

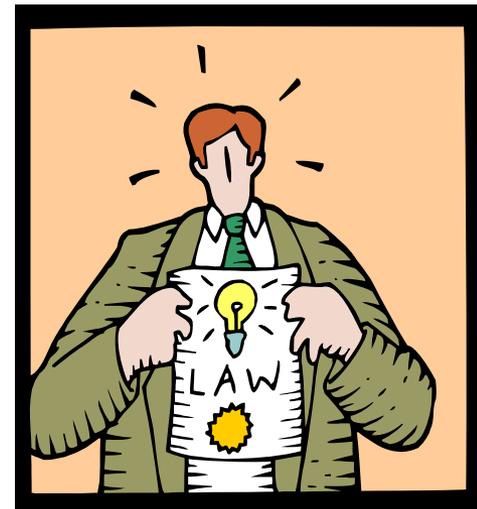
# Lead-Based Paint Renovation, Repair, and Painting

National Healthy Homes Conference  
September 16, 2008



# The Renovation, Repair, and Painting Rule (RRP)

- On March 31, 2008, EPA issued a final rule under the authority of § 402(c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in “target housing” and “child-occupied facilities.”



# Rule Scope

- Covers renovation, repair and painting activities that disturb painted surfaces in:
  - Target housing, which is housing constructed before 1978 except:
    - housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing); or
    - any 0-bedroom dwelling.
  - Child-occupied facilities
    - Buildings built before 1978 that are frequented by children under age 6.
    - Includes kindergartens and child care centers.

# Rule Scope

## Excludes:

- Renovations affecting only components that are free of lead-based paint
  - Determination by certified inspector/risk assessor or certified renovator using an EPA-approved test kit.
- Minor repair and maintenance:
  - 6 ft<sup>2</sup> or less per room interior, 20 ft<sup>2</sup> exterior.
  - No prohibited practices, window replacement or demolition of painted surfaces.
- Renovations performed by homeowners in their own homes.

# Rule Scope

## Opt-out provision:

- Homeowners may choose to opt out of the rule's requirements if they occupy the housing to be renovated, the housing is not a child-occupied facility, and no child under age 6 or pregnant woman resides there.
- To qualify for this provision, the homeowner must provide the renovation firm with a signed statement.
- This opt-out provision does not affect the Pre-Renovation Education Rule requirement that renovation firms provide a lead hazard information pamphlet before beginning a renovation.

# Pre-Renovation Education

- Existing regulation expanded to cover child-occupied facilities.
- New brochure “Renovate Right” developed for all covered renovations.
- From June until December 2008, either new or old brochure may be used.
- After December 2008, only new brochure may be used.
- “Protect Your Family” brochure will still be available for other purposes like real estate disclosure and general outreach.



# Certification

## Firms

- All covered renovations must be performed by certified renovation firms, using certified renovators and other trained workers.
- To become certified, firms must submit an application and fee to EPA (fee to be determined)
- Certifications will be good for 5 years.
- Certification allows the firm to perform renovations in any non-authorized State or Indian Tribal area.

# Certification

## Individuals

- Covered renovation activities must be performed and/or directed by a certified renovator.
- To become a certified renovator, an individual must take an 8-hour training course from an accredited training provider.
- The course completion certificate serves as certification (no application to EPA is required).
- Refresher training is required every 5 years.
- Other workers do not need certification, they may receive on-the-job training from a certified renovator.
- Certification allows the renovator to perform renovations in any non-authorized state or Indian tribal area.



# Accredited Training

- Trainers must submit an application and fee to EPA
- Trainers must be re-accredited every 4 years.
- Accreditation procedures are the same as established for abatement training.
- Course must last a minimum of 8 hours, with 2 hours devoted to hands-on training.
- EPA is updating model courses.
- Training providers must notify EPA of individuals who complete training.
- Accreditation allows the trainer to conduct training in any non-authorized State or Indian Tribal area.

