



Lead Industries Association, Inc.

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

Environmental Health Department

DATE: June 29, 1978
TO: All Members of Lead Industries Association
FROM: Jerome F. Cole, Sc.D.
SUBJECT: Special Assessments for LIA's Efforts on Proposed OSHA and EPA Lead Standards

Gentlemen:

At their meeting of June 23, 1978 the Executive Committee of LIA authorized two special assessments to cover continuing costs associated with LIA's activities in opposition to proposed OSHA and EPA lead standards. The additional sums authorized were \$100,000 for the OSHA effort and \$30,000 for the EPA effort. These will require the following assessment rates (based on the current assessment period of 7/1/76 - 6/30/77):

	<u>OSHA</u>	<u>EPA</u>
Pig lead, Mining, Smelting and Refining Manufactured Articles	4.5¢/Ton	1.25¢/Ton
Assembled Articles	2.25¢/Ton	1.25¢/Ton
Minimum	\$45.00	\$12.25

Statements for your company are enclosed.

The Executive Committee and I regret the necessity of continuing to require additional special assessments for these activities. However, the OSHA deliberations have gone on far longer than originally anticipated and we are now anticipating the possible necessity for action in the U.S. Court of Appeals on the proposed EPA standard. If our current estimates are correct (but unfortunately they are subject to all the factors which have made previous estimates incorrect), the additional assessments will provide sufficient funds to appeal and prosecute the appeals, if necessary, of both the OSHA and EPA standards.

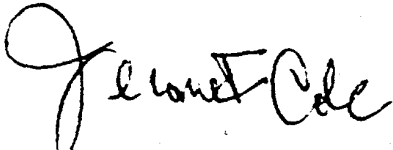
Confidential Appendices A and B provide chronological summaries of the activities on each of the proposed standards, the financial history, and bases of the current estimated budgetary needs in order to bring you up to date and to give you our best estimates of the likely course of future events.

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June 29, 1978

We look forward to your continuing support of these essential activities. Should you or your colleagues have any questions regarding the special assessments or the activities, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jerome F. Cole". The signature is fluid and cursive, with the first name "Jerome" being more prominent than the last name "Cole".

Jerome F. Cole, Sc.D.
Director, Environmental Health

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Enc.

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Appendix A

C O N F I D E N T I A L

Summary

LIA Activities on Proposed

OSHA Standard for Inorganic Lead

While the staff of the LIA Environmental Health Department had been closely following the activities of OSHA on lead ever since OSHA's inception, activity began in earnest in late summer of 1975. At that time, it appeared likely that OSHA would soon propose a lowering of the current time-weighted-average airborne lead standard of 200 ug/m³ to 100 ug/m³ (based on a desire to keep blood lead levels in workers below 60 ug/100 ml). Based on that information, the LIA Director of Environmental Health recommended that (a) legal counsel be retained, (b) an economic impact study be commissioned and (c) that plans be made for full-scale participation in the hearing process. After consultation with the LIA Environmental Health Committee and the Executive Committee, an OSHA Steering Committee was established to oversee the detailed development of LIA's position and strategy. This committee was made up of the following persons:

W. Pallies (Chairman - LIA Environmental Health Committee)

S. Lerner (N.L. Industries, Inc.)

N. Masington (ESB Inc.)

G. Welch (St. Joe Minerals Corp.)

K. Nelson (ASARCO)

R. Viener (H. Viener & Sons)

The legal firm of Debevoise, Plimpton, Lyons & Gates (DPLG) was retained to provide assistance to the staff. Also, Charles River Associates, Inc. (CRA) was commissioned to prepare an economic impact study of the proposed standard, which actually was announced on October 3, 1975.

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Work began immediately on the preparation of detailed comments which were submitted to OSHA in January of 1976 together with a request for public hearings. It was anticipated that hearings would be held in early 1976.

However, 1976 passed without the scheduling of public hearings. This was, nonetheless, an active period for LIA staff, legal counsel and economic consultants. Meetings were held with representatives of the United Steelworkers of America, AFL-CIO, and the OSHA staff, including a meeting with then OSHA head Morton Corn. During 1976 LIA also closely monitored activity within OSHA and closely followed the proceedings of a Congressional hearing on occupational lead poisoning, in which OSHA was involved. With the assistance of the Steering Committee the LIA position and alternative proposals were further refined.

