

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
FRANK R. LAUTENBERG, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK

JAMES M. INHOFE, OKLAHOMA
DAVID VITTER, LOUISIANA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
LAMAR ALEXANDER, TENNESSEE
MIKE JOHANNIS, NEBRASKA
JOHN BOOZMAN, ARKANSAS

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
RUTH VAN MARK, MINORITY STAFF DIRECTOR

April 27, 2011

The Honorable Cass R. Sunstein
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

Dear Administrator Sunstein:

We are writing to express concerns about additional regulatory actions that the Environmental Protection Agency (EPA) is planning to take regarding the “Lead: Renovation, Repair and Painting Rule” (LRRP).

We understand that EPA has sent its final rule, “Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program,” to you for approval. Before you take action on this new proposal, we want to make you aware of the letter that we sent to EPA on April 15, 2011, just before they sent the final rule to you on April 18, 2011. As of today, we have not received a response from EPA.

We are concerned that the requirement for clearance testing following renovation work, a dramatic change to the program, will amplify the unintended consequences we have heard from our constituents: that the higher costs from current LRRP renovators have pushed homeowners to either hire uncertified individuals or to perform renovation work themselves. These outcomes run counter to the intent of the rule, which is to protect people from the potential dangers of lead dust.

In addition to our concerns about the program’s complexity causing fewer people to receive the benefits of the rule, we believe that the inclusion of clearance testing is counter to congressional intent under the Toxics Substances Control Act (TSCA). Congress made clear that renovation activity and abatement activity are separate. Renovation work is governed by section 402 of TSCA and abatement work is under section 405. Additionally, EPA’s own regulatory definitions support a clear distinction between the two activities. Requiring remodelers to comply with the same requirements as the abatement firms will blur the lines between renovators and abatement firms, potentially harming both.

Finally, we disagree with EPA’s assessment that this rule is not economically significant. EPA’s economic analysis of the rule included a significantly lower number of renovations that would require lead safe work practices due to the impending approval of “next generation” testing kits. Unfortunately, none of those kits have been approved. The current test’s high false positives rate has significantly increased the number of renovation jobs that require lead safe work practices—

and EPA's economic analysis does not take this much higher number into account. With unemployment in the construction sector hovering around 21 percent, changes to the complexity and costs of doing work need to be accurate.

Protecting pregnant women and children from lead exposure is important to all of us and we continue to support the intent of the LRRP rule. However, we remain concerned that this amendment will have the unintended consequence of driving people away from using LRRP certified renovators and missing the clear health benefits that come from employing LRRP renovators.

Thank you for your consideration of this important matter.

Sincerely,

James McElroy

ASusan M. Collins

David Vitth

Lamar Alexander

Chuck Grassley

John Hoeven

Tom Coburn

Ray Blunt

Michael B. Enzi

John Barrasso

Enclosure

Mike Johanns

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
FRANK R. LAUTENBERG, NEW JERSEY
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK

JAMES M. INHOFE, OKLAHOMA
DAVID VITTER, LOUISIANA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
LAMAR ALEXANDER, TENNESSEE
MIKE JOHANNIS, NEBRASKA
JOHN BOOZMAN, ARKANSAS

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA PORIER, MAJORITY STAFF DIRECTOR
RUTH VAN MARK, MINORITY STAFF DIRECTOR

April 15, 2011

Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

We are writing to express concerns about additional regulatory actions that the Environmental Protection Agency is planning to take regarding the "Lead: Renovation, Repair and Painting Rule" (LRRP).

We first contacted you with our concerns about the implementation of this rule in May 2009. Though implementation was difficult, the rule is now fully in place and, thanks to the June 2010 enforcement guidance, EPA has trained significantly more contractors than it initially estimated it would need for compliance.

However, we now understand that, as a result of a legal settlement, EPA has already proposed new amendments to the LRRP rule. These amendments would require renovators to conduct "clearance testing" following a project's completion to prove the presence or absence of lead in homes. We are concerned about this amendment for a number of reasons.

First, poor planning for the initial LRRP resulted in the rule taking effect without having enough opportunities for renovators to become certified, massive confusion among homeowners about the necessity of paying extra for the LRRP compliance measures, and an inadequate amount of lead test kits. Additionally, EPA significantly underestimated the cost of compliance for small businesses and individuals.

Dramatic changes to the program, such as the requirement for clearance testing, will likely impose significant confusion and complication for renovators and remodelers who have already completed their LRRP training and will also result in additional costs for homeowners and renovators to pay for the clearance testing. We have heard from a number of our constituents that the higher costs from current LRRP renovators have pushed homeowners to either hire uncertified individuals or to perform renovation work themselves. This is absolutely counter to the intent of the rule, which is to protect people from the potential dangers of lead dust.

Second, this new requirement is a clear violation of congressional intent under the Toxic Substances Control Act (TSCA). Congress made clear that renovation activity and abatement activity are separate. Renovation work is governed by section 402 of TSCA and abatement work is under section 405. Additionally, EPA's own definitions make it clear that abatement and remodeling are different activities. The regulatory definition of abatement not only excludes remodeling activities, but defines abatement as the identification and permanent elimination of lead hazards. Remodeling activities, on the other hand, are not required to eliminate lead hazards but instead to repair, restore, or remodel the existing structure. By requiring remodelers to comply with the same lead hazards as the abatement firms will blur the lines between renovators and abatement firms, potentially harming both.

Finally, the identification of a lead hazard in rooms where the renovations have not occurred by remodelers will make renovators liable for existing lead in the home. Many of the homes where this work will be done may already have lead levels exceeding EPA's federal hazard level prior to renovation work. Regardless of whether the lead levels were cleared or not, renovators must leave documentation that confirms the presence of lead in the home that must be disclosed to future buyers or tenants.

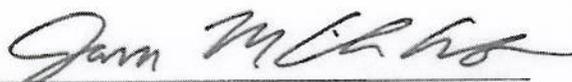
This amendment raises some serious questions for us:

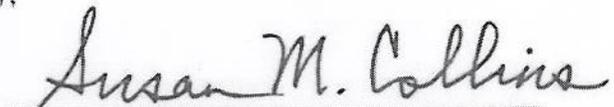
- Previous EPA studies have found that LRRP work practices and training requirements provide protection of public health. Has EPA received additional data regarding LRRP work practices and their health protections? We would be interested to review any new health or exposure data justifying an expansion of regulation to cover renovation work.
- Additionally, please provide us with the authority EPA has under TSCA to require remodelers to use clearance testing or dust wipe testing.
- Finally, it appears that EPA's initial cost estimate included a lower number of renovations requiring lead safe work practices due to approval of "next generation" testing kits. Unfortunately, none of those kits were approved. With the test's false positives, will EPA be revising its economic analysis of this rule, given the unavailability of new testing kits, and the higher number of jobs that require lead safe work practices?

Protecting pregnant women and children from lead exposure is important to all of us and we continue to support the intent of the LRRP rule. However, these amendments could have the unintended consequence of driving people away from using LRRP certified renovators and missing the clear benefits that come from employing LRRP renovators.

Thank you for your consideration of this important matter.

Sincerely,





Tim Witter

Chuck Grassley

John Barrasso

John Hoeven

Laura Alexander

Olympic Snow

Roy Blunt

Michael B. Enzi

Mike Johanns

Tom Carls