

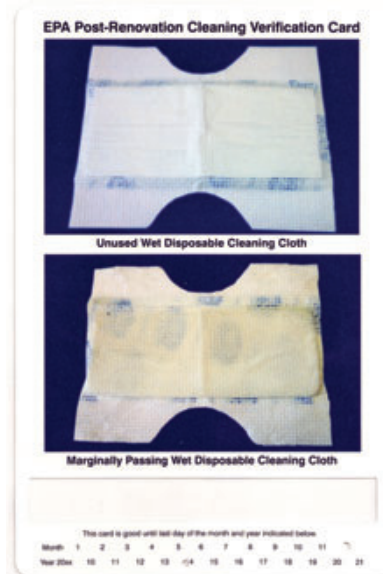
JLC Report

Builders Breathe a Sigh of Relief as EPA Abandons Lead Clearance Requirement

Remodelers and painting contractors got some good news this summer about the EPA's Renovation, Repair, and Painting rule (RRP), which defines the work practices contractors must follow when working on homes containing lead-based paint. On July 15, the agency announced it would not push ahead with a much-anticipated amendment that would have required builders to obtain end-of-the-job confirmation from an independent testing company that no lead was detected in the work area.

The decision means that builders can continue to check the post-project cleanliness of their jobs — as they have since the rule took effect a year and a half ago — by wiping work surfaces with a disposable cleaning cloth and comparing its appearance to an EPA-provided cleaning-verification card (see example, below). The agency also made minor adjustments to several other provisions of the rule, such as adding a requirement that vertical containments or the equivalent be used when outdoor work is performed within 10 feet of a property line and establishing a minimum timetable for HEPA-vac filter changes.

Long and winding road. As most readers know, the RRP took effect in April 2010. Originally, though, it was supposed to be implemented in mid-2008, more than 18 months earlier. That plan was derailed when a coalition of environmental groups — includ-



The EPA's recent decision not to require third-party cleaning verification means that contractors will be allowed to continue doing their own post-project cleaning evaluations using EPA-provided cards like this one. The white Swiffer-type cleaning cloth is wiped over not more than 40 square feet of the work area and compared — through the rectangular cutout near the bottom of the card — to the "Marginally Passing" cleaning cloth pictured. If the shade of the actual cloth is lighter than the sample, the work area can be considered sufficiently clean.

■ According to a recently released state auditor's report, California is at risk of forfeiting \$37.4 million in unused federal funds earmarked for home-weatherization programs. The state received a total of \$186 million in funding under the American Recovery and Reinvestment Act, the unspent portion of which must be returned to the federal government by March 31, 2012. The program has so far weatherized 26,800 homes at an average cost of \$2,540 each — well short of the expected 43,150 homes at \$3,660 apiece. The Golden State is not alone: As of July 1, nearly \$2 billion of the \$5 billion in weatherization grants awarded to the states reportedly remained unspent nationwide.

■ In the wake of a 2009 U.S. Department of Labor investigation of Nevada's state-run OSHA program — prompted by an unusual number of fatal workplace accidents from 2004 to 2009 — federal officials have told the state agency to get busy issuing citations. According to a story in the *Las Vegas Review-Journal*, state inspectors had been finding serious, willful repeat violations on 22 percent of site visits — far below the nationwide average of 79 percent of site visits. Builders complain that the new policy amounts to a quota system that will encourage inspectors to cite builders for violations that may not even exist. "It's like telling policemen they have to write more tickets," one Las Vegas builder was quoted as saying. "They'll stop you in a 55 mph zone and say you were going 56."

■ Building officials in Wichita, Kan., are preparing to upgrade the local code after a seven-month investigation concluded that a half-dozen new homes with failed slab foundations were fully in compliance with the existing code. The foundation failures were blamed on a combination of poor drainage and unstable clay soils. According to the *Wichita Eagle*, the code changes under consideration include mandatory soil testing and a requirement that all slab foundations contain steel reinforcement.

ing the Sierra Club, the Center for Environmental Health, and the New York City Coalition to End Lead Poisoning — sued the agency, charging that the rule as written was not stringent enough. The judge in the case responded by issuing an order freezing any implementation until the suit had been settled.

According to EPA Region 5 lead outreach coordinator John Wsol, the lawsuit — and resulting court-ordered freeze — was largely responsible for the delays many builders later encountered when they tried to enroll in the required lead training programs. “It meant that builders didn’t have to deal with the work rules until later than planned, but it hurt them in the long run,” he says. “It made a mess of the training, because training providers didn’t know what kind of training they’d be expected to do until the details of the settlement came out.”

In August 2009, the agency and the plaintiffs reached an out-of-court settlement, paving the way for the RRP to take effect the following April. Under the terms of the settlement, the EPA agreed to several changes in the rule. For many builders, the most contentious of these was the elimination of the original “opt-out” provision, which would have allowed homeowners without small children to waive the requirement that lead-safe practices be used. The EPA also committed itself to re-examining the science behind several other aspects of the rule in accordance with an agreed-upon timetable, and to make changes where appropriate.

