

Congress of the United States
Washington, DC 20515

May 9, 2005

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460-0003

Dear Mr. Johnson:

We are writing to express our concern regarding EPA's apparent abandonment of regulations required by law to protect children from exposure to lead in renovated homes.

The Toxic Substances Control Act requires EPA to set national standards for lead-safe renovation and remodeling practices. These regulations would protect children, their families, and construction workers from one of the largest sources of exposure to lead. Although EPA has avoided making a formal announcement of its decision, the agency has apparently decided to forego issuing these regulations. Instead, EPA plans to ask the construction industry involved in home renovation and remodeling to voluntarily implement protective practices. EPA's actions do not comply with the law, and they utterly fail to protect our children from a toxic substance that can cause severe developmental damage.

Lead Harms Children

The devastating health effects of lead, especially on developing fetuses and young children, are well documented. Lead is a potent neurotoxin that has especially debilitating effects on children, damaging the brain and nervous system and impairing development. As EPA's website states, the health effects can include "behavioral problems, learning disabilities, seizures and death."¹

Over the past several decades, strong EPA programs have significantly reduced the incidence of lead poisoning in our children, but there is still a long way to go. Recognizing the severe harm that comes from exposing children to lead, the federal government has set a goal of ending childhood lead poisoning by 2010.² But we are falling far short of this goal. The Center for Disease Control (CDC) estimates that in 2000, there were 434,000 children in America with dangerous blood lead levels over 10 micrograms per deciliter.³ Lead poisoning also has environmental justice implications. The harm caused by lead poisoning disproportionately affects

¹ U.S. EPA, *Lead in Paint, Dust, and Soil* (online at <http://www.epa.gov/lead>).

² President's Task Force on Eliminating Environmental Health Risks and Safety Risks to Children, *Eliminating Childhood Lead Poisoning* (2000) (online at <http://www.epa.gov/lead/fedstrategy2000.pdf>).

³ CDC, *Childhood Lead Poisoning Prevention Program: Statement on EBLLs* (online at <http://www.cdc.gov/nceh/lead/research/kidsbll.htm>).

poor and minority families. Fully 22% of African-American children living in pre-1946 housing have lead poisoning.⁴

In the United States, major sources of exposure to lead are lead-based paint and lead-contaminated dust.⁵ Forty percent of all American homes have lead paint somewhere in the building, and 27 percent of homes have significant lead-based paint hazards.⁶ People are exposed to the lead when the paint chips or turns to dust and the chips or dust are inhaled or consumed.

Remodeling and renovation work in houses with lead paint can be hazardous because painting, removing carpets, changing windows, or other basic construction work can leave lead dust in the air, around homes, and in soil. EPA's own studies of lead exposure during and after renovation and remodeling projects indicate that "all [renovation and remodeling] activities deposited significant amounts of lead onto floors... Occupants could be exposed to this lead if appropriate containment practices are not employed."⁷ With 20 million remodelings or renovations occurring each year in housing at risk for lead contamination,⁸ this is an issue that affects communities all across America.

In addition to being especially susceptible to the health effects of lead exposure, children are also more likely to be poisoned by lead dust in homes because of their daily habits, including simply playing in their homes. The CDC states: "More commonly, children ingest dust and soil contaminated with lead from paint which flaked or chalked as it aged or which has been disturbed during home maintenance or renovation. This lead-contaminated house dust, ingested via normal repetitive hand-to-mouth activity, is now recognized as a major contributor to the total body burden

⁴ James L. Pirkle, *Exposure of the U.S. Population to Lead, 1991–1994*, Environmental Health Perspectives, 745 (Nov. 1998).

⁵ CDC, *About Childhood Lead Poisoning* (Oct. 2003) (online at www.cdc.gov/nceh/lead/about/about.htm).

