

# Alan Bjerke

May 13, 2024

Representative Trevor Squirrell, Chair  
Legislative Committee on Administrative Rules  
115 State Street  
Montpelier, Vermont 05633

Re: 24-P01 Lead Control Regulations

Dear Representative Squirrell,

Rental housing in Vermont is increasingly becoming less affordable for Vermonters. According to the VHFA, the number of rent-burdened households has reached unprecedented levels - with ~88,000 households paying more than 30% of their income for housing and ~39,000 households paying more than half of their income just on housing.

The Health Department is exacerbating Vermont's affordable housing crisis with the Lead Control Regulations proposed before you today, and in particular the significantly greater expense the regulations impose on owners of rental housing. Those greater expenses are passed onto tenants as higher rents.

Lead and lead paint are dangerous substances and the state is right to take appropriate steps to reduce potential harm. But the steps these regulations take often impose substantial costs with no corresponding public health benefit.

- Charging rental property owners the same licensing fee as a professional contractor provides no health benefit to the public. In 2018 when the Health Department sought authority from the Legislature to create the lead control regulation, they unequivocally testified that rental property owners would not be required to pay licensing fees. See Testimony of Shayla Livingston and Katie McLinn attached.
- Requiring each and every owner of rental housing who works on their own property to be separately trained and licensed imposes enormous unnecessary costs, not imposed on professional contractors or owners of child care facilities. A licensed Owner of Target Rental Housing should be allowed to supervise other owners of the property as is permitted for professional contractors and owners child care facilities. The Health Department's claim that liability insurance is necessary to protect co-workers reflects a fundamental ignorance of insurance policies.
- Requiring very expensive XRF Analyzer testing, conducted by a licensed lead paint inspector instead of the much less expensive chemical test for the presence of lead and component exclusion creates a high hurdle to public safety, when we should be charting a course to eliminate barriers to maximum safety.

- Creating barriers to component exemption and requiring the use of RRPM practices where there is in fact no lead present forces the costs to maintain property significantly higher and generates significantly more waste. Vermont is also running out of options to dispose of its waste. We should be working to generate less, not more landfill waste.
- Requiring licensure instead of certification of rental property owners working on their own properties effectively cancels the insurance protection their tenants would otherwise benefit from - leaving them less protected, not more. See Jeff Lyon Letter attached.
- Requiring additional special permitting fees for the common setup of a dust collecting sander to a HEPA vacuum as is allowed under the Federal EPA regulations without such special permit does nothing to protect public health. It is simply a money grab and the Department's own records show that no one is getting the permit - so it isn't working anyway.

Rental hosing providers have attempted to work with the department to establish regulations that are equally as safe, without imposing unnecessary costs and burdens on property owners, which in turn drive up the costs of rental housing for tenants. The Department has turned a deaf ear to those concerns. I ask that you reject the proposed amendments before you, have the Health Department return to the drafting table and further amend the lead control regulations with an eye towards reducing the costs on providers of rental housing, just as they did for owners of child care facilities.

If I can be of any further assistance to you, please do not hesitate to contact me.

Thank you very much.

Sincerely Yours,

*/s/ Alan Bjerke*

Alan Bjerke

“Shayla Livingston with the Health Department, so I’m happy to address that question first. The fees are remain only for those who are getting licenses, so those who are doing work for compensation. A landlord is going to take a training, there’s no fee in this statute about, around that training, it does still require them to take a training and that will be again, outlined in rule, as it is currently outlined in rule. To the Representative’s question earlier: the practices, the Essential Maintenance Practices that are currently in statute will be moving to rule, but they will be staying the same in terms of making sure the deteriorated and chipping paint is not, you know in a property. A place where a tenant or a child can be exposed to it, etc., etc. **The cost effective way in which landlords are able comply with this law will remain the same. They do not need to pay permitting fees, they do not need to pay licensing fees. Again, they will just be required to take the training, as they are required to do that now.** “

*Rep. Ann Pugh: What about the comment that the Federal standards are for big projects?*

