Lead Industries Association, Inc.
292 Madison Avenue • New York, N. Y. 10017 • Telephone: (212) 532-2373

Environmental Health Department

March 10, 1981

To: All Members of the LIA Environmental Health Committee
All Official Members of the LIA

From: Jerome F. Cole

Subject: Information Request by OSHA Re: Petition for Delay of MRP Trigger

Enclosed are three documents pertaining to the LIA petition for delay of the MRP trigger of 60 ug/100 g lead in blood scheduled to go into effect on April 1, 1981. The enclosures include a letter of February 27, 1981, from David Ziegler of OSHA to Standish Medina announcing the granting of a 30-day stay of the 60 ug/100 g trigger and advising that OSHA would follow-up with a request for more specific information to further substantiate our request for a one-year delay. Also enclosed is a copy of the March 3, 1981, Federal Register received yesterday announcing the delay and noting that all further information must be submitted to OSHA by March 20, 1981. Finally, also enclosed is a letter received late yesterday afternoon from Mr. Ziegler to Standish Medina outlining in detail the additional information requested by OSHA. We recognize that the collection of the detailed information called for in the letter of March 5 will be extremely difficult. However, in view of the extremely tight time constraints placed by OSHA on us, i.e., the March 20 deadline, we must ask that you move as quickly as possible to obtain the requested information and submit it directly to me or to Standish Medina, by phone if necessary, by the date of March 17, 1981.

Emphasis should be placed on the request contained in Paragraph 1a of the letter of March 5, i.e., how many supervisory or skilled workers of those exposed would be required to be removed because their blood lead levels exceeded 60 ug/100 g. Also, it would be helpful to have your estimate of the time required for these workers to reach the return level of 40 ug/100 g. It is important to note that we are particularly interested in any information you may be able to supply on the impact of the 60 ug/100 g trigger on productivity and the supervision and maintenance of safety and health practices and equipment.

Again, we are sorry about the very short period of time permitted by OSHA, but we feel that we must endeavor to do our best to comply with OSHA's time schedule.

Sincerely,

Jerome F. Cole
Director, Environmental Health

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U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

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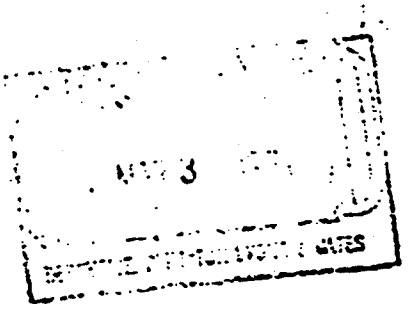

Standish Forde Medina, Esq.
Debevoise, Plimpton, Lyons & Gates
299 Park Avenue
New York, New York 10171

Dear Mr. Medina:

This is in response to your request, dated February 18, 1981 for a one year delay in the effective date of the 60 ug/100g removal trigger and 40 ug/100g return trigger in the medical removal protection provisions of the OSHA lead standard. After carefully reviewing your request and the attached documents, I have decided to grant a 30-day delay in the March 1, 1981, effective date to permit the submission and evaluation of additional information relating to your request. After consideration of the additional data, a decision will be made as to what further relief is appropriate.

The occupational lead standard was issued on November 13, 1978 and published in the Federal Register in November 14 (43 FR 52952) and November 21 (43 FR 54354). The standard, codified at 29 CFR 1910.1025, includes a requirement for the removal of employees whose blood lead levels exceed specified values and for their transfer to lower exposure positions or, in the absence of such positions, for the maintenance of these employees' earnings and other employment rights. These employees would then be returned to employment when their blood lead levels dropped below specified levels.

To assure the feasibility of this provision and in recognition of the existing elevated blood lead levels of many exposed employees, the standard provided for a progressive phase-in of the levels which would trigger the removal and subsequent return of employees to lead exposure positions. For purposes relevant here, beginning March 1, 1981, the start of the third year of the standard, employees would have to be removed if their blood lead levels exceeded 60 ug/100g and could not be returned until their blood lead levels dropped below 40 ug/100g.