⁶ Office of Lead Hazard Control, U.S. Department of Housing and Urban Development, *National Survey of Lead and Allergens in Housing, Final Report, Volume I: Analysis of Lead Hazards*, Revision 6.0, E-1, 5-1 (Apr. 18, 2001) (online at www.hud.gov/offices/lead/techstudies/HUD_NSLAH_Vol1.pdf).

⁷ U.S. EPA, *Lead Exposure Associated with Renovation and Remodeling Activities, Summary Report* (May 1997) (EPA 747-R-96-005) (online at <http://www.epa.gov/lead/rfinalsummaryreport.pdf>).

⁸ U.S. EPA, *U.S. Environmental Protection Agency Lead Safety Partnership (LSP) Voluntary Initiative, Briefing for the Deputy Administrator* (May 19, 2004).

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of lead in children.”⁹ In too many places, lead poisoning from these activities has already happened. For example, in one community in Chicago over 18% of the children under six have harmful levels of lead in their blood.¹⁰

Action by EPA could go a long way toward solving this problem by requiring contractors to implement simple steps when doing renovation work in areas at risk for lead contamination. Unsafe work practices allow lead dust to be released throughout a home in the course of renovation and remodeling work. Yet reasonable precautions, such as sealing and carefully cleaning up work areas and wearing protective clothing and washing it after work, can prevent lead poisoning. EPA found that a remodeling and renovation regulatory program would protect 1.4 million children and prevent 28,000 lead-related illnesses every year. In economic terms, EPA estimated that the result would be a net benefit of between \$2.7 and \$4.2 billion annually.¹¹

Requirements of the Toxic Substances Control Act

In 1992, Congress adopted the Housing and Community Development Act, which added a title to the Toxic Substances Control Act on lead exposure in homes. These provisions were intended to reduce a major source of lead poisoning by safeguarding against lead exposure from lead paint in homes. Title IV of TSCA requires EPA to issue rules to protect children, families, and construction workers from lead exposure resulting from activities such as lead paint abatement and renovation and remodeling in residences.

In August 1996, EPA promulgated the first set of regulations required under Title IV to ensure that contractors performing projects to abate lead-based paint hazards are trained and certified, and that they use lead-safe work practices. TSCA also requires EPA to extend these safeguards to cover other forms of home renovation that can be dangerous to children’s health.

Specifically, section 402(c)(2) of TSCA required EPA to conduct a study of the extent to which persons are exposed to lead or disturb lead and create a lead-based paint hazard during remodeling and renovation activities. EPA complied with this requirement and found that “there is

⁹ CDC, *Preventing Lead Poisoning in Young Children* (Oct. 1991) (online at <http://wonder.cdc.gov/wonder/prevguid/p0000029/p0000029.asp>).

¹⁰ City of Chicago Department of Public Health, *Blood Lead Testing Data by Chicago Community Area in 2003* (online at http://egov.cityofchicago.org/city/webportal/portalContentItemAction.do?contentOID=536920868&contentTypeName=COC_EDITORIAL&topChannelName=Dept&blockName=Health%2FLead%2BPoisoning%2BPrevention%2BProgram%2FI%2BWant%2BTo&context=dept&channelId=0&programId=0&entityName=Health&deptMainCategoryOID=-536891845).

¹¹ U.S. EPA, *Economic Analysis of Proposed TSCA Section 402(c)(3) Rule* (Feb. 2002).

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a potential for significant amounts of lead to be disturbed by [renovation and remodeling] activities, well over the current EPA guidance.”¹² Section 402(c)(3) then requires EPA to extend the regulations addressing lead-based paint abatement projects to include contractors engaged in renovation and remodeling activities that create lead-based paint hazards, relying in part on the results of the study.¹³ The purpose of these regulations is to extend the requirements for training, certification, and use of lead-safe work practices to all contractors engaged in renovation and remodeling that creates lead-based paint hazards.

EPA was required to issue the rules by 1996. However, EPA has not yet issued these rules, which are now nine years overdue.

