



SEP 28 2010

The Honorable James M. Inhofe
United States Senate
Washington, D.C. 20510-3603

Dear Senator Inhofe:

Thank you for your letter requesting information on the Occupational Safety and Health Administration's (OSHA) coordination with the Environmental Protection Agency's (EPA) implementation of its Lead: Renovation, Repair and Painting (LRRP) Rule, 40 CFR § 745.85. You have also asked if OSHA is aware of any conflicts between the EPA's LRRP Rule and OSHA's Lead Standard for Construction, 29 CFR § 1926.62.

OSHA has maintained interactions with the EPA through a memorandum of understanding between our agencies, which has been in effect since 1990, and includes participation in a federal interagency lead-based paint task force. The Department of Housing and Urban Development (HUD) co-chairs this interagency task force with the EPA, so they may be contacted for official records of these periodic interagency meetings.

In 2006, OSHA was informally asked by the EPA to review a risk study design and a health and safety plan, which the EPA developed for collecting data for the LRRP Rule. We offered a few informal comments on the risk study, but did not review the health and safety plan because of limited resources at the time. This correspondence is attached. Also around this period, when the EPA was developing training requirements and a model curriculum for the LRRP Rule, OSHA was informally asked if the EPA curriculum should include information on the OSHA Lead Standard for Construction, 29 CFR § 1926.62. We recommended that the OSHA Lead Standard and other OSHA standards, such as those addressing personal protective equipment and hazard communication, be identified within EPA's curriculum but we advised the EPA not to attempt to develop in-depth materials addressing the OSHA standards, because only site-specific workplace conditions can determine which OSHA standards apply. OSHA holds employers responsible for training their employees on whatever OSHA health and safety standards apply to their workplace activities, regardless of whether they are performed under the LRRP Rule. This aspect of the EPA's training was discussed in the preamble to the LRRP Rule:

[C]ommenters suggested that the required training elements include OSHA health and personal safety requirements. The Agency agrees that these are relevant topics. . . [T]he Agency believes that identifying potential OSHA requirements, rather than requiring in-depth curriculum components, is the best way to make trainees aware of those requirements and yet avoid redundancies between EPA- and OSHA-required courses. 73 Fed. Reg. 21727 (April 22, 2008).

Following the receipt of your letter and contact with your office, members of my staff contacted EPA-certified trainers in several states to learn of any problems that either instructors or students have encountered with regard to the Lead Renovator curriculum and compliance with OSHA standards. After compiling these comments, we reviewed the LRRP curriculum ourselves, which may be downloaded from the EPA's public Web site. We contacted the EPA with our suggested changes to their curriculum to better address OSHA's requirements involved in these construction activities. We have enclosed copies of our informal correspondence with the EPA on this matter. The EPA has accepted our suggested changes and is posting the updated curriculum.

In answer to your question on whether there may be any conflicts in compliance with both the EPA LRRP Rule and the OSHA Lead standard, our reply is that we believe there are no conflicts. We understand that both of these lead standards apply to contractors performing this hazardous work, even though the rules are designed for different purposes: the EPA rule exists to protect the environment and the public, especially children, where there may be lead-based paint; and the OSHA standard exists to protect workers exposed to any amount or form of lead (not just lead-based paint). We also realize these overlapping rules may cause concerns for affected building owners and contractors, but this illustrates why proper training is crucial to ensure the health and safety of all parties.

I appreciate receiving your letter. Please be assured that your concerns are important to us, and we are doing our best to address this matter. If we may be of further assistance, your staff may contact Sharon Block in the Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

A handwritten signature in black ink, appearing to read 'DM', with a long horizontal stroke extending to the right.

