

Weatherization Assistance Program (WAP—POI)

Testing

Many contractors and Community Action Agencies (CAA) use chemical spot-testing to determine if lead-safe work practices (LSWP) can be excluded on projects in pre-1978 homes. Where possible, this makes perfect sense to eliminate costs and time associated with lead-safe work practices.

Chemical spot-testing is not allowed on HUD projects, most likely because it is a less accurate process than X-Ray Fluorescence Analysis. Coatings on the paint, certain paint colors, the locations of the test, and the renovator's judgment and experience can all come into play with chemical spot-testing. Most EPA RRP trainers will concede that errors can and will occur in chemical spot-testing results.

If lead dust was present in the disturbed surface area, a property owner could claim they were exposed to or poisoned by lead dust, despite lead paint test results to the contrary. Testing is always excluded from general liability policies. So what are the best- and worst case-scenarios?

The best-case scenario would be that the Community Action Agency and contractor have Pollution Occurrence Insurance coverage along with a testing endorsement. In this scenario, the contractor and CAA have only the deductible to worry about.

If the contractor or CAA use a third party to test for lead, then the contractor or the CAA could "recover" some of the defense and medical costs from the third-party testing company's insurance policy. If third-party testers are used, the contractors and Community Action Agencies should seek insurance advice to establish adequate third-party tester insurance coverage requirements and administrative insurance monitoring procedures.



To contact us:

Matt Wallace
Vice President —
WAP Program Manager
Phone: 1-800-257-1639
Fax: 916-939-1085
Cell: 916-813-6050
E-mail:
matt@environmentalinsurance.com
www.environmentalinsurance.com

Weatherization Assistance Program (WAP—POI)

Testing

- Continued

On the other hand, if the contractor or CAA does their own testing and/or works in pre-1978 homes without lead safe work practices, and they do not have Pollution Occurrence insurance coverage that includes coverage for testing, the contractor or the CAA own this very expensive potential problem. Not incorporating a lead safe work practices into a pre-1978 home project will always increase potential claim costs significantly because without LSWP a contractor or CAA has limited poisoning defense options which is why these claims are settled out of court and are very expensive.

Considering this high-level risk, the contractor and CAA would be wise to develop a risk management plan to deal with all the exposures related to the EPA RRP law, and the first order of business should be to transfer this testing risk as well as transferring the risk associated with not incorporating LSWP in pre-1978 homes to an insurance company especially if both exposures are present on projects.



To contact us:

Matt Wallace
Vice President —
WAP Program Manager
Phone: 1-800-257-1639
Fax: 916-939-1085
Cell: 916-813-6050
E-mail:
matt@environmentalinsurance.com
www.environmentalinsurance.com