Current Status of EPA Rulemaking

Despite the unambiguous statutory requirement for EPA to issue regulations governing renovation and remodeling activities that risk dangerous lead exposure, EPA has apparently recently decided not to issue the rules. Instead it appears that EPA now intends to develop a pilot voluntary program that leaves lead-safe remodeling practices optional, even for contractors working in homes with young children. This is unacceptable.

As of 2003, EPA was working on the lead renovation and remodeling rule. EPA’s semi-annual Regulatory Agendas and Regulatory Plans showed that the agency planned to issue a proposed rule in 2004 and a final rule in 2005.¹⁴ EPA staff had completed an extensive economic analysis to support a regulatory proposal.

However, while you were Deputy Administrator of EPA, the agency apparently decided to abandon this rulemaking. EPA made no public announcement of this decision, but agency documents indicate that EPA has quietly ceased its work on the regulations required under TSCA.

A briefing paper entitled “U.S. Environmental Protection Agency Lead Safety Program Voluntary Initiative, Briefing for the Deputy Administrator, May 19, 2004,” reveals that you were presented with a choice as to whether to complete the rule or to pursue an alternative approach. The alternative was a plan to merely *encourage* lead-safe remodeling and renovation practices through a voluntary, collaborative program for contractors engaged in remodeling and renovation in housing

¹² U.S. EPA, *Lead Exposure Associated with Renovation and Remodeling Activities, Summary Report* (May 1997) (EPA 747-R-96-005) (online at <http://www.epa.gov/lead/rfinalsummaryreport.pdf>).

¹³ Toxic Substances Control Act, section 402(c)(3).

¹⁴ U.S. EPA, *Fall 2003 Regulatory Agenda*, 68 Fed. Reg. 245 (Dec. 22, 2003) (online at <http://www.epa.gov/fedrgstr/EPA-GENERAL/2003/December/Day-22/g28903.htm>).

with lead paint. This alternative would begin with a pilot program that would involve a small number of contractors in just two cities.

After this briefing, EPA apparently stopped work on the rule in favor of the voluntary approach. EPA's next regulatory agenda, published in June 2004, dropped the renovation and remodeling rule and added a "Voluntary Program for Renovation and Remodeling." EPA's fall 2004 regulatory plan states, "As an alternative to the regulatory program, EPA is working with stakeholders to develop a voluntary program for renovations and remodeling activities."¹⁵ The voluntary program was supposed to "partner the Agency and national organizations together to promote an initiative which could provide incentives to participating contractors and property owners who incorporate lead safe work practices into their standard operating procedures."¹⁶

Failure to Protect Children from Lead Poisoning

In addition to violating the requirements of the law, a voluntary approach will fail to protect children from the health effects of lead. A voluntary approach is unenforceable, is unlikely to be effective, would take years to implement, and requires substantial new funding that is simply not provided for in EPA's budget.

EPA has identified lead safe work practices that will greatly reduce exposures. Under a voluntary approach, there would be no requirement to use these practices and no ability to enforce them. Given the serious and ongoing threats to children from lead poisoning in renovated homes, taking minimal protective actions should not be optional. This is why Congress required EPA to promulgate regulations to address this problem.

It is also unclear what specific incentives a voluntary program could provide and whether such incentives would have any significant impact in changing current behavior. According to EPA, there are more than 250,000 contracting businesses that do remodeling and renovation work. EPA acknowledges that few contractors currently use lead safe work practices and there is little public demand for them.¹⁷ One potential incentive identified by EPA is that a participating contractor would be allowed to use a program logo.¹⁸ While this may have some appeal for some contractors, it appears highly unlikely that this would drive most or even many contractors to

¹⁵ U.S. EPA, *Regulatory Plan* (Fall 2004) (online at [http://ciir.cs.umass.edu/ua/Fall2004/regplan/environmental_protection_agency_\(EPA\).html](http://ciir.cs.umass.edu/ua/Fall2004/regplan/environmental_protection_agency_(EPA).html)).

