



National Center for Healthy Housing

March 16, 2006

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Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,
Washington, DC 20460-0001
ATTN: Desk Officer for EPA, 17th St., NW Washington, DC 20503

Re: Docket ID: EPA-HQ-OPPT-2005-0049

The National Center for Healthy Housing (NCHH) respectfully submits these comments regarding EPA's Lead; Renovation, Repair, and Painting Program. We understand that the Agency is seeking comments early in the rulemaking process so that it may continue working expeditiously toward its goal of publishing a final regulation in early 2007. In that spirit, we would like to offer initial comments on the proposed cleaning verification activity and reoccupancy-related aspects of the rule. More detailed comments on this issue are forthcoming.

EPA's regulation includes a "white glove" methodology for verifying that no lead hazards remain following a renovation, repair, or painting job, and that the home is safe for reoccupancy. We believe EPA's reliance on this methodology instead of the proven clearance dust testing methodology puts occupants at significant risk and fails to protect contractors from liability.

Clearance dust testing is the only objective methodology for determining the safety of a unit following renovation, repair, and painting.

Clearance dust testing has been the primary method for determining the safety of a unit for over a decade. Studies show that dust wipe loading correlates well to blood lead levels.^{1,2} This method is the best method for determining the true risk to a child. In addition, dust wipe measures have been shown to be both reliable and valid. While the white glove methodology

¹ Lanphear, B., Matte, T., Rogers, J., Clickner, R., Dietz, B., Bornschein, R., Succop, P., Mahaffey, K., Dixon, S., Galke, W., Rabinowitz, M., Farfel, M., Rohde, C., Schwartz, J., Ashley, P., Jacobs D., 1998. The contribution of lead-contaminated house dust and residential soil to children's blood lead levels: A pooled analysis of 12 epidemiologic studies. *Environ Res* 79:51-68.

² Lanphear, B., Weitzman, M., Winter, N., Tanner, M., Yakir, B., Eberley, S., Matte, T., 1998. Lead-contaminated Housedust and Urban Children's Blood Lead Levels. *Am J Public Health* 86:1416-1421.

Building a lead-safe and healthy home environment for all children

shows promise as an innovative approach to determining the risk of a home following renovation, it has not been correlated with blood lead levels, and it fails to provide factual information about the presence or absence of lead or a specific numeric result that can be compared with EPA's established lead hazard standard. Extensive research supports the fact that visual examinations are not sufficient to determine whether a unit contains invisible lead dust. A 2002 NCHH study found that of 121 units enrolled, 54% passed a visual yet failed clearance levels (at that time clearance levels were 100 µg/sq.ft. on floors, 500 µg/sq.ft. on window sills, and 800 µg/sq.ft. on window troughs).³

The subjectivity of visual “white glove” tests creates serious risks for consumers and does not give them the information they need to protect their children..

Because the white glove test does not provide a numeric result, a family is given limited information from which to make informed decisions and worse yet, may be given a false sense of security. The Rochester study showed that 20% of children exposed to a floor dust lead level of 40 µg/sq.ft. had blood lead levels greater than 10 µg/dL and the baseline floor levels in homes enrolled in the National Evaluation were 17 µg/sq.ft. Error! Bookmark not defined. In other words, although the federal floor dust standard is set at 40 µg/sq.ft., there is sufficient evidence to suggest that floors well below this standard may endanger children. Property owners and residents should be provided quantitative information so they can choose what actions to take based on those levels. For instance, a clearance test could reveal that dust lead levels in the work area on floors are just below the EPA standard of 40 µg/sq.ft. Although the contractor would have met the legal obligation, the property owner or residents may wish to take steps to carry out additional cleaning. The white glove test's result would simply tell a property owner or resident that the floors met a measure for apparent “cleanliness” as compared with the EPA-developed visual verification card.

Excluding clearance dust testing from the regulation undermines other federal, state, and local efforts and will cause unnecessary confusion in the industry.

