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EPA Lead Abatement Training and Certification Requirements

Common renovation activities, such as sanding, cutting and demolition, can disturb lead-based paint and can be harmful to adults and children. In an effort to address this risk, the U.S. Environmental Protection Agency (EPA) recently implemented rules intended to minimize the potential for lead poisoning in buildings and structures frequently occupied by residents and children.

Effective April 2010, contractors who perform repair and paint projects that disturb lead-based paint in homes, child care facilities and schools built prior to 1978 must be certified to follow specific work practices. These rules impact residential rental property owners/managers, general contractors and special trade contractors (painters, plumbers, carpenters, electricians, etc.) who perform renovation, repair and painting work in pre-1978 housing and child-occupied facilities. Homeowners who perform these renovations, repair or painting activities at their own homes are not covered by the rules.

Under EPA's new rules, child-occupied facilities include residential, public or commercial buildings where children under the age of six are present on a regular basis. While these new requirements apply to most renovation, repair and painting activities, the rules do not apply to minor maintenance or repair activities (i.e., where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior of a home or building). Notably, window replacement is not considered to be minor maintenance or repair.

EPA will now require contracting companies that perform such renovation, repair and painting projects to be certified by EPA. Such companies are also required to use certified renovators who are trained by EPA-approved training providers to follow lead-safe work practices. Individuals may become certified renovators by taking an eight-hour training course from a EPA-approved training provider. Contractors must use specified lead-safe work practices and follow procedures, including containing the work area, minimizing generation of dust and clean up all work areas thoroughly.

Property owners who renovate, repair or prepare surfaces for painting in pre-1978 rental housing or space rented by child-care facilities must, before beginning work, provide tenants with a copy of EPA's lead hazard information pamphlet, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*, and document compliance with this requirement.

On June 18, 2010, EPA issued a memorandum which provided supplemental guidance to the EPA Regional Offices on the enforcement of these new rules. In the memo, EPA offered additional time for renovation firms and workers to obtain the necessary training and certification to comply with the news rules, as follows:

- Until October 1, 2010, EPA will not take enforcement action for violations of the firm certification requirement.
- For violations of the rules' renovation worker certification requirement, EPA will not enforce against individual renovation workers if the person has applied to enroll in, or has enrolled in, by not later than September 30, 2010, a certified renovator class to train contractors in practices necessary for compliance with the final rules. Renovators must complete the training by December 31, 2010.

EPA's memorandum also provided that EPA will continue to enforce work practice requirements in the rules that protect children against lead exposure. Information concerning lead-safe work practices can be found at www.epa.gov/lead/pubs/renovation.htm#requirements.

In This Issue...

EPA Proposes Two Alternatives for Regulating Coal Ash Disposal by Utilities in Surface Impoundments and Landfills

EPA is proposing to change how it regulates the disposal of coal ash and other coal combustion residuals generated by electric utilities from the combustion of coal. Currently, coal ash is regulated under Subtitle D of the Resource Conservation and Recovery Act (RCRA) and subject to state oversight. Under this regime, coal ash, generated at approximately 100 million tons annually, is typically disposed of either in liquid form in surface impoundments or in solid form in landfills.

EPA has proposed two alternative regulations aimed at reducing environmental and health risks associated with the disposal of coal ash in such surface impoundments and landfills. The first option is that coal ash would be regulated as "special waste" under Subtitle C of RCRA. The second option is that coal ash continue to be regulated under Subtitle D as a solid waste, but under new federal minimum criteria which states would have the option of adopting.

Under the first option, coal ash would be subject to the same requirements as other hazardous waste regulated under Subtitle C of RCRA, except that EPA would allow beneficial use, such as application in concrete, cement and wallboard. Subtitle C regulates the generation, transport, treatment, storage and disposal and imposes a permitting program. Existing surface impoundments would either have to close in accordance with the new rules or upgrade to the new rules within four years. The cost of compliance has been estimated at $1.4 billion.