In your request, you allege that the application of this requirement on the March 1, 1981, effective date is infeasible because it would necessitate the removal of many skilled employees, including supervisors, foremen and maintenance workers, whose blood lead levels currently exceed 60 ug/100g. You further state that these employees would have to be on removal status for lengthy periods of time until their blood leads dropped below 40 ug/100g, and that because of their skills and experience they could

not be easily replaced. As a result, there would be serious adverse effects on the continued operation and productivity of your plants, including the health and safety controls utilized in these industries.

Your request raises substantial questions concerning the feasibility of the new trigger levels, which clearly warrant some relief to prevent the disruptions you contend will occur. From the information submitted so far, however, it is difficult to determine the precise nature of the relief necessary. Thus, for example, you have submitted data concerning certain employers in the primary smelting and battery manufacturing industries. It is not clear from these data whether similar problems are faced in other industries and therefore whether the relief requested is necessary for all industries covered by the lead standard or can be limited to the primary smelters and battery manufacturers. Even in these two industries, your submission relates mainly to a limited group of skilled employees who would be difficult to replace while they are on removal status. Again, it is not clear whether it would be sufficient if a delay in the new trigger levels affected only these employees or whether a broader delay covering production employees is also made necessary by the circumstances.

In light of these uncertainties and other gaps in the evidence submitted, and the very brief period of time before the March 1 effective date, I have decided as an interim measure to delay the effective date of the new trigger values, provided in §§1910.1025(k)(1)(i)(C) and 1910.1025(k)(1)(iii)(A)(3), until April 1, 1981, for all employers covered by the lead standard. This brief delay will enable you to submit additional information concerning the extent and scope of a delay which you consider necessary, and will enable the agency to evaluate your request and determine what long-term action is appropriate. Public comments and information from other interested parties will also be solicited. I would suggest that your collection of additional data commence immediately because of the brief period of time available. We will shortly be sending you a separate letter setting out in some detail the questions we believe you should address in your additional submissions and the date by which this information must be submitted.

I am confident that with the cooperation of all concerned we will be able to develop a solution which will protect employees in a reasonable and feasible manner.

Sincerely,

David C. Ziegler
Acting Assistant Secretary

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-004M]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Delay of effective date of new trigger levels for medical removal protection.

SUMMARY: OSHA is delaying the effective date of the new trigger levels for medical removal protection under the lead standard from March 1, 1981 to April 1, 1981 [§ 1910.1025(k)]. This action is taken upon the request of several industry parties and will allow for the submission and evaluation of additional information from all interested persons concerning any further relief which may be appropriate.

DATES: The effective date of the new trigger levels is April 1, 1981. All data and comments must be received by March 20, 1981.

ADDRESS: All comments should be submitted to the Docket Officer, Docket No. H-004M, Occupational Safety and Health Administration, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Dr. Robert P. Belilles, Occupational Safety and Health Administration, Room N3718, U.S. Department of Labor, Washington, D.C. 20210; telephone (202) 523-7081.

SUPPLEMENTARY INFORMATION: On November 13, 1978, OSHA issued a new standard on occupational exposure to lead under the authority of section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b). The standard was published in the Federal Register on November 14 and 21, 1978 (43 FR 52952; 43 FR 54354) and codified at 29 CFR 1910.1025.

The standard, in addition to requirements for reduction of airborne lead exposures, monitoring, protective equipment, training, medical surveillance, and other protective measures, also contains a requirement for the removal of employees whose blood lead levels exceed specified values and for their transfer to lower exposure positions or, in the absence of such positions, for their removal from the workplace. While employees are transferred or removed from the workplace, the employer must maintain their earnings and other employment rights. These employees would then be returned to employment when their blood lead levels drop below specified levels. This provision, known as the medical removal protection ("MRP") requirement, is contained in paragraph (k) of § 1910.1025.

To assure the feasibility of this provision and in recognition of the existing-elevated blood lead levels of many exposed employees, the standard provided for a progressive phase-in of the levels which would trigger the removal and subsequent return of employees to lead exposure positions. During the first year of the standard, beginning March 1, 1979, employees would have to be removed if the concentration of lead in their blood was at or above 80 micrograms of lead per 100 grams of whole blood (80 μg/100g). These employees could be returned when their blood lead levels dropped to 60 μg/100g. Starting March 1, 1980, employees with blood lead levels at or above 70 μg/100g would have to be removed and could not be returned until blood lead dropped to 50 μg/100g. Beginning March 1, 1981, the third year of the standard, the trigger levels for removal and return were scheduled to drop to a 60 μg/100g removal level and 40 μg/100g return level.