# Work Practice Standards

## General

- Post signs defining the work area.
- Contain the work area so that no visible dust or debris can leave the area.
  - HVAC ducts, countertops, floors, and objects left in the work area must be covered with taped-down protective sheeting.
- Certain practices are prohibited:
  - open-flame burning or torching
  - machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control
  - operating a heat gun above 1100 degrees Fahrenheit



# Work Practice Standards

## Cleaning

- After the renovation has been completed, the firm must clean the work area until no visible dust, debris or residue remains.
  - Pick up all paint chips and debris.
  - Remove all protective sheeting.
  - Dispose of paint chips, debris and sheeting as waste.



# Work Practice Standards

## Cleaning Verification

- A certified renovator must use wet disposable white cleaning cloths to wipe windowsills, countertops, and uncarpeted floors in the work area.
- These cloths must be compared to a cleaning verification card.
- If the cloth matches or is lighter than the card, that surface has passed the cleaning verification.
- Surfaces that do not pass the first attempt must be re-cleaned.
- Surfaces that do not pass on the second attempt must be allowed to dry and wiped with a white electrostatic (dry) cleaning cloth.
- Dust clearance testing may be performed instead, if the renovation contract or another law or regulation requires the firm to achieve clearance standards.

# Recordkeeping and Enforcement

- Documents demonstrating compliance with the rule must be retained for 3 years following the completion of a renovation.
  - Pamphlet acknowledgment forms, owner opt-out forms, and documentation of work practices
- EPA may suspend, revoke, or modify a firm's certification if firm is found to be in non-compliance.
- Non-compliant contractors may be liable for civil penalties of up to \$25,000 for each violation.
- Contractors who knowingly or willfully violate this regulation may be subject to fines of up to an additional \$25,000 per violation, or imprisonment, or both.



# State and Tribal Program Authorization

- States, Territories, and Tribes may obtain authorization to administer and enforce their own RRP programs.
- They could begin applying for program authorization as of June 22, 2008.
- EPA is developing an application guidance package for the States, Territories, and Tribes to use when applying for authorization.
- EPA will authorize programs that are at least as protective as the final RRP rule.
- EPA will begin implementation of the Federal program in all non-authorized states, territories and tribal areas in April 2009.

# Important Dates

- **June 2008:**
  - States and tribes may begin applying for authorization
  - 406(b) applies to child-occupied facilities
  - Some restrictions apply to unaccredited training programs
- **December 2008:**
  - “Renovate Right” brochure must be used for 406(b)
- **April 2009:**
  - EPA begins administering program in unauthorized states
  - Training providers may begin applying for accreditation
- **October 2009:**
  - Renovation firms may begin applying for certification
- **April 2010:**
  - Training providers must be accredited
  - Renovation firms must be certified
  - Renovators and dust sampling technicians must be certified
  - Workers must be trained
  - Work practices must be followed



# Thank You for Your Time!

Michelle Price

National Program Chemicals Division  
Office of Pollution Prevention and Toxics  
U.S. Environmental Protection Agency

[www.epa.gov/lead](http://www.epa.gov/lead)



# BUILDING A FRAMEWORK FOR HEALTHY HOUSING

## Regulatory & Enforcement Track RRP Rule – Landlords Perspective *How to Achieve Success*



**Presented by:**

Lee Wasserman

President : LEW Corporation

[www.LEWCorp.com](http://www.LEWCorp.com)

# My qualifications to discuss RRP Rule & a Landlords Perspective

- Landlords perspective
  - Lead evaluations in multi-family since 1992
  - 60% of client base are Property owners
  - Board or active member of:
    - ABO
    - POA
    - NJAA
    - JAHMA
    - NYCHAMA
    - IREM
  - Clients range from small rental owners (1-2 family) to institutional owners (5000+, REITS, PHA, Military)
- Lead
  - 16+yrs performing lead evaluations
  - Past President of LEHA (formerly NLLAC)
  - One of 30 Original Trainers for Blitz and Bulge Training LSWP (implement 1012)
  - Multi-state/jurisdiction certified Lead R/A, Lead Proj. Planner & Lead Abatement Supervisor
  - 1012/1013 HUD implementation committee



# Philosophically → RRP Rule

## Landlords current perspective (Generally)

- The more regulation → the more government oversight
- More Govt. oversight → the more cost to operate
- More cost to operate → more incentive for lack of compliance
- More lack of compliance → More resident complaints
- More resident complaints → More potential for violations, fines, penalties
- more potential for violations, fines, penalties → More potential for litigation!!!
- More litigation = more cost to operate, less profit more incentive for lack of compliance!



