B2503

HONORABLE LEONA BAUMGARTNER, M. D.

Commissioner of Health

City of New York

PETITION

OF THE

NATIONAL AND NEW YORK

PAINT, VARNISH AND LACQUER

ASSOCIATIONS

TO

THE BOARD OF HEALTH

OF THE

CITY OF NEW YORK

TO THE BOARD OF HEALTH OF THE CITY OF NEW YORK:

The National Paint, Varnish and Lacquer Association, in conjunction with its affiliate, the New York Paint, Varnish and Lacquer Association, respectfully submits this petition to the members of the Board of Health of the City of New York for an extension of the enforcement date of Section 230d of the Sanitary Code of the City of New York from May 1, 1955 in so far as the provisions of the said section of the Sanitary Code apply to the complete relabeling of certain stocks of paint products on hand in retail and wholesale inventories on May 1, 1955 and which were manufactured before that date.

We respectfully point out and pledge that this petition has no reference to any paint manufactured and packaged after May 1, 1955. It is our firm intention to comply with Section 230d in regard to any such paint, so that all containers of paint containing more than 1% of lead will bear an appropriate label, as required by the regulation. It is significant and noteworthy to your honorable Board that the general custom in the paint industry is to place a code number on paint containers. This code number is a record of the date the container was filled and the identity of the product. The stamping or imprinting of the code number on the paint container is positive proof of these facts. We submit this information to show a simple means of determining that paint containing more than 1% of lead and manufactured after May 1, 1955 is properly labeled.

In support of such petition we respectfully submit the following information:

The National Paint, Varnish and Lacquer Association with offices at 1500 Rhode Island Avenue, N. W., Washington, D. C. is a non-profit, trade organization representing approximately 94% of the manufacturers of paint, varnish, lacquer and allied products in the United States.

The New York Paint, Varnish and Lacquer Association, with offices at 2 Park Avenue, New York, N. Y., is a non-profit, trade association whose membership consists of approximately 95% of the manufacturers of paint, varnish, lacquer and allied products, who either manufacture and sell, or sell such products in the City of New York. The New York Paint, Varnish and Lacquer Association is an affiliate of the National Association.

Approximately eighteen months ago you honorable Board members and the Health Department officials concerned themselves with the public health problem of lead poisoning of children, particularly with respect to the eating of chipped or peeled paint and the use of proper paints on interior surfaces which might be chewed by children.

Coincident with this undertaking, both the National and the New York Associations cooperated with the Board and the Department to the end of achieving a workable warning label for paints containing more than 1% of lead.

Some delay was encountered to permit the American Standards Association to complete its studies and ultimate recommendation for public health purposes. During this period, the National Association initiated and completed action resulting in the recommendation of precautionary statements to its members. These warning labels, which are set forth in Exhibit "A", were developed with the knowledge and cooperation of the Department, with the consequent result that the good faith and sincerity of the Association and their members to meet the objectives of the proponents of the suggested lead labeling regulation were recognized and commended.

Your honorable Board called a hearing on the proposed Section 230d on October 29, 1954. Representatives of the paint manufacturers and of the Paint Dealers Institute of New York City testified at that meeting. At the conclusion of the meeting, this honorable Board adopted Section 230d and declared the section would be effective for enforcement on May 1, 1955.

We point out that this regulation requiring a specific warning label on paints containing more than 1% of lead is the first regulation of its type in the country. The industry has conveyed its sincerity and good faith in cooperation with the Board and Department. No objection to the adoption of the regulation was voiced by the industry. The only point raised was the length of time required to achieve effective compliance with the statute. On page 6 of the transcript of the meeting, Mr. Clarence Slocum, a spokesman for and a member of the industry stated:

> "However, there should be a generous period of time given before this thing can really become effective and I do not want to presume upon naming a period of time before any can of paint coming in here must bear this label; but if I might do so I might suggest a period of about 9 months for existing stocks of labeled paints and labels to be consumed."

However, at the hearing and in private conferences with interested public health officials, the Association and industry members advised of the problems of a change-over from existing production methods and labeling techniques to those required by the new regulation. Our desire, as adequately expressed by industry representatives at the October 29, 1954 meeting, was cooperation with your honorable Board and the Department. That desire is our present, announced intention. What has changed is the fact that our estimate of time necessary to change over to this new labeling was inadequate. Frankly, we miscalculated the enormity of the task that faced the industry in meeting fully the requirements of the new Section 230d.

