November 7, 1991

National Paint & Coatings Association

To: Occupational Health/Product Safety Committee

From: Stephen R. Sides, CIH
Director, HSEA Division, NPCA

Re: Issues for Consideration on Lead Abatement

Please review and be prepared to comment on the following technical points and issues at the upcoming OH/PS meeting in Washington (November 15, 1991). It is essential that we develop some clear recommendations for consideration by the NPCA Executive Committee.

1. X-Ray Fluorescence (XRF) instuments used to detect the presence of lead in paint are inaccurate and misleading. The current HUD standard for lead content in paint requiring abatement is 1.0 mg/cm2 (determined by XRF) or 0.5% by weight (in the dry film using conventional methods).

   1.0 mg/cm2 is approximately 12% lead for a single paint film, and represent the lower limit of detection for the XRF instrument. HUD estimates that 62% of houses built from 1960 to 1979 have lead-based paint (as determined by XRF) over 1.0 mg/cm2. This is inconsistent with known industry formulating practices for that time period. The lead content in house paint simply did not even approach 12% during that time period. The XRF instrument has produced bad data now being used in bad risk assessments, all to the detriment of the paint industry. Past NPCA efforts to alert HUD and other agencies to this problem have produced no meaningful changes in policy.

2. EPA is very interested in having encapsulants serve to control exposure to lead-based paint as a cost saving and "do-able" abatement measure. At issue is the criteria by which encapsulants will be "certified". ASTM currently has a role through its E.06 Committee, however EPA is interested if NPCA would be willing to set up an independent certifying organization.

3. There is considerable debate as to the actual health risk associated with low level lead "poisoning" in adolescent populations. Epidemiology evidence (Needleman and Lin-Fu) seems to indicate that there is a latent effect to childhood lead poisoning producing learning disabilities and behavioral problems. The educational community currently considers these problems as "intrinsic" in the adolescent population and has not associated them with an "organic" or discernable evidence of lead exposure.

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4. Other sources of lead have been associated with lead poisoning in children, and despite their more widespread environmental dispersion, there seems to be little interest in their abatement or control. In fact, paint as a source of lead in the environment is often cited as THE GREATEST SOURCE despite evidence to the contrary. Media coverage of this anomaly has not generated any activity to properly attribute sources of lead within the Federal government, however some State initiatives (California and Minnesota in particular) are attempting to deal with the problem. Anecdotal evidence is often cited that paint is the source of lead in soils directly adjacent to structures or in household dust in structures with intact lead paint. Myths attributing "inherent properties" to paint such as chalking, dusting and general deterioration over time are ill-placed.

5. The State of California recently passed (and the Governor signed) a bill that apportions (through taxes) the cost of administering a lead poison prevention program. Taxes will be levied against industries representing at least three "sources" of lead contamination in the environment: gasoline, smelters, and paint. (NOTE: The concerted opinion among those representing the paint industry in California was that this legislation had sufficient support in the General Assembly to assure passage. In its original form the bill would have placed the primary tax burden on the paint industry. Efffective lobbying by the California Paint Council demonstated that old paint was not the only source of lead in the environment, nor the most dispersed source available for exposure. The final legislation, now law, identifies at least three sources and defers the taxing decisions to a review "board" that will determine fair apportionment.. presumably based on a finding of "fault"...in early 1993. This law sets a dangerous precedent. While the industry can derive some comfort in the fact that there is a broader, and presumably fairer apportionment scheme, the simple fact is that the costs associated with the abatement "problem" are staggering. California at the onset is only seeking funds to support the blood lead screening program in the state, some $16 million annually. However screening may produce evidence of health impacts, thereby accelerating primary prevention efforts and widespread abatement activities. Even with a risk-based approach to abating lead paint "problems" (ie. deteriorated lead-based paint and high lead levels in household dust) HUD estimates the annual cost will exceed $1.9 billion for the next ten years. With California containing some 15% of the nations housing stock the annual prioritized abatement costs approach $300 million. The combined tax burden on the paint industry, as the sole contributor to the paint "problem", could conceivably result in a tax of some $4 per gallon (based on estimated architectural surface coatings volume in

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California). Because of the potential impact of this law, the paint industry must move swiftly to evaluate its position with respect to the abatement tax issue, document through the existing literature its potential contribution to lead dispersion in the environment, and develop an economic impact analysis (including marginal and opportunity cost assessments for paint and its available alternatives).

6. Numerous states (New Jersey and Louisiana among others) have sought to amend the statute of limitations for bringing suites against paint companies to recover costs associated with lead abatement. In addition, many of these same states have sought to establish a rebutable presumtion operating in the law establishing paint as the sole source of lead poisoning among children under the age of seven. While these legislative efforts have thus far been unsuccessful, they are no less desirable among their supporters who seek an "open season" on paint companies. Passage of one such piece of legislation may serve to make permanent "fact" of the underlying falsehoods.

7. The Lead Industries Association (LIA) has been fighting lead legislation and regulation for years. They have an established research organization (International Lead Zinc Research Organization or ILZRO) at their disposal to support research of interest to their industry. In fact, all of the efforts to seek a a proper perspective of the available evidence establishing a health basis for "low-level" childhood lead poisoning owe their origin to the LIA. Some may argue that the LIA has served the paint industry by their actions to support sound science and discourage regulatory and legislative activities based on an "inappropriate" assessment of risk. Others believe that the paint industry is being "left behind" in the LIA's effort to preserve lead use in general. While these beliefs may never really emerge as a discernable reality, what is important is that the LIA "owns" the lead issue, and they know every curve, bump, blind corner and "political" pothole or shortcut. The paint industry has a lot of work to do to catch up. Consequently, we have to be more focused and directed in our efforts to preserve and protect our industry.

8. There has been some talk that a "comprehensive" program is needed by a united paint industry (IBPAT, PDCA, NDPA, and NPCA) to meet the problem of lead abatement head-on and devise a paint industry focused solution. Such an effort has definate political benefits as there are no known examples of manufacturers, distributers and retailers, contractors and organized labor banding together to resolve an environmental issue. The only factor not covered by such an effort is the cost. By offering a united industry to

LTW 0024579

help deal with the paint portion of the problem, however, we may cast a critical light on the underlying risk assessment... and impact any effort to find fault... in our favor.

9. Another factor not properly considered by industry is the fact that public housing availability may drive the lead abatement issue. Critics argue that the cost of abatement may lead landlords to abandon properties and force homelessness on an already oppressed group. Housing advocates believe that landlords have used such arguments for the last time and are preparing political programs aimed at forcing action. Inherent in this debate is the fact that the paint industry is often viewed as an accomplice of the landlords. The simple reality is that we could be a friend to both groups by forging an effective, low-cost alternative to what currently serves as lead-based paint abatement. Our existing public service programs could then serve to promote our industry effort by informing others of our continuing committment health and product safety.

10. Finally, the proliferation of lead regulatory activities is "self-feeding" in that one agency's efforts prompts action by another. Federal action (or more often inaction) prompts state initiatives...all remarkably alike either in their means or their ends. To facilitate the expected wildfire of such actiity we need to prepare specific and detailed briefing packaged to be utilized by paint industry advocates wherever and whenever they are needed. To accomplish this we need to coordinate activities among the NPCA Staff charged with the governmant relations/advocacy role on lead.

Thank you for reading the information above. In preparing for discussion please make a note of those issues and/or programs which you feel NPCA should act on in the interests of the industry. I also ask you to identify those specific areas where you individually or those in your company may provide direct assistance.

See you on the 15th!

Sincerely,

Stephen R. Sides, CIH
Director, Health, Safety &
Environmental Affairs

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