

December 1, 1972



Honorable Edward M. Kennedy
United States Senate
Washington, D. C. 20510

Dear Senator Kennedy:

We greatly appreciated the opportunity to discuss with Mr. Bates the legislation which would amend the Lead-Based Paint Poisoning Prevention Act. As the representative of the manufacturers of more than 90 percent of the dollar volume of paints and allied products and as the spokesman for the major suppliers of raw materials for these products, we are, quite naturally, most interested in any proposed Congressional action in this area.

Most assuredly, the problem of lead poisoning of children is one requiring solution on a priority basis. We continue to pledge our support in this endeavor. Additionally, I would emphasize that we have not and will not attempt to place any adverse economic impact on our industry in a position paramount to the health of our Nation's children. Without question, our children's health must now and always be the primary consideration.

Actually, any effective solution must consider two separate and distinct situations. The first, which is real, existing, and identified, is the old lead-based paint which is flaking and peeling from the walls of older housing, particularly dilapidated housing in urban areas. This old paint, manufactured years ago, contained substantial amounts of basic carbonate of lead, an admittedly hazardous substance if ingested in sufficient quantities. This existing problem can be corrected if adequate funds are provided and priority attention is given to it by authorities in those areas where the condition is most prevalent.

The second situation concerns the paint being manufactured today and its relation to the safety of future generations. We agree that the lead content of today's product should be set at a level which will not present a hazard years from now after several layers have been applied. A safe lead-content standard should be established, this standard should be vigorously enforced, and violators diligently prosecuted.

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Nashington
Office of W
Washington, D. C.
20500

Telephone
72 683-6772

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The real question then is what is this safe standard? And, a related question which cannot be overlooked is what relationship should this standard have to the standard for lead content of paints already on the walls (or surfaces of residential housing)?

The existing Lead-Based Paint Poisoning Prevention Act calls for a 1% level, while the regulations issued by FDA, in effect, reduce this to .5% effective January 1, 1973. Without reason to believe that any reduction from the 1% level was necessary, our Association supported this regulatory change as an additional margin of safety and as evidence of good faith. We feel very strongly, however, that any further reduction should be based on hard scientific data produced by adequate research. There is an absence of such data at this time. The provision in S. 3080, 92d Congress, directing that this research be done by HEW was totally appropriate and would have provided this much needed scientific knowledge.

The .06% standard is particularly troublesome to the industry and, I believe, to the housing authorities. It is based primarily on the work of Dr. Kehoe of Kettering Laboratory, which through extrapolations, interpretations, and assumptions, has become the basis for the position of the American Academy of Pediatrics. It must be noted that Dr. Kehoe worked with lead acetate, which is very soluble, and not the kind of lead compounds used in paint today, which are far less soluble. This research also did not involve the actual feeding of paint chips to any control group. In contrast, other research done by Doctors Gage and Litchfield, which did involve animal-feeding studies of paint chips, indicates a much higher level to be safe. Additionally, the extrapolations from Kehoe's work are based on an assumed absorption rate of 10%, whereas preliminary studies done recently in New York, involving animal-feedings, indicate an absorption factor of approximately 1%. We also attach significance to the fact that in October 1971, the Director, Division of Hazardous Substances and Poison Control, within FDA wrote: "There is no data from scientific studies to show how much lead in the form of paint chips a child might ingest per day, nor what fraction of such daily dose will be absorbed. . . . We are unable to produce epidemiological evidence of lead poisoning even at 1% in dried paint films or documentary scientific evidence to support a finding that this level is enough to result in overt symptoms of lead poisoning."

The point is, there is an absence of empirical data and to impose an arbitrary standard at this time is, in effect, condemning a product which has not been fairly tested.