“Yeah, so that maybe is an excellent example of where, you know, the Health Department is really hoping with this rewrite to be able to put some more time, energy and resources into doing education and outreach, in the sense that if a landlord is going to hire somebody to do work for bigger projects then yes, that is correct, right? If you’re hiring somebody to do work for compensation then they need to comply with these RRPM standards. If you are doing your own work, then you do not, under current law and that will continue to be the case going forward. So, you know, that is probably true. If you’re going to do a huge renovation, you might be hiring an somebody to work. That individual that you hired is required to comply with RRPM “

## Overview: H.736 – An act relating to lead poisoning prevention

### What does it do?

Consolidates the authority to regulate activities related to lead-based paint under the Vermont Department of Health. Currently, regulatory authority is split between the Environmental Protection Agency (EPA) and the Vermont Department of Health (VDH).

### Why is it needed?

The current requirements of the state and EPA are duplicative, confusing, burdensome and incongruent for property owners and contractors. This leads to lack of awareness and exposure to lead due to unsafe work practices.

#### Three goals:

1. Reduce confusion and regulatory redundancy (cut red tape)
  - Eliminates duplicative regulations for rental housing and child care facilities
2. Expand education, outreach, and training regarding lead-paint laws
  - Coordinated training courses will reduce confusing and to increased training availability
  - Increases state-level guidance for do-it-yourself renovators and homeowners
  - Allows state to implement a system to search licensed contractors
3. Improve compliance through better outreach at the state level
  - Establishes VDH as the one source for compliance and technical assistance for property owners, property managers, and contractors

### Did you know?

- 627 children ages 1 to 5 years old were poisoned in Vermont in 2016.
  - 9 out of 10 cases investigated by VDH are from pre-1978 housing and the source is either deteriorated lead-based paint or unsafe renovation practices.
- There is no safe level of lead in the body, especially for children, where lead interferes in neurological and other developmental processes.
- Lead poisoning is permanent but is 100% preventable.
- The greatest contributor to childhood lead poisoning is lead dust and residue found in homes and soil surrounding homes.
- Most of this lead contamination is caused by lead-based paint that has deteriorated or has been disturbed through renovation or preparation for re-painting. Because lead was banned as an additive to residential-use paint in 1978, lead from paint is most likely to be found in structures that were built prior to 1978.
  - Most (70%+) residential buildings in Vermont were built before 1978 and likely contain lead paint.
- Lead poisoning is just as likely to occur in owner-occupied housing as in rental housing.

### What are the laws now?

In 2008, the United States adopted, and in 2010 implemented, regulations for “Lead-Based Paint Poisoning Prevention in Certain Residential Structures: Residential Property Renovation” (40 CFR 745, Subpart E). The EPA currently administers these regulations under a program called the Lead-Safe Renovation, Repair, and Painting Rule (the “RRP Rule”). The RRP Rule requires contractors to use lead-safe work practices and educate their customers regarding the risks of lead-based paint. These are required anytime a contractor will be doing a project in a residential property or child-occupied facility that was built prior to 1978.

In Vermont, the RRP Rule overlaps with requirements for repair and maintenance of lead-based paint in pre-1978 rental property housing and child care facilities. Pre-1978 property owners in Vermont must seek guidance from two regulatory agencies, the EPA and the Vermont Department of Health.

### **Contractors and Property Managers**

*Who does this apply to?*

- Only applies if the contractor or property manager performs renovation, repairs, painting, or maintenance at pre-1978 residential properties or child-occupied facilities

*What are the requirements?*

- If the company has more than one employee, it must have a Lead-Safe RRPM Firm license, issued by the Department of Health (same fee schedule as EPA)
- For each regulated job, there must be a trained *and* VT-licensed Lead-Safe RRPM Supervisor on site to perform or supervise the project
- For pre-1978 rental housing and child care facilities: Lead-safe work practices are required for any job that impacts 1 ft<sup>2</sup> or more of painted surface, interior (per room) or exterior (per exterior wall)
- For owner-occupied housing and child-occupied facilities that are *not* child care facilities (e.g., kindergarten classroom): Lead-safe work practices are required for window and door replacement and for any job that impacts painted surfaces over 6 ft<sup>2</sup> interior (per room)/20 ft<sup>2</sup> exterior
- Use of unsafe work practices is prohibited (18 V.S.A. §1760) without permit from the Vermont Department of Health

