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Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave., NW.,
Washington, DC 20460-0001

May 24, 2006

**Re: Comments on EPA's Lead Renovation, Repairs, and Paint Proposed Rule
Docket ID: EPA-HQ-OPPT-2005-0049**

On Behalf Of: Public Employees for Environmental Responsibility (PEER) and the
Organization for a New Eastside.

Section 402 of the Toxics Substance Control Act (TSCA) requires the Environmental Protection Agency (EPA) to adopt regulations controlling lead-based paint (LBP) hazards in target housing, public buildings constructed before 1978, and commercial buildings that create LBP hazards. Lead is a toxic substance, which can cause serious health problems in every stage of human life, including adulthood. However, despite the well known dangers of lead and LPB, the EPA has neglected to comply with their legal obligations under TSCA for nearly a decade. Now, the EPA's proposed Lead Renovation, Repairs, and Paint Rule is riddled with shortcomings, which will only compound EPA's unjustifiable delay in complying with TSCA.

Only after a lawsuit was filed against the EPA by PEER and others on December 20, 2005 for its egregious delay to comply with TSCA, did the EPA finally propose this rule.

Yet, incredibly, EPA's belated proposed rule fails to protect even the most susceptible populations, children and pregnant women, from lead poisoning caused by renovations. These obvious shortcomings of EPA's Lead Renovation, Repairs, and Paint Proposed Rule, merely compound the agency's dereliction of duty and prolong the adoption of effective prevention measures.

I. EPA'S PROPOSED RULE FAILS TO ADDRESS LBP HAZARDS IN DAY CARE CENTERS, COMMERCIAL AND PUBLIC BUILDINGS AS REQUIRED UNDER TSCA

A. Day Care Centers Not Protected

EPA's proposed rule neglects to address lead hazards in commercial and public buildings, including child care centers. This omission is a blatant failure on the part of EPA to comply with their legal obligations under TSCA Section 402, to adopt regulations controlling LBP hazards regarding public and commercial buildings.

In addition, EPA's failure not only violates TSCA's mandate, but it also puts children within child care centers, known by the EPA to contain LBP hazards, at an extremely high risk for lead poisoning due to renovations that could cause dust and soil lead contamination.

The National Environmental Health Survey of Child Care Centers (CCC), which was conducted by the EPA, in conjunction with the Department of Housing and Urban Development (HUD) and the Consumer Product Safety Commission (CPSC), showed: (1) an estimated 14,200 or 14% of licensed child care centers in the United States have significant LBP hazards; (2) that an estimated 28,000 or 28% of licensed child care centers in the continental United States have LBP on interior or exterior surfaces, or both; and (3) an estimated 15,800 or 16% of child care centers have deteriorated LBP. (First National Environmental Health Survey of Child Care Centers, Final Report; Volume I: Analysis of Lead Hazards (July 15, 2003, pg. 5-10)

Elevated lead blood levels in children can cause stunted growth, convulsions, mental retardation and death. In addition, LBP hazards, such as contaminated dust and soil that result from renovations, have the highest rate of causation for childhood lead poisoning. (First National Environmental Health Survey of Child Care Centers, Final Report; Volume I: Analysis of Lead Hazards, pg. 10; July 15, 2003, pg. 10; National Safety Council; <http://www.nsc.org/library/facts/lead.htm>, last visited March 24, 2006).

The annual cost of elevated blood lead levels in children may be as high as \$43.4 billion. (Environmental Pollutants and Disease in American Children: Estimates of Morbidity, Mortality and Costs for Lead Poisoning, Asthma, Cancer, and Developmental Disabilities; Center for Children's Health and the Environment (www.childrenenvironment.org/reports/Environmental-Paper.htm)). Not only are the economic losses of lead poisoning high, the individual impacts on children and families can be devastating. EPA must do all it can to reduce children's exposures to lead and other environmental pollutants.

B. Commercial and Public Buildings Not Covered

While children are especially vulnerable to the effects of exposure to lead, adults are also at risk. Elevated lead blood levels in adults can result in high blood pressure, fertility complications, nerve disorders, muscle and joint pain and memory and concentration problems. Therefore, EPA's failure to address public and commercial buildings in their

proposed rule is not only unacceptable because it fails to protect the public in general from lead hazards.

II. EPA'S PROPOSED RULE FAILS TO ADOPT REGULATIONS CONTROLLING LBP HAZARDS FOR ALL TARGET HOUSING AS REQUIRED BY TSCA

TSCA requires the EPA to adopt regulations controlling LBP hazards in "target housing" which the Act defines as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities), or any 0-bedroom dwelling. However, EPA's proposed rule utterly fails at accomplishing this statutorily-mandated task.