We endeavored, as stated above, to acquaint your honorable Board of the industry's problems of compliance. At the same time both your Board and the Department was informed that the Associations, who are your petitioners, had adopted and officially published a national policy of adequate precautionary labeling with respect to dangerous or hazardous materials or products. This policy recognizes the desirability of rules such as those adopted by your honorable Board in Section 230c of the Sanitary Code. This regulatory development merits commendation and praise to each Board member for his or her individual and collective efforts to achieve a uniform approach to labeling. Due regard to the needs of local regulatory agencies as well as State regulations, similar to Chapter IX-A of the New York State Health Department Sanitary Code is your and our objective. We believe you join with us in attaining that goal.

The National Association, representing our industry, has consistently supported a long established policy requiring full and adequate support for every reasonable effectual means to decrease or eliminate hazards in the use of the industry's products.

We direct your attention to the Association's recommended precautionary labels (Exhibit "A" attached). Your honorable Board will note in Exhibit "B" hereof the uniform warning label, approved and recommended by the Association to the industry. Also, both the National and New York Associations and individual industry members are engaged in a Health-Education program to aid in the task of teaching the public about the proper selection of paints and the avoidance of risks arising from paints containing more than 1% of lead.

The tremendous effort to acquaint the general public with the health question, and to afford the paint manufacturer and distributor full time and information to market his products honestly without understatement or exaggeration of any hazards which may exist has been going forward with the support and guidance of the technical, toxicological, sales and legal experts of the industry. The desire is to comply with this new type of labeling law. The other mandatory object is to achieve complete elimination of conflicting provisions, so that one label can be used in any jurisdiction, Federal, state or municipal. In our undertaking, we found that a conflict exists here in New York City between the requirements of Chapter 19 of the Administrative Code relating to Flammable and Combustible Liquids as administered by the Fire Department, and Section 230c of the Sanitary Code as administered by the Health Department. To remove this conflict the problem was presented to the Fire Commissioner on January 28, 1955. The attached copy of the joint petition (Exhibit "C") of the National Paint, Varnish and Lacquer Association, the Manufacturing Chemists' Association and the Chemical Specialties Manufacturing Association, and of the comparative sheet prepared by the National Paint, Varnish and Lacquer Association of various regulations (Exhibit "D") are self-explanatory.

We respectfully allude to two points in this effort to achieve universal compliance (1) We seek adherence to the Health Department's rules. (2) The industry, in its inability to meet full compliance with New York City regulations of necessity was obliged to defer preparation of labels until it had exhausted its right of petition to the Fire Department, the Health Department and the Mayor, who as you will note from Exhibit "E" was advised informally of the industry's dilemma on November 1, 1954, two days after the enactment of Section 230d.

The problem of adjustment of existing production, packaging, distribution and marketing methods to achieve full compliance with the new regulation is manifold. The various phases of the difficulties presented to paint manufacturers and dealers are set forth as follows:

The paint manufacturer, in the ordinary conduct of his production operation, often plans his production schedules one year ahead. Market potentials, consumer demand, supplies of raw material and a myriad of questions are presented to him. One of them is the proper labeling of his products. Any production schedule includes adequate supplies of labels, set methods of packaging, and installed equipment to achieve this labeling from a production viewpoint. Most manufacturers had arranged for this phase of their operations last summer and were set to utilize the adopted methods no later than January first of this year. These schedules did not and could not include the labeling requirement of Section 230d, because the precise provisions were unknown. Consequently, many production schedules were in full operation before the regulation was enacted.

Perhaps a description of the required paint production schedules is necessary. Paint is a product whose market, with minor geographical variations, commences to reach its greatest volume in March. As the spring months pass, sales volume increases and reaches its peak in April, May, June and July. The result is a factory production schedule commencing in the preceding fall months in order to achieve a maximum inventory by April. The inventory stock of paint manufacturers in the month of April exceeds that of any other period in the year because traditionally paint sales for the period April-July are greatly in excess of production capacity for the same period.

Exhibits "F" and "G" are extracts from a National Consumer Survey of Painting Habits, made by the National Paint, Varnish and Lacquer Association in late 1953 and published in November 1954. These exhibits show graphically the seasons for exterior and interior painting of a house.

Paint manufacturers generally, particularly those who market on a national scale, adhere to such a production schedule. The filling of paint, after it has been approved by laboratory control for correct color and quality standard, is entirely a high speed, automatic process. The steps are as follows:

1. Emptv cans on a conveyor belt pass under automatic filling equipment which accurately fills the containers (1/32 gallon to 1 gallon) to the required volumetric measure.

