



February 1, 2011

Verification of Lead Certification on permits for work in residential structures constructed prior to 1978

A Federal Environmental Protection Agency law has put in place contractor lead abatement regulations that require contractors doing work on pre-1978 child occupied residential buildings to test for and/or abate lead in the areas of those buildings on which they are working. The Minnesota Legislature passed a law, effective February 1, 2011, intended to work in conjunction with this Federal law. This Minnesota law is contained in Minnesota Statute (MS) 326B.106 subd. 13 & 14. (See attached copies of Minnesota & Federal law sections cited.)

The Department believes that this law intends that a permit should not be issued for work on pre-1978 residential structures unless the licensed residential contractor requesting the permit has the required lead certification or one of the exceptions in 745.82 can be met. In interpreting this statute it would be unreasonable to assume that the statute requires a certification be verified and then no action be taken if the certification is not present or valid. Also, Minnesota statutes need to be interpreted in favor of the public interest, such as protecting the public, rather than the private interest, such as the contractor. (See MS 645.17)

The Minnesota law uses the Federal law to define 'renovation'. MS 326B.106 subd. 14 states that lead certification is required if the licensed contractor is "...performing renovation as defined by Code of Federal Regulations (CFR), title 40, section 745.83....unless the property has been determined to meet an exemption under CFR, title 40, section 745.82." However, the scope of the Minnesota law is narrower than the CFR. The Minnesota law applies only to residential structures, and is further limited to the work being done by licensed residential contractors, whereas the CFR, title 40, Vol 30, section 745.83 also includes other 'child occupied' spaces which fall outside the scope of residential structures.

The Minnesota law applies only to licensed residential contractors, whereas, the Federal law applies to all contractors. A commercial contractor doing work on a large multi-family residential building would not be required to have their certification checked under Minnesota law because they are not licensed, but they would still need to comply with the Federal standard. A 'handi-man' with an exemption certificate under the residential contractor licensing law requesting a permit to do work on a single family house is not required to have their lead certification checked under Minnesota law because they are not licensed, but would still need to comply with the Federal standard. Even though roofing contractors are a part of the residential licensing group in Minnesota law, unpainted roofing that does not disturb paint is outside the scope of the CFR, they would not be required to provide a lead certification unless the scope of work includes doing more to the fascia than putting a drip edge over it.

Per MS326B.106 Subd. 14 The Minnesota licensed Residential Contractor "...must be certified in accordance with CFR title 40 section 745.89...". This CFR section is for 'Firm Certification'. An individual within the firm must also be certified, but the verification called for is the 'Firm

Certification'. Nothing would prohibit a construction firm with the proper lead certification from doing the portion of the work dealing with the lead contamination and another contractor from doing the remaining work under separate permits, much as asbestos is handled.

During the early implementation of this law, remember that the ultimate intent is to have an EPA lead certified person on the work site of each pre-1978 residential structure where a licensed residential contractor is disrupting a surface that has lead based paint. During this transition, a city can certainly accept either form of certification that meets that intent on paper or on the web.

Legislation is currently moving forward that would delay the effective date of the Minnesota Lead Law until August 1, 2011. We will get the word out if this bill gets signed into law.

The link to look up the Federal Certification at

http://cfpub.epa.gov/flpp/searchrrp_firm.htm

Minnesota Health Department at

<http://www.health.state.mn.us/divs/eh/lead/prof/pre/index.html>