

Public Employees for Environmental Responsibility

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July 6, 2005

VIA CERTIFIED MAIL - RETURN

RECEIPT REQUESTED

Stephen Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dear Administrator Johnson:

Please take notice that the undersigned plan to file suit in order to prevent the further violation of federal laws and prevent further endangerment of public health and the environment.

NOTICE OF INTENT TO SUE

Pursuant to the Citizens' Suit provision of the federal Toxic Substances Control Act (TSCA § 20, 15 U.S.C. § 2619), notice is hereby given that the individuals and groups identified below intend to file new litigation or amend current litigation to address the Administrator's failure to perform certain acts

or duties under TSCA that are not discretionary. This notice is directed to the U.S. Environmental Protection Agency (EPA). The non-discretionary acts or duties that EPA has failed to perform are indicated below.

- I. The Administrator has failed to perform his non-discretionary duty to promulgate rules relating to lead-based paint activities for Renovation and Remodeling, as required by TSCA § 402(c)(3), 15 U.S.C. § 2682(c)(3). Despite a statutory directive to issue a regulatory program for Renovation and Remodeling activities by October 28, 1996, EPA has not issued any rules thus far.
- II. In public statements issued during the spring of 2005, EPA representatives explained EPA's failure to adopt these required rules by indicating that it intended to explore voluntary alternatives to regulation. According to the May 16, 2005 Federal Register, however, EPA has abandoned plans to institute a voluntary-compliance program for Renovation and Remodeling activities.
- III. Since abandoning the voluntary program, EPA has not indicated a commitment to promulgate the legally-required rules or to an alternative course of action. Section 20 of TSCA, 15 U.S.C. §2619, authorizes citizen suits to be brought for the Administrator's failure to perform any act or duty under the Act which is not discretionary. The EPA has had nine years to rectify the situation and issue Renovation and Remodeling rules, and has failed to do so.

The groups and individuals who are concerned about these issues would welcome the opportunity to resolve them informally through dialogue that leads to rulemaking.

Childhood lead poisoning remains a serious threat to the healthy development and academic achievement of American

children. According to the latest data gathered for the Centers for Disease Control and Prevention, 310,000 preschoolers have elevated blood lead levels, even as growing scientific evidence documents lead's adverse effects on children's brain development at far lower levels. The disparities in the burden of this disease make childhood lead poisoning a compelling environmental justice issue: low-income children and children of color are at higher risk than other children.

As the federal strategy to eliminate childhood lead poisoning makes clear, most children who are lead-poisoned have been exposed to lead-based paint and dust hazards in their homes. According to the Department of Housing and Urban Development's national survey, more than 25 million homes – fully one-quarter of the entire US housing stock – have “significant lead hazards.” Experts and practitioners have determined that lead-safe work practices (LSWP) for paint repair and remodeling activities are an integral part of the national prevention equation.

Persons performing work that repairs or disturbs lead-based paint in poorly maintained rental housing properties, including millions of unsubsidized affordable housing units, will not be reached by the voluntary initiative. They need clear direction and strong incentives to control, contain, and clean up lead dust. The federal responsibilities include serious capacity building and enforcement, as necessary, to make this a reality.

EPA's own cost-benefit analyses show that adoption of the Renovation and Remodeling regulations would yield a net economic benefit of at least \$2.73 billion per year. These internal analyses also show that –

- An estimated 1.4 million children under age 7 residing in some 4.9 million households are at risk of lead exposure due to unsafe repair and renovations; and

- The renovation regulations could be expected to prevent at least 28,000 lead-related illnesses each year, thereby preventing \$1.6 billion in medical costs and economic losses annually.

Disturbance of surfaces containing lead-based paint and improper clean up cause a myriad of health problems in young children. By issuing rules that require renovators and remodelers to exercise proper caution when dealing with painted surfaces, the EPA can make great strides in reducing these health risks.

TSCA section 402(c) directs EPA to address renovation and remodeling activities by first conducting a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular basis. Section 402(c) further directs EPA to revise the lead-based paint activities regulations (40 C.F.R. §745(L)) to include renovation and remodeling activities that create lead-based paint hazards.

Presently, there is no indication that EPA plans to go forward with the study or issuance of any rules. Ignoring the directive to issue rules and allowing hundreds of thousands of children to suffer from elevated lead-blood levels is an unacceptable approach to an issue that is very important to many people in affected areas.

We look forward to your constructive response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Condit".

BY COUNSEL:
Richard Condit

PEER General Counsel
On behalf of

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The Arc of the United States
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216-491-8550;

California Communities Against
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Philadelphia Citizens for Children and
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Organization of the New Eastside
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