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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR  
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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 our concerns about additional regulatory actions that the Environmental Protection Agency is planning to take regarding the “Lead: Renovation, Repair and Painting Rule” (LRRP).

Following the finalization of EPA’s LRRP Rule, several lawsuits were filed and on August 24, 2009, EPA entered into a settlement agreement with some of the petitioners. In the settlement agreement, EPA agreed to commence rulemaking to address renovations in public and commercial buildings to the extent those renovations create lead-based paint hazards. As a result of this agreement, by December 15, 2011, EPA must issue a proposal to regulate renovations on the exteriors of commercial buildings and public buildings built before 1978. EPA must take final action on that proposal and propose regulations for the interior of buildings by July 15, 2013.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 gave EPA authority in the Toxic Substances Control Act (TSCA) to “apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards.” We are concerned that EPA is assuming that the majority of commercial buildings create a lead hazard without having the data to support it. In a 2010 report, EPA recognized the “scarcity of data related to dust exposures in public and commercial buildings and other non-residential settings,” and that an extensive literature search “revealed relatively little information concerning typical levels of floor and window sill dust lead in public and commercial buildings.” Yet EPA is moving forward at a very rapid pace to issue proposed regulations.

Additionally, under section 402(c)(2), EPA has an obligation to study “the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or

occasional basis.” Section 402(c)(3) says that EPA “shall utilize the results of the study under paragraph (2)” in determining what to regulate.

Relying on the dust studies done in residential settings and schools is not sufficient for promulgating rules on all existing commercial buildings. If EPA does not currently have sufficient data on the lead hazards in commercial buildings, it must study those lead hazards and gather that data prior to issuing regulations.

We are also concerned that the EPA seems to believe it can easily apply what it has done under residential LRRP to commercial buildings. Whereas a home owner or child care facility may only renovate a bathroom or kitchen once every 10 years, some commercial buildings are renovated continuously. Tenants move in and out of office buildings, requiring outfitting to meet their individual needs, mall shops move and change frequently, and many commercial and public buildings undergo upgrades to make them more energy efficient. Prior to issuing regulations, EPA must have a robust understanding of what renovation activities in public and commercial buildings entail, the frequency of these activities, and the relationship of these activities to ambient lead in the building. Without understanding what activities are likely to affect ambient lead levels in the building, EPA cannot write regulations and guidance that will actually create meaningful improvements to public health.

At a time when the nation’s building industry has been in a severe recession and faces an unemployment rate of nearly 21 percent, we need to make sure that the rules EPA is promulgating will not present additional barriers to economic recovery. We appreciate your attention to this letter.

Sincerely,

Jan McLaughlin

Susan M. Collins

Dan Vitter

Chuck Grassley

Olympic Snowy

John Barrasso

Roy Blunt

John Hovorn

Michael B. Enzi

Tom Coburn