

CHASTAIN-SKILLMAN, INC.

ENGINEERS • ARCHITECTS • SCIENTISTS • SURVEYORS

CONSULTANT'S UPDATE

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BOUNDARY SURVEY: WHY SHOULD YOU HAVE A SURVEY COMPLETED?

By Robert F. DuBois, PLS



One of the largest investments an individual or entity may pursue is the purchase of and improvements to a parcel of land. To protect the investment, it is imperative that the purchaser know all the related information. As with a structural engineer or a building inspector that examines the integrity of the structures on a particular site, the surveyor examines the integrity of the boundary of a parcel of land. There are many expenditures involved in a land transaction deal; the fee of a boundary survey that meets your needs, the needs of the other parties involved, and legal requirements are usually the least of those costs. It is, therefore, prudent to have a legal bound-

ary survey performed by a licensed land surveyor. In the event of litigation, for the boundary survey to be considered legal and document-admissible, the land surveyor must be licensed in the state in which the property is located. In today's economic situation, individuals with only short-term and/or minimal interest in the land transaction are advising of other means to circumvent the need to have a legal boundary survey performed. This leaves the owner of the land unprotected and his/her investment in jeopardy in the future while the other individuals have moved on to the next land transaction.

Current land owners, especially large tracts with recent adjacent development or parcels

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HOW THE EPA LEAD-BASED PAINT RENOVATION, REPAIR, AND PAINTING RULE COULD AFFECT YOU

By Beth S. Blackmon, MSPH, CIH



In recent months, you may have heard from news reports that lead has been found in children's toys, cosmetics, jewelry, and most recently some reusable shopping bags. While lead hazards are not new concepts, what you may not have heard is that failure to follow the procedures as described in the newly effective Lead-Based Paint Renovation, Repair, and Painting Rule packs some hefty penalties. Let's take a closer look at how this new rule came into effect, and the importance of strict adherence.

In the 1970s OSHA instituted the Lead Standard for General Industry and the Lead Stan-

dard for Construction and, in 1978, lead-based paint in housing was banned by the U.S. Consumer Product Safety Commission. Federal standards define lead-based paint as any paint or surface that contains lead equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5 % by weight (i.e. 5,000 ppm).

Lead is a known toxic metal that is extremely dangerous to children, who absorb more of the metal and whose brains and nervous systems are more sensitive to its damaging effects than adults. Studies have found that even low levels of lead in children can reduce IQ, cause learning disabilities, behavioral problems, reduce attention span, and retard physical development. Damage can be

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ANNOUNCEMENTS

Tom Lewis, PG, CSI's Tallahassee Office Manager/Senior Project Manager, recently received his Asbestos Inspector/Management Planner Certificate of Accreditation for the State of Alabama. This further enhances CSI's ability to serve our clients' needs throughout the southeast region.

Steve Dutch, PE, has assumed the duties of Director of the Environmental Department. Steve has been with CSI for over 16 years, and has 37 years of experience in the design of wastewater and water treatment facilities, linear utilities, and stormwater transmission systems, as well as construction engineering and permitting services.

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that have not been surveyed for many years, may want to have their parcel surveyed as an inventory of their investment. Recent development or just the passing of time may cause situations where adverse possession and prescriptive easement claims may affect the parcel of land. These claims may result in reduced property values and loss of land. An example of the unfortunate loss of land was discovered during a recent boundary survey of a large parcel. This parcel was once in a rural area and titled to one family for many generations. During the development boom, many of the surrounding parcels were subdivided into smaller tracts and sold as recorded lots in platted subdivisions. The boundary survey of the larger parcel identified that a platted subdivision encroached onto said parcel by more than ten feet, for a quarter of a mile. Since the plat was recorded many years ago and the lots had since been sold to individual families, the cost of litigation and the unlikelihood of prevailing in a court of law lead the owner of the larger parcel to realize that the land was lost.