Instead of providing protections for all target housing, the EPA has presented a "pick and choose" proposed rule, making its own decisions as to what target housing should be subject to regulations controlling LBP hazards and what target housing should not.

Specifically, EPA's proposed rule is to be implemented in two stages, both of which are incomplete because they implement regulations controlling LBP hazards in certain target housing, and not others. TSCA, however, does not provide that the EPA shall adopt regulations controlling LBP hazards for only some target housing. To the contrary, TSCA's mandate is for all target housing, with very specific and limited exceptions, to which EPA's broad and sweeping target housing exclusions under the proposed rule bear no resemblance.

A. Significant Stocks of Target Housing Remain Uncovered

Under the first stage, the renovating firm only has to implement controlling LBP hazard regulations if the firm has been notified by the owner or occupier that: (1) a child under six years of age resides in the house; and (2) that the child already has a dangerously high blood lead level (elevated blood-lead level greater to or equal to 10 [mu]dL or a state or local government level of concern).

In addition, under the first stage, if the renovating firm does not give the owner or occupier the opportunity to notify the firm that a child under six years of age resides in the house and the child has the prerequisite dangerous lead blood level, the regulations only apply to target houses built prior to 1960. However, TSCA defines target housing as houses built prior to 1978. Therefore, the first stage of EPA's proposed rule completely excludes houses built between 1960 and 1978, an eighteen year span that TSCA mandates be included.

B. Children under Age 6 Remain Unprotected

Therefore, children living in target housing as defined by TSCA, who are six years of age or older, or who are under six years of age, but are not yet suffering from alarmingly high lead blood levels, are not included in the first stage of this proposed rule. In addition, children and pregnant women living in target housing, built between 1960 and 1978, are also excluded.

C. Exclusion of Older Children from Protection Is Unjustified

Although TSCA makes note under its definition of target housing that houses of the elderly or persons with disabilities are not included in the definition of target housing unless a child who is less than 6 years of age resides or is expected to reside in the house, TSCA at no point states that target housing does not include houses where children aged six or older reside. The EPA has wrongfully expanded this very specific age language found only in limited exceptions under TSCA, to encompass the entire definition of target housing.

Although studies have shown that small children age six and under and fetuses, are most susceptible to lead because their brains and central nervous system are still being formed, children ages six and older are also susceptible to the extremely harmful effects of lead poisoning, such as stunted growth.

In addition, female children who are exposed to lead and grow up to become mothers are likely to pass the lead stored in their bones from their childhood exposure onto their fetus. For these reasons, EPA's arbitrary age line fails to provide a valid basis for excluding these older children from the protections promised by TSCA.

D. Pregnant Women Unprotected

Additionally, if the renovating firm obtains a statement from the owner that the renovations are occurring in the owners own residence and that no child under six years of age resides there, then the rule does not apply at all under the first stage. Therefore, the proposed rule completely fails to account for a situation where the owner sells the house or rents the house to a family with young children or a pregnant woman, after the renovations have taken place and the LBP has been allowed to contaminate the entire house, including dust and soil. Since lead consists of very small particles that can even penetrate dust masks and requires a special respirator to avoid breathing it in, it becomes a part of the atmosphere of a house, contaminating the air, dust and soil in and around the house and cannot be easily cleaned away.

Pregnant women can easily transfer elevated lead blood levels from themselves to their fetus. For example, if a woman has ever been exposed to lead, even prior to becoming pregnant, the pregnancy can trigger the release of lead stored in her bones that can be transferred to the fetus. Of these groups, young children and fetuses (pregnant women) are the most susceptible to lead poisoning caused by LBP found in dust and soil resulting from renovation, repair and paint (renovations). In addition, this type of dust and soil contamination is the cause of most childhood lead poisonings. (First National Environmental Health Survey of Child Care Centers, Final Report; Volume I: Analysis of

Lead Hazards, pg. 10; July 15, 2003, pg. 10; National Safety Council; <http://www.nsc.org/library/facts/lead.htm>, last visited March 24, 2006).

E. Proposed Second Stage Does Not Cure Impermissible Gaps of Coverage

Under the second stage, the proposed rule will be implemented in all rental target housing renovations, however not all owner-occupied target housing as defined by TSCA will be included. Specifically, if the renovating firm obtains a statement from the owner that the owner actually occupies the house and no child under six years of age resides there, the firm is under no obligation to implement any of the renovation regulations.

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Although, the second stage expands the percentage of target housing included in the proposed rule, it still neglects to include a significant portion of target housing as defined by TSCA. In addition, the second stage does not even begin the implementation process until one year after the first stage has begun. Therefore, many children and pregnant women living in target housing will have to wait at least another year after implementation of a final rule to be afforded protections by the second stage, and unfortunately, because of the short comings of the second stage itself, many never will.

