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Executive Director

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Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460-0001

VIA FIRST CLASS MAIL
VIA ON-LINE SUBMISSION
(Docket ID: EPA-HQ-OPPT-2005-0049)

RE: EPA's Proposed Rule – Lead; Renovation, Repair and Painting Program

To Whom It May Concern:

The Coalition to End Childhood Lead Poisoning (the “Coalition”) appreciates the opportunity to submit comments on the Lead Renovation, Repair and Painting Program proposed rule by the Environmental Protection Agency. In response to the Agency’s proposal, the Coalition has outlined specific concerns related to renovation work.

The Coalition is a 501(c)(3) non-profit organization that provides advocacy, outreach, and direct prevention services in Baltimore City and throughout Maryland. Since 1993, the Coalition has successfully managed over \$12 million in publicly and privately funded grant programs to provide direct services into at risk communities. The Coalition is considered the leader on the issues of childhood lead poisoning prevention and Healthy Homes initiative in Maryland. The goal of the Coalition is to prevent childhood lead poisoning, to help families with children who have been affected by lead poisoning and to end childhood lead poisoning by 2010. Our organization has lead the effort in Baltimore City to achieve a 92% reduction in lead poisoning since 1994. We provide a broad range of direct services that include hazard control, relocation, legal services, education and public policy work. The Coalition also provides lead technical assistance to many States and Cities including among others: Delaware, Washington, DC, St. Louis, Phoenix, and Miami. The Coalition’s mission is to ensure that every child has the opportunity to grow up in healthy environments so that they may reach their full potential.

While we applaud the EPA for promulgating the new renovation regulations, we are compelled to address EPA’s proposed Rule on Renovation, Repair, and Painting Program because we have several concerns. Our comments and recommendations on improving the proposed Rule are as follows:

I. Protection for Pregnant Women

A. As drafted, we are concerned that the Rule does not adequately protect persons most at risk for lead poisoning.

1. It is most concerning that the proposed rule does not include pregnant women in owner-occupied properties for protection. Only properties where children under age six (6) reside are provided for heightened protections from unsafe work practices under the proposed Rule. Pregnant Women are classified as persons-at-risk for lead hazards under all medical standards and they must receive a high level of protection.

OUR RECOMMENDATION: Include pregnant women, along with children under age 6, as a group to receive the highest levels of protection under the law.

II. Housing Units That Would be Covered by the Rule

A. The bifurcated phase-in of the Rule is unnecessary, at a minimum will cause confusion under Federal Law.

1. In Phase I, the rule would apply to renovations for compensation in:
 - a) All pre-1978 housing where the renovation company receives documentation that a child under 6 lives in the housing and has an elevated blood lead level above 10 µg/dl or lower if set by a State or Local authority; and
 - b) all pre-1960 owner-occupied or rental properties. In the case of owner-occupied housing, the rule will not apply if the renovation firm receives a waiver signed by the owner stating that no child under 6 resides in the house.

This is problematic and counter productive because a child under 6 can visit the owner's property, spend considerable amount of time per week on the property or the owner may sell the property to a buyer with plans for children or children under 6.

OUR RECOMMENDATION: eliminate the distinction for owner-occupied housing and do not permit waivers even if an owner proves a child under 6 does not reside in the property.

2. Phase II would apply to all rental target housing (pre-1978) and owner-occupied target housing (pre-1978) unless the waiver mentioned above is obtained.

- a) The phasing is problematic because it ignores the fact that at least a quarter of the housing units built between 1960 and 1978 contains lead-based paint.
- b) Renovations in these units pose the same risk as renovations in units built before 1960 that have lead based paint.
- c) Since the second phase is to take effect only a one-year after the first phase, we feel it would be more protective and cogent to have the Rule apply to all pre-1978 target housing from the onset of the Rule.
- d) The bifurcated phase process introduces another date (1960) into the federal regulatory scheme that will undoubtedly create confusion under current disclosure laws that require the distribution of information in all pre-1978 rental units and at the time of sale of any pre-1978 home.

OUR RECOMMENDATION: eliminate the phase-in process and require renovation procedures for all pre-1978 properties.