Several employers and industry groups representing a cross-section of those affected by the lead standard, have petitioned OSHA for a one-year delay in the March 1, 1981 effective date of the new trigger levels. They have alleged that the application of the new trigger levels on March 1 is infeasible because it would necessitate the removal of many skilled employees, including supervisors, foremen and maintenance workers, whose blood lead levels currently exceed 60 μg/100g. They further state that these employees would have to be on removal status for lengthy periods of time until their blood leads dropped below 40 μg/100g, and that because of their skills and experience they could not be easily replaced. As a result, there would be serious adverse effects on the continued operation and productivity of their plants, including the health and safety controls utilized in these industries.

Responses to these requests for a delay in the effective date have been received from several unions, generally challenging the adequacy of the factual basis for the requested delay and suggesting that any delay which is granted be limited in scope and time to those employers and plants where serious feasibility problems can be demonstrated.

These requests and responses raise serious questions concerning the feasibility of the new trigger levels and what relief is appropriate to prevent the disruptions which may occur while protecting employees from harmful exposures to lead. The information submitted so far by affected industries and unions does not fully indicate the precise extent and scope of the problem or the appropriate relief, including an alternative protection which might be warranted.

In light of these uncertainties and other gaps in the evidence submitted, OSHA has decided as an interim measure to delay the effective date of the new trigger values, provided in §§ 1910.1025(k)(1)(i)(C) and 1910.1025(k)(1)(iii)(A)(3), until April 1, 1981, for all employers covered by the lead standard. This brief delay will enable all interested persons to submit additional information and views concerning the extent and scope of any appropriate relief, and will enable to the agency to evaluate the requests and determine what long-term action is appropriate.

All interested persons are invited to submit information and views on all issues involved in the requests for delay in the effective date of the new medical removal protection trigger levels. Since there is a very brief period of time available, all comments must be received by March 20, 1981 to be assured of consideration by the agency. Written comments should be submitted, in quadruplicate, to the OSHA Docket Office, Docket No. H-004M, Room S6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 523-7894. The requests and responses received so far, as well as all comments received in

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response to this notice, will be available for inspection and copying at the Docket Office.

In view of the very brief time available and the limited nature of the delay in the effective date provided herein, OSHA has determined that public notice and comment on the one-month delay are impracticable, unnecessary and contrary to the public interest, within the meaning of 5 U.S.C. 553(b) and section 6(b) of the Occupational Safety and Health Act.

Signed at Washington, D.C., this 27th day of February 1981.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 81-6942 Filed 3-3-81; 10:20 am]

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U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:

March 5, 1981

DeBevoise, Plimpton, Lyons & Gates
Attorneys for Petitioner
Lead Industries Association, Inc.
299 Park Avenue
New York, New York 10171

Dear Mr. Medina:

As I indicated to you in my recent letter, the effective date of the new removal and return triggers for medical removal protection (MRP) in the lead standard has been delayed until April 1, 1981, pursuant to your request. The purpose of this delay was to permit the submission of additional data and information pertaining to your request, and the evaluation of the data by the agency to determine what further action is appropriate. My earlier letter noted that you would be provided with some specification of the data needed by the agency in order to adequately evaluate your request.

This letter addresses the major areas where the agency feels additional data are necessary. It has been prepared by our technical staff based on the limited submission you made earlier. Your responses should not be confined to the areas addressed in this letter, but should include any information which you consider relevant to our evaluation of your request.

Unfortunately, as you know, the time available for the submission and evaluation of additional data is very limited. As stated in the Federal Register notice published on March 3, all submissions must be received by March 20 to assure consideration by the agency by the new April 1 effective date. While we understand the burden this imposes on you, we are constrained to request that you comply with the time frame provided in the Federal Register.