Research is underway which will provide a sound and reasonable basis for legislation, if needed. Our Association has undertaken a research program, to be conducted by an independent laboratory, involving animal-feedings of paint chips with the ingredients being used in modern paints. The test protocols have been established, with the

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assistance and advice of FDA, the Bureau of Community Environmental Management (BCEM), leading medical authorities, and others, and -- the project is ongoing. Meaningful results will be available during 1973, probably within 6 to 8 months.

Also, the Institute of Environmental Medicine of New York University Medical Center has a research program underway, funded by the City of New York. In addition, it is understood that FDA and BCEM have undertaken research programs of their own. Certainly the scientific knowledge being developed by these studies will provide many of the answers to the questions which exist today.

We urge that any legislation which would reduce the lead level of modern paints below the .5% directed by FDA be based on the scientific data produced.

As you recall, both the Senate and the House considered this matter in some detail during the 92nd Congress although final enactment was not achieved. The Senate bill provided for a standard of .5% effective January 1, 1973 with an automatic reduction to .06% a year later, and also provided for a research program by HEW to be completed within 8 months. On the other hand, the House bill provided for the .5% standard only and included a much-needed federal preemption clause, but made no provision for research.

We would welcome and support a measure in the 93rd Congress which combined features from both of these versions namely, establishment of the .5% standard, a federally-directed and funded research program, and a provision providing for federal preemption with respect to lead standards. We would be pleased to work with your staff in developing such a proposal.

The provision for full federal preemption, similar to that in the Federal Hazardous Substances Act, is of vital concern to our industry. We are facing an ever-increasing number of differing state and local standards. Many jurisdictions are adopting measures which vary in content, standard restrictions and effective date. This results in a substantial burden on interstate commerce, causing unnecessary confusion and impediments to manufacturers moving their products across state lines. Clearly, one standard, based on hard scientific data should serve as the basis nationwide. It is strongly urged that a preemption clause be included in any legislation on this subject.

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We are delighted with the kind offer of Mr. Bates to meet with us again in the near future to discuss the matter further and answer any questions concerning our position. Such discussion can be helpful to us all in arriving at solutions to this pressing problem, and we welcome it most gratefully.

Sincerely,

Robert A. Roland
Robert A. Roland
Executive Vice President

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RECOMMENDED AMENDMENTS

Substitute for Subsections (x), (y), and (z) of Section 1 the following:

No person shall knowingly sell, offer for sale, apply or cause to be applied lead-based paint or similar surface coating material, manufactured after the effective date of this Act, intended for use on the following surfaces or articles: (1) interior surfaces of any dwelling; (2) exterior surfaces of a dwelling which are readily accessible to children under 7 years of age, such as stairs, decks, porches, railings, windows and doors; (3) toys or other articles intended for use by children; (4) residential furniture, and (5) cooking, eating and drinking utensils.

No person shall knowingly sell or offer for sale any other lead-based paint or similar surface coating material manufactured after the effective date of this Act that may be purchased by the general public unless the container is clearly labeled as to its intended use and bears on the principal display panel the word "WARNING" and the following statement: "CONTAINS LEAD. DRIED FILM OF THIS PAINT MAY BE HARMFUL IF EATEN OR CHEWED. See other cautions on (side or back panel)."

These products shall also bear on their label the following additional statement or its practical equivalent:

"Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children.

"Do not apply on these exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

"Keep out of the reach of children."

The placement, conspicuousness and contrast of the above labeling shall be in accordance with the requirements of Federal law and regulations issued thereunder.

No person shall knowingly sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away, any toy or other article intended for use by children, residential furniture, cooking, drinking or eating utensil, manufactured after the effective date of this Act to which any lead-based paint or similar surface coating material has been applied.

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Any paint or other similar surface coating material shall be deemed to be lead-based when it contains lead compounds of which the lead content, calculated as the metal, is in excess of five-tenths of 1 percentum of the total weight of the contained solids or dried paint film; or such lower standard for lead content in residential paints as may hereafter be established by Federal law or regulation.

(Add appropriate penalty provisions)

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