CHICAGO PAINT, VARNISH AND LACQUER ASSOCIATION

Suite 1710 • 33 N. Dearborn St. • Chicago, Illinois 60602

April 28, 1972

Honorable Richard J. Daley
Mayor of the City of Chicago
City Hall
Chicago, Illinois

Dear Mayor Daley:

The purpose of this letter is to request that the compliance dates of the recently enacted Chicago Ordinances fixing maximum permissible quantities of lead and other heavy metals in paint, be extended.

Manufacturers who thought that they probably would be able to meet those ordinances now find that they cannot do so, at least within the time fixed in the Ordinances.

Manufacturers find that even if they add no lead, as such, in the manufacture of important interior paints, tests show lead in batches, in varying amounts, well above the permissible amount under the Ordinances.

Lead, therefore, gets into paints through natural contamination of the raw materials, regardless of the source, over which the manufacturers have no control. They have no way of removing the lead in the manufacturing process.

Manufacturers find that several important interior paint products, not exempted as of July 1, 1972, just cannot be manufactured to meet the Ordinance, and will therefore not be available in the Chicago market.

In addition, testing procedures presently available are not uniformly accurate. For instance, one manufacturer submitted samples of a single batch to three different testing laboratories, including the Health Department of the City of Chicago, and got three different readings which varied widely. The highest reading was .7% by the City of Chicago.

The task of trying to determine which cans of paint in the manufacturers' warehouse inventories, let alone the inventories in the retail stores, should be re-labeled is staggering, and cannot be done by July 1, 1972.

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Unless the compliance dates in the Ordinances are postponed, many important paints will have to be taken off the market by the retail dealers, at a substantial financial loss to them, which we do not believe is justified, especially in view of the action taken by the Commissioner of Food and Drugs of the Federal Government subsequent to enactment of the Chicago Ordinances.

On March 8, 1972, the Food and Drug Administration adopted a regulation banning the shipment in interstate commerce of paints containing lead in excess of: (1) 0.5% after January 1, 1973, and (2) 0.06% after January 1,1974. The regulation does not ban the sale of paints containing more than those amounts; it merely bans the shipment of such products in interstate commerce after those dates. Thus, paints which contain higher percentages of lead, manufactured prior to those dates,may continue to be sold.

It is apparent that the timing of the Federal Regulation was based,in part, on the following conclusions of the Commissioner which appeared in the Federal Register:

(1) In the Federal Register, dated November 2, 1971, the Commissioner stated, in part:

> "While there are numerous reports of serious injury and even death resulting from the ingestion of the dried film of old formulations of paints containing high levels of lead, the Commissioner is unaware of any similar reports as a result of ingestion of paint containing 1 percent lead or less." (emphasis added)

(2) In the Federal Register, dated March 11, 1972, the Commissioner stated, in part:

> "Although paints and other surface coating materials containing lead do not present an imminent hazard to the public health......action must be taken to minimize the health hazard to future generations." (emphasis added)

Paint is an economic necessity, and since modern day paints do not present an imminent hazard to the public health, the paint industry should be given a reasonable opportunity to eliminate lead from paints to the extent possible. It cannot do so within the times specified in the Ordinances. As we have shown before, it takes time to find a satisfactory substitute for lead in paint, and a great deal of time to adequately test paints made with substitute material before going into production. The industry has not had sufficient time to do this.

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We have seen a copy of what we understand will be the form of the Kennedy Bill that the Senate Committee will recommend be adopted by the Senate. While it adopts the same compliance dates as is specified in the F.D.A. Regulation, it also will require that the Secretary of Housing and Urban Development, in consultation with the Secretary of Health, Education and Welfare, shall conduct appropriate research on multiple layers of dried paint film containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products, and submit to Congress, within 8 months, his findings, together with his recommendations as to legislative changes which should be made to carry out his recommendations. This, we submit, is what should be done. Existing legislation, including the Chicago Ordinances, has been enacted without the benefit of such scientific research to support the legislation.

The retail paint dealers, particularly those who have stores only in the City of Chicago, are "running scared." They do not know how much lead or other heavy metals is in each can of paint on their shelves, and thus they do not know exactly which products can be sold without re-labeling. They see that they are going to have a substantial inventory of products that cannot be sold in the City of Chicago, all of which will become distress merchandise, and result in very substantial losses to them.

The dealers and painters are fearful of the liability to which they are exposed by the ordinance.

As we have tried to explain, compliance with the Ordinances is not a simple re-labeling job. Manufacturers are working with their dealers but very few dealers sell only one brand of paint. In addition, from time to time, dealers change their sources of supply but continue to carry over remaining inventories from the former supplier. Many dealers sell products of out-of-state manufacturers, some of whom are just beginning to learn about the Chicago Ordinances.

Some painting contractors have large inventories of paint on hand, bought when the price was right, and they have problems similar to the paint dealers. They are also concerned about the quality of paints that will be available for use after July 1. They have become used to using certain types of paints and are fearful of using newly re-formulated paints that have not been adequately tested.

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We, therefore, respectfully request that the two Ordinances be amended as follows:

(1) Amend Chapter 78-17. 25 and 2D6, changing the effective date of July 1, 1972, as therein specified, to January 1, 1973;

(2) Amend Chapter 78-17.2D6 by changing the effective date of January 1, 1973, as therein specified, to July 1, 1973;

(3) Amend Chapter 100-23.3 by changing the effective date of July 1, 1972, as therein specified, to January 1, 1973.

We are not certain that the paint industry will be fully able to meet the suggested new dates of compliance, but we assure you that it is our express desire to do everything that we can to eliminate as much lead as is possible from our paints, and at as early a date as possible.

Respectfully submitted,

CHICAGO PAINT, VARNISH & LACQUER ASSN.

Edward F. O'Toole

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Edward F. O'Toole
General Counsel