EPA believes the practical effect of their new rules will be that owners of surface impoundments will choose not to or be unable to comply with clean closure or retrofitting requirements due to the size of the units and the volume of waste involved. Therefore, the new rules would effectively phase out surface impoundments. Environmental groups support this option and point to a recent incident at the Tennessee Valley Authority's Kingston Fossil Plant in Roane County, TN in December 2009, where a surface impoundment wall failed, releasing more than one billion gallons of water-ash mixture over nearby land and waterways. The direct cost to clean up the TVA spills is currently estimated to exceed $1 billion.

Under the second option, coal ash would continue to be regulated as a solid waste under Subtitle D of RCRA, but states would have the option of adopting new minimum federal standards governing facilities for their disposal. Subtitle D does not regulate the generation, transport or treatment of coal ash, and there is no permitting program. This option would impose some of the same disposal requirements as the first option, but in a self implementing program. Requirements would include location restrictions, composite liners and leachate collection and removal system. Surface impoundments would have to come into compliance with the new requirements or close within five years. The estimated cost of the second option is $587 million. EPA expects that this option would not cause facilities to cease wet handling. A variation on the second option differs only in that it would allow existing surface impoundments to continue to operate, without retrofitting, for the duration of their useful life. The cost of this option is estimated to be $236 million.

Once EPA publishes the proposed rule, interested parties will have 90 days to comment.

Ohio's Renewable Energy Credit and Certification Process Update

Enacted in 2008, Senate Bill 221 helped create a statewide marketplace for advanced and renewable energy resources by requiring certain utilities in Ohio to utilize alternative generation sources.

As a result of Senate Bill 221 and rules promulgated by the Public Utilities Commission of Ohio (PUCO), electric utilities and affected electric services companies must ensure that by 2025 and each year thereafter, electricity from "alternative energy resources" (i.e. advanced energy and renewable energy resources) equal at least 25% of their retail electric sales in the state. At least half of the electricity supplied from alternative energy resources is required to be generated from renewable energy resources. Renewable energy resources include: solar (photovoltaic and thermal), wind, hydropower, certain solid waste, biomass, bio-methane gas, fuel cells, wind turbines, off peak storage facilities utilizing renewables and distributed generation facilities utilizing renewables.

Electric utilities and affected electric services are required to meet annual benchmarks of renewable energy resource use prior to 2025, as well. Pursuant to Ohio Revised Code § 4928.64, at least half shall be generated from renewable energy resources, including one-half percent from solar energy resources, in accordance with the following benchmarks:

By End of Year	Renewable Energy Resources	Solar Energy Resources
2009	0.25%	0.004%
2010	0.50%	0.010%
2011	1%	0.030%
2012	1.5%	0.060%
2013	2%	0.090%
2014	2.5%	0.12%
2015	3.5%	0.15%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.3%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each calendar year thereafter	12.5%	0.5%

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A renewable energy credit (REC) means the environmental attributes associated with one megawatt-hour of electricity generated by a renewable energy resource. RECs can be unbundled from the electricity produced and sold or traded as a separate commodity. As a result, electric utilities or affected electric services companies can purchase RECs in order to meet the alternative energy benchmarks set forth by the Alternative Energy Portfolio Standard rules.

A REC must originate from a facility that meets the definition of a renewable energy resource and be measured by a utility-grade meter in compliance with applicable rules. PUCO has established a process by which a project may obtain certification as a renewable energy resource and become a source of a REC. An entity seeking qualification as a renewable energy resource must file an application for the certification of its resource. Application forms for entities seeking certification can be found on the PUCO website www.puco.ohio.gov/PUCO/Forms/Form.cfm?id=9464.

The application procedure includes a determination of deliverability of the energy source into the grid. The application procedure also includes the possibility for interested persons to file a motion to intervene and/or file comments or objections to any application.

Finally, PUCO offers an online docketing system, where PUCO posts each application for certification of a renewable energy resource. See http://dis.puc.state.oh.us/AdvS.aspx and enter purpose code “REN” for a listing of such applications.

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*If you have any questions or would like more information, please contact the Environmental Law Group in Ohio at (330) 376-2700, in Florida at (239) 649-6200, or via e-mail at **environmental@ralaw.com.***