David Michaels, PhD, MPH

Enclosures

cc: Ms. Lisa Jackson, Administrator, EPA

McGowan, Larry - OSHA

From: McGowan, Larry - OSHA
Sent: Tuesday, July 06, 2010 5:17 PM
To: 'wilson.mike@epa.gov'; 'edmunds.marc@epa.gov'
Cc: Profitt, Audrey - OSHA; Dougherty, Francis A. - OSHA
Subject: RE: OSHA and EPA coordination on Lead Renovator Training
Attachments: EPA LRRP Trng - Scaffold Slide (OSHA Comments 7-6-10).ppt

Mike,

To follow-up on our conversation last week in our effort to respond to a Congressional inquiry into the Lead RRP Rule, listed here are the comments/concerns/responses that OSHA has regarding EPA's Lead Renovator training materials:

- Introduction, Slide #5, http://www.epa.gov/lead/pubs/rrp_8hr_intro_feb09.ppt#261,5, This Course... - OSHA contacted a training provider in Maryland that reported a concern about this slide with a bullet stating, "This course does not satisfy OSHA training requirements," and the trainer was not sure if he was adequately instructing students on how they may learn about OSHA's training requirements; OSHA's response is that some instructional information in fact appears in the Instructor's Manual, p. 5, http://www.epa.gov/lead/pubs/rrrp_8hr_instructormanual_feb09.pdf, which explains that "...For more information on OSHA requirements, visit www.osha.gov/Publications/osha3142.pdf," which is a link to an OSHA brochure on Lead in Construction, but the point is taken that this reference is limited to only one OSHA standard, and other OSHA requirements should also be mentioned, such as general safety requirements for scaffolds and ladders; OSHA's suggested correction is to add a reference in the Instructor's Manual to another helpful OSHA publication addressing general safety and health hazards in construction, OSHA 3252 Construction Pocket Guide, <https://www.osha.gov/Publications/osha3252.pdf>.
- Module 4, Slide #12, http://www.epa.gov/lead/pubs/rrp_8hr_mod4_feb09.ppt#313,12, Exterior Containment: Extra Precautions - OSHA contacted a training provider in Maryland that reported a complaint about this slide with a photograph of a worker standing on a scaffold that appears to be improperly constructed; OSHA's responses are annotated on the subject slide, attached to this e-mail; OSHA's suggested correction is to remove the photograph from this slide.
- Module 5, Slide #2, http://www.epa.gov/lead/pubs/rrp_8hr_mod5_feb09.ppt#286,2, Traditional Renovations Create Airborne Lead Dust - OSHA contacted a training provider in Pennsylvania that reported a complaint about this slide with a chart displaying air sampling results for lead exposures during hand sanding, power sanding, and interior demolition, but there was no citation or reference for the data, and the data may not be representative of all lead operations, especially those of short duration; a second comment concerned small employers asking how they may obtain air sampling for their own operations; OSHA's response regarding the chart of exposures is that the reference is in fact cited in the Instructor's Manual, p. 5-2, http://www.epa.gov/lead/pubs/rrrp_8hr_instructormanual_feb09.pdf, but the point is taken that the explanation may not sufficiently explain that the exposures were extrapolated as if the activities were performed for eight (8) hours; OSHA's suggested correction is to insert a comment to this effect in the Instructor's Manual, and to amend this slide that the OSHA PEL is an 8-hour time weighted average; OSHA's response to the employer's question on how to obtain air sampling is to add a statement or a link for small employers about OSHA's On-Site Consultation Service, <https://www.osha.gov/dcsp/smallbusiness/consult.html>, which offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to high-hazard worksites, and consultation services are totally separate from enforcement and do not result in penalties or citations.
- Module 5, Slide #5, http://www.epa.gov/lead/pubs/rrp_8hr_mod5_feb09.ppt#283,5, Protect Yourself, OSHA contacted a training provider in Virginia that reported concerns when instructing about PPE and respirators on this slide, and asserting that the students may be inadequately informed of OSHA requirements for respiratory protection; OSHA's response is that adequate instructional information in fact appears in the Instructor's Manual, p. 5-5, http://www.epa.gov/lead/pubs/rrrp_8hr_instructormanual_feb09.pdf, which mentions that OSHA provides additional information on respirators in 29 CFR 1910.134, but the point is taken that the slide could be

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improved, so OSHA recommends amending bullet, "Workers should wear disposable N-100, R-100 or P-100 respirator" with "(and follow OSHA standard, 29 CFR 1910.134, Respiratory Protection)" to ensure this point is made to the students.

