



How to best comply with protecting yourself from EPA's new lead-based paint regulation

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As a well respected national lead paint expert and president of LEW Corporation for almost 2 decades, I can honestly share from an environmental science position, that I think EPA's Renovation, Repair and Painting (RRP) Rule is a litigation/violation claim waiting to happen for those who don't pay attention. (fines start at \$37,500/day/violation, litigation \$\$\$?). Therefore, I would like to highlight several areas that may cause concern and suggest how one might comply while simultaneously protecting yourself.

Although I am not a lawyer, the first area of concern is the required EPA firm certification & required project checklist. The firm certification is an affidavit of assuring compliance and the project checklist, to be completed by the certified renovator for each project, requires formal signed certification by the renovator that the requirements of the rule were followed. According to EPA, enforcement actions and penalties will be directly related to EPA's ability to review the required documentation for completeness, accuracy & diligence. Since a substantial portion of EPA or litigators' claims will be based upon the presence vs. absence and completeness of these required documents, I highly recommend the creation of a digitized Standard Operating Procedure (SOP) followed by random audits to assure such requirements are being adhered to and the required paperwork is completed.

As mentioned above, both the firm and the renovator have to be federally certified when disturbing pre-1978 non-certified lead free painted surfaces. So what is the difference between a traditional lead-based paint abatement contractor and the newly required/regulated lead-safe renovation firm? Not much! Therefore, this is an area of concern! Based on numerous conversations with both contractors and insurance entities it appears to be common that the vast majority of contractor's insurance policies contain an exclusion for lead-based paint. If you have not already done so, I would highly recommend immediately discussing the requirements of this new law with your insurance agent. If you need assistance finding a lead paint insurance program specific for contractors vs. abatement firms, email the author, I have identified several with very different premiums and very different coverage's.

Another area of potential concern if not properly managed, is contracts with third parties. All entities that receive compensation to disturb a pre-1978 painted, stained or varnished surface in regulated properties must be certified firms. Accordingly, if acting as a general contractor (G.C.) and accepting compensation for the project which includes a regulated paint disturbance, the G.C. firm must be certified. In addition, any subs who actually do the paint disturbances must also be certified firms and employ on the job certified renovators. Therefore, should you need to use subcontractors assure yourself they are properly certified, employ certified renovators and have proper insurance naming you as an additional insured before having them do work!

However, the area of greatest concern is EPA's required Cleaning Verification (CV) test. The CV is basically a white glove test, based on the presumption, "if it looks white, it must be lead safe." If you believe that I have a pot of gold to give you. N.J. lead laws and federal lead laws have long standing, well documented and litigated quantitative levels of unacceptable lead dust which has no direct correlation to the CV or what the human eye can see. Since the CV test is not quantitative, nor third party documented and very subjective by the person making the visual determination (how white is white), it is highly likely that actual quantities of dust lead could be well above the acceptable regulated current levels (false negative), whereby actually leaving behind dangerous levels of lead dust. Based on the litigious world we live in and the risk associated with a particular paint disturbance, the CV test is potentially high risk since it does not provide any quantifiable assurances of a safe environment as related to lead nor quantifiable support the area is safe for re-occupancy. To minimize or eliminate this concern, as part of the EPA's lead training requirements, students can become certified to collect their own dust wipes, where an actual quantitative result(s) can be obtained and compared to current numerical standards to document that a lead safe environment was truly achieved, not to be questioned later!

My biggest concern is going to be the substantially increased awareness to the very litigious issue of lead-based paint poisoning. The mere observance and remembrance of a paint disturbance in the future, will be cause for owners, residents, customers and the general public to question the possibility and risk to their environment of a lead-based paint poisoning event. The best way to manage or better yet eliminate this concern, is to have your property(ies) XRF lead based paint tested by a certified lead

inspector/risk assessor. How can you properly, effectively and most cost efficiently manage what you don't know, cannot see and have no idea if it exists at all. After 20 years of lead testing properties, I have NEVER seen a house, apartment, or building that was painted head to toe with lead based paint! Have your property(ies) professional tested so compliance with this new rule can be deployed when needed and NOT wasted when not required! Whereby "Out of site, out of mind."

The above represent several areas of concern but unfortunately not all of them in my opinion. As EPA has so boldly stated in their national marketing campaign, "Disturbing just 6 square feet can cost you big time!" Assuming you don't want to be the poster child for what not to do, comply with the rule, test your property, manage your risk and please self evaluate your paperwork, SOPs, insurance, contracts and all the rest that might impact your project as it would relate to EPA's new Lead-Based Paint Law.

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