¹⁶ *Id.*

¹⁷ U.S. EPA, *U.S. Environmental Protection Agency Lead Safety Partnership (LSP) Voluntary Initiative, Briefing for the Deputy Administrator* (May 19, 2004).

¹⁸ *Id.*

undertake training and change their work practices. Even with respect to the contractors that participate, meaningful oversight and verification would be a huge and continuing challenge.

Moreover, a voluntary program will only further delay meaningful action to eliminate lead poisoning in homes. The briefing on the Lead Safety Program Voluntary Initiative indicates that EPA expected it to take up to five years before the program “takes on its own momentum.”¹⁹ In contrast, in 2003, EPA anticipated issuing a final rule in only two years.²⁰ In the face of this threat to children’s health, EPA has displayed remarkably little urgency or concern for those who may be hurt by this added delay.

Additionally, voluntary programs of this type are very resource intensive, and EPA is facing budget cuts that probably preclude any such new initiatives. A full-scale national voluntary program would presumably entail outreach efforts to contractors across the country, as well as a consumer education campaign to promote demand for contractors who adopt lead-safe work practices. The Administration’s budget requests for EPA’s lead program have decreased by almost 30% from FY04 to FY06.²¹ Last year, EPA’s entire lead risk reduction program received only \$11 million. It appears that a lack of funding may have prevented EPA from completing even the planned first steps for developing the pilot program.²² The reality is that EPA probably has insufficient funding to carry out even the proposed small pilot version of a voluntary lead safety program, let alone a full-scale national voluntary program.

Finally, there is widespread public opposition to EPA’s new voluntary approach. On March 31, 2005, 95 public health, community, and environmental organizations, along with many concerned doctors, nurses, and other professionals, wrote to you protesting EPA’s decision to abandon this rule and EPA’s failure to protect America’s children from lead poisoning.²³ These groups ranged from national organizations such as the Alliance for Healthy Homes and the National

¹⁹ *Id.*

²⁰ U.S. EPA, *Regulatory Plan* (Fall 2003) (online at [http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_\(EPA\).html](http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_(EPA).html)).

²¹ U.S. EPA, *Summary of EPA Budget FY04* (online at <http://www.epa.gov/ocfo/budget/2004/2004bib.pdf>); U.S. EPA, *Summary of EPA Budget FY06* (online at <http://www.epa.gov/ocfo/budget/2006/2006bib.pdf>).

²² *See* U.S. EPA, *Regulatory Plan* (Fall 2003) (online at [http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_\(EPA\).html](http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_(EPA).html)) (stating deadlines for EPA to issue *Federal Register* notices announcing pilot projects in December 2004 and May 2005).

²³ Letter from Alliance for Healthy Homes et al. to Stephen L. Johnson, Acting Administrator, EPA (Mar. 31, 2005).

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Association of County and City Health Officials, to local groups such as seven local chapters of the Arc of the United States and many children's health and environmental advocates. In April, the attorneys general of New York and Illinois also wrote to urge you to issue these regulations.²⁴

Flawed Process and Decision-Making at the EPA

We are also deeply troubled about how EPA arrived at this decision. It appears that the agency has striven to avoid imposing *any* costs on the businesses that engage in renovation and remodeling, while accepting continued extensive harm to public health. In the process, EPA has disregarded the law, science, and economic principles of maximizing benefits.

The law requires EPA to issue a regulation. The scientific consensus is that lead is a serious threat to children's health, and the federal government has set a goal of eliminating childhood lead poisoning by 2010. EPA's own studies show the potential for significant lead exposure from remodeling and renovation activities. EPA's own analysis found that a regulation would be effective and would provide health benefits to the American public valued at \$5.8 billion annually.²⁵ Depending on the stringency of the rule, EPA estimated the costs would range from \$1.7 to \$3.1 billion annually, producing net benefits of between \$2.7 and \$4.2 billion annually.²⁶