Finally, OSHA scheduled public hearings to begin on March 15, 1977. LIA staff and counsel interviewed a number of possible witnesses, eventually selecting Dr. M. K. Williams of the U.K. to appear on LIA's behalf. Also, a number of written statements were prepared and submitted to OSHA for the hearing record. LIA participated fully in the public hearings which were held from March 15th through early May, 1977, in Washington, D.C.; St. Louis, Missouri; and San Francisco, California. During the Washington phase of the hearing, LIA was required to set up a temporary office in hotels in Washington. This office was used to prepare detailed cross-examinations of OSHA witnesses and others and to prepare LIA's testimony. Detailed post-hearing comments were prepared and submitted to OSHA in June of 1977. It was anticipated that the standard would be promulgated by OSHA within a few months.

However, in September of 1977, OSHA announced its intention to request comment and to hold a public hearing on the issue of medical removal protection, OSHA's euphemism for rate retention. While LIA has no philosophical objection

to the concept of medical removal protection, it is doubted that OSHA has statutory authority to require it. Further, in the event the blood lead level for instituting protection is set much less than 80 ug/100 ml, the cost to our industry would be excessively high and practically prohibitive for much of our industry. Also, any form of medical removal protection would have to be worded very carefully, so as to prevent abuse. LIA submitted detailed comments in October, 1977 and participated in the public hearings in November and December of 1977. Further, LIA, with the assistance of consultants, reviewed and critiqued an economic impact study on medical removal protection, commissioned by OSHA, which was based on a faulty understanding of the dynamics of lead in the human body. Final post-hearing comments on medical removal protection were submitted to OSHA in January of 1978. At that point, it was anticipated that OSHA would promulgate its regulations in the spring of 1978. Anticipating this, LIA staff sought and received authority from the LIA Executive Committee in January, 1978 to file an appeal with the U.S. Court of Appeals should the promulgated standard be unsatisfactory.

Efforts continue to be made to demonstrate to OSHA and other interested governmental agencies and departments that the OSHA proposal is not economically feasible and that the LIA counter-proposal, which would allow the continued viability of the lead industry, is fully protective of worker health. Unfortunately, we have seen no lessening of resolve on OSHA's part to promulgate regulations at least as severe as were proposed. Therefore, the necessity to file and prosecute an appeal with the U.S. Court of Appeals appears to be likely.

At its meeting of June 23, 1978 the LIA Executive Committee approved filing and prosecuting an appeal, if necessary, and authorized funding

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sufficient to carry through the appeal stage, if the standard is promulgated by OSHA within the next 2-3 months.

J. F. Cole

June 29, 1978

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Financial Summary

Special OSHA Fund

A. Income

Total from 4 Special Assessments	\$552,265.35
Battery Council International	<u>20,000.00</u>
Total	\$572,265.35

B. Expenses

Legal - DPLG (9/30/75 - 3/31/78)	\$381,838.87 (67.4%)
Economic Impact Study - CRA (11/29/75 - 8/6/77)	152,591.83 (26.9%)
Consultants	11,707.57 (2.1%)
Public Relations	9,320.28 (1.6%)
Staff Expenses (Primarily during Hearings)	10,577.41 (1.9%)
Meeting Expenses	276.86 }
Miscellaneous Expenses	<u>75.00</u> (0.1%)
Total	\$566,387.82

Cash Balance (5/31/78) \$ 5,877.53

Basis of Estimated Budget

(Assuming Standard is issued in August)

4/1 - 7/31, 1978	Legal Expenses - DPLG	\$ 20,000
8/1 - 10/31, 1978	Legal Expenses - DPLG	60,000
11/1 - 12/31, 1978	Legal Expenses - DPLG	10,000
	Other Expenses	<u>10,000</u>
Total		\$100,000

Approved by Executive Committee (6/23/78) \$100,000

Appendix B

C O N F I D E N T I A L

Summary

LIA Activities on Proposed

EPA National Ambient Air Quality Standard for Lead

Because it had already promulgated lead-in-gasoline phase-down regulations, EPA had not seen the need to propose a National Ambient Air Quality Standard for lead. However, in 1976 the Natural Resources Defense Council (NRDC) successfully brought court action against EPA requiring the Agency to issue a National Ambient Air Quality Standard for lead.

The first stage of a series of events leading up to the promulgation of a standard is the issuance of a "Criteria Document" by EPA. The purpose of this document is to review the available scientific data upon which a standard may be based. EPA issued the first draft document in December of 1976. This document suggested that a standard of 5 ug/m³ (90-day average) would be appropriate. LIA did not oppose this standard but it submitted information to show that such a level was more than adequate to protect the public health.

