



LEAD PAINT

BY LAUREN BOSTON

Independent rental owners are adapting—and even changing their business models—to accommodate the EPA’s burdensome lead-based paint regulations.

Unexpected, drop-in property visits from government officials. Hundreds of thousands of dollars in fines. Costly training courses and certification fees. Prolonged renovation projects. These problems are every independent rental owner (IRO)’s worst nightmare, and under the Environmental Protection Agency (EPA)’s new lead-based paint regulations, they’re becoming a reality for some.

Months after the EPA announced the regulations, many IROs are struggling to meet the increasingly stringent requirements.

Under the most recent addition to the Renovation, Repair and Painting (RRP) Rule, enacted on April 22, 2010, all individuals and companies involved in the renovation of pre-1978 housing units must receive EPA certification. It’s a costly requirement for small owners, carrying an individual fee of \$200 to \$300, plus an additional \$300 for company certification. Owners can avoid the fees by hiring certified contractors for future projects, but those contractors can be expensive or difficult to find in some areas.



While James is willing to comply with the RRP Rule, he still feels the regulation is excessive. "The resources we will put into this are an utter waste. We're treating adults like children."

—Dick James, *President, R. James Properties Inc., Atlanta*

Whether renovations are performed in-house or by a contractor, renovators must follow expansive lead-safe work practice requirements, issued on April 22, 2008, that can add time and cost to projects.

With potential EPA fines and violations looming, many IROs fear the additional red tape will discourage buyers from investing in older properties, decreasing their property values. Others are reconsidering acquisitions of pre-1978 housing entirely.

Does the Rule Apply to You?

At buildings constructed before 1978, long gone are the days when just any contractor or maintenance staff member could conduct a half-day, in-and-out paint job, window replacement and spackling. Apartment owners at these properties must now be certified to do their own repair work or must hire certified contractors to perform renovations, repairs or painting work that disturbs six square feet of interior paint or 20 square feet of exterior surfaces.

Disturbances include, but are not limited to, replacing windows, removing walls, repairing a painted surface or removing painted components, such as doors. The regulation in some cases excludes studio apartments, housing that is officially designated for the elderly or the handicapped, and housing that previously has been tested by a State Certified Lead Inspector and found to be free of lead-based paint.

To gain certification, companies must complete the EPA's application for Certification to Conduct Lead-Based Paint Activities and Renovations (see www.epa.gov) and pay \$300. Additionally, companies must have at least one Certified Renovator who has completed an EPA or state-approved training course assigned to

each renovation project to oversee and train all other workers on the job. Individual and company certification is good for five years.

In June, the EPA acknowledged concerns raised by those affected by the law and extended the company certification deadline to Oct. 1. The individual certification deadline also was extended. Individual workers must have enrolled in a certified renovator class by Sept. 30 and complete training by Dec. 31.

The federal government-approved, 8-hour certification class, offered through many local apartment associations, is intended to train employees on the use of the mandatory lead-safe work practices first issued in 2008. These include containing the work area and covering the ground with plastic sheeting to prevent dust contamination. Two hours of hands-on training are part of the course and technicians then must pass a final exam.

Wisconsin, Iowa, North Carolina, Mississippi, Kansas, Rhode Island, Utah, Oregon and Massachusetts are authorized to administer their own RRP programs in lieu of the Federal program, and may have more stringent certification requirements. To locate accredited renovation training programs, go to http://cfpub.epa.gov/flpp/searchrrp_training.htm. Individual certification costs are from \$200 to \$300 per person.

Federally owned or assisted housing properties are required to follow the U.S. Housing and Urban Development (HUD)'s Lead Safe Housing Rule, which overrides the EPA's RRP Rule. HUD's requirements are similar to the EPA's, but there are some important differences. Visit www.hud.gov for details.

Owners in violation of any of the RRP Rule requirements could be fined from \$150 to \$37,500 per violation, as estab-

lished in the Toxic Substances Control Act (TSCA). "In determining the penalty, EPA must take into account the nature, circumstances, extent and gravity of each violation," says an EPA spokesperson. "EPA must also take into account the effect on the violator's ability to continue to do business, and the violator's history of violations and degree of culpability. With some very limited exceptions, EPA also seeks to eliminate any economic benefit a violator may have gained from its violations."

