

Lead-Safe Remodeling

Contractors getting on board, though misconceptions persist

Since the EPA's Renovation, Repair, and Painting (RRP) rule took effect in April 2010, residential remodelers have scrambled to bring their job-site practices and record-keeping into compliance. (See "Uncertainty Abounds as Lead-Safe Remodeling Deadline Nears," 3/10; and "EPA Delays Enforcement of Lead-Safety Requirement, But Pleases No One," 8/10.) Eight months into the new regulation, large numbers of remodelers appear to be toeing the new regulatory line as best they can,

even as another, more vocal group continues to denounce it as burdensome and unworkable.

Still training. By law, all remodelers working on pre-1978 housing should have completed EPA-approved lead-safety training by last April. But with qualified trainers scarce, outreach by the EPA lackluster, and enthusiasm among contractors low, many are just now getting around to taking the required eight-hour course.

Dan Taddei, director of education for the National Association of the Remodeling Industry (NARI), notes that training firms are still enrolling about 5,000 new trainees every month. The late enrollees, Taddei speculates, represent the program's "third wave."

"First you had the professional association members and others who knew the requirement was coming ahead of time," he says. "Then you had the shortage of trainers caused by the big

rush of people who didn't hear about the rule until close to the deadline. Now we're seeing the late adopters who don't talk to other remodelers, don't read any trade publications, and are just now hearing about the rule from someone down at the lumberyard."

As of the end of October 2010, 511,000 individuals and 64,000 companies had completed the required training. It's impossible to say what those figures represent as a percentage of the total, partly because no one knows how many active remodelers are out there, and partly because building owners and other noncontractors are also enrolling in the training courses. But David Merrick, a Kensington, Md., remodeler who also serves as the chair of NARI's government affairs committee, expects training to taper off soon.

■ At an October meeting in Charlotte, N.C., the International Code Council (ICC) voted to approve the 2012 version of the International Energy Efficiency Code (IECC). The new code tightens energy efficiency requirements by 30 percent (relative to the existing 2006 code). The NAHB has opposed the change and contends that it passed only because "several groups that receive federal funding to promote energy-efficiency codes took advantage of a loophole in the ICC's policy and filled the hearing room with officials from state energy offices." Among other recommendations, the 2012 IECC — due to be published early this year — calls for more-efficient building envelopes and better-performing ductwork.

■ A Massachusetts inventor has obtained the first shipment of a new tape measure designed to minimize measuring errors. Carpenter Oded Peri, whose dyslexia makes it difficult for him to read the numbers on a conventional tape, spent three years testing nearly 50 prototypes before settling on a design that makes use of what he calls a "precision sight-scribe," in which a stainless-steel pointer indicates the correct measurement. A separate scribing device lets users mark measurements directly on the wood without using a pencil. The new product will be marketed as the M1, shorthand for "measure once."



The EPA's "Small Entity Compliance Guide" offers practical tips for working within the RRP rule.

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“The established professionals are already on board,” he says. “I think that most of the contractors who still haven’t been trained yet have made a conscious decision to work outside the rules and hope they don’t get caught.”

Just do it. At its most basic level, the RRP is a requirement that contractors use effective dust-control measures while doing demolition. For contractors who have been doing that already — either out of concern about lead or simply to please customers by running a dust-free job site — meeting the new requirements may entail only some minor procedural changes. (For a pre-RRP approach to dust-free remodeling, see “Commonsense Lead Safety,” 10/01.)

“The key is to think ahead,” says Indianapolis remodeler Chris Wright. “If the subs are going to be disturbing paint anywhere on the job, you want to do all the demo at the beginning rather than setting up containments for the duration, or having the subs set up their own containments. I’ll sometimes demo a little more than I might really need to because I want to be sure the plumber has access to everything.”

Chicago-area remodeler Rich Cowgill uses lead-safe work methods even in post-1978 homes, where they are not required under the RRP. “It’s cleaner and you get better referrals,” he says. “The only difference is that we don’t have to do the cleaning verification at the end.” According to Cowgill, the best practical reference for complying with the RRP is the EPA’s “Small Entity Compliance Guide to Renovate Right,” available as a free download at epa.gov/lead/pubs/renovation.htm.

To test or not to test? Under the EPA rules, testing for the presence of lead paint is optional. (If a contractor opts not to test a pre-1978 home, however, lead-safe work rules must be followed as if lead were positively shown to be present.)

“I don’t test,” says Hanceville, Ala., remodeler Sean Lintow, who is concerned



The scrap lumber generated in the course of this window replacement will be sealed in a plastic bag (larger material can be wrapped in plastic sheeting) before removal from the work area.

that customers could see discussion of testing as a “scare tactic.” “I just follow the lead-safe rules.”

David Merrick, on the other hand, prefers to test every job. “It’s a good thing to know and understand,” he says.

Remodelers who do plan to test for lead should keep two things in mind: First, provisions in state law may hinge on the test’s outcome. In Illinois, for example, a positive test for lead means that any demolition must be performed by a lead-remediation firm, leaving the remodeler shut out of the job until that phase is complete. If no testing takes place, the demo work can be done by any EPA-certified



During exterior work or painting, ground coverings should extend a minimum of 10 feet from the wall, with an additional allowance for multistory structures. In urban areas where building lots are narrow, plastic may have to be hung vertically to achieve the required coverage.

renovator working in accordance with the RRP.