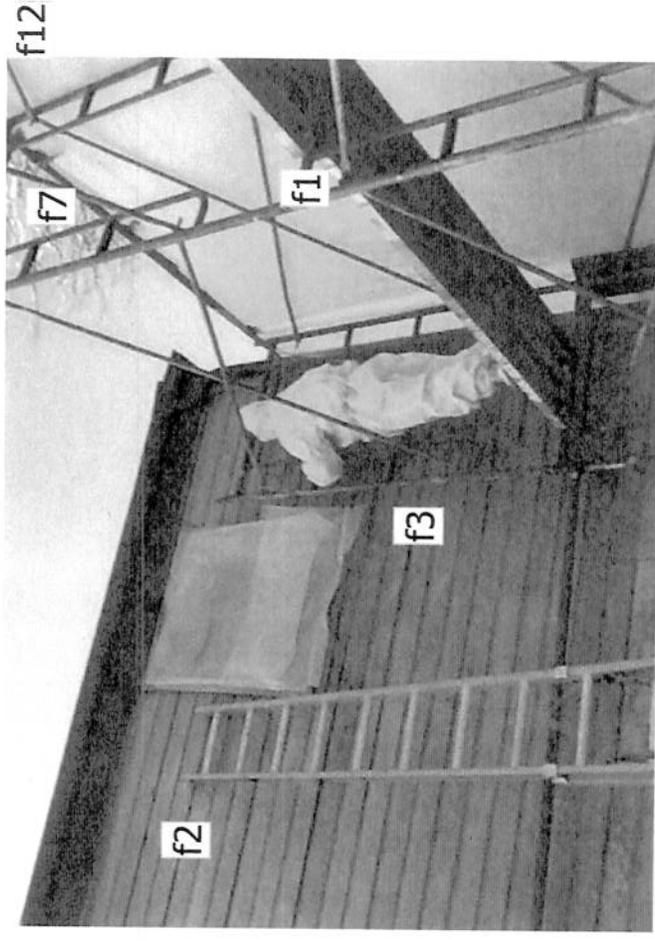
If these are changes that the EPA accepts and can implement through an update to the the EPA's posted training materials, please let us know. We hope these comments are helpful.

Larry McGowan, CIH, CSP
Acting Director, Office of Health Enforcement
Directorate of Enforcement Programs
Occupational Safety and Health Administration
Phone: (202) 693-1860
Fax: (202) 693-1681

Exterior Containment: Extra Precautions

- Extra precautions taken to prevent the spread of dust.
- Extending work area.
- Vertical containment.
- Avoid working in windy conditions, where possible.

f11



Slide 1

- f1** Scaffold is not fully planked
fdougherty, 6/29/2010
- f2** Ladder gives the impression that it was used to access the scaffold it is too far away from platform.
fdougherty, 6/29/2010
- f3** The cross braces do not appear to meet the minim requirements for use as a guard rail. Should also have a toe board .
fdougherty, 6/30/2010
- f7** scaffold does not show an acceptable method for accessing the platform.
The scaffold in the photo is of the type not acceptable for climbing.
fdougherty, 6/30/2010
- f11** Based on the obvious failures to comply we would question if any training of employees took place.
And if a qualified or competent persons were involved in the design and erection of the scaffold.
fdougherty, 6/30/2010
- f12** fdougherty, 6/30/2010

McGowan, Larry - OSHA

From: McGowan, Larry - OSHA
Sent: Tuesday, July 06, 2010 5:19 PM
To: 'edmonds.marc@epa.gov'
Subject: FW: OSHA and EPA coordination on Lead Renovator Training
Attachments: EPA LRRP Trng - Scaffold Slide (OSHA Comments 7-6-10).ppt

Marc,

Sorry I mistyped your address...

Larry McGowan
 OSHA

From: McGowan, Larry - OSHA
Sent: Tuesday, July 06, 2010 5:17 PM
To: 'wilson.mike@epa.gov'; 'edmunds.marc@epa.gov'
Cc: Profitt, Audrey - OSHA; Dougherty, Francis A. - OSHA
Subject: RE: OSHA and EPA coordination on Lead Renovator Training

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If these are changes that the EPA accepts and can implement through an update to the the EPA's posted training materials, please let us know. We hope these comments are helpful.

