

Compliance – Renovation, Repair and Painting Beyond Training and Certification

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By now, you are well aware that on April 22, 2010, the Environmental Protection Agency (EPA) Renovation, Repair and Painting rule (RRP) went into effect. Under the RRP no firm may perform, offer or claim to perform renovations, without certification from EPA or an authorized state, in housing or child-occupied facilities built prior to 1978. Additionally, the RRP requires a Certified Renovator be assigned to each renovation, in order to perform or supervise the performance of lead-safe work practices throughout the renovation.

As word of the RRP spread, professional firms did not tarry. They leapt into understanding the requirements of the RRP. These firms sent renovators to the Certified Renovator Initial training course; they filled out the application for firm certification; they purchased new HEPA vacuums and the attachments necessary to use the HEPA vacuum with power tools; they bought rolls of plastic and tape; they did all the things they thought they should in order to comply with the requirements of the RRP.

But have they (and you) done enough? Compliance with government regulations is often challenging. When those regulations are changing it becomes even more challenging. EPA updates and rule changes resulted in many of you questioning your procedures. Only two weeks after the RRP went into effect, EPA published, in the Federal Register, changes to the RRP. Those changes went into effect on July 6, 2010. Firms, who thought they were doing the right thing, suddenly were unsure of what the right thing was.

And doing the right thing is important. Not only does doing the right thing protect workers and occupants, especially those children under the age of six, from the potential hazards of lead-based paint created by renovations, it protects firms from the potential of being fined \$32,500. Or is that \$37,500? (It seems a preset inflationary adjustment was made, to the fine amount, after EPA published information on what fines could be levied...) Confusion began to ripple throughout the regulated community. Rumor and speculation were discussed around today's modern water cooler: The Internet.

This confusion manifests itself in many aspects of the RRP. From the very onset people wondered to whom the RRP applied: Were painters the only trade affected? What about carpenters, plumbers, electricians, roofers, flooring installers, etc.? What properties did this really apply to? After all, what exactly is target housing? Or even more confusing, what is a child-occupied facility? Who really can figure out what EPA meant when they defined a child-occupied facility?

A child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and that the combined weekly visits last at least 6 hours, and the combined annual visits at least 60 hours.

And that is not even the entire definition. The definition goes on to fill an entire paragraph of legalese describing exactly what constitutes a child-occupied facility.

Once a firm decided a property was target housing (or a child-occupied facility), they had to determine (or assume) the property had lead-based paint on the surfaces to be disturbed. For that matter, they had to learn the correct definition of lead-based paint. Just how do you determine 0.5% by weight or 1mg/cm²? And the EPA-recognized test kit: When can you use it? Where can you use it? What do you mean it can't be used on that substrate? (For that matter, what is a substrate?).

Even after deciding if the RRP applied, firms had to figure out how to follow the RRP. Who does the firm have to notify concerning the renovation? When do they have to notify? Do firms really need to notify each affected unit? What if the firm is working in a 1000 unit apartment complex? Do they need 1000 *Renovate Right* pamphlets? The questions go on and on, and we haven't even finished the pre-renovation notification (which, by the way, is a portion of the RRP that was changed on July 6th, 2010).

Once the maze of possibilities for notification has been navigated, and notification completed, a certified firm can finally begin the renovation. But wait a minute. This job has a general contractor and several different sub-contractors. Who is responsible for following the RRP? Who even needs to be a certified firm?

Each step along the compliance path seems fraught with confusion. From who needs to be certified, to who is going to do the work, EPA is very specific in their direction. However, translating 40 CFR 745 (the regulating document) into language a renovator can understand is a challenge. Once a certified firm figures out who is going to be responsible and do the work, the firm must determine how to do the work in a manner that is compliant with the RRP. From the very beginning of the actual work, the firm faces challenges that are often not understood. These challenges can manifest themselves in something as simple as the requirement for Occupant Protection:

Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation work to remain outside the work area. To the extent practicable these signs must be in the primary language of the occupant (40 CFR 745.85(a)(1)).

A firm that has embraced the training of the RRP may post the sign included in EPA's curriculum for the RRP. Unfortunately this firm has now potentially strayed into a violation of yet another applicable regulation: OSHA's *Lead In Construction Standard*. EPA signs posted to exclude occupants from the work area may not meet an OSHA requirement for signs to be posted while workers are exposed to particulate lead. Isn't it enough that one government body has regulations that affect the firm?

Unfortunately, for certified firms to stay in compliance while performing the work, they not only need to understand the RRP, they need to be aware of and comply with OSHA's *Lead In Construction Standard*, and HUD's *Lead-safe Housing Rule*. Just when the certified firm thought they had the regulatory path figured out, another twist leads to more confusion. Additionally, upon completing the physical work on the renovation the firm still has more work to do.

Recordkeeping (and reporting) is the next step along the compliance path. The certified firm needs to maintain detailed records documenting each step the firm took as they performed the renovation. These records must be maintained for a minimum of three years and must be available for when EPA decides to audit your records. The certified firm needs to be prepared to show EPA which properties required compliance with the RRP and then show EPA how the firm complied with those requirements. Even simple missteps, such as failing to record the number of wet disposable cleaning cloths used to complete the cleaning verification procedure can lead to a violation of the RRP. These small violations can add up quickly on each regulated property. At \$ 37,500 per violation the consequences of failing to comply may be dramatic.

With all this in mind, you need to now move beyond certification and new vacuum cleaners. You have entered the Compliance Zone, a world eerily unfamiliar to most; a world of recordkeeping, documentation, audits, findings and retraining. This phase of the RRP is manageable, repeatable, can be standardized, and requires investment and commitment.

CONNOR Institute is the training and compliance division of CONNOR, a national real estate due diligence and environmental services company. With 20 years experience CONNOR Institute Specializes in Lead-based Paint training, Asbestos/Mold Awareness and Compliance Assistance Visits, for more information on CONNOR Institute contact Bob Bixler at 443-322-1220 or bbixler@connorinstitute.com