Hundreds of state and local agencies rely on clearance as part of other federal grant programs and existing state and local policies. HUD's regulation, which applies to all federally-assisted housing (more than 1 million units were covered in the first year of the regulation), requires clearance dust testing nearly universally whenever painted surfaces above de minimis levels are disturbed. Experience with the HUD rule demonstrates the practicality, usefulness, and feasibility of widespread adoption of clearance requirements. EPA's rejection of clearance as the measure of lead safety could unravel current state and local laws and prevent the promulgation of such requirements in the future. The result of the decision will be widespread confusion among those carrying out renovation work regulated by multiple agencies regarding whether a clearance dust test is required. The final rule should clearly state that the EPA rule is not intended to preempt existing more stringent requirements to be consistent with TSCA Section IV.4 (e), which states, “nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this

³ National Center for Healthy Housing. 2002. An Evaluation of the Efficacy of the Lead Hazard Reduction Treatments Prescribed in Maryland Environmental Article 6-8. April 30, 2002.

title. In addition, where these rules and HUD's rules at 24 CFR 35 apply to a particular renovation, the more stringent requirements apply."

One of the most egregious instances of undermining existing regulations is the proposed rule's failure to include a test that would need to be disclosed in future real estate transactions under the Federal Lead Disclosure Rule. HUD and EPA Disclosure regulations state that "[t]he seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces."

The results of a lead-dust wipe test clearly must be disclosed. Since EPA is using the white glove test as a surrogate for lead dust hazards and if EPA includes this unproven test method in its final regulation, then the results should not be concealed and should be disclosed. In addition, since EPA does not require the renovation firm to provide the results to the owner in the form of a document, the information would not be disclosed under the broader requirement that "[t]he seller or lessor shall provide the purchaser or lessee with *any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards* in the target housing being sold or leased. This requirement includes records and reports regarding common areas. This requirement also includes records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole."

If EPA decides to include the white glove test in the final rule, it should require that the results be given to the owner and the occupant in writing and expressly state that the results of the White Glove Test must be disclosed to a potential buyer or tenant.

Clearance is the only methodology that is proven to provide valid results for carpeted floors. Hundreds of thousands of homes in the United States contain wall-to-wall carpet. It is likely that many of the activities covered under the EPA regulation would occur in rooms with wall-to-wall carpet, yet EPA has stated that the white glove technology should be used only on bare floors. This presents an enormous and dangerous loophole for occupants of these homes. The clearance methodology has been effectively used on carpeted floors. Lanphear et. al showed a significant correlation between dust lead in carpets and children's blood lead. That study showed that about 19.8 percent of children would have blood lead levels at or above 10µg/dL with carpeted floors at 40 µg/sq. ft. a percentage that is not significantly different from the 19.7 percent found with hard-floors.⁴ Similarly, the Rochester study showed that a child's blood lead was significantly

⁴ Lanphear B.P., Weitzman M., Winter N., Eberly S., Yakir B., Tanner M., Emond M., and Matte T. 1996. Lead contaminated house dust and urban children's blood lead levels. Am J Public Health. 86: 1416-1421.

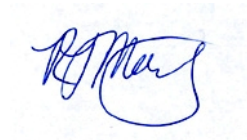
correlated with dust wipe loadings collected from carpeted and uncarpeted floors.⁵ The HUD protocol for sampling carpets is widely accepted and used.

Recommendations:

- Make clearance dust testing a mandatory requirement in the final regulation.
- Carry out large-scale field tests to determine whether the white glove test produces valid results when carried out by contractors across the country and determine whether the test correlates with blood lead levels.
- Make clear that more stringent state and local requirements for clearance (and other elements of the rule) would apply
- Clarify that the results of the white glove test are discloseable under the Federal Lead Disclosure Rule.
- Require clearance dust testing for carpeted rooms where renovation, repair, and repainting occur above de minimis levels.

Please contact me at 410.772.2774 or rmorley@centerforhealthyhousing.org to discuss these comments.

Sincerely,



Rebecca Morley
Executive Director

⁵ Lanphear B.P., Emond M., Jacobs, D.E., Weitzman M., Tanner M. Winter N., Yakir B. and Eberly S. 1995. Side-by-side comparison of dust collection methods for sampling lead-contaminated house dust. Environmental Research. 68:114-123.