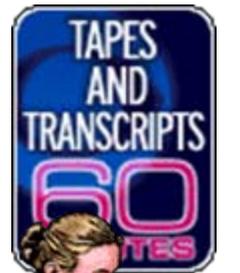
**LEAD = POISON!**



# Landlords historically fearful of environmental concerns → Why?

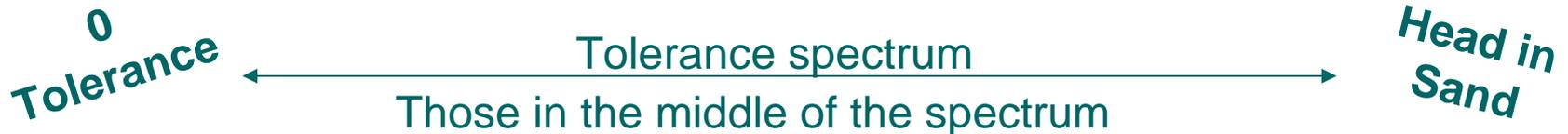


- Fear of the Unknown
- A Little bit of knowledge is Dangerous
- Media – scare tactic  
- What we don't know cannot hurt us (1018)
- Laws extensive
- Costly 
- Highly litigious (frivolous & legitimate)  
- Residents out to get them



# To understand landlords perspective must understand the Types of landlords

1. Institutional owners = 1000 units and up
  2. Small operators = 200 – 750 units
  3. Mom & Pops = less than 50 typically 10 or less
- Zero tolerance = they do not accept any env. exposure or risk
  - Head-in-the-Sand = don't want to know or address until all hell breaks lose.



# Based on size of owner and tolerance potential risk of non-compliance

<u>Regulatory &amp; Litigious risk Table</u>	<u>Institutional Owners</u>	<u>Small operators</u>	<u>Moms &amp; pops</u>
<u>Zero Tolerance</u>	<p><b>LOW - LOW RISK</b></p> <p>Low risk for non compliance</p> <p>Low risk of lead based paint litigation (type of owner &amp; type of housing stock typical)</p>	<p>LOW – MED RISK</p> <p>Low risk of non compliance</p> <p>Med risk of lead based paint present and potential for litigation</p>	<p>LOW - HIGH RISK</p> <p>Low risk of non-compliance</p> <p>High risk of lead based paint present and lack of ability to property manage, high risk of litigation</p>
<u>Head in sand</u>	<p>HIGH- LOW RISK</p> <p>High risk of non-compliance</p> <p>Low risk of lead paint presence</p>	<p>HIGH – MED RISK</p> <p>High risk of non-compliance</p> <p>Med risk of lead based paint present and potential for litigation</p>	<p><b>HIGH – HIGH RISK</b></p> <p>High risk of non-compliance</p> <p>High risk of lead paint present and ability to manage, very litigious</p>



Landlords, staff &  
3<sup>rd</sup> party  
contactors

**must realize**

RRP rule will  
impact their  
business and  
jobs in  
**NUMEROUS  
WAYS.**

**Compliance is NOT  
an OPTION !**

**Effective 4/22/2010**

<p>Firm certification</p> <ul style="list-style-type: none"> <li>•5 year cert.</li> <li>•Fee associated</li> </ul>	<p>Renovator Certification &amp; Dust Sampling Technician</p> <ul style="list-style-type: none"> <li>•5 yr</li> <li>•Refresher Requirement</li> <li>•Must provide training to co-workers</li> <li>•Record preparation</li> </ul>	<p>Training</p> <ul style="list-style-type: none"> <li>•Initial</li> <li>•Refreshers</li> </ul>
<p>Record keeping</p> <ul style="list-style-type: none"> <li>•3 years</li> </ul>	<p>Testing &amp; Assessments</p> <ul style="list-style-type: none"> <li>•Paint</li> <li>•Dust</li> </ul>	<p>Containment</p> <ul style="list-style-type: none"> <li>•Occupant &amp; occupant belongings relocation</li> </ul>
<p>Data distribution</p> <ul style="list-style-type: none"> <li>•Posting of signage</li> <li>•Updating Lead knowledge disclosure</li> </ul>	<p>Self audits</p>	<p>Tools Equipment PPE HEPA</p>
<p>Insurance</p>	<p>Info/Pamphlet distribution</p> <ul style="list-style-type: none"> <li>•<i>Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools</i></li> </ul>	<p>Diplomacy</p> <ul style="list-style-type: none"> <li>•Occupants</li> <li>•Co-workers</li> <li>•Government regulators</li> <li>•General public</li> <li>•contractors</li> </ul>
<p>Trust worthy staffing</p>	<p>Work Practice Standards</p> <ul style="list-style-type: none"> <li>•Prohibited work practices</li> <li>•Waste disposal</li> </ul>	<p>Costs to do work</p>



