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Lead Renovation, Repair and Painting Program Rule Creates New Certification and Work Practices Requirements for Contractors

By Mark K. Dausch

Under the newly enacted Lead Renovation, Repair and Painting Program Rule (“The Rule”) issued by the U.S. Environmental Protection Agency (“EPA”), anyone paid to perform renovations, repairs or painting work that might disturb lead-based paint may be required to obtain a special certification and follow specified work practices. (The entire text of this Rule can be found at 40 CFR §§ 745.80 - 745.92.) The Rule broadly applies to renovation, repair or painting activities that disturb at least six square feet of interior lead-based paint in any one room or at least twenty square feet of exterior lead-based paint in any home, child-occupied facility (residential, public or commercial buildings where children under age six are present on a regular basis) or school built before 1978. Firms may receive certification by applying and paying a fee to the EPA and individuals can become certified by completing an EPA accredited training course. (The application form is available at: <http://www.epa.gov/lead/pubs/firmapp.pdf>.) Both types of certifications must be renewed every five years. The renovator certification requirements will be waived if, prior to commencing work, the firm conducting the renovations obtains a signed statement from the owner and occupants of the facility certifying “that no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA’s renovation, repair, and painting rule.”

In addition to the certification requirements, the Rule mandates specific work practices for renovation activities that are subject to the Rule. Specifically, before renovations begin, the renovator must provide the owner of the facility, any residents of the facility, and any parents/guardians of children who spend time in the facility with a copy of a pamphlet entitled “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools.” The pamphlet is produced by the EPA and is available at: <http://www.epa.gov/lead/pubs/renovaterightbrochure.pdf>. Once renovations begin, the renovator must post signs that warn pedestrians to stay outside of a clearly-defined work area. The renovator must also isolate the work area by removing or covering all objects (i.e. furniture, rugs, etc.) from the work area and covering all windows, doors, floors, and other surfaces in the work area with an impermeable cover. Additionally, the burning or torching of lead-based paint, the power sanding or blasting of lead-based paint and the use of a heat gun at temperatures above 1,100 degrees Fahrenheit on lead-based paint are prohibited. Finally, the Rule provides instruction on how the walls, windows, floors and surfaces in and around the work area must be cleaned after renovations are complete and how renovators must handle disposal of waste. All workers at a jobsite subject to the Rule must be supervised by a certified renovator, and the certified renovator must test surfaces in and around the work area to verify that no lead-based paint dust remains in the facility after cleanup. The Rule does, however, allow for dust clearance testing as an alternative to having the certified renovator test to verify that there is no lead-based paint dust in the facility. The dust clearance testing requires testing of dust samples collected by a certified inspector, risk assessor, or dust sampling technician to confirm that there is no lead-based paint dust in the facility.

Failure to comply with any of the terms of the Rule can lead to civil or criminal sanctions or penalties, as well as suspension or revocation of a renovator's certification. More information on the Rule and its certification and work practices requirements is available from the EPA at: <http://www.epa.gov/lead/pubs/renovation.htm>.

If you have any questions regarding the Lead Renovation, Repair and Painting Program Rule, please contact Mark K. Dausch at (412) 394-5655 or mdausch@bccz.com or D. Matthew Jameson III at (412) 394-5491 or mjameson@bccz.com.

Pennsylvania Fiscal Code Amendment Extends Development Approvals

By Krista-Ann M. Staley

In addition to approving the state budget earlier this month, Governor Rendell signed into law the Permit Extension Act, amending the State's Fiscal Code to extend most development approvals, agreements and permits issued by state and local agencies. As a result, almost all state and municipal development approvals issued or in effect between December 31, 2008 and July 2, 2013 (the "extension period") have been automatically extended until July 2, 2013 (the "Permit Extension"). The Permit Extension became effective upon the Governor's signature, so any holder or recipient of an applicable approval can take advantage of this verification process immediately.

The Permit Extension applies to a wide variety of approvals necessary for development, including approvals and permits issued under the state statute governing local land use approvals, the Municipalities Planning Code ("MPC"). Such authorizations would include land development plan, subdivision, conditional use and special exception approvals. The Permit Extension also applies to permits issued under the Uniform Construction Code ("UCC"), such as building permits. From a construction point of view, the Permit Extension will benefit owners who put projects on hold when the economy collapsed – the Permit Extension will permit those owners to get those projects back on the construction track without having to go through the permitting process again.

The Permit Extension supersedes any contradictory expiration language contained in an approval, such as a conditional use condition that a building permit must be obtained within one year of approval. It also supersedes any contradictory expiration language contained in an enabling ordinance or statute, such as the UCC's requirement that building permit work begin within 180 days of the issuance of the permit.

Also noteworthy is the law's protection of existing approvals, agreements and permits from any changes in law, regulation or policy enacted, adopted or modified by a government agency during the extension period. The law specifically addresses MPC approvals, stating that changes in a zoning, subdivision or other governing ordinance shall not limit or prohibit an existing permit approval until July 2, 2013, and that the extension period can be further extended due to any litigation, including appeals, relating to an approval.

There are several exceptions to the Permit Extension, however, which may create some uncertainty as to the extent of its applicability. For example, the Permit Extension Act excludes certain transportation and environmental approvals. Any confusion as to the extent of the Permit Extension should be clarified soon, however, because the legislation requires all government agencies to publish a list of affected approvals, agreements and permits in the PA Bulletin by August 5, 2010. Furthermore, the legislation sets forth the procedure for the holder or recipient of any approval, agreement or permit to seek verification from the issuing government agency of (1) the existence of a valid approval and (2) the expiration date of the approval. The government agency then has 30 days to respond to the inquiry in writing, and failure to do so will result in a deemed affirmation.

If you have any questions concerning the Permit Extension Act, please contact Krista Staley at (412) 394-5406 or kstaley@bccz.com.