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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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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 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,



Paul Vitter

Chuck Grassley

John Barrasso

John Hoven

Laura Alexander

Olympic Snow

Roy Blunt

Michael B. Enzi

Mike Johanns

Tom Carls