

EPA Surprise Inspections Hit Door Dealers

Two Midwestern Door Dealers Reveal What Happened

By Tom Wadsworth, Editor

Here they come.

During all of 2010, we heard the threats of fines of \$37,500 per violation per day for failing to follow the U.S. Environmental Protection Agency's (EPA) lead-safe Renovation, Repairs and Painting (RRP) program. Now, in 2011, the EPA is making good on those threats.

We talked to two door dealers who were surprised by EPA investigators in January and February. We hope the following interviews will give door dealers an idea of what to expect and how to minimize exposure to violations and fines.

Our interviewees are from Omaha Door and Window of Omaha, Neb., and a family-owned company in the Midwest who asked to remain anonymous. Speaking for Omaha Door were Tom Murnan, co-president, and Mike McLaughlin, millwork manager. A top official of the other Midwest firm served as spokesperson for his company.

Both firms are EPA-certified companies with several certified renovators on staff and have been in business for about 50 years. Each firm is established and respected, and each firm thought it was accurately following lead-safe RRP procedures.

Omaha Door has 105 employees and sells garage doors, windows, entry doors, and more. The "Midwest" firm has eight employees and also sells garage doors, entry doors, and windows.



When did you get your visit?

Midwest: It was a Thursday in late February, about 11:00 in the morning.

Omaha (Tom): They arrived at about 9:00 a.m. on Wednesday, Jan. 12.



Tom Murnan



Mike McLaughlin

Omaha (Mike): They wanted all the paperwork for the 10 jobs. They asked for jobs that tested positive for lead and jobs that tested negative.

In retrospect, do you wish you had done anything different in the way you responded to his questions and requests?

As far as you know, how did you get selected?

Midwest: We were told that (the inspector) was in town to do a class, but it was cancelled at the last minute. He said he then called his office and was given our name and address.

Omaha (Tom): They seemed to be targeting windows. We learned later that they hit two other window firms in Omaha.

How many inspectors were involved?

Midwest: Just one.

Omaha (Tom): Two guys.

How did they begin the inspection?

Midwest: He said he was here to do an audit of our paperwork.

Omaha (Tom): They said, "Give us 10 jobs," and we gave them (the paperwork for) 10 window jobs.

Prior to their visit, approximately how many total jobs had you performed for which you used lead-safe practices?

Midwest: We had eight jobs that involved lead paint, but we had other pre-1978 jobs that had no lead. The audit indicated that we needed to document all of those non-lead jobs also. Our training only covered what to do when lead is present.

Omaha (Tom): We had probably done around 80 to 100.

What questions were you not prepared for?

Midwest: We had paperwork accessible, but it was not prepared in the way they required. We were expecting unannounced field audits; we felt we would have done well at a field inspection.

Omaha (Tom): We thought we were prepared. But it's like an OSHA visit; they're always going to find something. The number one thing they were looking for is if you're giving the customer that ("Renovate Right") pamphlet.

How long was he onsite?

Midwest: Five hours.

Omaha (Mike): They were here from 8:30 to noon. I think that's been the standard.

Did he go to any of your job sites?

Midwest: No.

Omaha (Mike): We did not see them do that. One of our installers thought he saw an EPA guy drive by, but we can't confirm that.

Did he contact any of your customers?

Midwest: Not that I know of. But he took copies of our paperwork, and their names, addresses, and phone numbers were on it.

Omaha (Tom): We don't think so.

What files/records did he want to see?

Midwest: He wanted copies of our bids, job tickets showing dollar amounts, paperwork with RRP signatures, copies of lead-test paperwork, procedure forms, cleaning forms, and pictures.

They also asked questions about our business, the number of jobs per year, average dollar amount of each job, and the number of jobs bid compared to the number of jobs sold. He also asked how much we charged for lead-safe removals.

I am very uncomfortable with the questions about our pricing, sales info, and our customers' info. I would like to know if I am legally required to give him that information. If I don't give it, will it affect our grade?

Midwest: We were forthcoming and helpful. He mentioned during the visit that he would add that to his report. In retrospect, none of that seems to have helped us.

Omaha (Mike): I think we did the best we could under the circumstances. The best defense is to be prepared. When questioned, answer only what the EPA asks. Don't volunteer anything else.

What are the most important things that a dealer should know about the inspection?

Midwest: Dealers should know that the EPA is out there doing inspections. They are most likely going to do paper audits. Based on the copy of the report we received, it appears that they are going to grade in a pass/fail manner. So, be sure to dot your i's and cross your t's.

Omaha (Mike): Make sure your guys are doing the job right and are properly completing all the paperwork. Review the paperwork when your guys turn it in. The EPA hates blanks on your paperwork. Put "N/A" in those spots, and make sure that your dates coincide.

Don't offer any information if they don't ask for it. They hear everything you say, and they write it all down.