III. Training, Certification, and Accreditation

- A. We do not find the training, certification, accreditation provisions in the proposed rule adequate to protect the residents of target housing where renovations are taking place.
 1. Our major concern is that, as written, the proposed Rule does not require that the on-site workers receive any third-party training before performing renovation activities.
 - a) Under the proposed Rule, the EPA is only requiring that the renovation company doing the work have one person trained as a “renovator” to act as supervisor during the project but does not require that this training “renovator” be onsite continuously while the work is being undertaken.
 - b) The workers are not required to complete a training course but are permitted to receive on-the-job training from the renovation company's supervisor on lead-safe work practices.
 - c) Under the proposed Rule, one renovator can supervise multiple jobs.
 - d) Unsafe work practices can create more of a hazard then just leaving the lead-based paint intact.
 - e) The current reality in the United States is that a substantial amount of home improvement work is completed by non-English speaking workers and the proposal to only require on-the-job training overlooks the language barrier and health and safety of those workers and their families.

2. Our second concern with the training, certification and accreditation scheme proposed by EPA is that while the “renovator” has to receive third-party training, there is no test or evaluation at the end of this training.
 - a) This is concerning because not requiring any testing to receive the certification compromises the quality of training and provides no incentive for the “renovator” to take the training seriously.

OUR RECOMMENDATION: Require that all workers involved in renovation receive at least a one day, third party training (not just the supervisor) and pass an examination to be certified as meeting the law's basic requirements.

3. Our third concern with the training, certification and accreditation scheme is that there are no proposed renewals for supervisors and workers beyond the initial training.
 - a) Lack of such renewal training sessions does not give an opportunity for the “renovator,” worker, or contractor to keep current with changes in the field.
 - b) EPA’s lack of emphasis on renewing training conveys that lead hazard reduction methods are not evolving.

OUR RECOMMENDATION: require that all workers and supervisors conduct renewed training after initial trainings every year or two years, to update and inform them on changes in lead hazard reductions.

IV. Pre-Intervention Testing and “Clearance Wipes” at the Conclusion of the Renovations

- A. The proposed Rule provides for pre-intervention verification of lead-based paint utilizing a new, EPA approved lead testing kit and post-intervention testing by the renovator utilizing a new, EPA approved swab-wipe test to determine if unsafe levels of lead dust remain in the property.
 1. The pre-intervention lead-based paint testing kit is not currently an EPA approved product.
 2. The on-site swab-wipe testing which the proposed rule recommends is also not yet commercially available.
 3. In the past, the EPA has been critical of home testing kits and stated that data retrieved from such testing is not reliable. Therefore the proposed Rule appears to ignore EPA’s own standards and research for home lead testing kits.

4. In addition, we are concerned that since the pre-intervention lead-based paint test and the swab-wipe clearance test are not currently available as an EPA-approved product, this will serve as a method for further delay of the law's implementation and potential inaction if they are delayed in reaching the market.

- B. The Rule does not provide for any type of third party clearance at the end of the renovations or any method of independently verifying that lead-safe work practices were in fact employed. The failure to use lead-safe work practices can create a greater lead hazard than if no work was undertaken. Having contractors test and verify the safety of their own work is not a protective standard for children.

OUR RECOMMENDATION: We recommend that the law's implementation not be contingent on the development or approval of any new lead testing techniques or products. We also recommend that independent inspectors, not the contractor, conduct clearance examinations where renovation work has occurred.

V. Hazardous Work Practices

- A. The Rule is proposing to permit prohibited and unsafe work practices such as open flame burning, machine sanding, sandblasting, etc. The Rule would also create an exception to the Rule in emergency situations involving properties occupied by a child with an elevated blood lead level.
 1. By allowing practices that are prohibited during lead abatement to be used during renovation activities, the Rule is not prohibiting or restricting renovation work practices that are known to generate hazardous lead dust and debris.
 2. While we understand the need to expedite hazard reduction projects in properties occupied by children with elevated blood lead levels, the exception condones potentially unsafe work practices in the most at risk properties – where lead poisoned children reside. Poisoning properties already contain significant lead hazards and permitting unsafe work practices will only exacerbate those hazards.

OUR RECOMMENDATION: We recommend that the practices that are prohibited under 40 CFR 745 also be prohibited for renovation work in pre-1978 properties. We recommend that no exception to the Rule be established for properties occupied by lead poisoned children or children and pregnant women in general.

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For the outlined reasons, we respectfully request that the EPA address our comments and implement our recommendations where possible. We appreciate your consideration of these comments and the EPA's future support in helping the Coalition to achieve its goal of ensuring that all children (irregardless of race, color or income) grow up in affordable, healthy environments with the opportunity to reach their full potential.

Sincerely,



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