

February 15, 2023

Mr. Alan Bjerke
145 Lakeview Terrace
Burlington, VT 05401

Dear Mr. Bjerke, Mr. Tracy, and Mr. Grillo:

After careful consideration, the Department of Health denies the January 9, 2023, petition for rulemaking pursuant to 3 V.S.A. § 806 and 18 V.S.A. Chapter 38 to amend the Vermont Regulations for Lead Control, or suspend provisions of that rule, for the reasons set forth below. The proposed changes could jeopardize Vermont's authority from U.S. Environmental Protection Agency to implement this program. Incorporating the amendments proposed in the petition would make Vermont's Renovation, Repair, and Maintenance (RRPM) program less protective of human health and the environment than the federal program, which could prompt the EPA to withdraw Vermont's authority to implement the program pursuant to 40 CFR 745.324. To be considered at least as protective as the Federal program, a state program must establish procedures and requirements for the formal certification and re-certification of renovation firms and ensure that renovations are conducted only by certified renovation firms, using trained individuals. Under the Federal Program, individuals who lease pre-1978 residential properties (i.e., landlords), and do the renovation work themselves, are performing renovations for compensation and are therefore subject to all requirements, including training and certification.

The requirement for landlords to be trained and licensed to paint and renovate their own rental properties is not new but is an existing requirement under federal law. Under EPA's Renovation, Repair and Painting (RRP) Rule, which has been in place since 2010, landlords are required to be trained in lead-safe work practices and certified by EPA in order to conduct renovation and repair activities, like preparing surfaces and painting a room. Many landlords did not realize that their paint maintenance and repair activities were covered by EPA's RRP requirements because it was not historically well communicated or enforced. Since Vermont received authority to implement this federal regulatory program, now called RRPM, the Health Department has been conducting outreach to contractors, landlords and other regulated entities, many of whom are only just becoming aware of their obligations under the law, both past and present.





Landlords were already required, under federal law, to be registered with EPA for a fee of \$300/5 years if conducting repair work on their rental properties. EPA's program has required both firms to be registered and individuals to be trained and certified to conduct work that disturbs lead-based paint over 6 square feet per interior room. EPA requires that firms be registered with them for a fee of \$300 every 5 years. Now that Vermont implements this law, the firm license fee is \$300 every 5 years, paid to the state rather than to EPA. Under EPA's program, as well as Vermont's, a sole proprietorship is considered a firm, and rent is considered to be compensation paid to rental property owners for maintaining their properties. The legislation at 18 VSA § 1752(d) that allows for individuals who perform RRPM services not for compensation was included by the legislature specifically to allow childcare owners to do work on their own properties with the proper training but without paying for a license because of the state of crisis in Vermont's childcare system. As such, a person with the uncompensated child care operator certification is much more limited in their ability to undertake activities that a licensed RRPM Supervisor is permitted to do, including training and supervising workers to undertake RRPM activities.

Liability insurance protects both landlords and tenants: While the training and firm licensing fees mirror those already required by EPA, the requirement for lead licensees to have liability insurance is a Vermont-specific requirement from statute at 18 VSA § 1764. Many landlords have existing general umbrella property insurance plans that provide coverage for lead poisoning caused by lead-based paint activities, but some may need to purchase additional insurance if this coverage is specifically excluded from their general policy. This requirement ensures that tenants and their children who are lead poisoned due to conditions or lead-based paint activities at a rental property may recover money to cover their injuries and provides coverage for lead-based paint-related claims for bodily injury or property damage for landlords conducting their own repair and renovation work.

Hiring a licensed RRPM contractor will become increasingly easier and the Health Department is focusing on compliance assistance in the first year of the program. The Vermont Regulations for Lead Control require that firms and individuals conducting RRPM activities be licensed with the Health Department; but during the transition of the program from EPA to the Health Department, it will take time for landlords and contractors to obtain the required training and apply for the required licenses in Vermont. There were approximately 950 individuals and 300 RRP firms in Vermont that were already certified by EPA as of October 1, 2022, and the Health Department is conducting outreach and providing compliance assistance to those entities as well as other entities who may not have been aware of their lead-safe training and licensing obligations. As a result, the Health Department anticipates that the number of licensed firms and individuals will increase significantly in 2023; the number of licensed firms has increased by 20 since the petition was received. During this transition period, as the program ramps up, the Health Department plans to work with regulated entities to achieve voluntary compliance and would only pursue administrative penalties in egregious situations.





The Health Department provided adequate notice of the proposed rule. The Department held a public hearing, provided an opportunity for public comment, and responded to those comments, and posted the proposed rulemaking on its website and in newspapers of record as required by the Vermont Administrative Procedures Act. There was also significant and meaningful input from stakeholders throughout the passage of enabling legislation. Pursuant to 18 V.S.A. § 128(a), you have the right to appeal this decision to the Vermont Board of Health within 30 days. Hearings by the Board under this section shall be subject to the provisions of 3 V.S.A. chapter 25 relating to contested cases.

The Board shall consider the matter de novo and all persons, parties, and interests may appear and be heard. You have the right to bring an attorney and witnesses if you choose. The Board shall issue an order within 30 days following the conclusion of the hearing. To request a hearing with the Board of Health, please contact Sarah Gregorek at sarah.gregorek@vermont.gov.

Sincerely,

A handwritten signature in blue ink that reads "Mark A. Levine".

Mark A. Levine, M.D.
Commissioner

