



News Alert – EPA Finalizes Changes to Lead Clearance and Testing Requirements for the Renovation, Repair and Painting Program

On August 5, 2011, the EPA finalized a number of changes to its 2008 Lead Renovation, Repair and Painting Program (“RRPP”) rules. 76 FR 47918. To address lead-based paint hazards created during renovation, repair and painting activities of older homes and structures, in 2008 the Environmental Protection Agency (“EPA”) issued final rules in 2008 requiring, among other things, that most renovations of houses, schools and child care centers built before 1978 be performed only by EPA certified contractors who follow specific work practices for preparing, remodeling, cleaning up, and record keeping. After delaying enforcement to allow more time for contractors and firms to achieve the required EPA certification, the RRPP rules have been effective since the beginning of 2011.

In addition to numerous minor modifications, the August 5 final rule made four significant changes to the 2008 RRPP rules. First, although the EPA had proposed adding dust wipe testing for renovations, it elected not to do so in the final rule. In last year’s proposed rule, the EPA proposed requiring dust wipe testing on uncarpeted floors, windowsills, and window troughs after many types of interior renovations. The samples collected would then be tested and analyzed for lead content before clearance. In rejecting dust wipe testing, the EPA noted the RRPP rules were intended to address the lead-based paint hazards created during the renovation and that it intended to maintain the distinction between renovations and lead remediation. Requiring dust wipe testing could make the renovator responsible for cleaning up lead content present before the renovation activity that was not caused by the renovation activity.

Second, the EPA had also proposed adding a “clearance procedures” requirement for certain types of destructive demolition projects in renovations, such as the demolition or removal of plaster through destructive means or the disturbance of paint using machines designed to remove paint through high-speed operations, such as power sanders or abrasive blasters. Again, the EPA found it did not have sufficient data to justify this change. The EPA also acknowledged that, like the dust wipe testing, a clearance procedure requirement could make the renovator responsible for cleaning up lead content that was present before the renovation activity and fundamentally change the scope of the renovation project.

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Third, the final rule allows certified renovators to collect paint chip samples from affected areas of the renovation instead of using test kits to test paint in the affected areas. The sample, once collected, must be sent to a certified entity for analysis. This option should help address the concern of many in the home building and remodeling related industries that test kits continue to have accuracy issues.

Fourth, the EPA added to the RRPP rules a requirement for vertical containment on exterior projects.. Under the new rule, vertical containment or equivalent extra precautions in containing the work area is required for all exterior renovation projects that are covered by the rule and that affect painted surfaces within 10 feet of the property line. The containment must be secured to the roofline, taped to the sides of the building to surround the work area, and fastened and sealed to the ground cover. The EPA describes such containment as ranging from simple barriers with plastic sheeting or disposable impermeable material to more extensive scaffolding or rigging structures.

The RRPP rules contain many requirements for specific work practices for preparing, remodeling, cleaning up, and record keeping. If you have any questions regarding the specific rules or potential application to you or your company, please contact us at (918) 592-9839 or gerald.jackson@crowedunlevy.com.

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