

MASEK CONSULTING SERVICES, INC.

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Liability*

Seismic Retrofit Asbestos and Lead Regulations

For Owners, Managers, and Contractors

May 23, 2016

TABLE OF CONTENTS

	<u>Page</u>
City of Los Angeles.....	2
Asbestos.....	2
South Coast Air Quality Management District.....	2
Occupational Safety and Health Administration.....	2
Lead.....	3
Los Angeles County.....	3
Renovation, Painting and Repair (RRP).....	4
What To Do.....	4
Why Work With Us?.....	5

Why does any owner, manager, or contractor need to deal with asbestos and lead-based paint to perform a seismic retrofit of an apartment building?

City of Los Angeles

On May 20, 2016, Mr. Steven Harrison [steven.harrison@lacity.org] with the City of Los Angeles stated in an e-mail:

“Should your seismic retrofit project require a disturbance of materials suspected to contain or known to contain lead and or asbestos, you would be required to do testing and supply copy of the results at any point prior to or during the project.”

He was replying to the following questions:

Could you please clarify for us what hazardous materials need to be tested for the Tenant Habitability Program? Does the testing need to cover both asbestos and lead?

As with all significant work on apartment buildings in Los Angeles, a Tenant Habitability Plan must be prepared and approved, and no plans will be approved and no permits will be issued until that has been done. It is an important part of the entire retrofit process.

Asbestos

The most common materials which may contain asbestos and which may need to be disturbed to perform seismic retrofit work are stucco (any or all layers), drywall joint compound & texture, plaster (any or all layers), acoustic ceiling texture, and window putty. Sometimes various flooring materials may also need to be disturbed (sheet vinyl flooring, vinyl floor tile, flooring adhesives).

South Coast Air Quality Management District

The South Coast Air Quality Management District has an agreement with United State Environmental protection Agency (EPA) to administer asbestos regulations. Their Rule 1403 requires asbestos surveys and notification to SCAQMD prior to any renovation or demolition involving over 100 square feet of materials, even if no asbestos is present.

SCAQMD refers violations to the United Stated Environmental Protection Agency which can levy fines as high as \$37,500 per day. Violators may also be sent to federal prisons. Mr. Charles Yi of Los Angeles is a good example of what happens to apartment owners who try to ignore the asbestos regulations, as he went from being owner of a 204-unit apartment complex to ruined and serving four years in federal prison. SCAQMD inspectors may arrive unannounced to job sites, as well as responding to complaints.

Occupational Safety and Health Administration

The federal OSHA asbestos regulations for the construction industry are contained in 29CFR1926.1101. The corresponding California regulations are at California Code of

Regulations, Title 8 - Industrial Relations, Division 1- Industrial Relations, Chapter 4 - Division of Industrial Safety, Sub-chapter 4 - Construction Safety Orders, Article 4 - Dusts, Mists, Fumes, Vapors, and Gases, §§1529. Asbestos.

OSHA regulates all work involving asbestos, no matter the percentage content of the material or the quantity of material to be disturbed.

The regulations require that all asbestos removal work for seismic retrofits be conducted within regulated areas, with all of the related requirements for demarcation, signs, respirators, and so forth. All asbestos work performed within regulated areas must be supervised by a competent person. A competent person must be trained as an asbestos supervisor, as originally defined in the Asbestos Hazard Emergency Response Act signed by President Reagan, 40 CFR 763.

OSHA and Cal-OSHA also levies substantial fines and seeks prison or jail sentences for violators.

Lead

For buildings built prior to 1978, federal regulations require that all paint be assumed to be lead-based paint unless a properly trained and certified environmental consultant has tested it and found otherwise.

Three federal agencies regulate lead paint under Title X of the Housing and Community Development Act of 1992:

- The United States Environmental Protection Agency (EPA);
- The United States Department of Housing and Urban Development (HUD); and,
- The Occupational Safety and Health Administration (OSHA) of the United States Department of Labor.

The federal lead regulations for *construction work* are contained in 29CFR1926.62 and the corresponding California regulations in CCR 8 Section 1532.1 have some additions or revisions which are not in the federal regulations.

In California, accreditation, certification, and work practices for lead-based paint and lead hazards are regulated by Title 17, California Code Of Regulations, Division 1, Chapter 8. California Senate Bill 460 amended H&SC 17920.10 by adding "lead hazards" as a violation, amended H&SC 17961 to allow local agencies to enforce 17920.10 when lead hazards are present, and amended H&SC 105251-56 making it illegal for contractors to create lead hazards and to allow local enforcement agencies to perform enforcement. In California, lead abatement work must be performed by California CDPH (formerly DHS) accredited supervisors and workers.

Los Angeles County

Los Angeles County Municipal Code Title 11, Chapter 11.28 which prohibits paint containing

over 0.7 mg/cm² lead which is peeling, flaking, or chipped or on a surface which may be chewed, ingested, or inhaled in dwellings inhabited by a child under seven years of age.

Renovation, Painting and Repair (RRP)

The US Environmental Protection Agency (EPA) Renovation, Repair, and Painting Regulation is enforced against contractors and owners (see EPA's web site and the full text of the regulation). For single and multi-family residential buildings constructed prior to 1978 it:

- 1) Requires that all paint be assumed to be lead-based paint, unless it has been tested and found not to be lead-based paint;
- 2) Applies to work that results in the disturbance of painted surfaces, not just formal renovation projects, and not just painting work. Work by plumbers, electricians, carpenters, handymen, etc. which disturbs painted surfaces is included.
- 3) Does not apply to minor maintenance activities that disrupt a total of 6 square feet or less of painted surface per room for interior activities over a 30 day period or 20 square feet or less of painted surface for exterior activities, but we advise caution, as small amounts of lead-based paint chips or dust could create a lead hazard.
- 4) Applies to all window replacement work.
- 5) Applies to all demolition of painted surface areas.
- 6) Requires that companies performing the work be certified (complete a form and send payment to EPA);
- 7) That a person who has attended an eight hour training class to become a *Renovator* who must train all of the other employees, direct the work, keep records, and be present when the warning signs are up and when the containments (enclosures of polyethylene sheeting) are being built, and when cleaning is being performed. Firms with multiple work crews probably will find it impractical to have just one employee trained as a *Renovator*. The *Renovator* must also be available, either on-site or by telephone, at all times that renovations are being conducted, and must carry copies of their training course completion certificate.
- 8) Requires that copies of the *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* pamphlet be given to owners and tenants in some situations, and made available in others.

What To Do

The first step in the retrofit process is having us inspect the building(s) for asbestos and lead. We can inspect just the areas to be disturbed by the retrofit work quickly and at low cost. If any is found, we can recommend good abatement contractors to remove the materials which have

to be removed to perform the retrofit work. This is all very routine.

Why Work With Us?

We are a landlord owned company in our 25th year of helping people stay out of trouble and have earned our reputation as a provider to top-quality services at highly competitive prices.

Please contact us to discuss inspecting your buildings.

Kindly visit the News section of our web site to see some of our apartment industry magazine articles:

<http://masekconsulting.net/news/>

Information on laws and regulations is provided as a convenience, not as a substitute for proper legal advice and review of the entire text of the applicable laws and regulations.

Masek Consulting Services, Inc.

A handwritten signature in black ink that reads "F. Stephen Masek". The signature is written in a cursive style with a large initial "F".

F. Stephen Masek
President

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