Second, a test should never be performed unless it’s been clearly authorized by the homeowner. Because any test result that confirms the presence of lead paint must be disclosed when a home changes hands, a remodeler who performs such a test without approval could be sued for any resulting loss in resale value.

As far as Merrick is concerned, that’s only fair. “Any remodeler who would do that *should* be sued,” he says. “Why would you do that? You wouldn’t do anything else without the homeowner’s knowledge.” To document the homeowner’s acceptance of the lead test, Merrick has his customers write a check to the testing lab themselves.

Much ado about OSHA. Another testing-related issue has to do with the relationship between the EPA lead-safety rules (designed to safeguard homeowners and their children) and the OSHA rules (designed to protect workers). According to one theory — which has acquired a life of its own on blogs and Internet forums — contractors should avoid testing for lead at all costs, because a positive test for lead triggers OSHA requirements for respirators, booties, and hooded protective suits, as well as expensive air-monitoring equipment to gauge workers’ level of exposure to lead dust and ongoing medical monitoring of their blood-lead levels. Contractors who do not test, and who simply follow the provisions of the RRP instead, supposedly get a free pass on the OSHA regulations.

Unfortunately for its proponents, the forego-testing-as-a-magic-bullet-against-OSHA theory doesn’t hold water. It does, however, contain a grain of truth: According to OSHA standard 1926.62, which has been in effect since 1993, all construction workers — including residential remodelers — who may be exposed to lead must wear protective equipment and have their exposure levels monitored by their employers.

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In other words, testing for lead doesn't trigger anything, from OSHA's point of view, because remodelers are already subject to the strict requirements of 1926.62 — though these requirements are all but universally ignored. In fact, given that the new EPA rule ultimately protects workers as well as homeowners by reducing airborne lead dust, there's little reason to think that its existence will somehow galvanize OSHA's own enforcement efforts. If anything, the rule gives OSHA even less incentive to follow through on its 18-year-old (and mostly unenforced) rules.

Waiting for enforcement. Early last year, as the effective date of the new EPA rules approached, some RRP-averse contractors vowed to avoid the new requirements by limiting their work to post-1978 homes. While this approach may not qualify as much of a business plan — particularly at a time when work is scarce enough already — it does have the advantage of being perfectly legal. Charles Hunt, a lead-safety trainer with the New York-based firm ABLE Safety Consultants, says he has heard about many far more questionable schemes.

"None of the lead-safety rules apply to homeowners, so I've had people ask if they could get around the rules by having

homeowners do their own demolition," he says. And because the rules cover only work performed for hire, another class participant wondered "if he could give away the demo phase of the job, and only start charging when that part was done."

Are any remodelers actually endangering their customers — and risking their businesses — by putting such ideas into practice? Hunt hopes not. "What I tell people in class is that you might think you've found a way around the rule, but in the long run it's going to be much easier to just comply," he says.

Indeed, agonizing over every nuance of the new rules is a sure way to risk paralysis by analysis. Contractors who obtain the necessary certification, complete the required paperwork, and make a good-faith effort to run their job sites in accordance with the requirements are probably at low risk of being busted for noncompliance.

As of mid-November 2010, the EPA had apparently not yet issued any citations to RRP violators. But the agency's enforcement guidelines, released in August (and posted online at fedcenter.gov/_kd/Items/actions.cfm?action=Show&item_id=16103&destination=ShowItem), seem to suggest that minor infractions are much more likely to

draw a slap on the wrist than a fine.

The most lenient of the four "levels of enforcement response" available to regulators, for example, is a notice of non-compliance, or NON. According to the guidelines, "a NON should be issued to address violations ... where a first time violator's violation has a low probability of re-occurrence and low potential for harm; or when a violator is in substantial compliance with the requirement as the specific facts and circumstances support." In addition, the guidelines state, "a NON should not ... impose a monetary penalty."

Watch your back. On the other hand, contractors who plan to simply ignore the new rules have much more to worry about. As if to underscore the risks of noncompliance, the EPA quickly followed up on the new enforcement guidelines by unveiling a program that allows consumers or other contractors to turn in RRP violators. Separate electronic complaint forms are available for each of the agency's 10 regional offices; a representative version can be viewed at epa.gov/region9/toxic/lead/tips-complaints.html.

It's too soon to know whether lead-safe builders are prepared to turn their non-compliant competitors over to the authorities, especially since the online form warns potential informants that "information submitted through the form is not confidential." But there's no question that established remodelers — who have chosen to follow the rules and bear the cost of doing so — have the most to gain from a policy of vigorous enforcement by the EPA.

"We're lobbying for increased enforcement," says David Merrick. "In the long run, this is going to be a positive thing for professional remodelers. It will weed out the tailgate slammers. Everyone's happy, and kids grow up to be normal."

— Jon Vara



This well-constructed dust containment was assembled from 4-mil poly and framing lumber. Note the intake to the HEPA-filter-equipped air handler at lower right, which will pull dust-filled air from the confined space and capture even extremely fine particles of lead paint.