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contractors. The dust wipe testing and clearance testing as contained in the proposed



Sincerely,

A handwritten signature in cursive script that reads "Thomas C. Jackson". The signature is written in black ink and is positioned above the printed name.

Thomas C. Jackson

Enclosure

COMMENTS REGARDING EPA'S PROPOSED AMENDMENT TO THE

LEAD-RENOVATION, REPAIR AND PAINTING RULE<sup>1</sup>

In 1992 Congress passed the Residential Lead-Based Paint Reduction Act,  
Pub. L. 102-550, tit. V (codified in part at 15 U.S.C.

<sup>1</sup> 2681-92). Among other things, that title added a new Subchapter IV to the Toxic Substances

exceed the statutory authority Congress granted to EPA under Title X. For the reasons set forth

below, EPA should withdraw its proposal to add these requirements in light of the limits on its authority.

A. EPA can only issue guidance concerning renovation work practices<sup>2</sup>

Based on the plain language of the statute, EPA lacks authority under TSCA to promulgate regulations requiring any form of clearance testing because such requirements are part of work practice standards, which can only be the subject of Agency guidelines. Section 402(a)(1) of TSCA only authorizes EPA to promulgate regulations “to ensure that individuals engaged in [lead-based paint] activities are properly *trained*; that training programs are *accredited*; and that contractors engaged in such activities are *certified*.” 15 U.S.C. § 2682(a)(1) (emphasis added). Moreover, while the statute also grants EPA authority to create standards for “*high-risk activities*,” such activities are defined in the case of target housing as “risk

hazards

In light of these studies, an ample basis exists in the record for concluding that most RRP activities do not create lead-based paint hazards, but rather minimize and even eliminate such hazards. As discussed above, the statute limits EPA's regulatory authority to ~~those activities that actually create a lead-based paint hazard, which means that RRP activities~~

would generally be exempt from EPA's authority under Section 402(c)(3). To the extent that EPA is without authority to promulgate enforceable regulations with respect to such activities, it ~~is not required to promulgate such regulations, and it is not required to promulgate such regulations~~

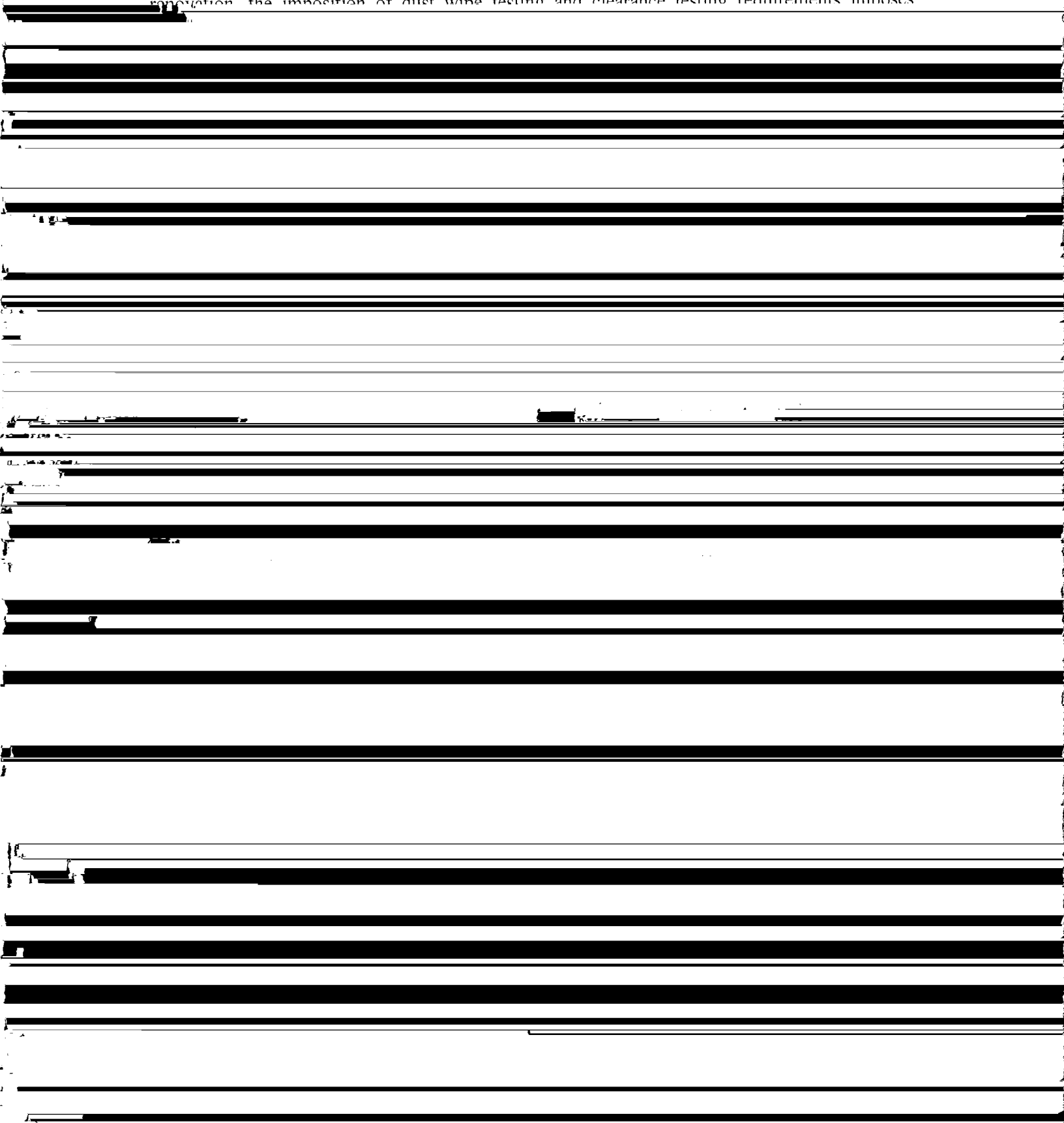
unregulated RRP activity contributed to increased blood-lead levels in *either* RRP workers or in children residing in homes that were being remodeled. NAHB likewise pointed out in its prior comments to EPA that “the studies cited do not illustrate a definitive link between renovation