EPA has developed a penalty policy, "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule," to provide greater clarification. To view the policy, go to www.epa.gov/compliance/resources/policies/civil/penalty/leadbasedpaint-consolidatederpp0810.pdf.

Taking the Class

IRO Brian Chase says his Richmond-based company, Landmark Property Services Inc., paid to have several of his employees earn their renovator certifications. The \$225 training course was given through the Central Virginia Apartment Association.

"The class provided an overwhelming amount of information on how certain renovation processes were to be completed," says Chase, whose company owns six B and B-plus properties in Virginia. "In general, our employees learned what was expected of them when completing a repair."

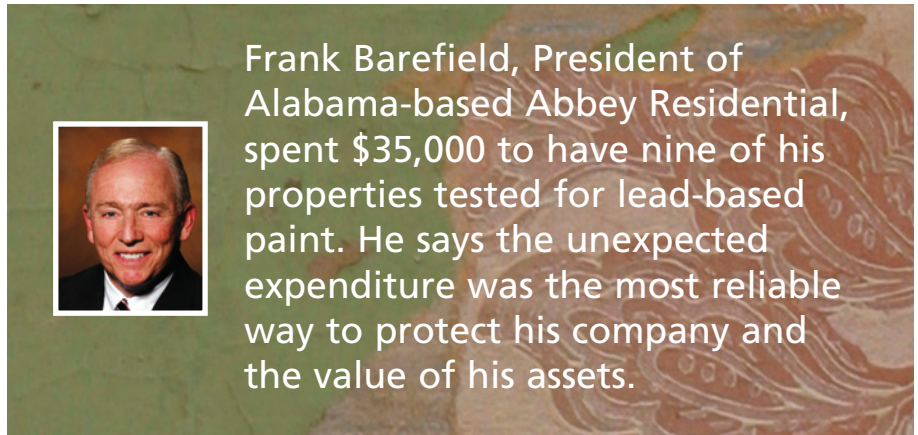
That list of required renovation processes is lengthy. According to the EPA, renovators must use work-area containment to prevent dust and debris from leaving the work area. Containment

procedures include protecting the work area with plastic sheeting that extends a minimum of six feet in all directions from the spot where the paint will be disturbed in interior renovations and 10 feet on exterior jobs. Some work practices are prohibited, including open-flame burning, using heat guns at greater than 1,100 degrees and the use of power tools without high-efficiency particulate air (HEPA) exhaust control (to collect dust generated).

Unauthorized persons and pets must be prevented from entering the work area through warning signs, fencing, or plastic barriers. Renovators also are required to remove all furniture and belongings from the work area, close all doors and close and cover air vents.

Finally, the work area must be thoroughly cleaned and verified to minimize exposure to lead-based paint. (For a list of mandatory steps to lead-safe renovation, repair and painting, visit <http://www.epa.gov/lead/pubs/steps.pdf>).

Rich Sommer, who operates 42 units



Frank Barefield, President of Alabama-based Abbey Residential, spent \$35,000 to have nine of his properties tested for lead-based paint. He says the unexpected expenditure was the most reliable way to protect his company and the value of his assets.

through his Wisconsin-based company, Sommer Properties, received his Lead-Safe Renovator Certification in March through the Milwaukee Lead/Asbestos Information Training Center. Sommer says passing the course was easy, but the training did not fully prepare his employees for the reality of working under the RRP Rule.

“This summer I had two employees scrape the paint from a large porch on a 100-year-old building,” he says. “Believe

me—dealing with the protective plastic sheet in the wind is much more challenging compared to when we learned how to do this during a training demonstration in a motel conference room.”

