

RE: Draft Lead Control Amendments

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Oct 25, 2023 at 12:02 PM

Hello Alan, John and Ken,

Thank you for your patience, and for meeting with the Health Department to provide feedback on the draft Vermont Regulations for Lead Control. We appreciate your input on the rulemaking and rule implementation.

We have attached a copy of the revised proposed rule and will be proceeding with the rulemaking process. The rulemaking is scheduled to be presented to the Interagency Committee on Administrative Rules on November 13. We welcome any additional comments you may have during the public comment period.

This response takes into consideration your August 21, 2023 memo as well as points you raised during our meeting in September.

1. The Health Department cannot eliminate the license or licensing fee for owners of rental properties.

The Health Department cannot eliminate the license requirement or the licensing fee for owners of rental properties. 18 V.S.A. 1752(e) states that a person shall not perform lead-based paint activities or RRP activities for compensation without first obtaining a license from the Commissioner. Rent is considered compensation for landlords doing RRP activities on their rental properties.

Landlords were already required, under federal law, to be registered as an RRP Firm with EPA for a fee of \$300/5 years if conducting repair work on their rental properties. Now that Vermont implements this law, the firm license fee is \$300 every 5 years, paid to the state rather than to EPA. The Commissioner is required to impose a fee for a license by statute at 18 V.S.A. 1753.

2. The Health Department cannot allow owners of rental properties to train and supervise other owners of the property being worked on without liability insurance.

The language in the recently enacted updates to 18 V.S.A. § 1764 state that "Owners of rental target housing who personally perform all work under this chapter on properties in which they have an interest shall be exempt from subsection (a) of this section [liability insurance requirements]."

This limitation on supervision is comparable to the limitation imposed on child care operators who wish to be certified to conduct repair work on their own child cares.

Additionally, since the holder of a lead-safe RRP firm license for owners of rental target housing does not have to show proof of effective liability coverage to indemnify properly a person who suffers damage from RRP activities, supervisees would not be financially protected in the case of a lead poisoning.

Although 18 V.S.A. 1761 (c) provides some immunity to rental property owners who are in compliance with Vermont's Inspection, Repair and Painting law – i.e. their rental property is maintained such that it does not have deteriorated paint over 1 square foot- pursuant to 18 V.S.A. 1761 (d)(3) the immunity does not apply if the owner or owner's representative created or allowed for the creation of lead hazards during renovation, remodeling, maintenance, or repair.

3. The component exemption requirement to have a licensed lead-based inspector/risk assessor determine whether a component is lead-free is required in statute and is protective of public health.

Statute at 18 VSA 1760(c) states that a component is only exempt if a licensed lead-based paint inspector or inspector-risk assessor states that the component is free of lead-based paint. This inspector can utilize an XRF to confirm paint is not lead-based or take paint chip samples and have them analyzed by a qualified laboratory. While an XRF instrument may cost \$40,000, most licensed lead-based paint inspectors or inspector-risk assessors have one, and the inspection itself costs significantly less.

Vinyl and other siding that is not painted or stained would be exempt automatically from RRP and IRCs. The owner would not need to file for a component exemption for these non-painted surfaces.

Making a blanket exemption for "clearly lead-safe" components is not advisable. Property owners often use reclaimed components that have lead-based paint on them, unbeknownst to the owner. And property owners often have no record of when the component was purchased or installed. Hardware store lead paint test kits are unreliable and often give false negatives.

4. Allowing a blanket approval for connecting a power sander with a dust control system to a HEPA vacuum on a per-setup basis, instead of a per-project basis is prohibited by statute and is not protective of public health.

A blanket approval for use of a sander with HEPA dust control attachment is not permitted or advisable.

The use of high-risk powered tools is prohibited under 18 VSA 1760 unless specifically authorized by the Department. Additionally, 18 VSA 1753(c) permits the use of prohibited practices such as powered tools only under a permit for a particular project. The per-project permit fee is set in statute at \$50.

Additionally, requiring that licensees apply for a power tool permit for each job is important because it provides ALRP with information about the project start and end dates so ALRP can visit the jobsite to make sure the work using this high-risk practice is being performed safely.

Thank you again for taking the time to provide input on this rulemaking.

Best,
Meg

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