A boundary survey is performed for the primary purpose of documenting the perimeter of a parcel of land by establishing the location of the corners of the parcel. A boundary survey performed by an experienced surveyor would identify possible adverse possession and prescriptive easement claims against the parcel of land, and also identify possible boundary line disputes. Other purposes for a boundary survey may include the mapping of the location of fixed improvements with reference to the boundary lines, assisting in dividing the parcel into smaller tracts, or subdividing the parcel for subdivision platting purposes. When expanding an existing building and/or adding new improvements to a particular site, a boundary survey would assist in ensuring that the improvements are built on the parcel of land for which it was intended without encroachment onto adjoining lands.

As a consumer, one will encounter basically two types of standards for boundary surveys: an American Land Title Association (ALTA)/American Congress of Surveying and Mapping (ACSM) Land Title Survey and a boundary survey that meets the standards of the regulatory agency of an individual state. The ALTA/ACSM Land Title Survey is comprehensive and is recognized across the nation. The intention of ALTA/ACSM standards is to establish a level of standards, so that entities in a land transaction, regardless of the state in which the individual entities may be located, will be ensured of a common standard. Individual state standards are usually set as the minimum standards by that state. The consumer should verify the standards required for his/her transaction.

The process of performing a boundary survey commences with the research of the county records and review of the documentation provided. Pre-survey research provides the surveyor with the knowledge of the parcel of land and the potential for boundary line conflicts that may be discovered when reviewing adjoiner owner's parcel information. The surveyor is then in a better position to direct the field survey efforts. A survey field crew will provide research of existing boundary lines and corner locations through evaluation of possession of occupation, existing boundary corners found, and testimonials of the surrounding land owners. Though the request for a boundary survey is for a particular parcel, in some circumstances, the survey crew may need to perform field research many miles from the parcel of land to be sur-

veyed. This in-depth field research will assist with solving and accurately locating the boundary lines of a parcel of land. All office- and field-generated research is gathered and analyzed to determine the location of the boundary lines and corners. The final product, provided to the client, is a signed and sealed survey map and report that depicts the location of the boundary line in reference to fixed improvements, and notation of possible boundary dispute and adverse claim issues if they exist.

The cost of a boundary survey depends on many factors; the type of terrain, accessibility to existing boundary lines and corners, and the availability of existing records and monumentation. Ways to reduce the cost of a boundary survey:

- Provide copies of previous surveys and records of the parcel to be surveyed;
- Check with adjoining property owners for copies of surveys;
- Find a land surveyor that has performed boundary surveys in the vicinity of the site to be surveyed;
- If reasonable, clear brush and debris from property corners and boundary lines;
- Ensure safe access to the parcel (gates are unlocked, pets are secured, tenants are informed of a land survey being performed);
- Verify the required standards for the survey (ALTA/ACSM Land Title Survey versus individual state requirements).

Under certain circumstances, a legal description and sketch may replace the need for a boundary survey. Discuss this with your land surveyor.

Choosing a Land Surveyor

When selecting a land surveyor, verify the surveyor and business entity is licensed in the state in which the property is located. In Florida, you may check license status at <http://www.doacs.state.fl.us/>. Each survey business entity must have a licensed surveyor. There are surveyors and business entities that specialize in many different disciplines of surveying which may include boundary, construction, aerial photogrammetry, terrestrial scanning and hydrographic. While the surveyor you select may be a licensed surveyor and/or business entity, it should be noted that it is against professional principles to practice outside the realm of expertise for which the surveyor has been trained. In other words, you would not want to have open heart surgery performed by a podiatrist. Some surveyors specializing in disciplines that are struggling in the current economic situation are exploring work outside of their expertise. Though they are licensed to do so, the public could be harmed by the inexperience of such surveyors. Also verify that the surveyor or survey business carries adequate professional liability insurance. Florida does not require professional liability insurance to practice land surveying. A surveyor or business entity that does not carry professional liability insurance must provide notice of such omission of insurance.

It will benefit the owners of a parcel of land to have a boundary survey performed to protect their investment and to be educated on the risks of the potential loss of not hiring a licensed, insured, and experienced land surveyor.

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irreversible, affecting children throughout their lives.