2. The metal can lids or labels are automatically marked for product and date identification.

3. Filled cans moving along the conveyors at controlled speed, progressively pass additional equipment which completes the following functions -

   A. Covers are placed on cans.
   B. Covers are tightly secured.

   See Exhibit "H" Titled - Filling Line - A Mechanical Process:

   C. Filled cans are labeled at the rate of 60 to 200 cans per minute, according to size.

   See Exhibit "I" Titled - Labeling Line - A Mechanical Process:

   D. Labeled cans are manually placed in open-end shipping cartons.

   E. Filled cartons on conveyor line pass thru automatic carton sealing equipment.

   See Exhibit "J" Titled - Carton Sealing Line - A Mechanical Process:

   F. Cartons are stencilled for product and package size identification and conveyed on fork trucks to stock area.

   See Exhibit "K" Titled - Finished Goods - For Storage and Shipment

The sustained rate of production required to meet minimum stock levels by April needs the full operation of all available equipment and manpower in each plant. There is neither the required floor space, equipment or manpower available for the staggering problems involved in a relabeling or sticker labeling conversion to meet code requirements on factory paint stocks already packaged.

Exhibits "L" to "P" inclusive, illustrate the storage areas in part of only three local paint manufacturers. On April 1, 1955, filled can inventories of these three factories (Sherwin-Williams Co., Pittsburgh Plate Glass Co., Benjamin Moore and Co.) located in the New York City area are planned to exceed 1,000,000 gallons in package sizes as follows:

1/4 Pint	-	32 cans to each gallon
1/2 Pint	-	16 " " " "
1/8 Gallon	-	8 " " " "
1/4 Gallon	-	4 " " " "
1 Gallon	-	1 " " " "

Plus stocks of 2 Gallon and 5 Gallon containers for painter's use.

One of the above factories filled, labeled and stocked nearly 10,000,000 cans of all sizes in the year 1954.

We point out that the relabeling of existing can stocks in dealers stores and warehouses presents an equally grave dislocation of business operations for the 750 paint stores in New York City and a hardship warranting reconsideration of the effective code date.

An Association survey of some representative paint manufacturers in New York City is of interest to your honorable Board. It shows that there is at present an average of 200 colors containing lead in varying degrees. The average manufacturer must list the various product lines and colors thereof requiring a Section 230d warning. Most manufacturers do not use lead pigments other than colorants in any product they manufacture for use on interior surfaces. The lead content, if any, present in an interior paint has its primary origin in the tinting colors plus the minute proportion represented by the lead drying salts used to promote proper drying and hardening of the paint film.

Rightly, your honorable Board may ask - In spite of these difficulties, your dilemma of compliance, the newness of the regulation - What have you done? What are you doing now?

Your attention is directed to Exhibit "Q" of this petition which shows some labels of paint products which are now being marketed in New York City with labels in full conformity with Section 230d.

In Exhibit "R" are some labels of the New York paint manufacturers. The phrases such as "Contains no lead...recommended for children's furniture and toys" are significant. This label and literature is typical of a number of paint products and will become more widespread in the industry as time and reformulation conversions permit.

Many phases of production planning are the basis of these two types of labels. What paints contain more than 1% of lead? What method of test of the content of lead should be used? What paints are susceptible of formula alteration to decrease the lead content and thereby avoid the necessity of relabeling without dimunition of quality? What paints can be made without any lead?

The labels either achieve the public health objective or meet the demands of the warning requirements. All this has been done or is in process of being done. Maximum compliance with the statute will be achieved by the manufacturers as follows:

A. All manufacturers' production schedules and operations are being set up to insure adequate labeling of paints (as required by Section 230d) that are made and/or filled on and after May 1, 1955.

This brief does not support any other action in this regard after May 1, 1955.

It is significant and noteworthy to your honorable Board that the general custom in the paint industry is to place a code number on paint containers. This code number is a record of the date the container was filled and the identity of the product. The stamping or imprinting of the code number on the paint container is positive proof of these facts. We submit this information to show a simple means of determining that paint containing more than 1% of lead and manufactured after May 1, 1955 is properly labeled.

B. Current factory operations are being accelerated to insure the highest possible proportion of paint manufactured before May 1, 1955 will be adequately labeled as required by Section 230d.

C. Association committee groups are in continuous operation to correlate all pertinent information and to maintain an industry advisory service for manufacturers and dealers.

