



July 24, 2015

James Jones, Assistant Administrator  
United States Environmental Protection Agency  
Office of Chemical Safety & Pollution Prevention  
1200 Pennsylvania Avenue, NW, (7101M)  
Washington, DC 20460

Re: Docket#: EPA-HQ-OPPT-2005-0049;  
Comments on Lead; Renovation, Repair and Painting Program; Lead Test Kit

Dear Assistant Administrator Jones,

I am writing on behalf of the 1,117 members of the Northeastern Retail Lumber Association (NRLA) in response to the Environmental Protection Agency's (EPA) review of the lead testing kit requirement from the original 2005 Lead Renovation, Repair, and Painting (LRRP) Rule. NRLA represents independent lumber and building material dealers, manufacturers, wholesalers, distributors, and other associated businesses in the Northeast, including Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, which employ over 80,000 residents and constituents across the Northeast.

On May 14, 2015, U.S. Environmental Protection Agency (EPA) published a notice of public meeting in the *Federal Register* announcing a "Lead; Renovation, Repair and Painting Program; Lead Test Kit Stakeholder Meeting."<sup>1</sup> The EPA is seeking to address three fundamental concerns of the LRRP Rule:

1. The existing market for lead test kits as referenced in the 2008 Lead; Renovation, Repair and Painting Program rule;
2. The development or modification of lead test kit(s) that may meet the EPA's positive-response criterion (in addition to the negative-response criterion); and
3. Other alternatives for lead-based paint field testing.

On behalf of NRLA's members, we appreciate the opportunity to comment on this important issue that affects our industry. I would like to discuss the issues members have faced with the lack of reliable testing kits under the LRRP Rule and that this has done to the remodeling market, whether the kits can be improved to meet the required standards, and alternatives that EPA is considering to replace the testing kits.

#### **Lack of Available Kits under the LRRP Rule**

The original LRRP rule called for testing to be conducted before commencing work and after all completed work to be tested to make check for the presence of lead. The rule called for a kit that produces no more than 10% false positives and false negatives; however, no commercially available kit is currently able to meet that standard. The EPA itself previously acknowledged that there is no viable kit that meets their required criteria. EPA's Acting Assistant Administrator wrote in a letter to NAHB, "Despite the EPA's commitment of resources to this effort, to date

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<sup>1</sup> 80 *Federal Register* 27621-27623 (May 14, 2015)

no company's test kit has met both of the performance criteria outlined in the Lead RRP Rule. The EPA is unaware of any test kit currently available or under development that would meet the positive criterion." The letter went on to note that the test kits recognized by EPA currently have a false positive rate of 22.5% to 84%, far above the EPA stated limit of 10%."<sup>2</sup>

Faced with this dilemma, contractors and remodelers have been forced to do extra remediation work due to the high rate of false positives and the cost for remodeling has risen unnecessarily. Additionally, the lack of a viable kit means that the LRRP Rule is being increasingly applied to projects that should have been excluded from the rule. This increased costs drive consumers to seek contractors and remodelers who will bypass the LRRP Rules to reduce the costs of the project. This hurts all involved, especially the contractor or remodeler who has invested their time, money, and resources, to maintain compliance with the LRRP Rule.

### **Creating a Viable Testing Kit**

At this time, NRLA does not see any new or viable testing kits entering the market. After seven years, no manufacturer has been able to create a testing kit that meets the requirement of the LRRP Rule of less than 10% false positives and false negatives. This is not due to a lack of trying or testing, as many manufacturers have attempted to meet this threshold, but have found it out of their current reach. The EPA has approved two testing kits, but those kits only meet the false positive threshold and are unable to meet the false negative threshold.

With this information at hand, and the knowledge that no company believes a breakthrough in on the horizon, it seems impractical to think that after seven years of attempts a new testing kit is going to suddenly appear on the market that can meet the requirements of the 2008 LRRP Rule.

### **Alternatives Moving Forward**

There appears to be three options that EPA is currently considering moving forward based on the assumption that a viable testing kit will not become readily available: XRF testing, sending paint chip samples to an outside laboratory, and assuming that all homes built prior to 1978 contain lead paint.