Larry McGowan, CIH, CSP
Acting Director, Office of Health Enforcement
Directorate of Enforcement Programs
Occupational Safety and Health Administration
Phone: (202) 693-1860
Fax: (202) 693-1681

Profitt, Audrey - OSHA

From: Annis, Jackie - OSHA
Sent: Friday, August 11, 2006 11:40 AM
To: 'brown.sam@epa.gov'
Cc: Fairfax, Richard - OSHA; Galassi, Thomas - OSHA; Sands, Melody - OSHA; Profitt, Audrey - OSHA
Subject: Safety and Health Plan

Dear Mr.. Brown:

Audrey Profitt and I appreciated the opportunity to participate in the Peer Review process for the lead abatement and renovation study. On August 4, 2006 we received your email requesting our review of the Safety and Health plan for the project. The purpose of this message is to inform you that we will not be providing you with a review of this document. The Directorate of Enforcement Programs provides interpretive guidance on compliance issues as they relate to specific OSHA regulations; we do not review, approve of or endorse employer's safety and health programs when they are provided to us outside of an enforcement venue.

Should EPA officially request guidance or interpretation of specific provisions of the OSHA regulations related to this project, we would be glad to provide you with that. Thank you again for requesting our assistance in the initial peer review process of EPA's design study, and we hope our input during that process was helpful to you.

Thank you

Jackie Annis
Audrey Profitt
OSHA
Directorate of Enforcement Programs

6/22/2010

Profitt, Audrey - OSHA

From: Schwemberger.John@epamail.epa.gov
Sent: Monday, July 31, 2006 4:44 PM
To: Annis, Jackie - OSHA; Profitt, Audrey - OSHA
Cc: Brown.Sam@epamail.epa.gov
Subject: Review of Health and Safety Plan for Study

Jackie and Audrey,

Could you review the Health and Safety Plan for the study you peer reviewed earlier this year? The Health and Safety Plan should be ready for review the week of August 7. Sam Brown will be handling the review. Sam can be reached at 202-566-0490 and brown.sam@epa.gov.

John Schwemberger
Statistician, US EPA

Mail Address:
Program Assessment and Outreach Branch
1200 Pennsylvania Avenue NW (7404T)
Washington, DC 20460

Overnight Delivery Address:
1201 Constitution Avenue NW
4th Floor Connecting Wing
Room 4355GG
Washington, DC 20004

202-566-1972 (phone)
202-566-0469 (fax)
schwemberger.john@epa.gov (email)

Profitt, Audrey - OSHA

From: Annis, Jackie - OSHA
Sent: Wednesday, April 26, 2006 11:26 AM
To: 'Schwemberger.John@epamail.epa.gov'
Cc: Sands, Melody - OSHA; Fairfax, Richard - OSHA; Profitt, Audrey - OSHA; Annis, Jackie - OSHA
Subject: RE: Peer Review of Study Design

Mr. Schwemberger:

We would be pleased to participate in the peer review of the Design Study to which you have referred. Please provide us with additional information as it becomes available. Prior to our involvement, however, we were hoping that you could also provide us with answers to the following questions:

- A) How will this study impact the final rule?
- B) Is it your expectation that OSHA will review only sections pertaining to worker protection?
- C) We are aware the Final Rule contains a section that defines worker protection. We were hoping that you could also provide us information on how this section of the EPA's final standard impacts OSHA's abilities to regulate lead exposures and employee protections under 29 CFR 1926.62?

Thank you - please feel free to contact us if you'd like -

Jackie Annis
202-693-2148

Audrey Profitt
202-693-2155

-----Original Message-----

From: Schwemberger.John@epamail.epa.gov
[mailto:Schwemberger.John@epamail.epa.gov]
Sent: Tuesday, April 25, 2006 2:02 PM
To: Annis, Jackie - OSHA; Profitt, Audrey - OSHA
Subject: Peer Review of Study Design

Jackie and Audrey,

I am writing to ask if you would be interested in peer reviewing the design of a study to characterize the lead levels associated with renovation, repair, and painting jobs that disturb more than 2 square feet of paint on a component. This study is being done to support the development of EPA's final rule for Renovation, Repair, and Painting.

The peer review is currently expected to start on May 1 and end on May 18. There may be some shifting of those dates. For the review documents, there would be approximately 75 pages of text to read.