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8200 Greensboro Drive, Suite 302 McLean, VA 22102-3881 • (703) 442-4890 • Fax: (703) 442-0630 • www.wddalliance.org
8/10/2010

Mr. Robert Cramer, Managing Associate General Counsel
Applied Research and Methods Strategic Issues
Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Mr. Cramer:

This letter is in regards to a Proposed Rulemaking by the Environmental Protection Agency published in the Federal Register at 75 Fed. Reg. at 25038 (May 6, 2010), entitled *Lead: Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program* (the "Proposed Rule"). The Window & Door Dealers Alliance (WDDA) would like to bring your attention to certain deficiencies in the studies relied upon by the EPA in the promulgation of this Proposed Rule.

As you are aware, in 1992, the Residential Lead-Based Paint Reduction Act was passed by Congress, which was codified in part at 15 U.S.C. §§ 2681-2692. This added a new subchapter to the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, (TSCA), which required the EPA to develop regulations designed to reduce exposure to lead by establishing requirements for parties involved in maintenance, remodeling, and construction activities in certain types of buildings, including target housing (15 U.S.C. § 2682).

The EPA published a regulation regarding the Lead Renovation, Repair and Painting Program for renovation, repair and painting activities in target housing in 2008 (73 Fed. Reg. at 21692, April 22, 2008) (the "LRRP Rule"). Target housing is generally defined as any residential structure built prior to 1978 where a child under six resides or is likely to reside (See 42 U.S.C. § 4851b(27)). The LRRP Rule was created to reduce exposure to lead hazards created by renovation repair and painting activities that disturb lead-based paint. Specifically, the LRRP Rule "establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping" (73 Fed. Reg. at 21692).

TSCA section 402(c)(2) requires the EPA to establish regulations after conducting studies on guidelines it created for persons involved in renovation and remodeling of target housing (15 U.S.C § 2681). As such, the EPA conducted four studies: *Lead Exposure Associated with Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study* (Phase I); *Lead Exposure Associated with Renovation and Remodeling Activities: Phase II: Worker Characterization and Blood-Lead Study* (Phase II); *Lead Exposure Associated with Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood-Lead Study* (Phase III); and *Lead Exposure Associated with Renovation and Remodeling Activities: Phase IV, Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovation of Old or Historic Homes* (Phase IV) (collectively called, The Studies).

Phase I analyzed airborne lead levels from each workers breathing zone during conduct of the activity (Phase I, EPA 747-R-96-007, May 1997). The workers had not been trained or completed any certification requirements that would have enabled the workers to limit their exposure, handle the work project more efficiently, or clean up the area using more than a dry mop or shop vacuum. *Id.* As such, these factors were considered by the EPA in its LRRP Rule where it implemented training, certification, and accreditation regulations (See LRRP Rule). Yet, the EPA, without conducting another study to

determine if the LRRP Rule reduced the lead exposure to the workers, plans to impose further regulations in an attempt to reduce the potential harm to the workers (See Proposed Rule).

In Phase II the EPA acknowledged that 90% of the workers did not use respirators, 88% did not use the correct cleanup methods recommended, and 99% used dry sweeping (Phase II, EPA 747-R-96-006, May 1997). The EPA also noted that 67% of workers had not received any materials on lead hazards and 87% had no training on the removal of lead based paint (*Id.*). This study also was relied upon by the EPA in formulating its LRRP Rule and in the Proposed Rule yet again, the EPA did not determine if the results would have changed after implementing the LRRP Rule in 2008.

The Wisconsin Childhood Blood-Lead Study focused on children's exposure to lead during renovation and remodeling activities (Phase III, EPA 747-R-99-002, March 1999). This study demonstrated that when remodeling and renovation projects were performed, lead dust hazards were created and that children had higher blood lead levels when the work was not performed by a professional (*Id.*). Even with knowing that work performed by the homeowner, friend or relative raised the blood lead levels in children higher than if work was performed by a professional, the EPA's LRRP Rule and Proposed Rule does not apply to this group because the EPA's rules only apply to professional workers (See LRRP Rule; See also Proposed Rule). Therefore, the individuals who created the most risk of exposing lead dust hazards to children are not required to undergo any certification, training or accreditation before performing renovation or remodeling in target housing (*Id.*). The EPA is seeking to impose a higher standard for workers to follow without determining if these new regulations were needed because the LRRP Rule requirements could help eliminate the need for the Proposed Rule requirements.

The final study, Phase IV, compared both workers and homeowners who performed remodeling and renovation (Phase IV, EPA 747-R-99-001, March 1999). Here, it is shown that only 23.7% of the workers used respirators, and when they did, almost half only used a dust mask (*Id.*). An overwhelming majority, 76%, did not receive any lead exposure training (*Id.*). Yet the EPA is seeking to implement new rules without determining if the LRRP Rules would elevate any of the concerns of the EPA regarding the amount of lead dust exposure to children and adults.

The EPA is basing its Proposed Rule on the results of the Studies performed in 1997 and 1999. These Studies were taken prior to the EPA's enactment of the LRRP Rule which were also relied upon in the formulation of that rule as well (See 73 Fed. Reg. at 21698 para. 6). While the EPA did utilize studies conducted in 2006 and 2007, for its LRRP Rule, both of these studies had flaws in their methodology which can skew the results (See LRRP Rule at 21698-21699). The EPA stated, it is more difficult to evaluate the effect of disturbing lead-based paint in the NAHB Survey, since the survey did not involve collecting samples after work had been performed but before the post renovation cleaning had begun (*Id.* at 21699).

The Regulatory Studies Program, Mercatus Center, at George Mason University reported that the lead hazards created by renovation and remodeling work are minimal. See Comments of The Regulatory Studies Program, Mercatus Center, George Mason University at 30 (Mercatus Report, May 25, 2006). This report cited that the Studies conducted by the EPA did not give rise to the conclusions made in the implementation of the LRRP Rule (See Mercatus Report at 23). The EPA did not adequately show the causal connection between the results of the Studies, the promulgation of the LRRP Rule and the proposed implementation of the Proposed Rule.

All of the Studies were conducted prior to the time when the participants had received any training or materials on the effects of Lead-Based Paint on how to avoid being placed at risk. The EPA has stated in the executive summaries for the Studies that the participants were not wearing protective masks, using ventilators, or trained in the handling or removal of debris that has Lead-Based Paint (See Executive Summaries attached). As such, the lead dust that remained after the work was completed, the elevated blood lead found in the workers, the processes employed in the removal of lead based paint, and the lack of safety equipment used by the workers will be considerably higher than if studies were employed after the implementation of the LRRP Rule.

The WDDA's contention is not whether the EPA has the authority to promulgate rules on Lead-Based paint, which is evidenced by the TSCA. Our contention is with the Studies the EPA relies upon in order to formulate their rules. The EPA based its Proposed Rule on the Studies that were conducted prior to observing if the new standards as provided in the LRRP were warranted. The LRRP Rule created standards for those involved in the renovation, repair, and painting of target housing to follow. After these standards are imposed and complied with, the EPA should conduct more studies to determine if further regulations as directed in the Proposed Rule are necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Walker".

David W. Walker
Vice President
Window & Door Dealers Alliance