Nonetheless, after you were briefed on the issue, EPA halted work on the rule in favor of a voluntary program. The only publicly available explanation states that "a rule is likely to have a potentially significant economic impact. In an effort to minimize that impact, the agency has worked with stakeholders to explore the development of non-regulatory approaches."²⁷

Thus, it appears that EPA made the decision to abandon a national lead safety rule in favor of a voluntary approach based solely on a desire to avoid costs to the contracting industry. While an internal agency document claims that a voluntary program would be more "cost-effective," it is unclear what the basis is for this assertion.²⁸ EPA conducted a sophisticated analysis of the estimated costs and benefits of several regulatory approaches. Yet EPA appears to have done no analysis to ascertain what level of benefit, if any, would be expected under a voluntary approach.

²⁴ Letter from Lisa Madigan, Attorney General, Illinois, to Stephen L. Johnson, Acting Administrator, EPA (Apr. 5, 2005); Letter from Eliot Spitzer, Attorney General, New York, to Stephen Johnson, Acting Administrator, EPA (Apr. 7, 2005).

²⁵ U.S. EPA, *Economic Analysis of Proposed TSCA Section 402(c)(3) Rule*, 6-3 (Feb. 2002).

²⁶ *Id.*

²⁷ U.S. EPA, *Regulatory Plan* (Fall 2003) (online at [http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_\(EPA\).html](http://ciir.cs.umass.edu/ua/Fall2003/regplan/ENVIRONMENTAL_PROTECTION_AGENCY_(EPA).html)).

²⁸ U.S. EPA, *U.S. Environmental Protection Agency Lead Safety Partnership (LSP) Voluntary Initiative, Briefing for the Deputy Administrator* (May 19, 2004).

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Finally, prior to making this decision, EPA met with representatives from industry and some unidentified states and localities.²⁹ Based on EPA's summary of its discussions with "stakeholders," EPA apparently did not consult with medical professionals, public health advocates, children's health advocates, educators, environmental organizations, or community groups.³⁰ Such one-sided discussions are contrary to EPA's past practice, cannot be considered fair process, and are unlikely to produce sound decisions that enjoy public support.

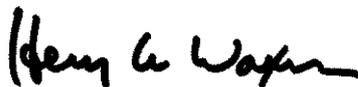
Conclusion

The successful effort to phase out many uses of lead over the past several decades is one of the triumphs of public health in this country. However, we still must finish the job. Even today, hundreds of thousands of children in this country have harmful amounts of lead in their bodies, acquired from old sources of lead in their homes, in the soil, and in their drinking water. The consequences of failing to address this problem will be dire for another generation of children.

The issuance of rules to prevent the poisoning of families as their homes are remodeled is long overdue. We urge you to move forward on this rulemaking with the urgency it deserves.

Attached are some questions on this matter. We look forward to receiving your responses by June 1, 2005. Thank you for your consideration.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives



Barbara Boxer
Ranking Minority Member
Subcommittee on Superfund and Waste
Management
Committee on Environment and Public
Works
U.S. Senate

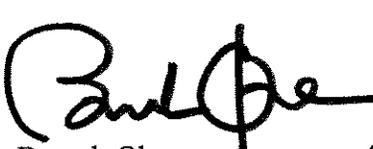
²⁹ *Id.*

³⁰ *Id.*

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Barack Obama
United States Senator

Stephen Lynch
Ranking Minority Member
Subcommittee on Regulatory
Affairs
Committee on Government Reform
U.S. House of Representatives