### **Pre-1978 Rental Property Owners**

*Who does this apply to?*

- Owners of pre-1978 residential rental properties

*What are the requirements?*

- Rental property owners will continue to be responsible for routine lead-safe maintenance of their rental properties, annual filing of lead law compliance statements, and communication with their tenants regarding lead hazards
- Lead-safe maintenance must be performed or supervised by someone who has taken an accredited Lead-Safe RRPM training course
- If a property owner hires someone to perform lead-safe renovation, repairs, painting, or maintenance, that contractor or property manager must be a VT-licensed Lead-Safe RRPM Supervisor
- Use of unsafe work practices is prohibited (18 V.S.A. §1760) without permit from the Vermont Department of Health

### **Child Care Facility Owners**

*Who does this apply to?*

- Owners of pre-1978 child care facilities licensed by the Department of Children and Families

*What are the requirements?*

- Child care facility owners will continue to be responsible for routine lead-safe maintenance of their rental properties, annual filing of lead law compliance statements (which is confirmed by DCF Child Care Licensing), and communication with families regarding lead hazards
- Lead-safe maintenance must be performed or supervised by someone who has taken an accredited Lead-Safe RRPM training course
- If a child care facility owner hires someone to perform lead-safe renovation, repairs, painting, or maintenance, that person must be a VT-licensed Lead-Safe RRPM Supervisor
- Use of unsafe work practices is prohibited (18 V.S.A. §1760) without permit from the Vermont Department of Health

Transcript: House Human Services Committee  
February 21, 2018  
Re: H.736

Katie McLinn:

“In terms of who needs a license: For persons performing lead based paint activities or RRPM activities for compensation in a residential house or child-occupied property, there’s a license required. Similarly for persons in rental housing or child care facilities. **But not for persons performing the work themselves in their own facility, although they will need to have the training and certification that they have completed the training.** And then, in commercial / industrial facilities: Yes, for persons performing lead based paint or RRPM activities. They need to have that license.”

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**H.726: An act relating to lead poisoning prevention**  
 Table compiled by the Department of Health and the Office of Legislative Council  
 February 20, 2018

	<b>Pre-1978 residential housing and child-occupied properties</b> 40 CFR 745, subpart E	<b>Pre-1978 rental housing and child care facilities</b> 18 V.S.A. Chapter 38	<b>Commercial and industrial sites with lead-based paint coatings</b> 40 CFR 745, subpart L
<b>Currently regulated by?</b>	No	Yes	No
<b>Required to address lead hazards (e.g. chipping paint)</b>	No	Yes	No
<b>Required to use lead-safe RRPM work practices (§1759)</b>	Yes, except homeowner performing RRPM activities in private home	Yes	No
<b>Trigger for using lead-safe RRPM work practices</b>	If work disturbs in excess 6ft <sup>2</sup> of painted surface per room for interior activities or in excess of 20ft <sup>2</sup> of exterior painted surface	If work disturbs in excess of 1ft <sup>2</sup> of interior or exterior painted surfaces	N/A
<b>Prohibited from using unsafe work practices (§1760)</b>	Yes, when disturbing 1ft <sup>2</sup> of interior or exterior painted surfaces	Yes, when disturbing 1ft <sup>2</sup> of interior or exterior painted surfaces	Yes, when disturbing 1ft <sup>2</sup> of interior or exterior painted surfaces
<b>Responsible party</b>	Contractors and property managers performing services	Rental property and child care facility owners (or owner's representatives)	Contractors and property managers performing services
<b>Training (§1752)</b>	Yes, for persons performing lead-based paint or RRPM activities for compensation  Not for private homeowners doing their own work	Training required for all people performing any RRPM activities	Property owners are responsible for informing contractors about potential lead-based paint hazards  Yes, for persons performing lead-based paint for compensation

