

EPA Cites First RRP Violator, With an Assist From YouTube

Ever since the EPA's Repair, Remodeling, and Painting (RRP) rule took effect in April 2010, remodelers around the country have been waiting expectantly for the agency to begin enforcement action against violators of its strict work-safety and record-keeping requirements (see "Lead-Safe Remodeling," *JLC Report*, 1/11). That wait came to an end in mid-May, when the EPA announced a multiple-count action against a Maine building owner and contractor for RRP violations dating to October 2010.

Particles and chips. According to the EPA complaint issued on May 6 and made public 10 days later, property owner Colin Wentworth was cited for a series of violations in connection with a painting project at a four-unit residential building in the city of Rockland. Sometime during the first

week of October, two workers employed by Wentworth (one of them his brother) began stripping paint from the wall of a 160-year-old building at 83-87 Park Street. From the beginning, the pair did just about everything wrong: No dust containment was used and no drop cloths were laid out to catch paint particles. The two men also made extensive use of conventional high-speed disk sanders, distributing paint chips and particles over a wide area and creating clouds of airborne dust.

Acting on an anonymous tip sent simultaneously to the EPA's Region 1 office in Boston and to the Maine Department of Environmental Protection (DEP), a DEP inspector visited the site, quickly determined that the paint chips scattered on the ground contained lead, and shut down the job. (Subsequent lab tests would put the lead content of the chips at 5.017 percent, more than 10 times the federal threshold of 0.5 percent.) After a cleanup and a follow-up

inspection that confirmed that all visible paint debris had been removed, the DEP inspector allowed the work to resume.



An anonymous YouTube video — from which this still image was taken — alerted EPA investigators to a Rockland, Maine, job site, where workers had made no effort to contain lead paint debris.

■ A recent analysis of the \$8,000 incentive for first-time home buyers — which expired in April 2010 — concludes that even though it did help home builders move some excess inventory, most consumers who participated in the program took a bath. Home analyst Jack Hough, writing in the *Wall Street Journal*, reports that as a result of continuing declines in home prices, a median-priced home purchased just before the program expired has since seen its value fall by \$15,000 — nearly twice the value of the incentive payment. Buyers who signed up earlier are even worse off: The median home price has fallen by \$20,000 since the program's launch in March 2009.

■ Builders and remodelers who have used software from Intuit to build their own websites might want to check their customer testimonials. A recent *New York Times* story found that at least 50 remodelers, roofers, and home improvement companies nationwide featured identical 50-word blurbs from a fictitious homeowner identified as Lucas Fayne, which read in part "We were very satisfied with the service and efficiency of your company ... have been recommending you to all our neighbors." According to Intuit, the Fayne blurb was part of the Web template and was meant to be replaced by an actual customer name and quotation — a step in the process that some buyers of the software apparently missed. Oops.

Failure times six. The EPA complaint against Wentworth charges him with four violations of job-site work rules and two violations associated with training, certification, and record-keeping. Here are the charges, as listed by the EPA:

- Failure to obtain initial firm certification
- Failure to post warning signs
- Failure to cover ground with plastic sheeting
- Use of sanding/grinding equipment without HEPA exhaust control
- Failure to contain waste from renovation activities
- Failure to establish and maintain records

In connection with the first count, it's interesting to note that Wentworth himself had taken the EPA-required lead safety course in February 2010 and therefore qualified as a "certified renovator" under the agency's rules. He had not, however, trained any employees or provided any supervision at the job site.

Wentworth is charged with one violation of each count, which individually carry a maximum fine of \$37,500. (In principle, the agency could seek fines of \$37,500 for each day that the violations continued, but it has presumably limited its enforcement efforts to the day of the inspection visit.) How much Wentworth will actually be required to pay had not been determined by press time. Under the Toxic Substances Control Act — which includes the RRP — the dollar amount depends not only on the violations themselves, but also on the violator's ability to pay without being driven out of business, any history of prior violations, and "such other matters as justice may require."

Caught on video. One unusual aspect of the Rockland case was the way in which the unsafe activity came to light: Rather than placing a phone call to a tip line, the anonymous tipster chose to record and edit a video of the ongoing work — complete with informative subtitles — and post it on YouTube before emailing the link to state and federal regulators. (The video, headed "Renovator Rule Violation Rockland," was available to visitors to the popular video-sharing site for more than six months but has since been removed for unspecified violations of YouTube's terms of service.)

