

LEGAL

& LEGISLATIVE BULLETIN

May



NATIONAL
PAINT &
COATINGS
ASSOCIATION

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TOPICS:

- A. Lead in Paint -- Recent developments
 1. Federal -- "Kennedy" bill clears Committee
 2. State -- Illinois and Arizona 0.06% bills pending
 3. Local -- Detroit and Burlington, Iowa ordinances
- B. Mercury in Paint -- Administrative proceedings commenced
- C. Poison Prevention Packaging Act
 1. Extension granted for turpentine and methyl alcohol
 2. NPCA comments on proposed "paint solvent" regulation
 3. Container sizes under special-packaging regulations

ROUTE TO

Department	
Finance	
Administrative	
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Other	

Executive Synopsis

This Bulletin reports recent developments on the following:

A. Lead in Paint -- Senate Labor and Public Welfare Committee reports out "Kennedy" bill (S. 607) with significant amendment; Proposals for 0.06% lead standard before Illinois and Arizona legislatures; Detroit lead ordinance rescheduled for public hearing; Burlington, Iowa adopts 0.5% lead ordinance.

B. Mercury in Paint -- Pre-hearing conference held on mercury issue; Administrative Law Judge establishes schedule for proceedings related to EPA cancellation of registrations of certain pesticides.

C. Poison Prevention Packaging Act -- FDA grants extension until July 1, 1973 for turpentine and methyl alcohol; NPCA files comments on proposed "paint solvent" regulation. Comments on container sizes subject to "special-packaging" regulations.

CONTACT AT NPCA, Office of Legal and Government Relations.

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The next public hearing, scheduled for the next week or so, will be in the Senate on S.B. 472. This would establish a 0.06% standard effective January 1, 1974 and otherwise is about the same as the Chicago ordinance. NPCA will present testimony at this hearing aimed at deletion of the 0.06% standard.

The situation in Illinois is extremely serious and a very real danger exists of the enactment of a bill at the 0.06% level with some or all of the other requirements previously mentioned.

b. Arizona

The Arizona House has passed a bill, H.R. 2052, which would prohibit the sale or use within the state of any paint at or above the 0.06% lead content level after December 31, 1973. Originally introduced at the 1% level, the bill passed the House amended as above. NPCA has discussed the adverse, far-reaching effects of this measure with the Chairman of the cognizant Senate committee which will next consider the bill. Our strong objections have been confirmed in writing to the Senate and we have been assured of an opportunity to present testimony at the Senate hearing.

3. Local ordinances

a. Detroit Ordinance rescheduled for public hearing

The Detroit Common Council will on May 16, 1973 hold another public hearing on two proposed ordinances relative to lead-based paints. One would prevent the sale of these paints for use in and around dwellings in Detroit, another would provide for the regulation of interior painted surfaces.

A lead-based paint ordinance was earlier adopted by the Detroit Common Council, but was vetoed by the mayor (see "L&L" Bulletin No. 9). The new proposed ordinances apparently have been revised to render them acceptable to the mayor. Our review of these, however, indicates that no changes have been made to the provisions affecting the sale, use and labeling of modern paints. Therefore, the modifications obtained by industry to the earlier ordinance are still intact with respect to the new proposed ordinances.

Since lead-based paint ordinances are again scheduled for a public hearing and may (if adopted by the Common Council and approved by the mayor) soon be enacted into law, it is advisable for those companies marketing in Detroit to be preparing to meet the ordinances' requirements.

On February 23, 1973, an NPCA "Immediate Action" notice, spelling out the requirements of the earlier ordinance, was sent out to all members. Since no changes affecting our industry are reflected by the new proposed ordinances, this notice is still pertinent. If needed, extra copies may be obtained from NPCA's Office of Legal and Government Relations.

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2. NPCA files comments on proposed regulation covering paint solvents

Recognizing that the problem addressed in C. 1 above would become much greater as more of the industry's products are subjected to special-packaging regulations, NPCA filed comments on the proposed regulation which would cover certain "liquid paint solvent preparations containing petroleum distillates, benzene, toluene, xylene or combinations thereof." In these comments, NPCA requested that special-packaging for these products not become effective until twelve months after promulgation of the final regulation.