<p><b>Licenses</b></p>	<p><b>Pre-1978 residential housing and child-occupied properties</b> Yes, for persons performing lead-based paint or RRP activities for compensation</p>	<p><b>Pre-1978 rental housing and child care facilities</b> Yes, for persons performing lead-based paint or RRP activities for compensation  Not for people performing the work themselves on their own facility (although they will have to be trained and certified)</p>	<p><b>Commercial and industrial sites with lead-based paint coatings</b> Yes, for persons performing lead-based paint or RRP activities for compensation</p>
<p><b>Compliance Statement</b></p>	<p>No compliance statement required</p>	<p>RRPM compliance statement required annually or within 60 days of purchasing property</p>	<p>No compliance statement required</p>



Jeffrey Lyon  
5 Ridgewood Drive  
Burlington, Vermont 05408  
802 658-3166

March 27, 2023

Alan Bjerke  
145 Lakeview Terrace  
Burlington, VT 05401

Re: Obtaining Insurance under Vermont's new lead control regulation

Dear Alan,

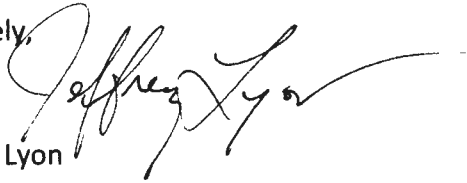
You have asked for my opinion concerning the availability of liability insurance which would satisfy the requirements of 18 V.S.A. §1762 for licensure as a Renovation, Repair, Painting and Maintenance (RRPM) Firm and Supervisor pursuant to Vermont's Lead Control Law and Regulations. The minimum requirement for such insurance is that it have a minimum coverage amount of \$300,000 and "indemnify properly a person who suffers who suffers damage from lead-based paint activities or RRPM activities . . ." It is my understanding that the Vermont Department of Health requires that a rental property owner who does RRPM activities (i.e. Painting) on their own property obtain a professional license in order to lawfully perform the activities.

It is my opinion that damage resulting from the performing or failure to properly perform RRPM activities when a license would be required to perform such activities would be excluded from liability coverage uniformly provided by the property insurance policies which typically insure buildings containing residential rental units such as yours. These would include the ISO Homeowner 3, 5, & 6 policies, as well as the ISO Business Owner's policy. These policies all contain uniform exclusions for "professional services" which includes the rendering or failure to render a professional service. Professional services are most commonly those which require a license to perform, such as plumbing, electrical work or in this case RRPM activities. There are no endorsements conventionally available for these existing policies that would waive the exclusion for professional services that I have seen in my career.

The alternative would be for you to obtain a separate policy of insurance for Professional Liability. The most common would be a Commercial General Liability policy with a specific endorsement for RRPM activities. In my experience, it would not be surprising if you could not find a company to write you such a policy. In order to qualify to obtain such a policy you would need to be a full time professional painter certified for lead paint removal, which you are not. You are a landlord who only works on properties that you own and therefore only paints maybe one or two units a year.

It is important to note that even if the Health Department were to approve your application for licensure based upon your Homeowner or Business owner's policies, it is my opinion that these policies would not actually afford your tenants any liability coverage for lead exposure resulting from improper RRPM activities since they are not the "named insured" on the policy and because of the conventional exclusions uniformly contained in the policies. The opinions stated in this letter are based upon my 23 year career as an independent insurance agent in Vermont. I have assisted hundreds of Vermont individuals and businesses with securing the most appropriate insurance policies for the property and activities they seek insurance to cover. I have negotiated coverage with dozens of insurance companies in order to provide my clients with options to cover their needs. While I worked at the Essex Agency in Essex Junction, Vermont for 23 years, I retired in 2021. The views stated in this letter are my own and not necessarily those of the Essex Agency or any insurance company I worked with while there.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Lyon", with a long, sweeping horizontal flourish extending to the right.

Jeffrey Lyon