Using third-party companies to deal with lead-based paint can be just as costly and time-consuming as having onsite staff perform the job. Bob Davis owns six properties in Iowa—a state that requires Lead-Safe Renovator Certification for work on disturbed surfaces of just one

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EPA U.S. ENVIRONMENTAL PROTECTION AGENCY

APPLICATION FOR FIRMS TO CONDUCT LEAD-BASED PAINT ACTIVITIES/RRP RENOVATIONS

Important: This application is required by 40 CFR §745.69(a) for renovations and is a substitute for the letter required by §745.228(f)(2) for abatement. Consult the instructions for firms applying for certification to conduct lead-based activities or renovations. For abatement activities, persons seeking individual certification should use the Application for Individuals instead of this form. Please fill out all sections. Type or print responses in black or blue ink only.

A. General Information
Select one of the following application types for lead-based paint activities: (abatement, inspection, risk assessment) and/or Repair, Renovation, and Painting (RRP) (renovation or dust sampling technician).

Initial certification application - renovation (RRP)
 Initial certification application - abatement, inspection, risk assessment
 Re-certification application - renovation (RRP)
 Re-certification application - abatement, inspection, risk assessment
 Combined re-certification - abatement, inspection, risk assessment and renovation
 Adding jurisdiction(s) to certification/renovation certification
 Replacement of a certificate

*The fee you must pay for the above certifications depends on the number of EPA-run jurisdiction(s) in which you plan to conduct lead-based paint activities (jurisdictions do not apply to renovation certification). See the fees schedule in the instructions to determine your fee. The total fee listed below should include fees calculated on any additional sheets.

1st EPA-run jurisdiction (pay base certification fee only) Fee: \$ N/A
 (See the definition of EPA-run jurisdiction(s), the fee schedule and an explanation of the combined application in the instructions. For current listing of EPA-run jurisdictions, see www.epa.gov/lead or call 1-800-424-LEAD.)

Each additional EPA-run jurisdiction: (List on additional sheets of paper and attach, as necessary, CD for jurisdiction) Fee: \$ N/A

Certification for Renovations only (jurisdictions do not apply to renovation certification) Fee: \$ 300

Total Fee: \$ 300

B. Applicant Information
Check here if you are a federally-recognized Indian tribe seeking certification as a firm.

Name of Firm: AAA Renovation Inc.
 Business Address: 123 Main Street, Detroit MI 12345, Street Address, Suite Number (Please use P.O. Box) State Zip Code
 Mailing Address: Same as above (If different from above) Street Address, Suite Number (Please use P.O. Box) City State Zip Code

Name of Attesting Individual: Steve Smith, Last First Middle
 Firm's Phone #: 845-123-4567 ext #: 123 Attesting Individual's Phone #: 845-123-4567 ext. 123
 Attesting Individual's E-mail Address: steve@aaa.com

C. Professional Certifications
Does the firm hold current permits, licenses, certifications, or registrations in the lead-based paint field in any state, U.S. territory, or Indian tribal land? Yes No

If yes, please fill in the following blanks, one line for each permit, license, certification, or registration held. Attach additional sheets of (PDF), as necessary.

Type of certification/permit	State, U.S. Territory, or Indian tribal land(s) name	Certification/identification Number	Date received
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

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D. Lead-Based Paint Activity or Renovation Violation[s]
Does the firm have any past, present, or pending lead-based paint violations of EPA, State, U.S. territory, or Indian tribal land(s) regulations? If yes, please attach a written explanation. Yes No

E. Certification Statement
Fill in the blanks in the following statement as indicated.

I, Steve Smith, Attesting Individual, attest that AAA Renovation Inc., Name of Firm, shall only employ appropriately qualified individuals to conduct lead-based paint activities and renovations.

AAA Renovation Inc., Name of Firm and its employees shall follow the work practices standards set forth in 40 CFR § 745.227 for conducting lead-based paint activities or 40 CFR § 745.85 for conducting renovations at all times.

Privacy Act Statement: This statement is provided pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a. The authority for collecting this information is 40 C.F.R. Part 745, and 15 U.S.C. § 1699c and 2054. The information collected on this form will be used to establish the applicant's eligibility for certification to conduct lead-based paint activities and renovations in target housing and child-occupied facilities. Disclosure of this information is voluntary; however, the failure to provide this information may delay or prevent an applicant's certification. This information may be disclosed to appropriate and limited circumstances to EPA employees, contractors, grantees or others when carrying out duties that are compatible with the purpose for which this information is collected and when the information is necessary to complete the fee, a member of Congress or someone in contact with your consent and on your behalf. If appropriate fee enforcement agencies responsible for implementing, enforcing, administering or reviewing specific statutes, codes or regulations, and this information is required to that responsibility, an appropriate administrative body when such disclosure is compatible with the purpose for which this information is collected and the EPA or the United States has an interest in the processing, and the Department of the Treasury, the General Services Administration, the General Accounting Office and other Federal, State, and Local Agencies in subsequent activities related to this information.