The following are the issues that we would like you to address:

ISSUE: On March 1, 1981 when the provision to remove workers with blood-lead levels in excess of 60 ug/100gm of blood becomes effective a portion of the industrial force may be required to be removed. The agency requests that the industry provide information on:

1. Describe the total workforce in each plant for which relief from the 60 MRP trigger is requested with specific information on the following:

(a) The number of supervisory or skilled workers exposed to lead in each plant. Of this group, how many will be removed because their blood-lead levels are at or below 60 ug/100 grams of whole blood?

(b) The number of employees who were transferred because their blood-lead levels were at or above 80 or 70 ug/100 grams of whole blood.

(c) Were any of these employees removed when their blood lead levels were lower than the triggers? If so why?

All of the above information (a-c) requested for supervisory or skilled workers should also be provided for other employees, i.e., those not classified as skilled or supervisory.

2. For all employees who were removed at triggers of 80 or 70 ug/100 grams of whole blood and those who would be removed at 60 ug/100 gram of whole blood, please submit the following data:

(a) blood-lead measures from 1976 to the present, to include dates of testing;

(b) pre-employment blood-lead levels;

(c) dates of removal and length (weeks, months, years) of removal period;

(d) environmental lead levels;

(e) respiratory protective devices (types of respirators and duration of use i.e., hours per day);

(f) efforts amd accomplishments in improving hygiene facilities and practices.

ISSUE: In the medical protection removal provision, OSHA designated the reduced blood-lead level which employees must achieve before they can return to the job from which they were removed. The industry contends that the removal periods are long and burdensome.

To address this issue the applicant should provide the following information:

1. Individualized blood lead data, for the period of January-June of 1976, plus the first re-entry blood lead data (including all dates of sampling) for lead exposed employees of the Bunker Hill and ASARCO (El Paso) plants.

2. Data for employees exposed to lead for each plant for which relief is requested. These data sets must include:

(a) medical removal protection blood lead level for those undergoing MRP, serial blood-lead levels during the "removal-return-to-job" period, including dates on which blood-lead level determinations were made for employees at all nine plants;

(b) For all skilled/supervisory employees at the Bunker Hill and ASARCO (El Paso) plants the Agency will need information on:

- individual blood lead levels, records of serial measurements and dates of such measurements;

- airborne lead levels to which individual workers were exposed

- respiratory protective devices used by each employee (specify the type and duration of use in hours);

- efforts and accomplishments in improving hygiene practices of employees;

- blood-lead levels for community residents who were never employed by the lead industry or otherwise experienced occupational exposure to lead. If available, this data should be related to the proximity of the residents to the plant.

Further, the applicant should address this relevant question: How much time (weeks, months) must elapse before workers removed at the "60 ug trigger" can achieve a blood-lead level of 40 ug/100 gram of whole blood and return to the job from which they were removed; a rationale for the estimates will be helpful.

ISSUE: The application for relief cites the Lyman and Nelson paper "Predicting Return to Work after Removal Required by Health Standards." This report analyzed the reduction in blood lead levels experienced by 87 workers in a primary lead smelter which was closed because of an employee strike.

In order to evaluate that study, the Agency needs more data on the workers referred to in Table 3.

1. Identify the location of the plants where these workers are employed.

2. Show that percentage of the workforce which was represented by striking employees.

3. Submit blood-lead measurements for all individuals cited in the report. This data should cover the period, 1976 to the present.

4. Provide a work history for each employee, including length of time at various job sites.

5. Describe non-occupational lead sources to which the employees were exposed and the contribution of those sources to the workers' lead burdens.

6. Submit data on type of respiratory protective devices and the duration (hours/day) such devices are worn by the employees.

7. Show the historical MRP pattern for each worker.

8. Submit Figures 5 and 6, referred to in the text, but not included in the application submitted to OSHA.

Finally, you should speak to the issue of (a) whether the relief you are seeking can be accomplished by the temporary variance procedure on a plant-by-plant basis, and (b) whether the removal of workers at the trigger will affect the industry's technological ability to comply with the standard to prevent lead induced disease and disability.

I would like to reiterate what I stated in my earlier letter:
I am confident that with the cooperation of all concerned we will be able to develop a solution that will protect employees in both a reasonable and feasible manner.

Sincerely,

David Zeigler
Acting Assistant Secretary
Occupational Safety and Health Administration.

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