Among the issues to be re-examined — and one on which the EPA agreed to take final action by July 15, 2011 — was the so-called clearance requirement. Although this requirement was widely opposed by builders, most of whom predicted that it would lead to more delays and higher costs, the general consensus was that it would nevertheless become part of a strengthened RRP.

Surprise. The EPA announced its decision in blandly bureaucratic language. “After carefully weighing all available information and considering the public comments,” its prepared statement reads, “EPA has concluded that it is not necessary to impose new lead-dust sampling and laboratory analysis, known as the clearance requirements, as part of the ... RRP.”

The decision caught builders and even regulators themselves off guard. “There had been rumors floating around that the agency was going to insist on the clearance requirement,” says the EPA’s Wsol. “We were kind of surprised that they made the decision they did, and that it was so broad.”

Cost and safety. The EPA is not in the habit of providing

■ How much of the cost of a new home can be attributed to government regulation? About 25 percent, according to a recent paper from the NAHB, which concluded that roughly two-thirds of that figure results from added costs incurred during lot development, with the remaining third falling on the builder during construction. Critics of the report, however, question its accuracy, noting that the 25 percent figure is based entirely on NAHB-solicited builder estimates. The paper, “How Government Regulation Affects the Price of a New Home,” can be downloaded from the association’s website (nahb.org).

■ Under a Florida law that went into effect on July 1, businesses will no longer be permitted to “advertise, sell, offer, provide, distribute, or market” products as windstorm-, hurricane-, or impact-resistant unless they are approved by the Florida building code. The law is designed to crack down on products of questionable value that have been sold directly to the state’s homeowners, such as shutters made from lightweight corrugated plastic sign stock, and tinted window films touted as offering “shutterless” hurricane protection.

■ It wasn’t that long ago that perfectly serviceable houses in red-hot markets were regularly bulldozed so that bigger, higher-priced homes could be built on the same lot. Now, in a new twist on this teardown process, a growing number of banks nationwide are expected to reduce their inventories of unsold foreclosed homes by demolishing them. Bank of America recently announced plans to tear down 100 homes in Cleveland, Detroit, Chicago, and as many as nine other cities by the end of the year. According to *Bloomberg News*, Wells Fargo, Citigroup, JPMorgan Chase, and Fannie Mae are considering similar programs or are conducting them already. “There is way too much supply,” one real estate professional was quoted as saying. “The best thing we can do to stabilize the market is to get the garbage off.”

detailed explanations of its decision-making processes, but that hasn't stopped observers from speculating about the reasons for its apparent reversal. Massachusetts remodeling consultant Shawn McCadden, who has been closely following the lead-safety issue, wonders whether the agency may have been influenced by pressure from the real estate industry.

"If a third-party lab test comes back positive for lead, it would have to be disclosed to future buyers," McCadden says. "That could have been a big problem for anyone selling a house."

The agency also may have been swayed by an argument the remodeling industry has been making for years: that placing too many demands on builders might actually increase lead-exposure levels, because it could cause sticker-shocked homeowners to undertake renovation and painting projects on their own without any safeguards, or hire unlicensed workers to do it for them.

That argument got a boost earlier this summer when NARI released the results of a survey of homeowner attitudes toward lead-safe practices and costs. Forty-three percent of the respondents said that complying with the RRP was "somewhat important to not important," and another 8 percent deemed it "not important at all." Well over half said they'd do work themselves to save money, and another 29 percent said they would consider cutting costs by hiring a non-EPA-certified contractor. In all, the report concluded, more than 60 percent of those surveyed would be likely to find a way to skirt the current rule.

According to NARI director of communications Gwen Biasi, the organization presented the survey results to EPA officials in mid-July, just days before the agency announced that it would not pursue the lead-clearance requirement. "They were very polite and cordial," Biasi says. "They'd said they wanted to re-examine the science, and we were able to give them some evidence that homeowners were splitting the rules." — *Jon Vara*

■ A team of researchers from Microsoft and the University of Virginia have proposed a novel and cost-effective approach to home heating that takes advantage of the explosive growth of computer data centers: Rather than build large, freestanding data centers that vent heat to the outdoors, service providers would set up "micro data centers" in the basements of homes and small commercial buildings that would use the waste heat given off by computer servers for space heating and hot water. According to the researchers, such "data furnaces" could save consumers money and potentially allow the IT industry to double in size without increasing its overall power footprint.

■ According to a recent article in the *New York Times*, there's growing interest among U.S. homeowners in maintaining and restoring historical windows in older homes rather than installing modern replacements that are energy-efficient but may lack the character of the originals. In July of this year, the article noted, a National Window Preservation Summit convened in Bledsoe, Ky., with the goal of developing national window-restoration standards. "It needs to be a standardized book," one of the conference attendees told the *Times*. "You can't replace the wood. You can't replace the craftsmanship that was put into it."

■ A combination of near-record prices for scrap copper, high unemployment, and an oversupply of vacant foreclosed and unsold houses has led to serious problems with copper theft in many parts of the country. In South Carolina, officials are hoping that a law that took effect in August will make life more difficult for the state's copper thieves. The new law requires both buyers and sellers of copper, aluminum, and catalytic converters to obtain a free permit from their local sheriff; makes it illegal for sellers to transport metal without a permit; and orders metal dealers to pay for purchases by check, not cash.