The serious deficiencies in stocks of special closures and other child-safe containers for our industry's products actually has reached crisis proportions since the production base for these materials does not exist at the present time. The NPCA Packaging Committee and other cognizant committees will review this problem to determine remedial measures.

3. Container sizes subject to special-packaging regulations?

Considerable uncertainty has arisen within the industry concerning the container sizes covered by special-packaging regulations. In our opinion, the position of the regulatory agency -- stated in the turpentine regulation -- should be considered applicable. In that regulation, it was stated -- "The person who places a household substance subject to packaging standards into a container or package must determine if that container is in fact a package in which the substance may be delivered to the consumer for use or storage in the household. If it is not, then these standards do not apply." (A copy of the turpentine regulation was forwarded as an attachment to "L&L" Bulletin No. 8.)

It should be noted that the proposed regulation covering pesticides (accompanying "L&L" Bulletin No. 6) did state that only products in "less than one-gallon containers" would be covered. That position must be considered an exception to the general rule discussed in the preceding paragraph.

Summarizing, we must conclude that, except for pesticides, most other products of the industry subject to "special-packaging" regulations and packaged in gallon containers will be covered, because experience has shown that such sizes sometimes are delivered to the consumer for use or storage in the household. By the same reasoning, it might be concluded that five-gallon containers normally would not be covered. The final decision in each case must be made by the manufacturer who puts the product in interstate commerce.

Questions have been asked whether or not the standard friction closure for paint products is a child-safe closure. While it should be considered so, it has not been confirmed that such containers yet have passed the requisite protocol. NPCA is supporting efforts to have such tests conducted in the near future.


Larry Thomas, Counsel

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Final Regulations for Mass. 0.5% Lead Law Issued

Final regulations amending the Massachusetts 0.5% lead law, including particular exemptions for special-purpose coatings and a compliance action for labeling requirements, were not March 21 by the state's Department of Public Health.

Lead-Based Product Categories

Effective April 1, the final regulations lead laws for certain products which are classified as lead-based. According to the existing industry is lead-based classification for paint, varnish or other surface coatings containing more than 0.5% lead by dry weight or 1.2 mg. lead per square meter of surface. (The 0.5% lead standard for surface coatings is currently 0.5% for a "range of other" with respect to the Massachusetts 0.5% lead law, according to NPCA Counsel Larry Thomas.)

Other Coatings Products

Permanent exemptions relating to temporary exemptions issued earlier have

been removed for the following categories of products exceeding the 0.5% lead level:

- 1) Paints used on small structures.
- 2) Touch-up paints for small structures, automobiles, vehicles, and other craft, when sold in containers small enough to eliminate any reasonable risk of use on buildings or furniture.
- 3) Lead primers for small craft hulls, when sold in retail only through boat yards, marine supply stores, and businesses dealing in marine sales.
- 4) Original finish paints for factory application to manufactured products not intended for use in homes or other structures where children commonly spend periods of over one half hour in a bedroom and day care centers, etc. These products may not be made available for sale to the general public and not sold in containers less than 2 gallons.
- 5) Lead primers for structural metals, vehicles and machinery, not available for sale to the general public and not sold in containers less than 2 gallons.

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(52) ²⁴¹ (Final Mass. Lead Regulations... cont.)

6) Automobile, agricultural and industrial equipment refinishing paints not available for sale to the general public and not sold in containers less than 2 gallons.

7) Industrial and commercial building maintenance paints including traffic and safety marking paints, not made available for sale to the general public and not sold in containers less than 2 gallons.

8) Coatings on paints marketed for application to billboards, road signs and similar uses not available for sale to the general public and not sold in containers less than 2 gallons.

