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September 1, 1972

No. 5

TOPICS: A. Lead in Paint -- Recent Developments
1. Louisiana Lead Law amended
2. Columbus, Ohio enacts Lead Ordinance
3. City of Detroit in process of developing Lead Ordinance
4. Petition for Exemption to FDA Order to be submitted shortly

B. Federal Legislation -- Recent Developments
1. OSHA amendment vetoed by The President
2. "Metric Conversion Act" passes Senate

Executive Synopsis

This Bulletin reports recent developments on the following:

A. Lead in Paint -- Louisiana legislature, in a special session, amends its recently-enacted lead law to substantially conform to pending Federal requirements; Columbus, Ohio enacts lead ordinance, effective August 30, 1972, banning the sale of residential paint products with lead content in excess of the 1% standard established under the Lead Based Paint Poisoning Prevention Act, P.L. 91-695; new lead ordinance being considered by City of Detroit; Association's petition for clarification of FDA Order to be filed.

B. Federal Legislation -- OSHA -- a provision in Department of Labor Appropriation Bill, which would have exempted certain small employers, fails due to Presidential veto of the entire bill. "Metric Conversion Act" -- Bill, passed by the Senate on August 18, 1972, encourages substitution of metric measurement units for customary measurement units.

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0007-SWP-036686

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A. Lead in Paint -- Recent Developments

1. Louisiana Lead Law amended

In our Legal and Legislative Bulletin No. 3 we advised that the State of Louisiana had recently enacted an extremely restrictive lead law which would have established a lead tolerance of only .03% (300 parts per million) and required a special and unusual warning label as to the health hazards of the lead additive. Because of a strong, unified effort on the part of NPCA and its members, these uncalled-for restrictions have been revised so that the new law will now conform to federal guidlines.

When brought to his attention, Louisiana Governor Edwin Edwards immediately recognized the severe inequities in Louisiana's new lead law (Public Act 371). He took affirmative action by placing the law "on call", i.e., on the agenda of the State's extraordinary legislative session which began on August 20th. During this session the House repealed the controversial restrictions on the sale and use of modern coatings and passed a new Act (H. B. 34) which totally replaces the original restrictions by substituting a new Section 1300.6 to Public Act 371. The new act, now awaiting the Governor's signature, will become effective on January 1, 1973.

These are several substantial changes made by the new Act. The most important is in relation to lead content in residential paints. The new Section 1300.6, dispenses with the .03% standard altogether and ties Louisiana's lead level to Federal requirements. It states that:

> "Any paint or other similar surface coating material shall be deemed to be lead-based when it contains lead compounds in excess of the Federal standard for lead content in residential paints established under Federal laws and regulations." (H. B. 34, Section D.)

This means that, as of January 1, 1973, Louisiana's lead restriction will be .5% since this is the confirmed FDA Federal standard, effective December 31, 1972. (See FDA's Order of March 11 and its Confirmation Order of August 10, 1972; 37FR49 and 37FR155.) If the Federal standard is changed at a later time, Louisiana's standard will automatically conform to any new Federal level.

The amended law further revises Section 1300.6 so that it now only bans, after January 1, coatings intended for use on surfaces or articles accessible to children. It does, however, require precautionary labeling for all other lead-based coatings that may be purchased by the general public. More specifically, here's how these provisions are being interpreted by us:

First: The new section 1300.6 will ban lead-based residential paints and other surface coatings (those containing lead in excess of the Federal standard) if they are <u>manufactured after January 1, 1973 and intended for use on:</u>

1). interior surfaces of any dwelling;
2). exterior surfaces of any dwelling such as window sills, porches, stairs or railings to which children under the age of six years of age may be commonly exposed;
3). toys or other articles intended for use by children;
4). residential furniture and fixtures that can be readily chewed by children; and
5). cooking, eating and drinking utensils.

Second: This new section will require all other lead-based coatings, <u>manufactured after January 1, 1973</u>, that <u>may be purchased by the general public</u>, to be labeled as follows:

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Principal display panel:

"WARNING. Contains lead. Dried film of this paint may be harmful if eaten or chewed."

Elsewhere on the label:

"Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling. Do not apply on those exterior surfaces of any dwelling, such as window sills, porches, stairs, or railings, to which children may be commonly exposed. Keep out of the Reach of Children."

(Note: The type size of this labeling must be in accordance with the requirements for precautionary labeling under the Federal Hazardous Substances Act, 15 U.S.C. § 1260 (1970).)

Third: It bans the sale of any toy or other article intended for use by children, residential furniture, cooking, drinking or eating utensil, manufactured after January 1, 1973, to which any lead-based paint or similar surface coating material has been applied.

