March 9, 2010

SUBJECT: The New EPA Lead Paint Renovating, Repair, and Painting (RRP) Legislation

On Thursday, April 22, 2010 (Earth Day) new EPA regulations regarding lead paint disturbance will dramatically change remodeling industry practices across the nation.

It is expected that the cost for remodeling projects in homes built prior to 1978 will be increased to the tune of hundreds or thousands of dollars per project.

By the EPA treating lead paint disturbance in the same manner as asbestos in normal home improvement renovations (kitchen and bath, window replacement, roofing, siding, electrical, plumbing, HVAC, etc.), standard work practices are changed severely as to lead dust containment requirements. Disturbance of any lead painted area (interior, six square feet or above; exterior, 20 square feet or above) requires stringent adherence to the new legislation.

Most concerning is the cancellation of any financial benefits from weatherization programs, incentives and rebates by the increased costs of the new regulations as well as the impairment of the renovation business while contractors are trained and mandated equipment is obtained. Programs such as “Cash For Caulkers” and the HOMESTAR Energy Efficiency Retrofit Program which are designed to help create jobs by encouraging homeowners to have energy efficiency improvements made to their homes are in jeopardy as who will be able to do the work, and at what price?

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Yours truly,

John Rigrod
Publisher

OVERVIEW

The new EPA “Lead Safety for Renovation, Repair, and Painting” (RRP) regulations effective April 22 require remodelers to be trained and certified (a full day 8 hour course with test) relating to working in homes that contain lead paint (usually built before 1978). Remodeling companies dealing with homes with lead paint must also register with the EPA and become certified. This law treats the disturbance of any lead paint as though it was asbestos (required respirator mask, disposable suit, gloves, etc.).

The new work is expected to add many hours to any home improvement project as beyond the “hazmat” suits, the home has to be worked on in a “lead-safe” way that includes hanging heavy gauge plastic to contain the room(s), the covering of floors, furniture, etc., and the proper disposal of materials encased in plastic sheets and properly sealed. Specialized thorough cleaning is mandated to remove any trace of lead paint dust that may have been created during the renovation. Although the dangers of lead paint to children is well documented, the speed at which this ruling is going into effect will put most of the remodelers across the country in great difficulty and subject to a $37,500 fine per day per incident if they are not trained and certified to EPA standards and correctly perform new work standards. It is expected that only 2 percent will be ready by April 22 with major concerns as to the availability of a tremendous amount of 6 mil plastic, HEPA vacuums, etc.
Problems with the New EPA Lead Safety for Renovation, Repair, and Painting (RRP) Legislation

Although remodelers and those in the building trades understand the concerns over proper work practices when disturbing lead-based paint, the new impending regulations scheduled to take effect on April 22, 2010 are virtually impossible to implement. Following are some of specific difficulties that must be addressed:

Need to postpone/extend date of implementation
This is a national problem. There is not enough time to certify the remodeling workforce. It is estimated that due to the shortage of training companies and minimal available classes, that only 2% to 3% of the remodeling industry can be properly certified by April 22nd.
Example: Long Island, New York has over 18,000 licensed remodelers. To date, only a few hundred have been trained and certified.

Shortage of required equipment
The new legislation requires specialized High Efficiency Particulate Air (HEPA) vacuum cleaners to be used during clean-up procedures. The amount of HEPA vacuum cleaners available, as well as other required materials including heavy gauge plastic, disposable clothing, respirators, lead test kits, and the like is estimated to be dramatically less than will be demanded by every remodeling company, per worker, per crew throughout the country.

Confusing legislation
Now that training has begun, there is some concern as to the language of the regulations. For example, all workers within the containment zone must wear HEPA respirators. It is believed that separate OSHA training is required as to the use of respirators and that the newly certified renovator is not properly trained in this matter, nor is he or she qualified to train others, as required.

Renovator liability
Because the new lead safe work practices treat lead paint dust in a similar fashion to asbestos, there is concern that homeowners will fear the disturbance of lead paint that commonly occurs during renovation in older homes built prior to 1978. This is a two-fold problem:
1. Any illnesses in children or adults discovered after the renovation project is completed might be blamed upon suspected lead poisoning. According to the EPA, this could include lower IQ or brain disorder, Attention Deficit Disorder, miscarriages, hypertension, digestive problems, muscle or joint pain, etc. Workers could also blame illnesses in later life on their chosen career.
2. Because the new regulations, printed matter, and available information on the internet provided by the EPA amplifies the perceived dangers of lead paint disturbance, if renovation companies are sued, there is concern that current insurance in place will not be in effect for lead. Further time is needed to determine whether additional insurance will be necessary, if available.

Excessive penalties/lack of notification to the trades
Fines of up to $37,500 for failure to correctly implement the new practices (believed to be per day per incident) are enough to force a small business to close its doors if mistakes are made. Also, because there is no current national database of those in the remodeling trades (home improvement, kitchen and bath, window replacement, roofing, siding, electrical, plumbing, HVAC, etc.), it is expected that many tradesmen and women will be unaware of the new legislation.

Increased cost of the renovation
Constructing containment zones, donning and removal of protective gear, reduced productivity working within protective clothing, respirators, goggles, etc., required extensive cleaning procedures, stringent waste containment, and purchasing of newly required equipment and materials could add many hours and hundreds to thousands of dollars to the cost of the job.
Excerpted content of correspondence received from Mary Harris, Executive Vice President

First, thank you for your phone calls and messages last Thursday and Friday. We sincerely appreciate the concerns of our members regarding the EPA Lead RRP Rules.

