

LegalLookout: EPA Proposes Lead-Based Paint Removal Requirements

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by Lynn L. Bergeson

On Jan 10, 2006, EPA proposed extensive requirements to minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair and painting activities in most housing built before 1978.[1] The proposal supports the attainment of the federal government's goal of eliminating childhood lead poisoning by 2010.

Importantly for *Pollution Engineering* readers, the proposal introduced lead-based paint training, certification and safe work-practice requirements for contractors involved in these activities. According to EPA, it is one component of a comprehensive program to ensure the use of lead-safe work practices that will also include training, and an education and outreach campaign targeted at both workers and consumers.

Background

Lead is a toxic metal that was used for many years in various applications, including paint. At elevated levels, lead is believed to cause a range of adverse health effects, from cognitive impairment and learning disabilities, to seizures and death. It is well recognized that children under six years of age are most at risk because their developing nervous systems are especially vulnerable to lead's effects. EPA reported that in 1978, there were 3 to 4 million children with elevated blood lead levels in the United States. As of 2002, an estimated 310,000 children had elevated levels of lead in their blood, according to the Centers for Disease Control and Prevention. While the Consumer Product Safety Commission banned lead-based paint for residential use in 1978, reportedly more than 38 million U.S. homes still contain some lead-based paint, with two-thirds of the houses built before 1960 containing lead-based paint.

In 1992, Congress enacted Title X, Residential Lead-Based Paint Hazard Reduction Act, of the Housing and Community Development Act, which established a national goal of eliminating lead-based paint hazards. Under Title X, EPA was directed to take four main actions: 1.) establish a training and certification program for persons engaged in lead-based paint activities; 2.) ensure that for most housing built before 1978, lead-based paint information flows from sellers to purchasers, from landlords to tenants, and from renovator to owner or occupant; 3.) establish standards for identifying dangerous levels of lead in paint, dust and soil; and 4.) provide information on lead hazards arising from lead-based paint.

Title X also added Title IV to the Toxic Substances Control Act (TSCA). TSCA Section 402(c)(3) directed EPA to revise regulations codified at 40 C.F.R. Part 745, Subpart L to ensure that individuals engaged in renovation and remodeling activities that create lead-based paint hazards are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified. The January 10 proposed rule was issued in response to this provision.

Scope of proposal

The proposed rule would apply to housing built before 1978 with lead-based paint. The standards would apply to all persons who engage in renovation activities for compensation,

including renovation contractors, maintenance workers in multi-family housing, painters, and other specialty trades. EPA is proposing a two-phased approach, with the first phase focusing on rental and owner-occupied housing built before 1978 where a child has elevated blood lead levels, in rental housing built before 1960, and in owner-occupied housing built before 1960 where children under the age of six reside. The second phase would apply to renovations in rental housing built between 1960 and 1978, and to owner-occupied housing built after 1960 and before 1978 where children under the age of six reside.

The proposal would not apply to owner-occupied housing where children under the age of six do not reside, minor repair and maintenance activities that disrupt two square feet or less of painted surface per component, and renovations where specified methods have been used to determine that the areas affected by the renovation are free of lead-based paint.

Proposed work practices

The EPA is proposing that all renovations regulated by the rule be performed by a firm that is certified to perform renovations and directed by a certified renovator. The proposed rule would require that:

- Certified firms would use certified renovators to perform certain activities and would provide on-the-job-training for uncertified workers;
- Firms would post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area;
- Before beginning the renovation, the firm would isolate the work area so that no visible dust or debris leaves the work area while the renovation is being performed;
- Waste from renovation activities would be contained to prevent releases of dust and debris;
- After the renovation is complete, the firm would clean the work area; and
- A certified renovator would verify the cleanliness of the work area using a procedure involving disposable cleaning cloths.
- In the proposal, firms performing renovations would have to ensure that:
 - All persons performing renovation activities are certified renovators or have received on-the-job-training by a certified renovator;
 - A certified renovator is assigned to each renovation performed by the firm; and
 - All renovations are performed in accordance with applicable work practice methods.

Under the proposed rule, firms that perform renovations for compensation would need to apply to EPA for certification to perform renovations. Firms would have to apply for re-certification every three years.

A person can become a certified renovator either by successfully completing an accredited

renovator training course, or by being a certified lead-based paint abatement supervisor or worker. A person can become a certified sampling technician by either successfully completing an accredited sampling technician course, or by being a certified lead-based paint inspector or risk assessor. To maintain certification, a person would complete an accredited refresher course every three years.

As proposed, a certified renovator would perform or direct uncertified workers performing regulated renovation activities; would provide training to uncertified workers on lead-safe work practices; would be required to be at the work site during key stages of a renovation, and at other times be available on-site or by telephone; and may use an acceptable test kit to determine whether lead-based paint is present in affected areas.

Although the proposed rule does not require that dust samples be taken or clearance tested, it does describe a certified dust sampling technician's role as one that collects dust samples, sends the collected samples to an EPA-recognized laboratory, and compares the results to established clearance levels.

Under the proposed rule, training programs that wish to provide accredited renovation training would apply to EPA for accreditation to provide renovation or dust sampling training. The proposed rule also specifies procedures for the authorization of states, territories and tribes to administer and enforce these standards and regulations in lieu of a federal program.

Implications

The proposed rule has far-reaching implications for any person or business engaged in renovation activities for compensation, painters and others in specialty trades. Additionally, for entities in the business of training and certification, the proposal, once implemented, would inspire efforts to develop training programs and obtain required certifications. Laboratories equipped to test lead in dust and other media would also be impacted by the rule, as materials will need to be supplied to ensure clearance levels are being attained.

EPA has required significant comment on this proposal. It is long and technical, and the agency specified various areas where input and advice was sought. Pollution Engineering readers with an interest in these matters are encouraged to contribute technical expertise and comment on this important rule. Comment is due by April 10, 2006.

Lynn L. Bergeson

Lynn L. Bergeson is a founding shareholder of Bergeson & Campbell, P.C., a Washington D.C. law firm concentrating on chemical, medical device, and diagnostic product approval and regulation, and associated business issues.

References

1. 71 Fed. Reg. 1588 (Jan. 10, 2006).