



NATIONAL  
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**ORAL STATEMENT OF THE**

**NATIONAL ASSOCIATION OF REALTORS®**

**SUBMITTED FOR THE RECORD TO**

**THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

**FOR**

**A PUBLIC MEETING ON THE PROPOSED RENOVATION,  
REPAIR AND PAINTING RULE FOR PUBLIC AND COMMERCIAL  
BUILDINGS**

**JUNE 26, 2013**

## **INTRODUCTION**

My name is Harold Huggins. I have been a real estate professional for 50 years, engaged in both residential and commercial sales, leasing, investment advising, property management, and appraisal. I am speaking on behalf of the National Association of REALTORS®, the Institute of Real Estate Management, and the CCIM Institute. The members of these three organizations are involved in all aspects of real estate and property management, including buying, selling and managing commercial and residential property. Their business activities positively impact the lives of millions of people, through the houses or office space that they sell or through the property that they manage. Our members take their responsibility to ensure the health of their clients, tenants and owners with the utmost seriousness, particularly as it relates to lead hazards and their impact on children's health. We support public policies that are effective in solving the problem of lead paint and want to work in a collaborative manner with EPA to implement those policies and activities that protect our clients from lead paint hazards while ensuring a vibrant and growing real estate and property management industry.

We thank you for allowing us this opportunity to testify, and respond to your request regarding lead hazards in public and commercial buildings. My testimony will focus on three specific points: 1) EPA has not conclusively determined the degree to which lead hazards exist in public and commercial buildings; 2) residential buildings are definitively different than public and commercial buildings –in tenancy, construction, operation and maintenance; and 3) EPA does not have sufficient research on lead hazards in public and commercial buildings; and has not conducted adequate outreach with governmental entities, who own and lease a significant proportion of commercial and public buildings.

## **DETERMINATION OF A HAZARD**

Prior to beginning any rulemaking, it is essential that EPA determine if, and to what extent, there is any lead hazard posed by public and commercial properties. EPA admitted in the Advanced Notice of Proposed Rulemaking (ANPR), published on May 6, 2010, that it does not have enough information to conclude that specific Renovation Remodeling and Painting (RRP) activities in commercial and public buildings create a lead-based paint hazard. (See 75 Fed. Reg at 24857 and 24859).

In fact, in a scan of relevant literature, there are no studies that demonstrate a lead hazard in public and commercial buildings, and several studies that demonstrate that most RRP activities either eliminate lead hazards or reduce the potential for future hazards. For EPA to proceed, the agency's current information collection efforts would need to demonstrate specific hazards created by RRP activities in public and commercial buildings. As we will discuss next, residential studies cannot be used to replicate the behavior or activities of public and commercial buildings.

We also must insist that EPA complete the congressionally mandated “Study of Certification” to determine which renovation and remodeling activities disturb lead paint and create hazards. Again, relying on residential studies is completely inappropriate.

### **RESIDENTIAL BUILDINGS ARE NOT A PROXY FOR COMMERCIAL**

Residential buildings are simply not an appropriate proxy for public and commercial facilities. Children do not reside in public or commercial buildings, nor do they spend significant time there. If they do, such as in the case of a child care center in a commercial property – those buildings are already regulated as a “child-occupied facility” and subject to the existing RRP rules. Under those rules, any property constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week of at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. This rule protects the most vulnerable population from lead paint hazards where they are present. Children are simply not present in commercial properties that do not contain a “child-occupied facility”. Lead dust is generally the largest lead contaminant in properties. But neither children nor vulnerable adults spend significant periods of their time on the floor of public or commercial buildings – where the majority of lead dust hazards in residential properties are found.

Furthermore, the scope of commercial buildings is significantly broader than residential properties. There are many buildings types, uses and occupancies that make-up “commercial buildings.” The Request for Information did not provide a definition of what constitutes a commercial building; in our written comments, we have provided a number of possible definitions of the term. It is estimated that there are more than 4.9 million commercial buildings in the United States. There are fourteen principal building activity types – including retail, lodging, office, public assembly, religious worship, service and warehouse. Each of these buildings has a very different tenancy, use and operation. Creating a single across the board standard would inappropriately ignore these differences. We believe RRP activities and practices may differ greatly among building types, and EPA should not assume that it is correct to treat all buildings the same.

In EPA’s *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings*, published November 5, 2010, the Agency acknowledges that residential properties differ greatly from public or commercial buildings. That notice says, and I quote, “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” Unquote (Id. At 79). Yet the May 6, 2010 ANPR seems to suggest that existing research on residential properties can be used to develop commercial and public building regulations.

It should be noted that commercial buildings are renovated and remodeled much more frequently than residential properties. For example, as tenants in retail or office buildings change, the space is refitted to the needs of the next tenant. This is most often done while the space is vacant and

substantial changes to the layout of the floorplan can be made. Likewise, cleaning is typically more routine and rigorous in commercial buildings than in many residences. Instead of relying on the cleaning habits of the individual tenants as is the case in a multifamily property, commercial spaces are most often professionally cleaned on a regular schedule. Cleaning often happens nightly, five days a week, by professional cleaning services. This routinely includes dusting, vacuuming and sweeping following each workday. This common practice alone greatly cuts down on any potential lead dust hazards.

## **RESEARCH ON PUBLIC AND COMMERCIAL BUILDINGS AND THE FEDERAL GOVERNMENT**

In April of this year, the National Institutes of Building Sciences, responding to a Senate inquiry, said that the, and I quote, “science-based information applicable to the presence, occupant exposure, and the mitigation of lead-based paint in commercial and public buildings is woefully inadequate.” End quote.

We would argue that EPA has a vast resource with which to collect data on public and commercial buildings – their sister agencies and organizations within the federal government. The General Services Administration (GSA) owns and leases over 354 million square feet of space in 9,600 buildings in more than 2,200 communities nationwide. In addition to office buildings, GSA properties include ports of entry, courthouses, laboratories, post offices, and data processing centers. The branches of the military- such as NAV FAC and other agencies control additional millions of square feet of space. Even a relatively small federal entity, the Architect of the Capitol, controls 17.4 million square feet in the Capitol complex and surrounding buildings. Each of these agencies could and should be compelled to share information with EPA that would help in this effort.

In addition, we believe that EPA needs to work with the Occupational Safety and Health Administration (OSHA), which already regulates renovation in commercial properties. CFR 1926.62 deals with construction as well as repairs and improvements. Many procedures in the OSHA regulation protect the public as well as workers. The EPA should carefully evaluate the OSHA regulations and consider any necessary recommendations before creating a new EPA regulation. Redundant regulations require additional training and may be expensive to implement for small business construction contractors.

## **CONCLUSION**

Thank you again for this opportunity to testify. We would also like to note that the majority of real estate professionals are small businesspeople. According to the 2012 National Association of REALTORS® Member Profile, the typical REALTOR® works in a firm that employs 23 agents and brokers and, more than 85% of the time, is an independent company. The average commercial property manager manages 30 properties. This rule could have a very significant impact on small businesses. We urge EPA to consider small businesses before proceeding.

We believe EPA has much work to do before continuing with this effort. Most importantly, we don't believe EPA has demonstrated a hazard caused by RRP in commercial facilities. Last month, more than 50 members of the House of Representatives wrote to EPA stating many similar concerns. So we urge EPA to NOT continue with this rulemaking. EPA is only required to regulate against hazards, and since none is proved, no regulation is permitted.