

Hazard Management Laws Asbestos, Lead, Pesticides and Radon

The U.S. Environmental Protection Agency (EPA) has promulgated regulations to govern asbestos, lead-based paint (LBP), and pesticide use (as well as manufacture and sale). EPA also possesses, but has not exercised, rulemaking authority for radon.

I. Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP)

The [asbestos NESHAP](#) (40 C.F.R. Part 61, Subpart M) applies to residential buildings with more than four dwelling units (and to other buildings), and imposes requirements for handling Regulated Asbestos-Containing Material (RACM) during demolition and renovation projects. RACM includes *friable* asbestos material; and *non-friable* material that has, or likely will become, friable (*e.g.*, will be subject to sanding or grinding, or likely will be crumbled or pulverized).

The NESHAP requires that:

- Prior to demolition or renovation, a certified inspector must inspect all affected areas; and EPA must be notified ten (10) days prior to the start of work for:
 - o any “demolition” (*i.e.*, removal of load bearing member or structure), *even if asbestos may not be present*, and
 - o any “renovation” that involves removal or disturbance of >260 linear feet or 160 ft² of RACM.
- Certified workers remove all RACM, a certified supervisor be present, and required work practices be followed (*e.g.*, wet methods, and no visible emissions).
- The collection, transport, and disposal of waste comport with regulatory requirements.

II. Lead-based Paint (LBP)

The federal government has several legal authorities pertaining to LBP and LBP hazards:

- Disclosure Rule (24 C.F.R. Part 35, Subpart A (HUD), 40 C.F.R. Part 745, Subpart F (EPA) and 42 U.S.C. §§ 4851-4853a (known also as the Residential Lead-based Paint Hazard Reduction Act of 1992);
- Lead Safe Housing Rule (LSH Rule) (24 C.F.R. Part 35, Subparts B-R. The U.S. Department of Housing and Urban Development (HUD) administers and enforces the LSH Rule);
- Toxic Substances Control Act (TSCA), and regulations thereunder:
 - o The Pre-Renovation Education Rule (PRE Rule);
 - o The Renovation, Repair and Painting Rule (RRP Rule) (issued by EPA on April 22, 2008 and fully effective on April 22, 2010); and
 - o The Lead-based Paint Activities, Certification and Training Rule (LBP Activities Rule) (15 U.S.C. §§ 2601-2692; 40 C.F.R. Part 745, Subparts E and L); and
- Resource Conservation and Recovery Act (RCRA) Section 7003 (42 U.S.C. § 6973)

Generally, these laws establish disclosure obligations, and performance standards for activities that disturb LBP – but do *not* impose an affirmative obligation to perform LBP risk reduction work and do *not* empower federal authorities to demand such work. There are two exceptions:

- The LSH Rule applies to federally owned or assisted pre-1978 housing (approximately 3 percent of pre-1978 housing). The rule requires disclosure, and various evaluation and risk reduction measures based upon the classification of the housing, as determined by the level of federal assistance, age of housing, ownership, and other factors.
- RCRA Section 7003 empowers EPA to order a responsible person to take action “as may be necessary” to protect human health and the environment when a “solid waste,” including a LBP hazard, presents an “imminent and substantial endangerment.”

III. Pesticide Use

Integrated Pest Management (IPM)

EPA promotes the use of IPM in residential settings, through outreach and education, and its [Pesticide Environmental Stewardship Program \(PESP\)](#).

IPM is a *series* of pest management evaluations, decisions and controls, generally using a four-tiered approach in the following sequence:

- Set Action Thresholds, *i.e.*, decide the point at which pest populations or environmental conditions indicate that pest control action is required;
- Monitor and Identify Pests, *i.e.*, ensure that pesticides are really needed, and that the correct pesticide will be used;
- Prevention, *i.e.*, manage the indoor space to prevent pests from becoming a threat; and
- Control, *i.e.*, use less risky pest controls first (*e.g.*, highly targeted chemicals, such as pheromones) or mechanical control (*e.g.*, trapping); use additional methods if necessary (*e.g.*, targeted spraying); use broadcast spraying of non-specific pesticides as a last resort.

Pesticide Labeling

[Pesticide labels constitute the law concerning the proper use of a pesticide.](#) Failure to use a pesticide by a professional or by a consumer in accordance with the label requirements and prohibitions is a violation of the law and may be grounds for an enforcement action. To promote proper pesticide use by consumers, [EPA employs outreach and education, and voluntary programs.](#)

The “Directions for Use” section of a label reflects EPA’s “determination that the use of the product in such a manner does not cause unreasonable adverse effects on the environment.” (Other sections explain the ingredients, effects, and other facts.) Generally, the Directions for Use section states the:

- o Pest(s) the product may be used to control,
- o Sites where the product may be used;
- o Required or preferred application methods, and prohibited methods;
- o Proper application of the pesticide and the rate of application;
- o Restrictions on use for factors such as weather, season, contamination of sensitive areas;
- o Limits on how often the pesticide should or may be applied;
- o Maximum applicable rates; and
- o Any other requirements as necessary

IV. Radon

The 1988 Indoor Radon Abatement Act (IRAA) (Title III of the Toxic Substances Control Act, 15 U.S.C. §§ 2661-2671) established the national goal that air within buildings in the U.S. “should be as free of radon as the ambient air outside.” IRAA does not explicitly *require* EPA to promulgate regulations, but Section 310 *authorizes* EPA to issue “regulations as may be necessary” to carry out the statute. IRAA also authorizes EPA to provide grants to states to support testing and reducing radon in homes.

EPA relies on voluntary programs to promote radon awareness, testing, and reduction. The program sets an “Action Level” of 4 picocuries per liter (pCi/l) of air for indoor radon. This level “is *not* the maximum safe level for radon in the home” but, rather, is the point at which EPA has deemed the cost to the homeowner to fix the problem is warranted by the risk. EPA works with homeowners, home builders, building code organizations, and others to promote awareness, make new homes more radon resistant, and encourage radon testing when existing homes are sold.

[In June 2008, EPA’s Inspector General \(IG\) announced that radon exposure has increased since 1988, and that EPA’s voluntary program has not achieved the IRAA’s national goal.](#) The IG recommended that EPA:

- “Develop a strategy” for achieving IRAA’s goal using the rulemaking authority of section 310 – or “explain its alternative strategy”;
- “Identify limitations” in its statutory authority, and report these to Congress;
- Provide “metrics that will better measure the magnitude of the potential radon problem in relation to the number of homes at risk”; and
- Revise how EPA reports Indoor Radon Program results in its accountability reports.