Ed Towns
Member
U.S. House of Representatives

Attachment

Attachment

1. As Deputy Administrator, you were apparently briefed on May 19, 2004, on whether EPA should comply with the statutory requirement to issue a rule mandating lead-safe work practices for remodeling and renovation, or whether EPA should stop work on the rule in favor of a voluntary approach. The stated purpose of the briefing was to “receive direction on our recommended approach.” During or after this briefing did you decide (or endorse a recommendation by others) that EPA would abandon the rule and pursue the voluntary approach?
2. If you did not make this decision, who did?
3. What is EPA’s claimed legal rationale for not following the specific statutory requirements to promulgate these regulations?
4. Existing regulations under the Safe Drinking Water Act are supposed to protect against lead in drinking water. As demonstrated by the recent crisis in the District of Columbia, as well as drinking water test results from other cities, these regulations are not protecting children from exposure to high levels of lead in drinking water. In responding to the crisis in the District and calls to strengthen the drinking water regulations, EPA has pointed to lead-based paint in older housing as the “most common source of lead exposure for children today.” The implication is that if we really want to address the problem of lead exposure, EPA believes we should be focusing on lead-based paint in older houses, not strengthening the drinking water rules. The reality is that EPA is doing neither.

Considering the existing, although inadequate, lead in drinking water regulations and the threat of lead-based paint in old houses, how can EPA justify devoting even less effort and choosing a less effective, non-regulatory approach to the source of lead exposure it has identified as the greatest threat?

5. An EPA study projected significant benefits from a regulation mandating lead-safe renovation and remodeling practices. Has EPA conducted a study to evaluate the effectiveness of a voluntary program?
6. What, if any, scientific evidence does EPA have to indicate that a voluntary approach would protect as many children from lead poisoning as would a regulatory approach?
7. A voluntary program to encourage contractors to use lead-safe work practices would necessitate a national outreach effort to over 250,000 businesses, with 1.7 million employees. Presumably, it would also require educating the millions of consumers who remodel homes each year to encourage them choose contractors who use lead-safe work practices, even though such practices might slightly increase their costs. What would be the annual cost of such a program?

8. Assuming EPA applied the level of funding identified above, please detail projected results. E.g., how many contractors would participate? How many renovation and remodeling jobs would be conducted using lead-safe work practices? How many children would be protected?
9. The Administration has requested almost 30% less funding for EPA's lead program in FY06 compared to FY04. Does EPA have the funding to carry out the relatively expensive national voluntary program it is contemplating?
10. Lead poisoning disproportionately affects poorer communities, and older, urban neighborhoods consistently have higher numbers of children with elevated levels of lead in their blood. Has EPA analyzed the environmental justice implications of its proposed approach? What, if any, evidence is there that a voluntary approach for remodeling and renovation would not, in practice, protect mainly wealthier consumers who would be more likely to choose more expensive contractors who use lead-safe work practices? Why wouldn't greater numbers of poorer and minority consumers, already hit hardest by lead poisoning, continue to suffer disproportionately from contractors who do not protect against lead poisoning?
11. EPA's Regulatory Plan issued in the fall of 2004 states that EPA will issue a notice in December 2004 announcing its first pilot voluntary project and will issue a notice in May 2005 announcing its second pilot voluntary project. EPA has not yet issued the first notice. What is EPA's current timeline for implementing the pilot projects described in its Regulatory Plan?
12. What is EPA's timeline to comply with the requirements of TSCA section 402(c)(3)?
13. EPA's effort to develop regulatory safeguards to protect children and workers from lead contamination from remodeling and renovation has been underway for over ten years. EPA has already completed an extensive economic analysis to support the rule, and EPA previously indicated in the 2003 regulatory agenda that it would take two years to complete a final rule. Will abandoning these efforts in favor of a new, voluntary approach lead to a longer wait before America's children are protected from lead as they play in their own homes? How long would it take to fully implement a voluntary approach?
14. EPA apparently developed this voluntary approach after consultation with "stakeholders."
 - a. For meetings held since September 1, 2002, please provide the dates, and names and affiliations of the participants for each meeting between EPA employees and outside parties related to the development of a voluntary program for renovation and remodeling practices.

- b. Please provide the same information as above with respect to telephone conversations.
 - c. Please provide copies of all materials exchanged, including e-mails, since September 1, 2002, between EPA employees and outside parties related to the development of a voluntary program for renovation and remodeling practices.
15. Has EPA consulted with interested parties other than industry representatives, such as children's health experts and environmental and community advocates?