Omaha (Tom): Before you quote a job, go to the assessor's website, get the age of the house, and put the age on your paperwork. Do it before you send the salesman to that house.

What area of your business was your greatest area of vulnerability?

Midwest: Paperwork.

Omaha (Mike): Subcontractors. We learned that our subcontractors need to be firm certified, and their guy who works for us needs to be a certified renovator. We use subs more in the window business.

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How many violations did they find?

Midwest: We're not clear on the number yet. We won't know until we receive notification from the EPA. He made note of possible violations because of things like no box being checked



and no paperwork being completely filled out. At same time, he took copies of pictures that showed we were following lead-safe practices.

Omaha (Mike): There were only two things that we weren't doing: the minor paperwork issues and the subcontractor's firm certification. The certification was the bigger issue, but they admitted that they were giving confusing directions on that.

Omaha (Tom): They sent us a letter stating the violations. We thought they were incredibly nitpicky. A couple of our dates were wrong. And there were some blanks in our paperwork.

About six weeks after they sent us the violations, we learned that we had no fine. No fine! We're still counting our lucky stars on that one.

What disturbed you about their inspection?

Midwest: Paperwork was never mentioned during any of our certification training sessions. Yet, paperwork seems to be the focus of their audits.

Some of the rules are ridiculous. For example, we gave a customer a bid on three doors on his house, and we gave him the "Renovate Right" booklet. After the customer accepted the bid on two doors, we ordered the material. A couple of weeks later, the customer called back and accepted the bid on the third door. According to the auditor, we needed to give the customer another RRP booklet and get another signature for the third door.

Do you plan to have an attorney defend your company against their allegations?

Midwest: We will see what the EPA's final ruling is and then decide what course to take.

Any concluding thoughts?

Midwest: We feel we are not on a level playing field with other companies, especially small companies that work out of their homes or companies that never signed up to be certified. We feel they are not being audited or even searched out. ■

To comment on this story, send an e-mail to the editor at trw@tomwadsworth.com.

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EPA'S HIT LIST

Here's a quick summary of all renovation companies that have been fined by EPA for alleged failure to comply with RRP rules. To our knowledge, no garage door firms have yet been fined.

Most fine-producing violations focus on failure to inform, such as failing to distribute the "Renovate Right" booklet to homeowners. The notable exception is the case against Colin Wentworth of Maine. EPA says it was

"the first action EPA has brought against a company or individual for lead safe work-practice violations."

In the Wentworth case, "the violations were brought to EPA's attention via an anonymous tip linking to a video ... posted on YouTube ... (which) documented workers using power equipment to remove lead paint from an exterior wall of a residential building." ■

FINES ANNOUNCED	COMPANY	LOCATION	ALLEGED VIOLATIONS	FINE
March 23, 2011	Permanent Siding and Windows	Milford, Conn.	"failed to provide lead hazard information to homeowners or occupants before doing renovations that may have disturbed surfaces coated with lead-based paint"	\$30,702
March 31, 2011	Window World of St. Louis	St. Louis, Mo.	"failed to notify owners and occupants of ... lead-based paint risks prior to performing renovation work"	\$19,529 + \$20,048 of donated windows at nonprofit facilities
April 6, 2011	College Works Painting	Portland, McMinnville, Hillsboro, Ore.	"failing to inform homeowners or residents of possible lead hazards" "failed to establish and maintain records necessary to demonstrate compliance"	\$32,508
April 21, 2011	Window World of Omaha	Omaha, Neb.	"failed to notify owners and occupants of ... lead-based paint risks prior to performing renovation work"	\$3,976 + \$11,928 of donated windows at nonprofit facilities
May 16, 2011	Colin Wentworth	Rockland, Maine	"failed to: obtain required certification ... post warning signs ... cover the ground ... contain waste ... prohibit use of machines that remove lead-based paint through high speed operation without HEPA exhaust controls ... establish and maintain records"	To be announced

Source: EPA

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Are You Prepared for an Inspection?

What EPA Will Ask You

We studied the EPA inspection forms that were given to the two inspected dealers. In addition to the reproduced form on the right, the inspector's requests will also likely include:

- A sample copy of the "Renovate Right" brochure.
- Customer's signed and dated acknowledgement of receipt of brochure.
- Documentation of on-the-job training in lead-safe work practices for non-certified workers.
- Documentation of test for lead-based paint.
- Copy of certificate of the renovator assigned to project.
- Contract and invoice for each inspected job.
- Number of certified renovators on your staff.
- Number of contracts completed in 12 months preceding inspection.
- Number of target housing units affected.

