# NPCA's General Counsel Hints at Court Action in FDA's Rule on Lead

**By E. L. Below**

Chicago, Ill., April 19—The possibility of legal action against the Food and Drug Administration's 0.06 lead regulation was raised here by the chief legal spokesman of the National Paint and Coatings Association.

General Counsel John M. Montgomery reported that the association, in company with other industry groups, had filed an objection challenging the FDA regulation and requesting a public hearing.

If the objection is not allowed, Mr. Montgomery said, the association will have exhausted its administrative procedures "and we are then permitted to challenge in court."

The attorney was among a number of paint industry speakers and FDA officials who took part in the 1972 Product Safety and Labeling Seminar here.

Mr. Montgomery told the audience of some 160 paint industry representatives that the 0.06 regulation posed some "unbelievable problems," and that some of these "may have to go to litigation."

"We don't look forward to what's ahead because some of it is very bad," the counselor said. "We are in a very discouraging and frustrating period."

Reviewing events that led up to FDA's adoption of its stringent lead limitation, Mr. Montgomery related that FDA originally had decided to agree to a .5 per cent lead limit but then changed its mind "when 0.06 became the marching order on the Hill."

He was referring to the hearings conducted by Sen. Edward M. Kennedy's Senate Subcommittee on Health at which the American Academy of Pediatrics and other witnesses introduce[d] testimony supporting the 0.06 limit.

"FDA believes it has solved the lea[d] problem for unborn children of unbor[n] parents, but it has not done anythin[g] for the problem on the wall," Mr. Mont[-]gomery said. "That's why we think i[t] is unfair to penalize our industry."

Another speaker, Edward F. O'Toole general counsel of the Chicago Paint Varnish and Lacquer Association, sai[d] the Chicago group would ask for "re[-]course" from provisions of a simila[r] 0.06 lead paint ordinance adopted b[y] the Chicago City Council.

The Chicago measure is schedule[d] to take effect July 1. It bans all excep[t] 0.06 per cent lead in interior archite[c]tural paints except for varnishes, floo[r] paints, aerosols and oil stains. The in[-]dustry has until January 1, 1973, t[o] bring this group into conformity.

Mr. O'Toole described the Chicag[o] measure as "a great burden on inter[-]state commerce." He said the Chicag[o] Paint Dealer's Association is joinin[g] with the Chicago PVLA in a move t[o] push back the July 1 effective date t[o] at least conform to the December 197[3] date of the FDA regulation.

The attorney charged that the Chi[-]cago Health Department wanted Chi[-]cago to be the first city on record with a ban against all but the lowest limits of lead in paint.

"They were so darned eager to d[o] something they went off the deep end," he said.

"We asked them to wait but they wouldn't. Now we are faced with the FDA Regulation, the Kennedy Bill, the other bill and the Chicago ordinance."

In his review of the moves and counter moves in the drawn-out lead con-



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troversy, Mr. Montgomery asserted that the turning point was reached when the American Academy of Pediatrics endorsed the 0.06 level.

"We didn't have the evidence to refute it since there were no animal feeding studies available, but neither did the proponents have the evidence to back it up," Mr. Montgomery said, adding that the only published findings on lead were mechanical extrapolations based on old studies containing some assumptions.

Earlier, provisions of the Federal Hazardous Substances Act and FDA regulatory activities were explained by Dale C. Miller, compliance chief of the FDA's Bureau of Product Safety, and John F. Rabusch, supervisory inspector of FDA's Chicago district.

Frank C. Gaugush, director of environmental control, The Sherwin-Williams Co., told the audience what to expect from an "OSHA" (Occupational Safety and Health Act) plant inspection. The S-W Co., he said, recently experienced an inspection which resulted in 17 citations, 36 violations and $136 in fines.

One fine, he said, was for workers bringing brown paper lunch bags into work areas.

Los Angeles Paint, Varnish and Lacquer Association golfers played in fine weather and enjoyed after-game fellowship at the March outing of the group at the Los Serranos Country Club.



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