renovations, the renovator must clean the work area of dust, debris, or residue. All collected waste must be stored in an enclosure or behind a barrier that prevents the release of dust and debris from the work area. Specifically, all paint chips and debris must be collected and sealed in a heavy-duty bag and protective sheeting must be folded (contaminated side in), taped shut, and sealed

in a heavy-duty bag. The contractor must clean all walls and other objects within two feet of the work area by either vacuuming with a HEPA vacuum or wiping them with a damp cloth.

Once the cleaning is completed, the renovator must perform a cleaning verification. For exterior renovations, a visual inspection must be performed to determine whether dust, debris, or residue may still be present. For interior renovations, a visual is required first. Then, the renovator must verify that each windowsill is clean by using a cleaning verification card. The renovator must wipe down all uncarpeted floors and countertops with a wet cloth and compare to a verification card. Once verification is complete, all the warning signs may be taken down.

We welcome the opportunity to speak with you about the applicability of the Lead-Safe Practices Law to your business or your property. ■

For more information about any of the topics covered in this issue of the Business Litigation Alert, please contact:

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