We have alluded to the production and handling problems of the manufacturers and dealers. There are also important problems of distribution and the task of trade education. The code regulation applies to manufacturers, warehousemen, distributors and retail dealers. All paint products must be properly labeled. As primary suppliers, the manufacturers are now engaged in a gigantic undertaking of distributing their products and educating their dealers as to the requirements of the code and its scope. What the law is - What it affects - What are dealer responsibilities - are a few of the many questions with which the manufacturing portion of our industry are being bombarded daily.

With few exceptions, the average paint store is staffed by a small number of persons - very often a husband and wife combination. Floor space is at a premium and cellar areas are used for storage of cased stocks. Can stocks are generally on open shelving, with larger package sizes (1 gal, 2 gal, and 5 gal. containers) in pyramid piles on the store floor.

Mr. E. J. Faber representing the Paint Dealers' Association of New York described the circumstances very graphically at the October 29th meeting. He said:

> "I am quite confident that this Board does not wish to place an almost insuperable problem and I do not mean to imply that it is insoluble; nevertheless, it is a problem which these small businessmen would have because most of these stores are run by a man and his wife or perhaps a man and his son or son-in-law. They are engaged in a very hard business. Their stores are open from 6 in the morning and in many instances to 7 at night. It is a very difficult laborious job and to add to it the problem of having to place labels on cans which already have labels would for these people present a real serious problem."

The proper relabeling of existing stocks in both dealer stores and factories can be accomplished in an orderly manner if permitted to extend beyond May 1, virtually the beginning of the peak of seasonal activity, when inventory stocks are largest and business operations are at the highest level. The factor of cost is not a consideration. The expenditure of money, as such, cannot accomplish the required purpose, nor would a postponement of the effective date result in any monetary saving of any kind.

It is the unfortunate circumstances of the code date (May 1) occurring prior to the most active part of the paint season that confronts our industry (both manufacturers and dealers) with this grave problem.

The impact of these difficulties as described by Mr. Faber becomes serious when it is realized that these burdensome conditions relate to approximately 750 paint and wallpaper stores as well as 3550 hardware and house furnishing stores handling paint, exclusive of all five and ten stores, lumberyards, variety stores, and department stores which sell paint.

The attached copy of an information folder in condensed form, prepared by Sapolin, Inc., (Exhibit "S") illustrates the task of presenting the story of Section 230d to dealers and the sincere effort of one New York City manufacturer to convey the information to the trade. The exhibit is typical of other manufacturers' dealer bulletins.

Based on the foregoing facts and circumstances, and with a proper claim that the Paint Industry is engaged in an effective and conscientious effort to reach a state of full compliance with the requirements of Section 230d at the earliest practical date, we beg the consideration of the Board of Health for the following proposal of relief from certain of the compliance dates involved:

First: Your attention is directed to the following statements on Page 5 of this brief, reading as follows:

"A - All manufacturers' production schedules and operations are being set up to insure adequate labeling of paints (as required by Section 230d) that are made and/or filled on and after May 1, 1955.

"This brief does not support any other action in this regard after May 1, 1955.

It is significant and noteworthy to your honorable Board that the general custom in the paint industry is to place a code number on paint containers. This code number is a record of the date the container was filled and the identity of the product. The stamping or imprinting of the code number on the paint container is positive proof of these facts. We submit this information to show a simple means of determining that paint containing more than 1% of lead and manufactured after May 1, 1955 is properly labeled.

"B. Current factory operations are being accelerated to insure the highest possible proportion of paint manufactured before May 1, 1955 will be adequately labeled as required by Section 230d."

Based on the foregoing statement of intention, we respectfully request your favorable consideration and approval of the following:

1. As applying only to that portion of paint stocks on hand May 1, 1955 in dealers hands, which, because of delivery prior to that date, are not labeled in conformity with the requirements of Section 230d, TO POSTPONE THE EFFECTIVE DATE OF ENFORCEMENT OF SECTION 230d UNTIL NOVEMBER 1, 1955.

2. Applying only to that portion of manufacturers paint stocks on hand April 30, 1955 which, because of prior date of manufacture are not labeled in conformity with the requirements of Section 230d, TO POSTPONE THE EFFECTIVE DATE OF ENFORCEMENT TO NOVEMBER 1, 1955.

Respectfully submitted,

NATIONAL PAINT, VARNISH AND LACQUER ASSOCIATION, INC.

Dated: February 17, 1955

By: Joseph F. Battley President

NEW YORK PAINT, VARNISH AND LACQUER ASSOCIATION

By: [illegible]