

EPA Fining Owners for Noncompliance of Lead-Based Paints and Regulations

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On June 1, 2000, the U.S. Environmental Protection Agency's (EPA) grace period for the enforcement of its lead-based paint laws and regulations ended. Until that date, the EPA's emphasis was on educating the public and the owners of "target housing" on lead-based paint requirements. Target housing is multifamily rental housing built before 1987 and financially assisted or sold by the federal government.

During the EPA's grace period, which was called the Compliance Assistance Period, the EPA investigated noncompliance only when it received strong complaints. In contrast, since June 1, penalties have become a key component of the EPA's enforcement program, which was designed to make the owners of target housing comply. The EPA has embarked upon a systematic, randomly chosen in the assessment of significant and unprecedented fines against target housing owners.

Disclosure Requirements

Owners of target properties who rent housing must do the following under the disclosure requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992: (1) disclosure all known lead-based paint and lead-based paint hazards, (2) provide renters with the EPA pamphlet describing lead-based paint hazards and EPA's requirements, (3) include warning language in the lease, together with a signed statement from the owner and tenants verifying compliance, and (4) retain the signed acknowledgement of compliance for a three-year period.

Failure to comply with disclosure requirements subjects an owner of target housing to a daily fine in excess of \$10,000 for each instance of nondisclosure. Disclosure is not, however, the end of an owner's obligation; renovations may require further compliance.

Before renovation can begin on most housing built prior to 1978, the EPA's Pre-Renovation Lead Information Rule requires that renovators distribute a pamphlet to owner's and occupants. The pamphlet, *Protect Your Family from Lead in Your Home*, discusses ways that individuals can protect themselves and their families from lead-based paint hazards.

The Pre-Renovation Lead Information Rule differentiates between renovation activities and excluded activities, such as routine maintenance or repair. Key sources of lead exposure during renovation are activities such as sanding, scarping and other surface preparations that disturb paint and generate dust. Renovation activities disrupting more than 2 sq. ft. of paint per component are covered by the rule.

Specific exclusions are activities that are less likely to pose a risk of exposure to lead-based paint dust or other hazards. Examples include minor housing repairs and

maintenance activities, emergency renovation operations and renovation activities taking place in housing already certified lead free by an inspector called a risk assessor.

The Pre-Renovation Lead Information Rule also requires that before renovating common areas about the nature and extent of the renovation and make the pamphlet available in a central location.

EPA's Focus

Unlike previous federal lead-based paint legislation, the Residential Lead-Based Paint Hazard Reduction Act of 1992 switched the focus of federal lead-poisoning prevention efforts from removing lead-based paint toward managing lead-based paint hazards.

Although federal laws and regulations do not require property owners to test, incentives are built in to encourage owners of pre-1978 housing to assess the presence and condition of lead-based paint on their premises. Under the 1992 disclosure legislation, owners of pre-1978 properties are relieved of many notification requirements if they test and the properties are found to be lead free. Similar relaxation of notice requirements exist under the Pre-Renovation Lead Information Rule.

Property Assessment

Self-assessment for lead-based paint hazards is critical to avoid fines. Unless there is a full lead-based paint assessment, the paint in a property built before 1978 is assumed to contain lead. Although the EPA estimates that more than 60 million units contain lead-based paint, the EPA estimates that many fewer have lead-based paint hazards. The only way to determine if a unit contains hazards is to have it tested by a risk assessor.

If no assessment has been made and the property was built prior to 1978, regulations assume that the paint contains lead, and notice requirements will be strictly enforced. The EPA has taken an active role in setting the criteria for lead-based paint assessments and establishing training and certification requirements.

Owners of residential multiple dwellings built before 1978 who ignore the EPA's requirements are being fined heavily for failure to meet strict paperwork requirements. It is essential that the property owner work with counsel and a risk assessor to develop a comprehensive lead-based paint self-assessment and compliance program before the EPA shows up to inspect premises and paperwork and penalize noncompliance.

While federal laws and the U.S. EPA requirements are complex and can be confusing, the reader should be aware that state and local requirements also exist and can be even more stringent.