



HARVARD SCHOOL OF PUBLIC HEALTH

Department of Environmental Health

February 28, 1999

Ms. Carol Browner
Administrator
U.S. Environmental Protection Agency
401 M Street SW
Washington, D.C., 20460

RE: Docket Control Number OPPTS-62156

Dear Administrator Browner:

Section 403 of the TSCA (15 U.S.C. 2683) as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4841) (Title X), mandates the U.S. Environmental Protection Agency (EPA) to take actions to address lead-based paint concerns. In Title X, Congress concluded that lead exposure to children, even at low levels, may result in adverse health effects (intelligence quotient (IQ) deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems). The U.S. EPA has an opportunity to eradicate childhood lead poisoning and significantly reduce the incidence of these adverse health effects by promulgating regulations that will identify and prevent exposure to lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

The National Environmental Justice Advisory Council (NEJAC), a Federal Advisory Council of the U.S. EPA, is privileged, also, to have the opportunity to significantly impact the environmental health in children through its advise and recommendation to the Agency and herewith submit our comments on EPA's proposed 403 rule, "Lead; Identification of Dangerous Levels of Lead."

The NEJAC acknowledges with appreciation the extension of the public comment period for the proposed Lead 403 Rule from December 31, 1998 to March 1, 1999 as requested by NEJAC on December 22, 1998. The intent of the request was to ensure that NEJAC and Environmental Justice communities have an opportunity to become informed of and comment on the proposed rule. Regretfully, the EPA failed to organize and implement an outreach effort to the NEJAC as well as to Environmental Justice communities, according to Section 5-5 "Public Participation and Access to Information" of Executive Order No. 12898, for its meeting on February 16, 1999. Therefore, attendance by the NEJAC was low with only four members present and no representatives of Environmental Justice communities. Several who expressed Environmental Justice concerns might have wished to attend. Indeed, only announcing the public meeting 13 days in advance through the Federal Register virtually assured that few would attend. We hope that future meetings and forums will be announced in a timely manner and appropriate outreach, where implicated, will include all concerned parties, in particular, Environmental Justice communities.

Children in Environmental Justice communities are greatly affected by the consequences of lead poisoning. For example, the third National Health and Nutrition Examination Survey (NHANES III) findings by the United States Department of Health and Human Services (HHS) showed that nationally, 17 percent of Hispanic children and 36 percent of Black children had blood lead levels ≥ 10 $\mu\text{g}/\text{dl}$, and 2 percent of Hispanic children and 2 percent of Black children had blood lead levels ≥ 20 $\mu\text{g}/\text{dl}$ (Brody, Pirkle, Kramer, et al., Blood lead Levels in the U.S. Population. Phase I of the Third National Health and Nutrition Examination Survey, JAMA 1994; 272: 277-91). Although lead poisoning is a pervasive



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problem that affects children in all races and all socioeconomic strata, it disproportionately impacts low-income populations, in particular, those in urban areas. As we know, in urban areas the hazards from lead-based paint are more prevalent in older housing. Any proposed rule must help to reduce lead-based paint hazards in most of these pre-1978 housing and child occupied facilities and prevent lead poisoning in children under 6 years of age in these communities.

After careful review, the NEJAC has concluded that, as currently written, the proposed Lead 403 Rule has reduced the protection from exposure to lead-based paint hazards in children, offers significantly less protection than does the current guidance, will not help in preventing childhood lead poisoning, and does not address Environmental Justice communities who are disproportionately impacted and at greatest risk.

Our concerns on TSCA Section 403 (scope and applicability, standards for lead-based paint, and requirements for implementing the standards), as proposed, are as follows:

1. Scope and Applicability

"This part of the proposed rule also makes it clear that the TSCA section 403 standards do not require the owner of properties covered by this proposed rule to evaluate his/her properties for the presence of lead-based paint hazards, or take any action to control these conditions if one or more of them is identified (Federal Register 1998 (June 3); 63(106):30309)".

The scope and applicability in proposed §745.61 are vague and are, therefore, at great risk for misappropriation. We feel that there will not be much incentive by owners to evaluate properties according to the proposed rules except for avoiding liability exposure. In addition, the disclosure requirements under §1018 of Title X may be limited by limiting the definition of lead-based paint hazards to only conditions cited by a certified risk assessor.

2. Standards for Lead-based Paint Hazards.

The proposed standards are codified in proposed §745.65. Proposed §745.65 (a) states that hazardous lead-based paint includes lead-based paint in poor condition.