However, according to the regulations, no lead-based coatings product will be exempt unless it is labeled in accordance with the new regulations in certain manufacturers must submit written notification, no later than July 1, to the Department of Public Health's Lead Poisoning Control Division stating the product is lead exempt for any reason and submit a lead exempt label by August 1, 1973. By July 1, manufacturers must submit the products and be marketed in specified channels. Following the July 1 deadline, the same information for new products must be submitted before exemption is applicable. Manufacturers should be sent to Robert Klein, M.D., Department of Public Health, State Laboratory Institute, 378 South St., Jamaica Plain, Mass. 02130.

The regulations also empower the Director to temporarily restrict exempted products if there is evidence that the product is a grave and immediate danger to health. Within 30 days after a product restriction, the manufacturer can appear before the Director and the Advisory Committee for Lead Poisoning Prevention Program. The hearing could result in the regulation being permanently rescinded.

Labeling Requirements

A 6-month extension until October 1, 1973, has been granted for manufacturers to comply with the labeling requirements for exempted lead-based paints and coatings, under the Massachusetts lead regulation.

Following are the 4 prescribed labels varying with container size:

- 1) Less than 1/4 pint or 8 oz. by weight.
(Label to appear next to label but in less than 10 oz.)
NO LEAD CONTAINS LEAD
- 2) 1/2 pint or 1 quart.
(Label to appear next to label but in less than 10 oz.)
NO LEAD CONTAINS LEAD
Do not use on toys, furniture, or the structure where children could play or eat the paint.
- 3) 1 gallon.
(Label three times 24 pt. minimum 12 oz.)
NO LEAD CONTAINS LEAD
Do not use on toys, furniture, or the structure where children could play or eat the paint.
- 4) 1 gallon or more.
(Label 3 times 48 pt. minimum 18 oz.)
NO LEAD CONTAINS LEAD
Do not use on toys, furniture, or the structure where children could play or eat the paint.

NPCA Action

NPCA is currently reviewing the new Massachusetts regulations, particularly the stringent labeling requirements with respect to the Federal prohibition of "leaking" household products covered by the Federal Hazardous Substances Act. NPCA will continue to keep members informed of developments in the Massachusetts lead law.

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were discussed in "L & L" after receipt of a new "program" and Notice of March 16, 1973.

ly from the original "special-purpose" coatings, generally are terminated rather.

erved as a result of the effect of these new products that the proposed industrial products are passed. While still considered, authorities have not indicated

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Arizona House Passes 0.06% Lead Bill

The Arizona House of Representatives recently passed a lead bill H.B. 2052, to ban all paint containing over 0.06% lead.

Although H.B. 2052 originally contained a 1% lead standard, the more restrictive amended version, in summary would:

1) Prohibit, after December 31, 1973, the manufacture or use of any paint containing more than 0.06% lead content of the total non-volatile matter in the container.

2) Prohibit, upon the bill's effective date, the manufacture or sale of any toy coated with paint more than 0.06% lead, or soluble compounds of antimony, arsenic, cadmium, mercury, selenium or barium.

3) Permit the seizure of products violating the bill's restrictions and authorize a civil penalty up to \$5000 per violation.

As presently written, the Arizona bill, even if amended to permit a 0.5% lead standard in paint, would still continue to ban the use or sale of many industrial and special-purpose coatings not intended for household use and which do not present a hazard to children. Among the products affected would be automotive refinish coatings, industrial maintenance coatings, marine coatings, and traffic markings, as well as factory-applied finishes.

NPCA has addressed a letter to Arizona's Senate Committee on Agriculture, Commerce and Labor now considering H.B. 2052.

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b. ARIZONA

H.B. 2052, as introduced, contained a 1% standard, but an amendment on the House floor reduced this to 0.06% and would have prohibited the sale or use of any paint at or above 0.06% after December 31, 1973. The bill passed the House in this form and also contained restrictions on the use of antimony, arsenic, cadmium, mercury, selenium, and barium. Intervention with appropriate officials on the Senate side has resulted in the bill being "tabled" for this year, meaning it will die in committee. Reintroduction next year is anticipated.

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