According to the Environmental Protection Agency (EPA), approximately three-quarters (75%) of the homes built prior to 1978 contain some form of lead-based paint. The most common surfaces for lead-based paint are exterior painted surfaces, interior woodwork, doors, and windows. Lead-based paint in good condition is not a hazard to children or adults. However, deteriorating lead-based paint and lead contaminated dust are the primary sources of lead exposure/hazards.

In an effort to reduce the prevalence of childhood lead poisoning, particularly that caused by housing contaminated by renovation activities, on April 22, 2008, the EPA issued a rule that would require the use of lead-safe practices and other actions that would prevent lead poisoning. On April 22, 2010, the Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule became effective. Under the lead-based paint RRP rule, all paid contractors performing renovation, repair, and painting projects that have the potential to disturb lead-based paint in residential homes and child occupied facilities, i.e. childcare facilities and schools, built prior to 1978 must be certified by an approved trainer and follow specific work practices to prevent lead contamination. The definition of a "child occupied facility" under the lead-based paint RRP rule is any residential, public, or commercial building where children under the age of six are present on a regular basis.

The new lead-based paint RRP rule not only affects building owners, but also applies to the general contractor, renovation contractor, property manager, painter, plumber, carpenter, electrician, and/or any individual that is paid to conduct work that could disturb painted surfaces. Most minor repair and maintenance activities of less than six (6) square feet per interior room or twenty (20) square feet on exterior projects are exempt from the work practice requirements. However, this exception does not apply to window replacements, demolition, or the use of prohibited practices.

EPA's lead-based RRP program is designed to reduce lead contamination by training contractors in relatively simple lead-safe work practices and certifying contractors to make sure that they follow lead-safe work procedures.

Typical renovation and maintenance activities on pre-1978 facilities can create dust containing lead. EPA states that following lead-safe work practices will prevent lead hazards. The specific lead-safe work practices included in the lead-based paint RRP rule include:

- An EPA approved lead test kit must be used when sampling for lead-based paint on painted surfaces that will be disturbed during renovation;
- All objects must be removed from the work area or covered to prevent contamination;
- All windows and doors must be closed and doors covered;
- Floors must be covered to contain dust;
- After completion of renovation, all dust and debris must be collected and walls cleaned by vacuuming or wiping;
- Upon completion of cleaning, a certified inspector, risk assessor, or dust sampling technician must verify the effectiveness of the cleaning;
- The renovator must re-clean the work area until it meets applicable clearance standards;
- Renovation is complete upon meeting the cleanup standards;
- Work practices prohibit the use of open flamed burning using heat guns at greater than 1,100 degrees Fahrenheit and the use of power tools without the use of high efficiency particulate air (HEPA) vacuums to collect dust.

Some of the new requirements state that the contractor must notify the property owner and occupants of the potential hazards of lead-based paint before work is started, the company and workers performing the renovation must be trained and certified, and work practice standards must be implemented for controlling lead-based paint dust, post-renovation cleanup requirements, and post-renovation cleaning verification.

In summary, if the building that you live in or are conducting a project in was built prior to 1978 and meets the definition of a "child occupied facility", a lead-based paint sampling by an EPA-recognized test kit or method must be conducted to determine if the EPA lead-based paint renovation, repair, and painting rule applies to you. If lead-based paint will be disturbed during your project, make sure that the contractor is trained/certified under the new EPA lead-based paint RRP rule, is implementing the work practice standards

RECENT PROJECTS AND CONTRACTS OF INTEREST

- CSI was recently selected by Florida Department of Management Services to provide Environmental and Occupational Health and Safety Services in the Northwest Region.
- CSI continues to provide EOH services for Hillsborough County Public Schools, one of our most prestigious clients.
- CSI has provided Environmental Risk Services to Hillsborough County at fleet refueling facilities and other locations.
- CSI recently performed IEQ evaluations at various facilities for Florida A&M University in Tallahassee.

mentioned previously, applies proper post-renovation clean-up, and post-renovation cleaning verification sampling is performed in accordance with the regulation. The EPA has stated that failure to follow the new lead-based paint requirements is a violation of the law and penalties can be significant (i.e., civil penalties up to \$32,500 for each violation, and firms knowingly or willingly violating the regulation may be subject up to an additional \$32,500 per violation or imprisonment, or both).