# How **BIG** & small landlords can achieve RRP Rule **SUCCESS!**

- They can modify their behavior (Not easy to change spots on dog, but can be done)
- They can delegate responsibility (internally)
- They can outsource (Prof. consulting)
- They can create checklists

**BUT → next slide**



# BUT –

- it is very difficult to manage something and have success, if you don't know IF and WHERE it (Lead paint) might exist!
- Complying with the RRP rule will be
  - Overwhelming & unnecessary on many occasions without Pb knowledge
  - Waste of time, money and resources on many occasions without Pb knowledge
- SOLUTION → a lead-based paint inspection = do I have lead and if yes, where.

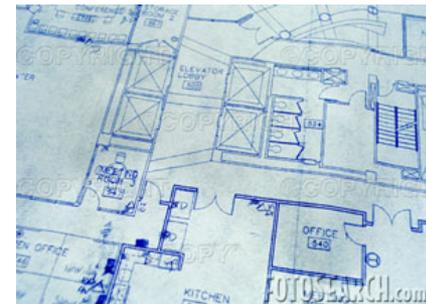


# Knowledge is Power

## Knowing where the lead paint is located

### we can

- Focus resources
- Reduce costs of compliance
- Reduce fear and/or concern of residents
- Achieve better accountability
- Reduce administrative violations
- Reduce potential for litigation



# By knowing where the lead paint is property owners can ....

- Focus assessments of condition on specific components or areas of paint disturbance, NOT ALL areas.
- Properly delegate training needs to those most likely to disturb the identified Pb surfaces
- Regulatory requirements can be focused to specific locations NOT ALL areas (presumed – **Guilty till proven innocent**)
- Internal tracking/reporting can be limited
- Risk management can be focused (**Risk factor Formula**)
  - Risk Factor=who lives in unit + location of paint disturbance + level of personal skill
- Achieving Lead-Based Paint free can be planned & budgeted for.
- Operations and Maintenance Programs can be component specific simplified, and focused (KISS, Keep It Simple Silly).



# Cheap Insurance – Dust wipes clearance samples vs. Cleaning Verification

- Quantitative dust wipe clearance (std. but optional in RRP rule)
- vs.
- Qualitative (RRP) cleaning verification Card
  
- Dust wipes least expensive way to minimize liability at end of paint disturbance
  - Third party analysis
  - NLLAP → ELAP accredited lab
  - Governmental Stds. established (40ug/ft<sup>2</sup>, 250, 400)
  - Documents levels at time of testing only
  - Established and proven science (cleaning achievability based)
  - Established and proven in legal system (unlike card)
  - Eliminates questioning AFTER the fact!
  - Completely eliminates conflict of interest on analysis



# Steps for successful compliance

- Step 1: Assess type of owner
- Step 2: Assess age of property and type of portfolio (market, affordable, senior, ect.)
- Step 3: Get the property tested for Lead Paint
  - **what you don't know cannot hurt you, no longer applies when the laws presumption is "guilty" until proven innocent, lead paint present all pre 1978 until proven otherwise**
  - Limited lead evaluation, "Look See" 3 units, 1 common & 1 exterior
- Step 4: Delegate 1 Sr. Cert. Renovator and 1 Asst. Sr. Cert. Renovator person to be the site lead responsible/accountable party
- Step 5: Create Std Operating procedures for all paint disturbances that might impact a Pb identified surface. (compliant with 40CFR Part 745)
- Step 6: Create checklist to assure compliance
  - signature accountability section.
    - Training
    - Resident notification and info distribution
    - Safe work practices
    - Dust Clearance
- Step 7: audit of above.