Please know that the EPA announced these rules on December 29, 2005 to which NARI provided formal and official response on May 22, 2006…

It is interesting to note that we assessed the burden these rules would have on our members and communicated that. Since that time, NARI has monitored and released many member communications regarding this matter and has continued to interface with the EPA. We have provided testimony in public hearings throughout the country and cooperated in a research study and training with NAHB.

Please know that the EPA as a federal agency has been under massive pressure by two administrations to tighten these rules due to the prevailing incidence of lead poisoning in young children. This agency has been sued by a number of child advocacy and environmental groups which has heightened the exposure and pressure.

[I contacted] the NAHB to see if there was any opportunity whatsoever to delay implementation. I was advised that a meeting took place on March 4 at which time the EPA advised that under no circumstances would implementation be extended beyond April 22. The only chance for extension is now being appealed to the Office of Management and Budget (OMB). Many industry associations including NARI have signed onto the attached letter.

We point out that the agency has not provided sufficient trainers to cover the industry adequately. To date, 135 accredited trainers have only trained 13,669 professionals out of a conservative pool of 200,000. Furthermore, the push for weatherization via proposed HOMESTAR cannot be accomplished.

We are hopeful that with a strong coalition of allied associations, we might be successful in getting the ear of OMB and getting some reprieve…

Please know that we share your concerns and believe that this approach is the final opportunity and may be the most constructive and effective way to create favorable change at this point.
March 8, 2010

The Honorable Jeff Bingaman
Chairman
Senate Committee on Energy & Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Lisa Murkowski
Ranking Member
Senate Committee on Energy & Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
Chair
Senate Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James Inhofe
Ranking Member
Senate Committee on Environment & Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Re: EPA Lead: Renovation, Repair and Painting Rule (LRRP)

Dear Chairman Bingaman, Chairman Boxer, Ranking Member Murkowski, and Ranking Member Inhofe:

We are writing to urge you to request a delay in the implementation of the Environmental Protection Agency's (EPA) “Lead: Renovation, Repair and Painting Rule” (LRRP). As manufacturers, distributors, retailers and installers of new construction materials, we support efforts to ensure that home renovations in pre-1978 homes are conducted in accordance with EPA’s LRRP requirements. Unfortunately, based on EPA compliance needs estimates, we do not believe EPA is prepared to adequately implement the LRRP. Further, if implemented now, the LRRP will negatively affect economic stimulus funding designed for housing weatherization and planned efforts for a national residential retrofit program.

Starting on April 22, 2010, renovation work that disturbs more than six square feet on the interior of a home built before 1978 must follow new Lead Safe Work Practices (LSWP) supervised by an EPA certified renovator and performed by an EPA certified renovation firm, as outlined in 40 CFR § 745.85. Your respective Committees have passed legislation to incentivize energy efficiency upgrades in older homes and buildings – the same housing stock subject to the LRRP. We agree this is an effective approach towards improving building energy efficiency. However, we also see that new proposals, such as the multi-billion dollar HOME STAR for residential retrofits, designed to quickly create jobs through efficiency upgrades to older homes, is at risk of derailing compliance with the LRRP, or vice versa, that compliance with the LRRP will subvert the ability to deliver jobs and save energy in the oldest, least-efficient housing stock.

Currently, EPA has only 135 accredited trainers and 13,669 certified renovators nationwide, although its own compliance-needs estimates indicate that it needs at least 200,000 or more certified renovators. Obviously, these numbers are far too insufficient for the millions of renovations carried out annually, even without a substantial retrofit incentive program like HOME STAR. With the April 22, 2010 deadline nearing, it is clear that EPA cannot ensure enough certified renovators will be available for compliance with the LRRP. Meanwhile, there is going to be an additional influx of new contractors and renovators generated by the HOME STAR proposal in the same industry (i.e., residential retrofitting). This will create a major problem between LRRP compliance and the exponential increase in the numbers of retrofit contractors under a HOME STAR program. We believe renovation incentives and HOME STAR, if passed as proposed, which is deliberately intended to significantly increase renovation work in older homes, will only magnify LRRP compliance issues.
There is a precedent for a solution which we believe could temporarily ameliorate some of these concerns. An example from the U.S. Department of Housing and Urban Development (HUD) on this exact same issue is particularly relevant. In September 2000, HUD published a “Notice of Transition” in the Federal Register (65 Federal Register 54858) which delayed HUD’s implementation of the “Lead Safe Housing Regulation.” HUD program participants who sought to take advantage of the transition period were required to file a “Statement of Inadequate Capacity”, which stated that “trained, licensed (certified) or accredited personnel or firms are either not available in sufficient numbers or are not available at a reasonable cost to make it practicable to comply with the Lead Safe Housing Regulation.”

In a recent proposal to amend the LRRP, EPA stated that it was considering delaying the effective date of the LRRP. We support this and urge you to contact the Administrator of the Office of Information and Regulatory Affairs (OIRA) and request a delay of the LRRP. In light of the high priority given by both Congress and the Administration to improving energy efficiency in older homes and creating a robust residential retrofit industry, e.g., through a HOME STAR proposal, contractors and industry professionals must have a resolution to the LRRP compliance issue before April 22, 2010.

Thank you for considering our views.

Sincerely,

National Lumber and Building Material Dealers Association
Window and Door Manufacturers Association
National Association of Home Builders
Hearth, Patio & Barbecue Association
Window and Door Dealers Alliance
National Glass Association
Manufactured Housing Institute
National Association of the Remodeling Industry
The Home Depot