I hereby attest and affirm that the information included on this application, including any attachments, is true and accurate to the best of my belief and knowledge. I acknowledge that any certification issued pursuant to this application, including any attachments, will be subject to revocation if issuance was based on incorrect or inadequate information that materially affected the decision to issue the certification.

Signature: [Signature] Date Signed: 10-1-2009
 Attesting Individual's Signature (Please sign legibly within the boundaries of the box above.)
 Owner
 Attesting Individual's Title (please print)

Before you mail your application and certification fee, make sure that you have:

- Filled out all applicable sections of the application
- Signed and dated the application
- Made a copy of your application for your files
- Enclosed the appropriate certification fees (check or money order)
- Printed "Lead Program User Fees" on the check or money order
- For more information, see the fees section of the instructions

Mail original completed application, supporting materials, and the certification fee to:

EPA Lead Program
 P.O. Box 979072
 St. Louis, MO 63197-9000

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The EPA's application for Certification to Conduct Lead-Based Paint Activities and Renovations (above) can be found at www.epa.gov. Companies are charged \$300 for certification.



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—Rich Sommer, Sommer Properties, Stevens Point, Wis.

square foot—and says he cannot find affordable, independent handymen who are lead-certified. “For projects as small as cutting a hole in a wall that may have lead-based paint or diagnosing a plumbing leak, I’m forced to use larger, certified construction companies at increased costs,” he says.

What to Give Your Residents

Implementing lead-safe work practices during renovation is half the battle; IROs

also are required to distribute informational materials to residents concerning the dangers of lead-based paint. Beginning in December 2008, companies engaged in renovation, repair or painting projects that are likely to disturb lead-based paint are required to provide an EPA booklet, “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools,” to adult residents of occupied apartments.

The pamphlet “Protect Your Family”

also must be provided to residents at lease signing. New residents are required to sign and date a Lead Warning Statement, provided as an attachment to their lease. Materials are available at www.epa.gov/lead/pubs/brochure.htm and www.epa.gov/lead/pubs/leadbase.htm.

Dick James, President of R. James Properties Inc., an Atlanta-based company that operates 2,135 units, learned firsthand about disclosure violations. In May, three EPA employees appeared without

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initials)

(c) Lessee has received copies of all information listed above.

(d) Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initials)

(e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

New residents are required to sign and date a Lead Warning Statement (above) at all pre-1978 buildings.

EPA-Approved Test Kits

EPA has authorized the reliability of three lead test kits when used by Certified Renovators that can be found in stores such as Home Depot and Lowe's:

LeadCheck. Used to determine that regulated lead-based paint is not present on wood or ferrous metal (alloys that contain iron). This kit is not recognized for use on plaster and drywall.

State of Massachusetts. Used to determine that regulated lead-based paint is not present on wood, drywall and plaster; it is not recognized for use on ferrous metal.

D-Lead. Used to determine that regulated lead-based paint is not present on wood, ferrous metal, drywall and plaster surfaces.

notice at one of James' properties and asked to have access to James' residents' files, with particular interest in the lead warning statements the community had collected from its residents.

James' community staff was not fully aware on how to proceed. After the property manager and her supervisor discussed the situation, the property manager gave the EPA officials access to the documents. James says his property manager had been distributing the lead paint pamphlets and obtaining signatures on the disclosure forms, and all parties believed that they had been handling the situation in full compliance.

"We incorporated the lead paint disclosure form into our lease and put a link to the EPA pamphlet in our software and on our website so we would never run out of pamphlets or forms," James says. "We also had an internal audit procedure to be sure every lease was signed. We thought that was enough to be in compliance. We expected to receive kudos."