**MONKEY  
SEE  
MONKEY  
DO**



# Compliance problems

- Lack of Knowledge/awareness = lack of compliance
- Failure to maintain records (dog ate my homework)
- Availability of experienced certified firms & certified renovators (cowboys & Indians)
- Properly insured (owners & certified firms) (toxic, microbial & env. exclusions)
- Fear of Resident notifications and doc. Distribution
- Lack of knowledge of lead paint locations causing substantial unnecessary compliance, costs and time
- Lack or failure to continually perform On-going monitoring and audit of requirements (not static, but dynamic conditions).
- Failure to comply, supports regulatory negligence = violations, fines, penalties and potentially supports occupant/employee litigation.
- Employee Env. exposure initiates potential OSHA regulatory compliance.





# BUILDING A FRAMEWORK FOR HEALTHY HOUSING

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## The RRP Rule

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Matthew J. Chachère, Staff Attorney  
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New York City Coalition to End Lead Poisoning

2008 National Healthy Homes Conference September 15-17, 2008 in Baltimore, MD

# Scope - Part 1

- Renovation - any modification of any existing structure or portion thereof that results in disturbance of painted surface
- Distinction from abatement? State of mind ... can be same risk to child's health
  - EPA - “abatement is a highly specialized skill that workers and supervisors must learn....”
  - EPA acknowledges “that many of the dust generating activities are the same”
  - EPA - “in many cases, window replacement as abatement and window replacement as renovation will generate the same amount of leaded dust”
- NYC largely removed the distinction in 2004

# Scope - Part 2

- Target housing - pre-1978 except
  - Housing for elderly or disabled (unless child < 6)
  - 0- bedroom dwelling (such as studio apt.)
- Child-occupied facility - pre-1878
  - Regularly visited by same child < 6 at least 2 days/wk for at least 3 hrs each, and annual visits 60 hours
  - Common areas used by children < 6 (not simply passed through)
  - Exterior sides adjacent to child occupied facility or common areas routinely used by children < 6

# Phase in

- Firms may apply for certification beginning 10/7/09
- After 4/7/10, no firm may offer or perform renovations without certification unless job meets exemption
- After 4/7/10, all renovations directed by certified renovator

# Certification

- Firms apply, pay fee, recertify every 5 years
  - Firm must ensure that those performing work are either certified renovators or trained by a certified renovator
- Individuals – Certified renovators
  - Must take approved course, and refresher course every 5 years
  - Responsible to train workers they supervise, be present when signs posted and containment established, assure work practices followed and dust contained, be available on site or by phone

# Exemptions - Part 1

- Abatement conducted by certified abatement contractor
- Minor repair/maintenance activities:  $< 6 \text{ ft}^2$  per room for interiors or  $< 20 \text{ ft}^2$  for exteriors within 30 days AND NOT
  - window replacement
  - demolition of painted surfaces
  - open-flame burning/ torching, or heat guns  $\geq 1100\text{F}$
  - Machine paint removal without HEPA exhaust

# Exemptions - Part 2

- No lead-based paint disturbed
  - Written determination by certified lead inspector or risk assessor, or
  - EPA-recognized test kit by certified renovator
- Emergencies
  - sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage

# Exemptions - Part 3

- Owner-occupied - if owner signs statement that
  - No child < 6 resides or is taken care of there
  - No pregnant woman residing
  - Not child-occupied facility, and
  - Work practices waived

# Pre-renovation notification

## no more than 60 days prior:

- Provide building owners with pamphlet, obtain verification of delivery
- For work in dwelling unit, provide adult occupant w/ pamphlet, get ver. of delivery
- For work in common areas, written notification (or assurance thereof) to all affected units, make pamphlet available upon request, post informational signs during job with location/dates of renovation, post pamphlet
- Child-occupied facilities - provide representative of facility with pamphlet, provide parents/guardians of children with pamphlet and information on renovation

# Occupant protection measures

- Post warning signs at perimeter of work area,
  - Before renovation until post-renovation clearance
  - To warn occupants and others not involved in work to remain outside area
  - Should be in primary language of occupants to extent practicable