EPA has based its decision to regulate RRP activities on the conclusions made in the Study, when the underlying data suggest that there is little, if any, need for such regulation. Because the conclusions of the Study are not supported by the underlying data, EPA has not satisfied the requirements of Section 402(c)(2) because it has not adequately determined 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



*will not require certified workers because it will not involve*

Accordingly, notwithstanding the fundamental distinction between abatement and  
renovation, the imposition of dust wipe testing and clearance testing requirements imposes



come to light since April 2008 that casts doubt on its prior position. *See* 75 Fed. Reg. at 25057 (References). Rather, it appears that the Agency simply changed its mind even before it implemented the Rule as the result of the settlement of a lawsuit. *See* 75 Fed. Reg. at 25044. In the absence of a reasoned explanation for the change in the Rule regarding dust wipe testing and clearance testing, the Agency's decision is arbitrary and capricious.

clearance requirements for renovation activities but fails entirely to explain how its new proposal is justified in the face of those same concerns

In contrast to the benefits of the existing regime, the only benefits proffered by EPA for its proposed changes are (1) providing more information to the owners and occupants of

Instead, Congress has provided two methods for information dissemination to owners and occupants, including Section 1018, which is discussed above. The other statutory mechanism for providing information to residents regarding lead-base paint hazards is found in

describing lead-based paint hazards that may be present in a home built before 1978, the risks these hazards pose to occupants of the property, the role renovation may play in creating these risks, methods for evaluating and reducing hazards, and information on how to locate contractors that specialize in lead-based paint hazard evaluation and reduction. *See* TSCA, § 406(a). Then,

be arbitrary and capricious for EPA to require more expensive and complicated dust wipe testing

and clearance testing that would provide little additional benefit as opposed to a simpler, more effective, and less expensive visual test, especially after EPA itself has admitted the many

even the amendment of an existing rule – that would result in a significant economic impact on a

business. For example, EPA convened a SPAD Panel to review

proposed changes to existing regulations related to the certification of pesticide applicators. *See* EPA, *Panel 33b: Certification of Pesticide Applicators (Revisions)*.

By adding dust wipe testing and clearance testing requirements, the proposed