Again, the proposed rule completely disregards the possibility that the owner could sell the home or rent the home that is now contaminated by high levels of lead, due to the unmitigated effects of the renovations, to a family with children or to a pregnant woman. Therefore, children and pregnant women who live in target housing will again be left unprotected by the proposed rule.

III. EPA'S PROPOSED RULE WILL HINDER IMPLEMENTATION OF THE PROPOSED RENOVATION REGULATIONS

The two-stage approach presented in EPA's proposed rule is convoluted, confusing and excessively lengthy. As described in the previous section, there are two completely separate phases for implementation under the proposed rule, which require the protections of the regulations to be implemented at different times. In addition, each of these two separate phases has many diverse components, exceptions and scenarios for application.

In order for the contracting firms to implement the rule correctly, they have to consider each component, exception and scenario for application, after they have already had to figure out which stage is applicable. Therefore, not only are the protections afforded by the first and second stages inadequate, but they are so confusing that contracting firms will not be able to follow the proposed rule in order to correctly implement its regulations and the EPA will have to spend an exorbitant amount of time just explaining the rule to contractors. Thus, because the EPA will have to spend such a large amount of time explaining the rule, actual enforcement time will be neglected, causing enforcement of the rule to be insufficient.

IV. EPA “WHITE GLOVE” TEST PUTS CHILDREN AND PREGNANT WOMEN AT RISK FOR LEAD POISONING

EPA’s proposed rule provides that the “white glove” test is to be used in order to verify that no lead hazards are present following renovation and the house is safe for occupancy. However, the “white glove” test is an insufficient method for detecting lead hazards and therefore puts children and pregnant women at risk for lead poisoning.

The white glove test provides absolutely no numeric data or factual information about the presence or absence of lead. It merely provides visual data for measuring apparent cleanliness, which has been proven unreliable. For example, a 2002 study by the National Center for Healthy Housing showed that out of 121 units, 54% of them passed a visual test, like the white glove test, but actually failed numeric data tests for acceptable lead levels. (National Center for Healthy Housing, An Evaluation of the Efficacy of the Lead Hazard Reduction Treatments Prescribed in Maryland Environmental Article 6-8. April 30, 2002.)

Moreover, at best, the white glove test only assesses the outer coat(s) of paint. Earlier coats of paint, which may be far more likely to contain lead, would not be detected by the white glove test.

Therefore, relying on the white glove test in order to indicate whether or not a property is safe for children and pregnant women in regards to lead hazards is unacceptable; especially when other methodologies for lead testing exist that provide reliable numeric data.

V. EPA SHOULD PROPOSE A SIMPLE UNIVERSAL RULE THAT DEPENDS UPON MINIMAL AGENCY ROLE IN IMPLEMENTING

EPA has been remarkably unreliable and duplicitous in implementing its lead-related programs. Aside from the Agency’s secret attempt to abandon its lead repair and renovation rulemaking responsibilities, the Agency has been secretive, grudging and counterproductive in formulating even this utterly inadequate proposal.

In addition, despite EPA claims that it provides Head Start centers with materials and that it distributes 500,000 lead prevention materials a year, such materials are not being distributed. If EPA cannot even follow through on pledges to distribute preventive educational materials, how can the Agency be relied upon to perform more complicated tasks involving contractor and homeowner assistance?

CONCLUSION

In conclusion, EPA’s proposed rule violates TSCA because: (1) it fails to address child care facilities public and commercial buildings, (2) it fails to implement regulations controlling LBP hazards for all target housing and that fail to protect children and pregnant women; (3) the phasing system is so confusing that it will hinder

implementation of the rule; (4) it uses the unreliable white glove test to determine whether or not a house is safe for occupancy following renovations; and (5) it relies on a seemingly congenitally unreliable Agency to undertake involved implementation efforts.

PEER and the Organization for a New Eastside understand that the EPA is concerned with the cost to contracting firms that may result from the adoption of regulations controlling LBP hazards. However, the greater concern before us is the health of children and pregnant women who are being severely harmed by the effects of lead poisoning.

Therefore, PEER and the Organization for a New Eastside ask that the proposed rule be amended in order to protect all children and pregnant women by provided an adequate Lead Renovation, Repairs, and Paint Proposed Rule that affords effective protection for all target housing, public buildings constructed before 1978, and commercial buildings that create lead hazards, as defined by TSCA.

Please contact me at (202) 265-7337 if you require any clarification on these comments.

Sincerely,

Jeff Ruch
Executive Director
PEER