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To: mtammaro@rtenv.com

Subject: No More Opting Out of Rule for Renovation of Buildings Containing Lead Paint

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No More Opting Out of Rule for Renovation of Buildings Containing Lead Paint

Press Release

On June 22, 2012, the US Court of Appeals for the DC Circuit upheld the US Environmental Protection Agency's (EPA) removal of the opt-out provision for work that disturbs lead-based paint in pre-1978 housing.

The opt-out provision would have allowed those homeowners who certified that there were no children younger than six or pregnant women residing in the home to "opt out" of the EPA's Renovation, Repair and Painting Rule (RRP Rule). The opt-out provision was in the original RRP Rule promulgated by EPA in 2008, but was removed in 2010 as part of a settlement between EPA and several environmental and health advocacy groups.

The National Association of Home Builders and other trade associations petitioned the US Court of Appeals for the DC Circuit for review of EPA's change of heart. The court ruled against petitioners, holding that it was not arbitrary and capricious for EPA to change its mind and that the court had no jurisdiction to review EPA's failure to convene a small business advocacy review.

The court noted that two events, in addition to settling with environmental and other groups, explained the EPA's decision: the inauguration of a new President and the appointment of a new EPA administrator. According to the court, and quoting then-Justice Rehnquist, "[a] change in administration ... is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations."

So the story is not over. Not only is there an upcoming Presidential election, but legislation introduced in the US House and Senate earlier this year would, among other things, reinstate the opt-out provision. But in the meantime, EPA is enforcing the RRP Rule and announced earlier this year its first known enforcement actions against three violators.

By [Jennifer Sulla](#)

* * *

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