

# **The 10 Most Important Questions and Answers about the EPA Lead RRP Rule:** What cleaning and restoration contractors really need to know

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Although many people are just becoming aware of the significance of April 22, 2010, for cleaning and restoration contractors, on that date new rules promulgated by the Environmental Protection Agency (EPA) will kick in that impact how contractors approach surfaces with lead paint. Known as the Renovation, Repair, and Painting (RRP) Rule, these regulations will have a major impact on which contractors may disturb lead paint and how that work is conducted.

As the primary instructor for an EPA-certified training organization that has guided hundreds of students through the labyrinthine maze of these regulations I have frequently addressed basic, but crucial, questions about these new government requirements. The following is my interpretation of the ten most important questions, as well as a bonus question at the end that strikes at the heart of how a business adapts to these new requirements.

## **1. What prompted these rules?**

To best understand why these regulations are moving forward one needs to consider both the big picture and specific circumstances. The overarching rationale is that exposure to lead dust and debris from lead-containing paint is a major source of lead poison. This is especially true for children who have more hand-to-mouth activity from painted/dusty surfaces and whose metabolism is more prone to lead poisoning. Lead exposure in children and adults can manifest itself in neurological problems such as learning disabilities, high blood pressure, and a variety of other nasty symptoms.

The more specific rationale for the institution of the RRP rule at this point in time is that the EPA was forced to move forward with the regulations as a result of a lawsuit by lead control activists. This understanding of the legal pressure is critical when addressing the second question.

## **2. Are contractors really going to comply or will it blow over?**

Although there is a lot of anger being expressed because the EPA did not do a good job of publicizing these requirements to the construction industry, it would be a mistake to let that anger turn into defiance in the hope that massive non-compliance will scuttle the regulations. Because the rules are a result of a lawsuit settlement it is unlikely that the EPA will back off from the implementation date.

As with any new government program there may be a short window (my guess is a few months after the April implementation date) where the Agency may focus on continued outreach and education of contractors rather than punitive penalties. However, most experts within the government and the cleaning and restoration industry believe that enforcement will gear up by this summer. Ultimately, contractors will have to comply, and it is best to be pro-active rather than reactive and face the potential of substantial penalties.

## **3. Can we just do all our work under the emergency exemption?**

Although it is true that there is an exemption for *some* of the rules in the case of an emergency, the exemption is limited and still requires the use of lead safe work practices any time lead-containing paint is impacted in target residences. Even this partial emergency exemption (covering the use of certified renovators, notification requirements to the occupants, and a few other provisions) is only good until the work area is stabilized enough to prevent significant damage to equipment or harm to

individuals. As such, cleaning and restoration companies may board up after a fire or pump out after a flood, but removal of wet drywall, release of cabinets, drilling of holes for wall drying, and other basic restoration and remediation steps generally fall back under the full range of the RRP rule.

#### **4. Will insurance companies pay for this work?**

In the continuing dance between restoration contractors who want fair payment for their services and insurance companies who want to keep their claims costs as low as possible, RRP compliance should be straightforward. At this point neither party really likes the tune being played by the EPA, however, there is little alternative but to dance together. The contractors face the potential for big fines for noncompliance and the insurance companies face real liability if covered renovations are done improperly—particularly if preferred or recommended vendors are used.

There is little chance of a mold replay in this situation because the contractor is boxed in by a rigid set of minimum procedures rather than the fluid standard of care that guides work with microbial contamination. Property and occupant harm is also more easily proven by comparison of surface samples to federal regulations and occupant blood tests that can be matched with medical consensus limits. Together, these facts enhance the liability risk on each side, which should dictate quick acceptance of the lead control costs by the insurance industry. Still, pro-active restoration companies should start educating their customers now to avoid payment delays for work after April 22.

#### **5. Is it a benefit to the building owner if we sample?**

Possibly, but not always. Contractors doing work in child-occupied residences built prior to 1978 must either presume that the structure contains lead paint or test painted surfaces that will be disturbed. While negative test results may save the contractor some hassle and expense, not all building owners will agree that testing is a good thing. A confirmation that lead paint is present may force the owner into other lead compliance requirements. It also would require a positive disclosure at the time of a property transaction rather than a response of “unknown”.

Therefore, even though cleaning and restoration contractors have multiple reasons to test paint in suspect facilities (RRP rules, OSHA compliance, etc.), it is best to inform the client of the pros and cons of such testing before it is undertaken. Contractors working in California should also remember that state regulations require the presumption of lead in the paint in houses built in 1978 or earlier regardless of any field testing they conduct.

#### **6. How does the EPA’s RRP rule intersect with OSHA in regards to respirators, programs, monitoring, and negative exposure assessment?**

Not very well at all! Although the EPA regulations require minimum personal protective equipment, the standardized training courses do not share essential components of such directives as required by OSHA. Any contractor following the EPA RRP regulations that provides a filtering face piece for their workers for potential disturbance of lead paint is also subject to the full range of OSHA requirements for respiratory protection. This means that the contractor must have a written respiratory protection program, have every employee that will be assigned a respirator provided with a medical evaluation, conduct fit testing, document testing, and provide adequate methods for cleaning and storing of the respirators.