EPA established, under its Science Advisory Board, a lead "subcommittee" to review the drafts of the lead criteria document. This committee was chaired by Dr. Roger McClellon of the Lovelace Foundation but was dominated by Dr. Samuel Epstein of the University of Illinois. Dr. Epstein is well known as an outspoken, anti-industry activist. At its meeting of January 31, 1977, the lead subcommittee of the SAB refused to endorse the first draft criteria document and, essentially, sent EPA back to begin again. The EPA submitted a second draft criteria document in May 1977 but, still unsatisfied, the SAB lead subcommittee required further changes. Yet, a third draft was submitted in September of 1977 and was generally endorsed by the SAB subcommittee with a few exceptions which

LIA03557

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were incorporated into a final version. All the while, of course, the document came closer and closer to the type of document desired by the Epstein-dominated SAB lead subcommittee.

Finally, on December 19, 1977, EPA issued a proposed National Ambient Air Quality Standard of 1.5 ug/m^3 (monthly average). The primary basis for this standard was a single, unpublished study indicating an effect on free erythrocytic protoporphyrin (EP) at very low levels of lead in blood. This study was in conflict with other published studies and the effect on EP is without adverse health consequences.

The LIA Environmental Health Committee recommended that LIA mount a major effort to challenge the EPA proposed standard. The Committee also recommended that LIA retain legal counsel and, as in the OSHA matter, commission an economic impact study of the proposed standard. While, according to EPA's interpretation of the law, it does not take economic considerations into account in setting standards, it was thought that such data would, nonetheless, be important to LIA's overall case. The LIA Environmental Health Committee also endorsed the LIA staff recommendation of a standard of 5 ug/m^3 (90-day average). Approval for all these actions was given by the LIA Board of Directors on January 30, 1978.

In consultation with the LIA Environmental Health Committee, the Washington legal firm of Prather, Seeger, Doolittle and Farmer was retained. This firm was familiar with the industry and had significant experience with EPA and the Clean Air Act.

Charles River Associates was selected to carry out the economic impact study because of its familiarity with the lead industry. During the course of the study, it was necessary to obtain additional air pollution and engineering information. This was provided by TRC of New England, working with Charles River Associates.

This study showed clearly the impossibility of meeting the proposed 1.5 ug/m^3 standard by most of the industry.

Public hearings were held on February 15th and 16th in Washington, D.C.

LIA's position was supported by several consultants:

J. J. Chisolm, M.D., Johns Hopkins University, Expert in
pediatric lead poisoning, ILZRO Researcher,

J. McNeil, M.D., El Paso, Texas, Pediatrician, ILZRO Researcher,

E. McCabe, M.D., University of Wisconsin, ILZRO Medical Consultant,

K. Wise, Charles River Associates, Economic Analyst.

A detailed commentary was submitted to EPA on March 17, 1978, including a written statement on the importance of EP as a health effect by Dr. J. Jandl, Professor and Head of the Department of Hematology, Harvard University Medical School.

Of interest, as an ancillary activity, a government relations committee, chaired by Charles Carlisle of St. Joe Minerals, has, for the past several months, attempted to bring the LIA position to the attention of interested individuals in the Congress and administrative agencies.

While EPA had previously announced its intention to promulgate its standard in June, 1978, there have been recent indications that promulgation may be delayed for several months. Nonetheless, it was the view of LIA staff and counsel that LIA should be prepared to appeal an unsatisfactory standard to the U.S. Court of Appeals. Therefore, at its meeting of June 23, 1978, the LIA Executive Committee approved filing and prosecution of an appeal, if necessary, and approved funding sufficient to carry through the appeal stage, if the standard is promulgated by EPA within the next 2-3 months.

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J. F. Cole
June 29, 1978

Financial Summary

Special EPA Fund

A. Income

Special Assessment	\$178,229.66
Battery Council International	<u>15,000.00</u>
Total	\$193,229.66

B. Expenses

Legal (through 5/31/78)	\$ 65,131.77
Economic Impact Study	95,255.28
Consultants	<u>2,179.40</u>
Total	\$162,566.45

Cash Balance (5/31/78)	<u>\$ 30,663.21</u>
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Basis of Estimated Budget

(Assuming Standard is issued in August)

6/1 - 8/31, 1978 Legal Expenses - PSDF	\$ 18,000
Appeal - PSDF	\$25,000 - 50,000
Other Expenses	<u>10,000</u>
Total	\$53,000 - 68,000

Approved by Executive Committee (6/23/78)	<u>\$30,000</u>
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