

**Comments of the Real Estate Industry Coalition  
on EPA's Approach for Developing Lead Dust  
Hazard Standards for Public and Commercial Buildings**

**Submitted to**

**The Science Advisory Board Lead Review Panel**

**December 6, 2010**

Thank you for the opportunity to present these comments regarding EPA's *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings* (Nov. 5, 2010) ("*EPA Approach*"). These comments are submitted on behalf of a coalition of trade associations (the "Coalition") whose members are involved in almost every aspect of commercial real estate development and management.<sup>1</sup> The Coalition represents the members of the regulated community that will be the most affected by any regulations that might be adopted by EPA with respect to renovation, repair and painting activities in public and commercial buildings. The lead hazard standards that are the subject of this Panel's deliberations will play a key role in any future regulations EPA might adopt to address potential lead-based paint issues associated with renovation, repair and maintenance-related activities in a wide variety of public and commercial buildings. Accordingly, the Coalition members have a substantial interest in the Agency's development of lead hazard standards that may be applied to renovation, repair and painting activities in these types of non-residential settings.

The Coalition has not had an opportunity to engage in a detailed technical evaluation of EPA's proposed approach to developing lead hazard standards for public and commercial buildings. However, even a brief review of the Agency's proposed approach has given us cause for concern in a number of areas.

In particular, as EPA itself has noted and a number of the Panel members have previously observed, the development of lead hazard standards for public and commercial buildings is fraught with uncertainty due to the minimal data that are available regarding the prevalence of lead dust in these types of buildings and other factors that are critical to the development of a reasonable standard. For example, EPA acknowledges the "scarcity of data related to dust exposures in public and commercial buildings and other non-residential settings." *EPA Approach* at 32. Likewise, EPA has noted that an extensive literature search "revealed relatively little information concerning typical levels of floor and window sill dust lead in public and commercial buildings." *Id.* at 36.

---

<sup>1</sup> The members of the Coalition include The Real Estate Roundtable; Associated Builders and Contractors; Associated General Contractors of America; Building Owners and Managers Association International; CCIM Institute; International Council of Shopping Centers; Institute of Real Estate Management; NAIOP, the Commercial Real Estate Development Association; National Association of Home Builders; National Association of Real Estate Investment Trusts; National Association of REALTORS®; National Lumber & Building Material Dealers Association; Painting & Decorating Contractors of America; Plumbing-Heating-Cooling Contractors-National Association; and Window and Door Manufacturers Association.

This lack of data has led EPA to rely heavily on extrapolations from data and models generated in connection with EPA's development of lead dust hazard standards and regulations that apply to residential settings. However, there appears to be little basis for making these assumptions. In fact, EPA acknowledges that:

the validity of the empirical models in predicting children's blood-lead impacts depends crucially on the assumption that physical and behavioral determinants of exposure are the same (or very similar to) in public and commercial buildings as in residences. There is very little empirical evidence in support of this assumption, which adds to the inherent statistical uncertainty in these models.

*Id.* at 79.

One example of the Agency's reliance on assumptions grounded on its experience with residential settings is its focus on dust on floors and window sills. While it may be reasonable to assume in a residential setting that the primary source of exposure for young children – who typically spend a great deal of time on the floor – would be floor dust. However, the primary source of exposure for office workers may be far different. EPA itself notes that exposures to lead dust from desks and table tops is likely but due to a lack of data has assumed that its residential exposure conceptual model “capture[s] these contributions.” *Id.* at 37.

In light of this paucity of data, the Coalition notes that Congress required EPA to conduct a study to determine which of the “various types of renovation and remodeling activities . . . disturb lead and create a lead-based paint hazard on a regular or occasional basis” before promulgating any regulations concerning renovation, repair and painting activities. 15 U.S.C. § 2682(c)(2). This statutory requirement to conduct a certification study explicitly applies to commercial buildings and to public buildings constructed before 1978. 15 U.S.C. § 2682(c)(2).

To date, EPA has not conducted a study that focuses on activities in commercial buildings and public buildings constructed before 1978 and the potential of such activities to create lead-based paint hazards. EPA has requested comments in its Advanced Notice of Proposed Rulemaking regarding the extent to which it should rely on previous studies it has conducted regarding lead-based paint in residential settings. 75 Fed. Reg. 24848, 24856 and 24858 (May 6, 2010). These studies include the 2007 Characterization of Dust Lead Levels After Renovation, Repair and Painting Activities (the “Dust Study”) and the four-part study conducted by EPA between 1997 and 1999.

EPA cannot rely on such studies in undertaking regulatory activities concerning lead dust in public and commercial buildings because these studies did not focus on renovation, repair and painting activities in commercial buildings and public buildings constructed before 1978. Although the Dust Study may have included information on renovations at a school building frequently occupied by children, this is too limited a data set from which to draw any conclusions regarding RRP activities generally in public and commercial buildings. 75 Fed. Reg. at 24856. Indeed, one of EPA's program offices recognizes the varied and heterogeneous composition of the commercial building stock. It has identified 14 unique types of commercial buildings for purposes of energy ratings – and even these represent only about 50% of the

commercial floor space in the United States.<sup>2</sup> Plainly, a dust study conducted at a single school is wholly insufficient as a basis to provide information on lead-paint hazards across the diverse suite of commercial building types.

The Coalition would respectfully suggest that in light of this congressional directive, the Agency should seek to fill some of these glaring data gaps. The panel chair, Dr. Buckley, himself stated in his August 20, 2010 Letter to Administrator Jackson conveying the comments of the panel members on EPA's proposed approach that "[t]he lack of data to support the commercial building approach highlights the need for research and data collection efforts in this area." We agree with this assessment.

The Coalition is also concerned about what appears to be the Agency's predominant focus on risks to young children. While the Coalition members recognize that young children are the principal population of concern, any lead dust hazard standards for public and commercial buildings that are based on exposures in young children may be largely inapplicable to a wide range of public and commercial buildings, such as office buildings and factories, which are visited only infrequently by children.

Finally, the Coalition has concerns about the use of the Leggett model to assess hazards to both children and adults. EPA has noted that the IEUBK model and the central tendency models from the NHANES data and Dixon appear to reflect reality much better than the Leggett model with respect to baseline blood-lead levels in children. *EPA Approach* at 42-43. There is no basis to conclude that the Leggett model is a better predictor of blood-lead levels when it comes to adult exposures to lead dust.

Once again, we appreciate the opportunity to submit these comments and look forward to working with the Agency as it develops lead dust standards and regulations for renovation, repair and painting activities in public and commercial buildings. If you have any questions concerning these comments, please contact Duane Desiderio, Vice-President and Counsel, The Real Estate Roundtable, at 202-639-8400, or counsel to the Coalition, Thomas C. Jackson, Baker Botts L.L.P., at 202-639-7710.

---

<sup>2</sup> See [http://www.energystar.gov/index.cfm?c=evaluate\\_performance.bus\\_portfoliomanager](http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager). The 14 varied commercial building types that are eligible to receive ratings from EPA's ENERGY STAR office are bank/financial institution; courthouse; data center; hospital; hotel; house of worship; K-12 school; medical office; municipal wastewater treatment plant; office; residence hall/dormitory; retail store; supermarket; and warehouse. But even this list is not exhaustive, and does not encompass other commercial building types like retail malls, restaurants, supermarkets, assisted living facilities, distribution centers, and others such as a wide variety of factories and other types of industrial facilities.