Instead, R. James Properties was fined for not filling out the forms completely and correctly. According to James, the EPA employee who performed the inspection said at least one space on each disclosure form that required a resident or leasing agent's initials, a checkmark, a signature, or a date was blank. In the subsequent "show cause" hearing, the EPA acknowledged that James' property was attempting to comply with the law, that the pamphlets had been distributed and that the disclosure forms had been at least partially signed. Nonetheless, the EPA threatened James with a fine in excess of \$300,000 if he did not cooperate by signing a consent form requiring, among other things, waiver of the right to a hearing, certification of compliance with the regulation, and agreement to pay a fine of \$2,640.

To argue his case, James spent \$600 on a lawyer, and eventually signed the consent form on Sept. 9.

James says that the omissions on the form were ones that could easily be made by anyone filling out the form. "The disclosure form contains 13 spaces which must all be either checked, signed, ini-

tialed or dated," James says. "One of the lines, for example, states that the tenant has received documents pertaining to lead paint testing. Since we had done no testing, there were no documents to deliver except the pamphlet. EPA took the position that lack of an "N/A" on the line constituted a violation. In another instance, the tenant failed to date his signature. Even though the disclosure form had the proper date preprinted by the computer on the bottom of the page, EPA took the position that the form was undated."

Three weeks later, an EPA employee visited one of James' other properties and asked again to be given access to his tenant's files. This property manager insisted that EPA make an appointment before reviewing her documentation. Instead of scheduling a visit, the government employee then asked to have 20 complete leases, application forms and disclosure forms mailed to the EPA office for review. James has not heard from the EPA since the tenant files were sent.

James says both experiences convinced him to double-check all documentation. He also decided to certify his property supervisors to avoid potential violations on renovations.

While James is willing to comply with the RRP Rule, he still feels the regulation is excessive. "The resources we will put into this are an utter waste," he says. "We're treating adults like children. Don't eat paint chips and don't breathe in the dust—it's that simple. Now I'm paying fines, and a common, \$350 turn-key job may become a \$600 project if it requires a delay for testing and subsequent delays to then set up and clean up to meet these renovation requirements."

Clean Bill of Health


If a pre-1978 building is found to be free of lead-based paint, the RRP Rule does not apply. Rather than assume the presence of lead-based paint or spot test as each individual maintenance problem arises, many IROs are taking a proactive approach and hiring a State Certified Lead Inspector or risk assessor to test all pre-1978 communities at once. Inspectors conduct a surface-by-surface investiga-

tion by collecting paint chips for laboratory analysis or using a machine to detect the presence of lead on painted surfaces. Testing costs \$3,000 to \$12,000 per property, but many owners say paying that for the peace of mind is worth the price.

Frank Barefield, President of Alabama-based Abbey Residential, spent \$35,000 to have nine of his 22 properties professionally tested. Five were found to be lead-free. He says the unexpected expenditure was the most reliable way to protect his company and the value of his assets. He adds that the testing will help make those properties more attractive to buyers.

Chase hired a third-party environmental company to inspect his properties, several of which tested positive for lead-based paint. On those properties that did contain lead, the inspectors pinpointed the presence of lead to the exterior surfaces of the buildings. The interiors of most apartments were lead-free, eliminating Chase's need to follow the RRP regulations on repairs completed inside the building. The inspection cost \$5,000 for a 200-unit property, but Chase says designating specific areas as "lead-free" will exclude him from following costly lead-safe work practices during future renovation projects.

Another way to avoid the lead-safe work practice requirements is to have an in-house certified renovator spot test for lead using an EPA-recognized chemical spot test kit. Testing must include all affected surfaces coated with paint, shellac, varnish, stain, coating and paint covered by wallpaper that will be disturbed during the renovation work.

A report documenting the testing must list the surfaces tested and which surfaces contain lead-based paint. If lead-based paint is present on an affected surface, the lead-safe work practices must be used. To date, EPA has recognized three test kits that comply with the RRP Rule (See Sidebar, page 56). HUD does not accept spot testing results from a certified renovator on federally owned or assisted housing and only recognizes testing performed by a State Certified Lead Inspector. 

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