

LEAD IN HOME IMPROVEMENT CONSTRUCTION

Part Two of a Two Part Series on Asbestos and Lead

Asbestos and lead are two of the more dangerous chemicals known to be present in building materials. Most who work in construction are aware of their presence and dangers. However, we present a refresher on some of the important things to know and where to find other resources on the subject. In this Part Two, we address issues about lead. Please visit <http://www2.epa.gov/lead> for lead information and how to become EPA lead-safe certified.

What is lead?

Lead is a naturally occurring element that was used extensively in paint, ceramics, pipes, and some other materials.ⁱ

Where has it been used?

In construction the most likely place to find lead is in lead-based paint. Lead-based paint was used in more than 38 million homes until it was banned for residential use in 1978.ⁱⁱ The likelihood that lead is present in a home increases with the age of the home. The likelihood of lead in a home built between 1960-1978 is 24%, between 1940-1960 is 69%, and before 1940 is 87%.ⁱⁱⁱ Thus, the older the home, the more likely it is to contain lead.

Why is it dangerous?

Lead is most dangerous when it is swallowed or inhaled. The most common way to ingest lead is from lead dust, which comes from deteriorating lead-based paint and lead-contaminated soil that gets tracked into homes.^{iv} Additionally, common renovation activities including sanding, cutting, paint removal, and demolition can create hazardous lead dust and lead chips.^v

Lead is especially dangerous to children under six because it can affect developing brains and nervous systems.^{vi} Lead is also harmful to adults and lead poisoning can be transferred to a fetus in pregnant women.^{vii}

Lead Education and Licensing.

Unlike asbestos, not every contractor in California must complete an education course on lead to become a licensed contractor. However, home improvement contractors who work on residential homes built before 1978 need EPA training and certification.

Certification and Registration.

Federal law requires contractors that disturb painted surfaces in homes, child care facilities, and schools built before 1978 to be certified and follow specific work practices to prevent lead contamination.^{viii} The Environmental Protection Agency (EPA) is the primary regulator for federal laws regarding lead. To obtain proper certification the lead safe training and certification program must be an EPA approved vendor. There is an exemption if before construction begins proper testing is conducted and confirms that lead is not present.

California law requires California Department of Public Health certification for all those doing lead hazard evaluations, lead abatement plan preparation, lead abatement work, and lead clearance inspections for residential and public buildings in California.^{ix}

Before the Start of a Project / Standard of Care.

Before the start of a project on any pre-1978 home or day care facility, federal law requires that contractors provide a copy of the pamphlet, “Renovate Right” (aka The Lead Safe Certified Guide to Renovate Right” to all clients (and occupant if not owner occupied) who may have lead in their homes or facilities.^x The owner’s written acknowledgement of receipt of the pamphlet is also required.^{xi}

The federal regulations require occupant protection including signage, work area containment, and cleanup, with specific procedures for both interior and exterior renovations.^{xii}

There are exceptions to certification and required work practices when:

- (a) a written determination has been made by a certified risk assessor that the lead is absent or below a certain level;
- (b) a certified renovator uses an EPA recognized test kit to test each component affected by the renovation and determined that lead is absent or is below a certain level;
- (c) a certified renovator has collected a paint chip sample from each painted component affected and an EPA recognized lab determined lead is absent or below a certain level.^{xiii}

California requires that any individual conducting “lead activities” shall use containment, ensure that the work area has no visible dust or debris following the completion of the project, and demonstrate compliance with those requirements to the Department or local enforcement agency upon request.^{xiv} The statute does not specify how to demonstrate compliance but training courses (EPA and California courses) will likely provide instruction on documentation.

“Lead activities” include abatement, lead-related construction work, or any activity which disturbs lead-based paint, presumed lead based paint, or creates a lead hazard.^{xv} Essentially, California requires contractors who work on any structure built before January 1, 1978 must use “lead safe” work practices including cleaning procedures.^{xvi}

To bypass the above California requirements the paint must be tested by state certified inspector/assessors and proved not to be lead-based.

Fines and Penalties.

Under federal law violators may be subject to civil and criminal sanctions for each violation, including fines up to \$37,500.00 per violation.^{xvii}

Under California law violations can result in a \$1,000.00 fine and are enforceable by a variety of local enforcement agencies including local city or county building departments, housing departments, environmental agencies or health departments.^{xviii}

Additionally, contractors could be held liable for damages resulting from injuries to persons by lead exposure as a result of unsafe lead practices.

Due Diligence/Recommendations.

Home improvement contractors in the Bay Area should be EPA lead certified because of the abundance of pre-1978 homes. Being EPA certified and using lead safe work practices should be sufficient to comply with the California requirements (unless you are doing abatement work or other specialized lead work).^{xix} If abatement or testing is required you must use a specifically certified/licensed firm.^{xx} Many contractors further limit their potential liability by using lead specialists for demolition/paint removal and include this in their bid when it is highly likely that lead is present.

In Summary.

It is the contractor's responsibility to be aware of the both state and federal rules and regulations regarding lead. As a contractor you can be liable to employees, other contractors, owners/tenants/occupiers of the premises, and others for mismanagement of components containing lead. Remember, all homes built before 1978 are presumed to contain lead and it is the responsibility of the contractor to be certified and comply with the various requirements. Alternatively contractors can have proper testing conducted prior to the work to confirm that lead is not present.

Please note, this is a general discussion only. If you have specific questions or concerns regarding the rules and regulations regarding lead safe work practices or certification please contact an attorney or other appropriate authority.

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For Bryant's previous articles, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade." They are also available on his website under "Articles," and on Brian's website under "Publications."

As always, these articles are summary discussions only - to simply give you a heads up on various construction topics. The information contained herein is not legal advice. Each scenario is different and if you need legal advice you should contact an attorney immediately.

ⁱ "Learn about Lead," United States Environmental Protection Agency. <http://www2.epa.gov/lead/learn-about-lead>.

ⁱⁱ "The Lead Safe Guide to Renovate Right," 2011, United States Environmental Protection Agency, p. 2. <http://www2.epa.gov/sites/production/files/documents/renovaterightbookletbwsept2011.pdf>.

ⁱⁱⁱ *Id.* at p. 5.

^{iv} *Id.* at p. 4.

^v *Id.* at p. 4.

^{vi} *Id.* at p. 3.

^{vii} *Id.* at p. 3.

^{viii} 40 Code of Federal Regulations §§ 745.80, 745.81, and 745.82.

^{ix} 17 California Code of Regulations §§ 35001-35050 and §§ 36000-36100.

^x 40 Code of Federal Regulations § 745.84.

^{xi} *Id.*

^{xii} See 40 Code of Federal Regulations §§ 745.85, 745.89, and 745.90.

^{xiii} 40 Code of Federal Regulations § 745.82.

^{xiv} 17 California Code of Regulations § 36050.

^{xv} 17 California Code of Regulations § 35032.

^{xvi} 17 California Code of Regulations § 36050.

^{xvii} 40 Code of Federal Regulations § 745.118.

^{xviii} California Health and Safety Code §§ 105255 and 105256.

^{xix} 40 Code of Federal Regulations §§ 745.80, 745.81, and 745.82; 17, California Code of Regulations § 36050.

^{xx} 17 California Code of Regulations §§ 36000 and 36100.