If the contractor documents the presence of lead-based paint that may be disturbed as required by the EPA, then the OSHA construction safety standards for lead also apply. The standards require air monitoring to assess exposure levels and require the implementation of a medical monitoring program, including blood lead level tests for the workers if they are exposed to the OSHA action limit. Since there is limited industry information available regarding lead exposure levels during normal restoration

work (such as removal of damaged drywall following a flood) either each individual contractor will have to conduct some level of air monitoring, or an industry association will have to step forward to sponsor a more comprehensive study. In either case, contractors will be required to develop a negative exposure assessment if they want to avoid the much more detailed requirements of the OSHA lead standards.

**7. Are there also discrepancies with the HUD regulations?**

There certainly are. Appendix 2 of the RRP training class student manual highlights a number of discrepancies between the EPA and HUD regulations that both deal with lead paint in residences. The summary chart below provides three examples of these discrepancies while the appendix in the student manual contains eight significant items for contractors working with lead to understand.

Stage of job	Requirement	HUD Lead Safe Housing Rules	EPA RRP Rule
During work	Prohibited work practices	6 practices prohibited	3 practices prohibited
During work	Exempted amount	2 sq. ft. or less	6 sq. ft. or less
After work	Post work testing	Lab testing obligatory	Self check of work

**8. What are the EPA penalties and is civil liability a concern?**

Although the maximum EPA penalties of \$32,500 per incident per day for noncompliance catch a lot of attention I believe that the biggest risk associated with non-conformance with the RRP rules is civil liability.

Although there is no official statement yet from the EPA regarding specific enforcement plans the current budget situation and past program histories would indicate that there will probably be two phases to the enforcement approach: Cooperative Education followed by Pirate Style Deterrence. Initially, contractors can expect a window of perhaps a few months during which the EPA will encourage affected businesses to work with the Agency to discover, disclose, and correct violations. During this Cooperative Education phase fines are generally kept to a minimum as the emphasis is on spreading the word about the need to come into compliance.

In a relatively short time after the implementation of the rule the Agency will start to respond to complaints of violations. When they start to find organizations that neither comply nor cooperate to address their legal obligations under the RRP rules they will start to levy heavy fines and publicize the actions taken against violators. In essence, the EPA will use modern publicity methods to “hang” the violators, like pirates used to be left hanging at the entrance to the harbor as a warning to all who passed by.

While regulatory enforcement and fines are a concern, the new rule sets the stage for significant civil liability concerns. Contractors who understand how to safely deal with lead in target and child-occupied housing yet fail to take the same precautions just because the occupants are older than six years run a tremendous risk of being sued if lead poisoning is ever discovered.

**9. If the house has lead-based paint is it logical to assume that surfaces are contaminated?**

Depending on the conditions in the house it is quite likely that significant lead contamination was present both indoors and outdoors before the restoration contractor started work. As such, contractors that follow the basic minimums for conducting RRP work, like utilizing a drop cloth but no true isolation barriers, may find themselves accused of cross-contamination of an entire house even though the lead-contaminated dust may have been present before they ever began.

## **10. How many people do I need to certify as renovators?**

The regulations only require one individual per firm to be certified as a lead renovator. However, this individual must be present at every project involving child-occupied or target housing to personally supervise the initial investigation, testing, and set-up of engineering controls, and then must return to the site to evaluate the effectiveness of the work practices and conduct post-remediation cleaning verification. For a company with more than one or two crews doing work this may prove to be problematic for a single individual to handle. Therefore, many companies have adopted a reasonable position that all of their project supervisors and estimators should be trained and certified as renovators.

## **Bonus Information**

While ten is a nice even number of questions I thought it would be appropriate for those of you who read all the way to the end of the article to get the benefit of an important bonus question.

## **11. What is the key to integrating this into our business efficiently?**

The primary key to avoiding problems and providing excellent service to your customers related to the disturbance of lead paint is to develop specific company policies that clarify the fuzziness of the regulations. In that way you can address situations such as:

- a) Use of lead-based paint beyond the date on which it was banned.
- b) Exemption from certain HUD and EPA requirements for work that is done in facilities with lead based paint that are *not* child occupied or supported by federal funds.
- c) How to deal with the EPA provision that allows residents to opt out of the use of lead safe work practices in their homes if they meet certain requirements.
- d) The EPA's misuse of the term "containment" for their minimum requirements for engineering controls.
- e) The liability trap in the RRP rule that does not require the pre-cleaning of objects being covered in a work area where paint will be disturbed.
- f) The missing definition of "vacuuming twice" in the EPA regulations for cleaning of carpets in a work area.
- g) The issues discussed in question 6 in regards to requirements for respiratory protection.
- h) Your approach to project completion using cleaning verification cards.

Upcoming compliance with the EPA's new Renovation, Repair and Painting rule presents a great challenge to cleaning and restoration contractors; however, proper training, a little time thinking about how the rules can best be applied to your organization, and access to good information and advice through the Restoration Industry Association can help you not simply comply but prosper in this new regulatory environment.