# Containment

- Isolate work area to prevent dust & debris contamination
- Maintain integrity of containment – ensure plastic not torn
- Emergency exit should be maintained

# Preparation - Interiors

- Remove or cover with plastic all objects in work area, seal edges
- Close and cover ducts with plastic
- Close windows and doors, cover doors with plastic
- Doors used while work performed must have dust control measures
- Cover floors with taped-down plastic 6' beyond perimeter of work area, or sufficient to contain dust, whichever greater
- Tools, containers, personnel, etc. free of dust & debris before leaving work area

# Preparation - exteriors

- Close doors and windows w/in 20', and below renovation
- Cover ground with plastic 10' beyond perimeter of work area, or sufficient to collect paint debris, whichever greater

# Prohibited practices

- Open-flame burning or torching, or heat guns  $\geq 1100\text{F}$
- Machine paint removal without HEPA exhaust
- Note: Dry sanding is NOT barred

# Waste handling

- During work, contain waste to prevent dust/debris dispersal. Chutes must be covered
- End of day and job, collected waste must be kept in containment, in an enclosure, or behind barrier to prevent release of dust and debris
- Transported waste contained to prevent releases

# Cleaning - Part 1

- Paint chips and debris must be collected without dispersal, sealed in heavy-duty bag
- Plastic used to isolate area left in place until after cleaning and removal of other sheeting. Mist before folding dirty side inward, tape shut to seal or put in heavy-duty bags
- Clean all objects and surfaces in work area and 2' outside, starting high and work down
- HEPA vac or wet wipe walls

# Cleaning - Part 2

- Use HEPA vac with beater bar on carpets & rugs
- HEPA or wet wipe all other surfaces
- Final cleaning - other than floors - wipe all surfaces (except carpeted or upholstered) with damp cloth
- Mop floors using mopping method that keeps wash water separate from rinse water or uses wet mopping system.

# Post cleaning verification - in general

- Must be performed by certified renovator (except recleaning)
- Option for dust clearance if per contract or other rules
- No notice of results to owner or occupant required

# Post cleaning verification - Steps

- 1 Eyeball for dust, debris and residue
- 2 Wipe windowsills, countertops, and uncarpeted floors with wet disposable cleaning cloth. Compare to cleaning verification card. Passes if lighter than card
- 3 If fails, reclean, wipe again with new wet disposable cleaning cloth, compare again to clearing verification card
- 4 If fails again, wait one hour or until dried completely whichever longer. Wipe with dry disposable cleaning cloth. Passes even if darker than card

# Recordkeeping - Firms

- 3 years, made available to EPA upon request (can be longer if local, state law required)
- Exemptions - determinations that no lead present on surfaces renovated, or owner-occupant waivers
- Information distribution
- Firm certifies that certified renovator was assigned to job, provided on-the-job training and directed workers, performed post-renovation cleaning verification, copy of training certificate
- Certified renovator assigned to project certifies that training provided to workers, warning signs posted, test kits were used at the specified locations and results were as specified, that occupant protection measures were followed, and post-renovation cleaning and cleaning verification used.

# Concerns re use of “cleaning verification” instead of quantitative dust clearance

- Clearance testing could be backstop insurance for poor containment, cleaning, training, verification
- EPA: cleaning verification “not as reliable a test for determining whether the hazard standard has been achieved as clearance testing”
- No verification for carpets
- No 3d party verification – conflict of interest
- No quantitative record to occupant, owner, agency (or even renov. firm - for liability purposes)
- Methodology not sound, not proven re: biological outcomes. Many commentators objected.
- How white is white? What about white paint?

# Enforcement

- Poor compliance thus far with pre-notification rule
- How will EPA know of work in progress?
- Easy to fabricate paperwork post-facto

# Other concerns

- Allowance for untrained, unsupervised workers
- Exemption of owner-occupied units
- Exclusion of 0 bedroom units
- Increase in *de minimis* levels
- Failure to prohibit dry-scraping

# Contact Information

- I'm happy to take questions.
- [chachere@igc.org](mailto:chachere@igc.org)
- (212) 822-8309
- [www.nycceelp.org](http://www.nycceelp.org)