The NEJAC found this to be the most problematic of TSCA Section 403.

The definition of and standards for hazardous lead-based paint in section §745.65 deviate from the statutory definition and the Agency's commitment to the health of children and places a disproportionate burden on Environmental Justice communities. Also, by EPA's acknowledgement, the definitions exclude many conditions that EPA knows are extremely hazardous. Deteriorated lead-based paint by its nature presents a hazard to children.

a) Proposed §745.63 defines paint in poor condition as "more than 10 square feet of deteriorated paint on exterior components with large surface areas, more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors), or deteriorated paint on more than 10 percent of the total surface area of interior or exterior components with small surface areas (e.g., trim, baseboards) (Fed Reg 1998(June 3); 63(106):30309)".

With respect to the "square foot" standard, the Agency concedes that because "there are no data to directly relate the degree of deterioration to blood-lead level, the EPA was unable to perform an analysis to specify a minimal area of deterioration that would be considered a "hazard" and that under this definition, "millions of homes would not be identified as having hazardous deteriorated paint" (Fed Reg 63:30331 - even though they may indeed contain such hazards). With respect to the "10 percent" standard, the Agency concedes that over one-third of windows with fully intact lead-based paint exceeded

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the Department of Housing and Development (HUD) clearance test levels (and for the remaining two-thirds, the lack of dust in many cases may merely indicate recent cleaning, not a lack of hazard (Fed Reg 63, 30332)). The Agency offers no empirical data to support weakening this definition. We, therefore, conclude that these definitions were chosen at random. We do not believe a Federal Agency's health-protection standards should be based on randomly chosen numbers.

The de minimis standard of 2 square feet of deteriorated paint in interior components with large surface areas, unfortunately, may lend itself only to temporary situations that will require future maintenance. Overtime the size of the area may become larger as a result of future deterioration as opposed to eliminating lead-hazard through prevention such as removal, replacement, or permanent covering.

Critical sources of lead exposure (deteriorated lead on walls, ceilings, and floors that do not exceed 2 square feet per surface, and lead on impact, friction and accessible surfaces as long as it does not exceed 10 percent of the surface area of such components) are omitted from the definition.

b) The rule is "not proposing hazardous lead-based paint standards for accessible surfaces and friction and impact surfaces (Fed Reg 1998(June 3); 63(106):30309)". Therefore critical sources of exposure from lead-based paint on these surfaces will not be considered hazardous unless more than 10 percent of such surface components are deteriorated. These are important sources of lead exposure as the surfaces are subjected to impact and abrasion with subsequent chipping and deterioration of lead paint. Also, lead-painted friction and impact surfaces are omitted as lead hazards, if the paint is intact or deteriorated to a de minimis extent. Interior and exterior lead-painted windows, in particular, are of concern because they constantly generate lead dust by repeated opening and closing. These omitted sources of lead exposure may increase the risk of exposure to children and gravely weaken the proposed rule.

c) Proposed §745.65(b) identifies dust lead hazards in terms of lead loading and location. Lead loading has been defined as "the quantity of lead present per unit of surface area (e.g., micrograms per square foot) for uncarpeted floors and interior windowsills". The dust lead standard does not include a standard for carpeted floors and window troughs.

The definition of "lead dust hazard" relies heavily on measuring the presence of lead dust to indicate the existence of paint hazards. By only relying on lead dust levels for uncarpeted floors and interior windowsills as a source of lead dust hazard, yet, other critical sources of lead exposure, for example, carpeted floors and window troughs, are ignored.

Window troughs and carpeted floors are reservoirs of lead dust and are highly accessible to children. Window troughs may be painted with lead that often deteriorates with debris falling and collecting in them. An important consideration, under these proposed regulations, is that a lead dust hazard with subsequent remediation would be omitted in situations where a window would have less than 10 percent deterioration but has very large amounts of lead dust in its troughs. This omission of standards for carpeted floors and window troughs implies that many floors and windows are not likely to be characterized as lead paint hazards.

d) The proposed §745.65(c) identifies the soil lead hazards in terms of lead concentration. The proposed standard for soil lead hazard (2,000 parts per million (ppm)) and the soil-lead level of concern 400 ppm) should both appear in both the regulation and guidance with an explanation of why the EPA has chosen the two levels.