"The video is obviously very compelling," says EPA District 1 spokesman Dave Deegan, but he is quick to point out that the violations Wentworth is charged with are the result of on-the-scene investigative work. "Given the digital editing capabilities available to people today, you can't assume that any video is completely accurate," he explains. In other words, a video is no different than a note slipped under a door — and anonymous tips can't be taken at face value. But Steven O'Neill, a Boston lawyer who specializes in construction law, observes that the EPA seems to be placing an unusual amount of emphasis on the YouTube

link. "If you read over the complaint, it refers to the video again and again," he says. "I don't think you would have seen that if the tipster had just sent in a postcard."

O'Neill speculates that the agency may be consciously moving toward what he calls a "crowd sourcing" approach to compliance, in the expectation that video-capable cell phones and other devices will encourage other media-savvy citizens to send in tips of their own. The Park Street job site in Rockland, he notes, happens to be just across the street and a few doors down from the local Sherwin-Williams store, meaning that just about every painting contractor in the area — including those who were themselves going to the trouble and expense of complying with the RRP — could very likely have driven past and seen a competitor simply ignoring the rule.

"How surprising is it that someone turned him in?" O'Neill asks. "It's not hard to sit across the street and have a cup of coffee with the video camera running on the dashboard. I think we're going to see this happening with some frequency from now on."

Faint cheers and a few boos. The Rockland case would seem to be an ideal enforcement debut for the EPA. The violations Wentworth is charged with are obvious and substantial. That the violator had been trained in lead-safe procedures suggests that his failure to comply was due to carelessness rather than ignorance of the rules. And the presence of several children in the building — including one under the age of 6 — means that the violations "had the potential for serious damage to human health," as the agency's complaint noted.

Nevertheless — and perhaps predictably — the EPA finds itself taking fire from already-compliant painting and remodeling contractors, who want to see more robust RRP enforcement. Among them is NARI director of communications Gwen Biasi. "Everyone is looking at this one person in Maine," she says. "But our members who have taken the time and expense to comply are frustrated that it's taken over a year to bring even one complaint. They're looking for the rule to be consistently enforced."

Whether it's fair to criticize the agency for being slow out of the gate on RRP enforcement is debatable, however. The May 6, 2011, date of the complaint in the Wentworth case is indeed more than a year after the April 2010 enforcement deadline — but the agency was actively working on the case for more than half of that time.

It's also important to remember that, due to contractor complaints and a shortage of trainers, the enforcement date for certification had been moved from April of last year to October (see "EPA Delays Enforcement of Lead-Safety Requirement, But Pleases No One," *JLC Report*, 8/10). Many industry observers believe that the EPA deliberately chose to delay beginning *any*

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enforcement efforts — not just ones related to certification — until after the Oct. 1 deadline had passed. If that's the case, the 12-day gap between that date and the EPA's initial site inspection in Rockland can hardly be characterized as a long delay.

Of course, even as some fault the environmental agency for not being aggressive enough, there are also plenty of anti-regulatory critics who attack from the opposite angle. "This is the kind of crap they want us doing," posted a participant on PaintTalk.com, billed as a forum for professional painting contractors. "Turning each other in. Couldn't sleep at night if I were to rat someone out."

The EPA's Dave Deegan concedes that the agency is unlikely to win any popularity contests no matter what it does. Still, he says, information from contractors and consumers will continue to be a mainstay of its enforcement efforts going forward. "We don't have inspectors everywhere, and I don't think anyone wants that," he says. "We depend on an informed and aware population, and we welcome their help." — *Jon Vara*

■ The DOE's Lawrence Berkeley National Laboratory has released a study that reportedly demonstrates that homes equipped with photovoltaic systems sell for significantly more money than those without them. After looking at data from more than 72,000 California homes sold between 2000 and mid-2009, the researchers concluded that homes equipped with a 3,100-watt PV system — the average size in the study — sold for a premium of about \$17,000. The installed cost of such a system during the time period studied averaged about \$5 per watt, or \$15,500.

■ New Mexico Governor Susanna Martinez has proposed rolling back upgrades to the state's energy codes passed under her predecessor, Bill Richardson. According to an administration press release, the roll-backs would "send a message that we are open for business." Kim Shanahan, the executive director of the Santa Fe Area Home Builders Association, disputed that claim, which he calls "political posturing." "Home builders believe that this is a good code," Shanahan told radio station KSFR. "This is one that we can live with and we are for it."