For more information concerning the EPA lead-based paint Renovation, Repair, and Painting rule, visit the EPA website at www.epa.gov.

Beth Blackmon is a Senior Industrial Hygienist in the Environmental & Occupational Health Department for Chastain-Skillman's Tampa Office. Beth received a Bachelor's Degree in Food Science and Human Nutrition specializing in Food Science and Dietetics from the University of Florida, a Master's Degree of Public Health with emphasis in Safety Management from University of South Florida in Tampa, Florida, and a Master's of Science Degree of Public Health with an emphasis in Industrial Hygiene from the University of South Florida in Tampa, Florida. She can be reached at (813) 621-9229 or [eblackmon@chastainkillman.com](mailto:eblackmon@chastainskillman.com).

COMPLYING WITH DAVIS-BACON REQUIREMENTS

By Ted R. Fylstra



As more local governments seek funding from federally funded grant and loan programs to complete capital projects, they must meet the conditions tied to these funds including the Davis-Bacon and Related Acts (DBRA) requirements. Programs that are typically used by local governments that require DBRA compliance include Community Development Block Grants (CDBG), State Revolving Fund Loans and Grants (SRF), Economic Development Administration funding, and many other programs.

DBRA are administered by the Wage and Hour Division of the United States Department of Labor. These Acts apply to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works.

Basic Provisions/Requirements

The Davis-Bacon Act requires that all contractors and subcontractors performing work on federal contracts (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of \$2,000 pay their employees not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination(s) for corresponding classes of workers employed on similar projects in the area. Davis-Bacon labor standards clauses must also be included in all prime and subcontracts.

Apprentices may be employed at less than predetermined rates if they are in an apprenticeship program registered with the Department of Labor or with a state apprenticeship agency recognized by the Department of Labor. Trainees may be employed at less than predetermined rates if they are in a training program certified by the Department of Labor.

Contractors and subcontractors on prime contracts in excess of \$100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay

employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek.

Covered contractors and subcontractors are also required to pay employees weekly and to submit weekly certified payroll records to the contracting agency and/or its agent.

Employee Rights

The DBRA provide laborers and mechanics on covered federally financed or assisted construction contracts the right to receive at least the locally prevailing wage rate and fringe benefits, as determined by the Department of Labor, for the type of work performed.

Employee Identification

In 1986, Congress reformed US immigration laws. These reforms, the result of a bipartisan effort, preserved the tradition of legal immigration while seeking to close the door to illegal entry.

Employment is often the magnet that attracts individuals to reside in the United States illegally. The purpose of the employer sanctions law is to remove this magnet by requiring employers to hire only individuals who may legally work here: citizens and nationals of the United States, lawful permanent residents, and aliens authorized to work. To comply with the law, contractors must verify the identity and employment authorization of each person hired, complete and retain a Form I-9 for each employee, and refrain from discriminating against individuals on the basis of national origin or citizenship.

The I-9 form includes, on its back, a list of acceptable documentation to establish an employee's identity and employment eligibility.

Notices and Posters

Every employer performing work covered by the labor standards of the DBRA must post the WH-1321 "Employee Rights Under the Davis-Bacon Act" poster at the site of the work in a prominent and accessible place where it may be easily seen by employees. There is no particular poster size requirement. The wage determination(s) must be similarly posted.

Recordkeeping

Under the DBRA, covered contractors must maintain payroll and basic records for all employees during the course of the work and for a period of three years thereafter. Records to be maintained include:

- Name, address, and Social Security number of each employee;
- Each employee's work classification(s);
- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents;
- Daily and weekly numbers of hours worked;
- Deductions made;
- Actual wages paid;
- If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected;
- If applicable, detailed information regarding approved apprenticeship or trainee programs.

Reporting

Each covered contractor and subcontractor must, on a weekly basis, provide the contracting agency and/or its agent a copy of all payrolls providing the information listed above under "Recordkeeping" for the preceding weekly payroll period. Each payroll submitted must be accompanied by a "Statement of Compliance." The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages must sign the weekly statement. Statements of Compliance are to be made on the form WH-347 "Payroll" or on any form with identical wording. This must be completed within seven days after the regular pay date for the pay period.