#### Hand Held XRF Testing

Hand held XRF testing is not a practical alternative to having a reliable and affordable test kit. XRF is a complicated testing procedure that must be done by an accredited professional. This is not something that contractors and remodelers can readily be certified to perform due to both the time and capital investment constraints, both of which are an antithesis to the foundations that the LRRP testing rule was based on. XRF testing would create a dramatic cost increase to the remodeling and renovation process while also requiring either substantial capital increase or the hiring of a third party vendor, resulting in delays in projects.

#### Samples Sent to Accredited Laboratories

Require all remediation and remodeling projects under the LRRP Rule to submit samples of paint chips for testing by an EPA accredited laboratory would also dramatically subvert the intent of the LRRP Rule. The rule called for reliable testing which the renovator could perform themselves. Having to collect, send, and then wait for results for an outside laboratory would be both time consuming and add dramatically to the time and cost of a renovation or remodeling project. This option dramatically rewrites the structure of the LRRP Rule and would substantially harm contractors and remodelers diligently working to comply with the rule.

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<sup>2</sup> Jones, James J. – Acting Assistant Administrator, Environmental Protection Agency. Letter to Ms. Tayyaba Waqar – Program Manager Environmental Policy for National Association of Home Builders. 31 July 2013.

Assuming the Presence of Lead in All Home Built Prior to 1978

The final alternative suggested has been to assume that all homes built prior to 1978 contain lead and therefore treat them all as if they would fall under the LRRP Rule whether or not lead is actually present. This option will result in an excessive over-application of the rule, which leads to higher regulatory costs for consumer and contractors while also reducing the efficiency and basis for the rule in the first place. This is not a solution to the problem, rather it is simply a widening of the net in an attempt to ignore the real issue and further burden homeowners with a regulation that may not apply to them.

If the EPA is to consider this alternative, then it must be done in conjunction with reinstating the opt-out provision that was originally in the LRRP Rule. The original LRRP Rule let homeowners decide whether or not they wanted to have extensive measures taken when dealing with lead paint, with the exception of homes with pregnant women and/or homes with children under six, as evidence points to lead paint disproportionately affecting these two groups. Nonetheless, the EPA removed the opt-out clause, not due to scientific evidence, but rather as part of a “sue and settle” agreement. This unnecessary and unilateral decision doubled the number of homes subject to the LRRP Rule and the EPA itself estimated that this change added between \$800 million and \$1.3 billion in the first year of compliance alone.<sup>3</sup> By reinstating the opt-out clause, this would allow homeowners to once again make the informed choice on how they want to handle the presence of lead paint, with the exception of those most vulnerable to lead paint, homes with pregnant women and/or children under six.

NRLA is pleased that the EPA has put forth this issue and is looking for ways to change or revise the original rule to meet with the real world experiences and problems that have been seen since this regulation went into effect. We fully support the need to address the section the LRRP Rule concerning testing kits, but do not believe a viable alternative has been presented at this time. As no new kits appear to be on the horizon, moving to more complicated, expensive, and time consuming options does to better the regulation or those forced to work under it. Nor does forcing the regulation onto more homes without a compelling reason or need address the true issues found within the LRRP Rule. Unless a viable, affordable option that falls within the original intent of the rule thus allowing the renovator to have a reliable and affordable testing kit that they can use and perform the test themselves, the best available option remains to allow the opt-out clause to be returned to the LRRP Rule, as it was when the rule went into effect.

If you have any questions or if you would like to discuss this matter further, please contact Jeff Keller, Director of Legislative & Regulatory Affairs, at 518.880.6376 or by email at [jkeller@nrla.org](mailto:jkeller@nrla.org) for additional information.

Sincerely,



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<sup>3</sup> Walthall, Susan M. - Acting Chief Counsel, Office of Advocacy, Small Business Administration. Letter to Lisa Jackson – Administrator of the Environmental Protection Agency. 27 November 2009.