Do you have job records that enable you to answer these questions? If not, you may be subject to a violation and fines. ■

RENOVATION, REPAIR & PAINTING RULE REGULATED WORK INFORMATION			
Property location/address:		Number of target housing units:	
Year built:	Was the work an emergency renovation operation?		YES <input type="checkbox"/> NO <input type="checkbox"/>
Was the work performed for compensation?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Was the renovation or repair work performed in common areas?	YES <input type="checkbox"/> NO <input type="checkbox"/>
Name and address of contractee:	Was the renovation or repair work performed on exterior?		YES <input type="checkbox"/> NO <input type="checkbox"/>
Property owner(s) address(es):	Did the renovation or repair meet the regulatory definition of <i>minor</i> ?		YES <input type="checkbox"/> NO <input type="checkbox"/>
Date(s) work performed:	Number of target housing units affected by renovation/repair work:		
Brief description of type of work:			
Is there documentation detailing the work practices performed on this job? YES <input type="checkbox"/> NO <input type="checkbox"/> If no, describe the work practices used on this job.			
Were the renovated components tested for the presence of lead-based paint by a certified renovator using an EPA-recognized lead paint test kit?			YES <input type="checkbox"/> NO <input type="checkbox"/>
Has a lead-based paint inspector certified that the property is lead-based paint free?			YES <input type="checkbox"/> NO <input type="checkbox"/>
Certified renovator assigned to project:			

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Senators and Industry Fight EPA Rules

"Clearance Testing" Requirements May Be Published in July

In case you think that no one feels your EPA pain, some senators in Washington and some renovation industry officials are on your side. Their efforts may be making some progress.

On May 24, in response to President Obama's call for a review of the regulatory system, EPA announced that it is "reviewing the efficacy of both its original (RRP clearance) testing requirements as well as those additional requirements proposed in 2010 and expects to issue a final rule in summer 2011."

Here is a summary of recent actions by legislators and industry members who are fighting aspects of the EPA's RRP rule.

On April 15, 12 Republican U.S. senators called for oversight hearings on EPA's lead-based paint rule. The senators sent two letters to EPA Administrator Lisa Jackson identifying problems with EPA's implementation of the RRP rule. Several of the senators serve on the Senate Committee on Environment and Public Works (EPW).

In Letter #1 (on Clearance Testing) ...

The senators questioned new amendments to the RRP rule that would require renovators to conduct "clearance testing" to prove the presence or absence of lead after completing a project. "This would impose significant confusion and complication for renovators and remodelers,"

said the senators, "and will also result in additional costs for homeowners and renovators to pay for the clearance testing."

"EPA significantly underestimated the cost of compliance for small businesses and individuals," stated the letter. "The higher costs ... have pushed homeowners to either hire uncertified individuals or to perform renovation work themselves. This is absolutely counter to the intent of the rule."

According to Brian Schoolman, legal counsel for IDA, this additional requirement, which includes "dust wipe testing," probably does not apply to typical garage door work. Rather, the proposed rule applies to "jobs involving demolition or removal of plaster through destructive means or the disturbance of paint using machines designed to remove paint through high-speed operation."

The amendments, if not stopped, are set to be published sometime in July 2011, taking effect sometime thereafter.

In Letter #2 (on Commercial and Public Buildings) ...

By Dec. 15, 2011, EPA must issue a proposal to expand the current residential focus of RRP to regulate renovations on the exteriors of commercial buildings and public buildings built before 1978. EPA must take final action on that proposal and propose regulations for the interior of buildings by July 15, 2013.

The senators criticized EPA's rulemaking for commercial buildings and public buildings, noting that "the agency lacks sufficient data on which to promulgate such a rule."

Senator James Inhofe (R-Okla.), ranking member of the Senate EPW Committee, said:

- The proposed oversight hearings would seek to "identify the agency's errors, correct them immediately, and realize the full public health benefits of this rule."
- "EPA's latest proposal governing how renovators and remodelers handle lead-based paint is impractical, confusing, costly, and not based on the best available science."
- "Once again, EPA is fumbling implementation of this rule, to the point that it will cost jobs

and fall far short of fully realizing the rule's laudable public health goals."

On April 28, after the EPA offered no response to the senators' pleas, 11 of the senators sent a letter to the White House Office of Information and Regulatory Affairs (OIRA), seeking to stop the clearance-testing proposal.



Senator James Inhofe (R-Okla.)

Industry Speaks Out

In addition to the efforts of these senators, the National Association of Home Builders (NAHB) met in May with Capitol Hill staffers to explain the detrimental effect that the RRP rule is having on the remodeling industry.

On several occasions, DASMA and IDA, acting through an industry task force, jointly communicated several garage door-related concerns directly to EPA.

On May 16, six representatives of the Window & Door Dealers Alliance (WDDA) met with officials of OIRA, urging them to block EPA from implementing the clearance-testing requirements.

On Jan. 11, the National Association of the Remodeling Industry (NARI) took a different approach. NARI, on behalf of its 7,000 companies, wrote a letter to EPA Administrator Lisa Jackson saying, "The only way for EPA to address the problem of non-certified contractors is to aggressively and publicly enforce the LRRP rule." ■