The proposed §745.65(c) utilizes cost benefit considerations for justification of setting the soil lead

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hazard level of 2,000 ppm. This level is less stringent than other current guidelines of the EPA, and EPA's standard for Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) cleanup programs. In addition, some states have defined the standard at much less than 2,000 ppm. Further explanation by EPA is needed to address the soil-lead hazard contamination between 400 ppm and 2000 ppm, in particular, the difference between the level of 2,000 ppm and its impact on the current practices by the HUD, the CERCLA, and the RCRA cleanup programs.

Should less stringent soil-lead standards be adopted, the EPA may find it difficult to clean up sites that house a lower more stringent hazard level and limit EPA's ability under RCRA and CERCLA to require cleanups which will meet the program standards of the CERCLA and the RCRA. In pre-1960 housing where abatements of lead-based paint hazards are required by TSCA, the proposed soil-lead hazard will limit the cleanup of federal property and, for evaluating federal housing built between 1960 and 1978, it will become a "defacto" standard.

In addition, the proposed play yard sampling procedure considers exposure based on the average of the dripline and the mid-yard composite samples. In play areas with high levels of lead, a soil-lead hazard would not be identified unless the yard wide dripline average exceeds the proposed standard, 2,000 ppm. This does not adequately address the soil lead exposure that might be present in play areas.

A failure to address lead-based soil hazards will not protect those at greatest risk, as soil, also, is a significant pathway of exposure for children in urban Environmental Justice communities. The EPA's Integrated Exposure Uptake Biokinetic Model (IEUBK) for lead in children (version 0.99D) predicted that exposure to lead in soil at 2000 ppm is associated with blood lead levels exceeding the Centers for DiseaseControl (CDC) level in up to 80 percent of children, and blood lead levels that require medical treatment in up to 30 percent of children. In addition, the EPA demonstrated that exposure to lower concentrations of lead in soil, for example, 1200 ppm, will cause at least 30 percent of children to experience lead poisoning associated with measurable IQ losses.

3. Requirements for Implementing the Standards

The proposed §745.69 would establish that the determination for lead-based paint hazards have to be made by a certified risk assessor according to the risk assessment work practice standards.

However, under the proposed rules, "hazardous lead-based paint" by definition would simply not exist unless a certified risk assessor has been hired to perform an examination. The NEJAC agrees that the property owner should not be allowed to use other than certified, qualified personnel to perform lead hazard identification, control, and abatement work. Indeed, we believe that the EPA should impose, at minimum, an obligation on all owners of dwellings where young children reside to affirmatively investigate for the existence of lead hazards, using certified personnel. But while the responsibility for ascertaining that a condition is unequivocally not "hazardous lead paint" within the meaning of the proposed regulations should indeed be limited to qualified persons; this should not limit other persons from reporting or identifying "hazardous lead paint" conditions as well - or reporting lead hazards beyond the limited scope of the definitions in the proposed rules.

In conclusion, the NEJAC feels that the proposed 403 Lead Rule does not satisfy the statutes of Title X and will further endanger the health of children by ensuring that lead exposure from sources will indefinitely continue, thereby, misleading the public to disregard many conditions that may be hazardous. As the proposed §745.61 indicates that "nothing in this subpart requires any persons to evaluate the property (ties) for the presence of lead-based paint hazards or to take any action to control these conditions if one or more of them is identified", the burden for lead poisoning prevention is shifted on

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tenant children and their families, those least able to provide preventive measures of control.

The NEJAC recommends that the U.S. EPA:

1. Employ a health-based model that the science supports.

The findings from an empirical model that was based upon data from a single city lead-in-dust-study was considered in the proposed rule instead of EPA's IEUBK model which is the Agency's model for childhood lead exposure. Although the IEUBK has undergone several reviews, both models (IEUBK and Empirical) have inherent uncertainties. Therefore, we recommend the Agency to use a health-protective model that the science supports.

We are perplexed by the proposed rule's claim that lead paint abatement in homes is not feasible and the standards were based on the premise that "resources are scarce" (Fed Reg 1998 (June);63(106):30307), we see no quantification of that scarcity. However, we feel that according to cost-benefit analysis, abatement is demonstrably more feasible. Studies (DHHS, Strategic Plan for the Elimination for Childhood Lead Poisoning (1991); Swartz J, Societal Benefits of Reducing lead Exposure, Environ Res 1994:66) conducted for the CDC and the EPA demonstrate that large investments in abatement are justified by the societal returns in preventing childhood lead poisoning.