Penalties/Sanctions

Contractors or subcontractors found to have disregarded their obligations to employees, or to have committed aggravated or willful violations while performing work on Davis-Bacon covered projects,

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may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld in sufficient amounts to satisfy liabilities for unpaid wages and liquidated damages that result from overtime violations of the Contract Work Hours and Safety Standards Act (CWHSSA).

Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment.

Owner Responsibilities

Under DBRA, the recipient of the funding is responsible to monitor compliance with the Act. These tasks include confirming compliance with employee notice requirements, review of the weekly certified payroll reports for completeness and compliance with the wage rate standards, conducting periodic labor interviews to confirm accuracy of the payroll reports, prepare certified payroll exception reports identifying missing and con-

flicting information, coordinating with the contractor to correct payroll deficiencies, and maintaining orderly records for agency and independent audits.

Should you have questions or need assistance regarding Davis-Bacon requirements, CSI can assist both funding recipients and contractors with monitoring programs or completing reporting forms. Davis-Bacon requirements may appear daunting but, with our assistance, compliance monitoring doesn't need to be time consuming or difficult.

Reference: Department of Labor

Ted Fylstra has a Bachelor of Science Degree in Industrial Engineering from the New Jersey Institute of Technology and nearly ten years experience in Loan/Grant Management Services in the state of Florida for numerous communities and funding programs. Ted has personal experience determining funding applicability and eligibility, preparing funding applications, and documenting compliance with funding constraints, as needed, to comply with audit requirements for over \$1.5 billion in grants and loans. He can be reached at (813) 621-9229 or tfylstra@chastainskillman.com.

EOH NEWS

Florida Mold Regulation Update

What are my options for Florida Mold Assessor and/or Remediator Licensure?

- ◆ *Licensure by Examination*
- ◆ *Licensure by Endorsement*
- ◆ *Licensure by Grandfathering (on or before March 1, 2011)*

CSI's Paul Osley is officially licensed, in accordance with the new regulation in Florida, to provide Mold Assessment services.

New EOHS Terms, Concepts and Research Developments

Coming Soon: Derived No-Effect Levels (DNELs)

The publication of DNELs starting December 1, 2010 may have far-reaching consequences for industrial hygienists, analytical laboratories and other EOHS professionals. Essentially, DNELs are new, scientifically derived risk assessment tools similar to OSHA PELs. The DNELs are part of the strictest law ever enacted on chemical manufacturing by the European Union's Registration, Evaluation, Authorization and Restriction of Chemicals (REACH). REACH defines the DNELs as "the level of exposure to the substance below which no adverse effects are expected to occur. It is therefore the level of exposure to the substance above which humans should not be exposed. DNEL is a derived level of exposure because it is normally calculated on the basis of available dose descriptors from animal studies such as No Observed Adverse Effect Levels (NOAELs) or bench-mark doses (BMDs). Thus, developing a successful DNEL requires the manufacturers or importers of chemicals to provide a valid study. As hundreds possibly thousands of DNELs are developed and published, IH and EOHS professionals will have an obligation (i.e., industry standard of care) to consider these new limits in their effort to protect workers. It would be inappropriate to ignore a standard such as a DNEL during a risk assessment. Eventually, the DNEL may very well become a de facto PEL here in the U.S. for thousands of chemicals that have never been associated with a specific exposure level.

Season's Greetings!



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From all of us at Chastain-Skillman, we wish you a safe and happy holiday season!

This newsletter is provided solely for informational purposes and presents only highly condensed summaries relating to the topics presented. Therefore, it should not be relied upon as a complete record for purposes of regulatory compliance, nor is it intended to furnish advice adequate to any particular circumstances. For additional information on any of the topics in this newsletter, please contact the author, or Allan Duham, (863) 646-1402, or e-mail us.

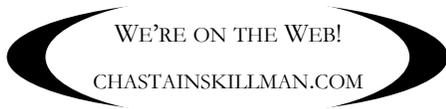
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