

Resolution No. 2

Date: 2/9/2012

City: Orlando, FL

NAHB Resolution

Title: Lead-Based Paint and Lead Hazard Reduction
Sponsors: NAHB Remodelers, Multifamily Council, and Commercial Builders
 Council
Submitted by: Bob Peterson

WHEREAS, the disturbance of, and exposure to, lead-based paint can present serious and persistent health risks;

WHEREAS, recognizing this risk, the U.S. Congress passed the *Residential Lead-Based Paint Hazards Reduction Act of 1992* (“Title X”), which directed the U.S. Department of Housing and Urban Development (HUD), U.S. Environmental Protection Agency (EPA), and Occupational Safety and Health Administration (OSHA) to work in partnership with the private sector to develop the most promising and cost-effective methods for evaluating and reducing lead-based paint hazards;

WHEREAS, notwithstanding HUD’s 1990 report to Congress, which stated that the majority of properties containing lead-based paint were constructed prior to 1960, Congress directed EPA to develop regulations to eliminate lead-based paint hazards in residential and public buildings constructed prior to 1978 and all commercial buildings;

WHEREAS, EPA promulgated its Lead: Renovation, Repair and Painting program (RRP) rule in 2008, which requires training and certification, and the use of lead-safe work practices, for renovators and remodelers who work on any privately-owned residential dwellings and “child occupied facilities” constructed prior to 1978;

WHEREAS, EPA’s RRP rule distinguishes remodeling activities from abatement activities and the differentiation between lead dust present in the structure prior to the start of work from lead dust generated by RRP activities, as exhibited by the RRP rule’s adoption of a cleaning verification;

WHEREAS, on May 6, 2010, EPA amended the RRP Rule to remove the Opt Out provision,” which effectively doubled the number of housing units subject to the RRP rule’s requirements from 37.8 million to all 78 million pre-1978 housing units; therefore having the potential to prevent many properties from being renovated, causing further decline of communities and pre-1978 housing stock;

WHEREAS, EPA’s RRP regulation and its subsequent revisions places significant new requirements on renovators, remodelers and property owners; creates a

new standard of care; and imposes legal liability that threatens the availability of contractor liability insurance, resulting in significant costs that have not been adequately assessed by the government;

WHEREAS, EPA has been unable to recognize an improved pre-renovation lead test kit that meets the requirements the agency set forth in its initial April 22, 2008 final rule;

WHEREAS, there is a distinct lack of consumer awareness of the rule because the Agency's efforts have been inadequate in promoting the rule's requirements to the public;

WHEREAS, EPA is in the early stages of developing two regulations; one for public buildings built before 1978 and commercial buildings, including new commercial buildings, which could impose a suite of certification, training, and work practice requirements similar to the RRP Rule for residential housing;

WHEREAS, EPA has begun the process of redefining lead-based paint to a more stringent level than the current 1.0 milligrams per square centimeter and revising dust-lead hazard to a more stringent standard than the current 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) on floors, and 250 $\mu\text{g}/\text{ft}^2$ on windowsills;

WHEREAS, as EPA has based its cost-benefit analysis on wholly unrealistically low costs for testing, remediation, capital investment in equipment and training, and administration; and

WHEREAS in parts of the country where more homes are newer than in other parts, a contractor may experience only one house every few years that meets the age trigger thus placing an extremely high cost to a single project,

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders continue working with HUD, the Centers for Disease Control and Prevention (CDC), and EPA to eliminate the risk of lead poisoning and support their goal of eliminating childhood lead poisoning;

BE IT FURTHER RESOLVED that NAHB urge HUD, EPA and the Occupational Safety and Health Administration (OSHA) to reconcile and support efforts to create consistency among the states in their lead regulations to ensure reciprocity in training and certification requirements, training programs and training grants;

BE IT FURTHER RESOLVED that NAHB encourage contractor training/certification in lead-safe work practices and promote their use by owners of multifamily properties and remodelers who work in properties containing lead-based paint built prior to 1978;

BE IT FURTHER RESOLVED that NAHB urge federal officials to support state and local efforts to create “safe harbors” from the risk of future claims and allegations for contractors, remodelers and multifamily property owners who follow EPA’s prescribed lead-safe work practices and are fully compliant with the recordkeeping and reporting requirements;

BE IT FURTHER RESOLVED that NAHB urge Congress to:

1. Direct HUD, EPA and CDC to report to Congress and the public annually on the overall progress toward achieving the goal of eliminating childhood lead poisoning and identify specific geographic areas and demographic groups who reside in housing stock (i.e. owner-occupied and rental housing) covered by EPA’s RRP rule and report what portion of these children are still at risk from lead hazards;
2. Oppose adding any requirement for dust clearance testing to the rule through any appropriations or authorization legislation;

BE IT FURTHER RESOLVED that NAHB pursue all options to compel EPA to restore the Opt Out provision to the RRP rule; continue to oppose any future clearance testing requirements;

BE IT FURTHER RESOLVED that NAHB work with other non-governmental organizations to urge EPA to increase its efforts to increase consumer awareness as well as coalesce with these non-profits to further inform the general public of the rule’s requirements;

BE IT FURTHER RESOLVED that NAHB partner with EPA to develop education and outreach programs for home owners and an improved reliable pre-renovation test kit that can be used to determine if lead is present as defined on painted surfaces in pre-1978 structures; and

BE IT FURTHER RESOLVED that NAHB engage in the development of regulations for;

1. Public and commercial buildings and work to ensure that any new regulations are based on data concerning exposure pathways to lead-based paint in these structures; and
2. The definition of lead-based paint and lead-dust hazards.

BE IT FURTHER RESOLVED that NAHB encourage Congress to require EPA to develop realistic capital and compliance costs and that the details of those cost analysis be made available for public comment.

Please note: If approved, this resolution will replace two active policies: 2008.5 No. 5 Lead-Based Paint and Lead Hazard Reduction and 2011.5 No. 1 EPA's Regulatory Amendments to the Lead: Renovation, Repair, and Painting Rule

Board of Directors Action:	Approved
Executive Board Action:	Recommends Approval
Resolutions Committee Action:	Recommends Approval
Construction, Codes & Standards Committee Action:	Recommends Approval
NAHB Remodelers Board of Trustees Action:	Recommends Approval
Commercial Builders Council Board of Trustees Action:	Recommends Approval
Construction Safety & Health Committee Action:	Recommends Approval
Federal Government Affairs Committee Action:	Recommends Approval
Environmental Issues Committee Action:	Recommends Approval
Multifamily Council Board of Trustees Action:	Recommends Approval