In addition, we are concerned that, in the proposed rule, cost consideration greatly out-weighs health consideration of children. As the Agency acknowledged, "Normally, EPA would tend to favor the approach that better reflects risk to human health (Fed Reg 1998 (June 3);63(106): 30309)". However, in the proposed regulations the Agency "concluded that the hazard standards should be based on a set of parameters identified by balancing the costs of reducing exposure to lead-based paint hazards with the benefits of avoiding adverse human health effects (Fed Reg 1998 (June 3);63(106):30313)."

2. Implement rules that target the disproportionate impact on poor and minority populations and involve representatives of affected populations in the decision making process in accordance with the Executive Order 12898, "Federal Actions to Address Environmental Justice In Minority Populations and Low income Populations" (Section 1-1, Implementation, Agency Responsibilities, "...each Federal agency shall make achieving environmental justice part of its mission by identifying, addressing disproportionately high and adverse human health or environmental effects of its program, policies, and activities on minority populations and low-income populations)."

In the decision making process of the proposed rules, the EPA indicated that it "established a Dialog Process", to get input from "interested parties", including "lead poisoning prevention experts, environmental advocates, housing providers, the lead industry, State and local governments, the banking and insurance industries, and the lead risk assessment and abate industry" (Fed Reg 1998 (June 3);63(106):30307)," held forums "sponsored by trade associations" and "seminars sponsored by real estate groups", "met with representatives of rental property owners to gauge owner response to the regulatory standards", and consulted with the Science Advisory Board on the technical review of the proposed TSCA Section with a limited specific set of charge questions that were not representative of those questions raised by the concerns of the affected communities. However, the EPA failed to meet with those most affected, i.e., tenants with young children.

The NEJAC is concerned by the apparent lack of effort by the EPA in seeking the input of those most disproportionately affected by the proposed rule, as well as, those who represent the disparate (Environmental Justice communities, low socio-economically deprived families with young children, and, we include, EPA's Federal Advisory Council on Environmental Justice, the NEJAC).

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3. TSCA § 401, 15 USC §2681 ("Title X"), defines lead-based paint hazard as any condition that causes exposure to lead from lead-contaminated dust, lead contaminated soil, lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects. The definition of hazardous lead-based paint in the proposed rule is not in accordance with this statute.

We urge that the Agency retain the current EPA guidance definition of hazardous lead-based paint, i.e., any lead-based paint that is deteriorated in any location (interior or exterior) that is peeling, chipping, chalking, cracking, or located on an interior or exterior surface or fixture that is damaged or deteriorated (Federal Register 60:47249-50), in the proposed Lead 403 Rule. Unless testing confirms otherwise, it should be presumed that paint in pre-1978 dwellings contains lead, given that 83 percent of such homes contain lead paint (Fed Reg 63:30305).

The Agency acknowledges that "Lead is a substance for which there is no clear evidence that there is a level of exposure below which there is no risk (Fed Reg 1998 (June 3),63(106): 30315)."

4. Retain the current EPA guidance standards that do not permit any deteriorated lead-based paint on any surfaces including friction, impact, and accessible areas as justification supplied for the exclusion of is not represented in the analysis.

5. Set interim guidance levels for lead dust on carpeted floors and for window troughs.

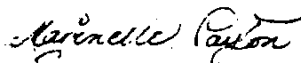
6. Draft a proposed rule in a concise comprehensible form for scientists as well as lay persons in accordance to Executive Order 12898, (Section 5-5, Public Participation and Access to Information: "... each Federal Agency shall work to ensure that documents relating to human health or the environment are concise, understandable, and readily accessible to the public").

7. Consider the concerns addressed by those persons and community groups during the public comment periods who, also, feel that the proposed regulations, as currently drafted, are not protective of children's health. In review of these comments, the Agency will notice that similar concerns are resounded and that, if adopted, they will help to develop a more effective rule.

The NEJAC remains committed to work with the Agency to set regulations that will, as stated in Title X, eradicate childhood lead poisoning through prevention.

Thank you.

Sincerely,



Marinelle Payton, M.D., Ph.D., M.S., M.P.H.
 Department of Environmental Health
 Chair, Health and Research Subcommittee
 U.S. EPA National Environmental Justice Advisory Council

cc: OPPTS Document Control Officer (7407)

Ms. Marva E. King, Program Manager, U.S. EPA Office of Environmental Justice