Violations of these provisions which, as mentioned, become effective on January 1, 1973, may be punished by a fine of from 100 to 500 dollars. Willful violations could result in up to 3 months imprisonment for a company official.

NPCA views the new revision to Louisiana's Lead Law as a responsible effort on the part of Louisiana officials and legislators to quickly clear up an intolerable legislative situation. We commend them for this and are pleased that we, along with many of our members, were able to play a part in bringing these changes about.

2. Columbus, Ohio enacts Lead Ordinance

Shortly after enforcement began under Chicago's Lead Ordinance (effective July 1, 1972), the Louisiana Law discussed above was enacted and in effect. Now Columbus, Ohio has quickly gotten into the act.

The City Council of Columbus, on July 31, 1972, passed a lead law which became effective on August 30, 1972. This new ordinance deals only with coatings presentl, being marketed and does not address the more substantial problem of old, heavily-leaded paints now peeling and flaking from walls of substandard housing. Here's what it does:

1. It bans the sale, use or application of lead-based coatings intended for use on any exposed surface, interior or exterior, of any dwelling or dwelling unit;

2. It bans the sale, use or application of lead-based coatings intended for use on any fixtures or other objects used, installed, or located in or upon any exposed surface of any dwelling or dwelling unit, or intended to be so used, installed or located.

The standard for lead content set by the Columbus Ordinance is not unreasonable since it is that which is now prescribed by the Lead Based Paint Poisoning Prevention Act -- 1%. Also, the ordinance does not extend to non-residential coatings such as automotive refinishes, industrial maintenance coatings, etc. The coverage of the law, however, as noted above, does extend to all exterior as well as interior residential products. Since this law is already in force and effect, this may present a substantial problem to those that are still marketing exterior residential products over 1% as permitted under Federal law, at least until December 31, 1972, when the FDA Order is implemented.

Because of the impact the Columbus Ordinance will have on our industry, especially with regard to current marketing of exterior residential coatings, we will make every effort to bring this ordinance in line with the FDA December 31, 1972 timetable.

3. City of Detroit in process of developing Lead Ordinance

In May of this year, Corporation Counsel for the City of Detroit presented a lead ordinance to their City Council. Alerted to this by several Detroit members, NPCA appeared before the Detroit Council on behalf of our industry.

During the City Council meeting, several questions were raised as to the scope and impact of the ordinance, including the question of whether the lead level for residential paints should be set at .06%. The decision was then made to withdraw the ordinance for revision and consideration at a later time. This revision, according to Detroit officials is nearing completion. NPCA will continue to monitor the proposed ordinance and participate by offering its opinions and suggestions, as appropriate. Details will be promulgated when the final draft become available to us.

4. Petition for Exemption to FDA to be Submitted Shortly

As reported in our last Legal Bulletin and Legislative Bulletin (See Bulletin No. 4 at Page 2), an ad hoc group within NPCA has completed preparation of a Petition which will request FDA: (1) to clarify the status of the Order banning lead-containing paint products with respect to certain product categories and (2) to exempt certain paints and related products which may fall within the scope of the Order but do not pose a lead hazard to children.

Top FDA officials to whom this request will be submitted have been vacationing during August. Immediately upon their return after Labor Day, NPCA will submit its petition to FDA and urge expeditious handling of the matter.

B. Federal Legislation

1. OSHA

Legal and Legislative Bulletins No. 2 and 3 advised of the provision in the Department of Labor Appropriation Bill which would limit OSHA inspections for certain small employers. Despite approval by both the House and Senate, the President vetoed the bill because it contained appropriations substantially in excess of his budget request. The House tried to override the veto but failed. Accordingly, the provision in question did not become law. Whether a similar restriction will be inserted in a later version of this bill remains to be seen. Organized labor has been very vocal in opposition.

Meanwhile, the Subcommittee on Environmental Problems Affecting Small Business of the House Select Committee on Small Business has issued its report on the oversight hearings on OSHA which began on June 20, 1972. (See Legal and Legislative Bulletin No. 1.) The report, among other things, recommends that the Department of Labor revise existing OSHA standards to make them clear, concise, and comprehensible "so that small businessmen can know what the law and standards require of them." It was also recommended that Department of Labor revise the standards to differentiate between risks attendant to different industries and categories within industries.

The subcommittee also made some specific recommendations for legislative changes as follows:

1. Make it clear that on-site consultation inspections by Department of Labor are permitted when requested by small business, and such inspections will be performed without issuing citations or penalties.

2. Allow discretion on the part of the Department of Labor in connection with the imposition of a penalty on the first inspection.

3. Provide for citations and penalties against employees where they willfully violate standards applicable to their own conduct.

4. Require Department of Labor to issue separate standards where appropriate for distinct industries and businesses if that Department doesn't do this voluntarily.

The Select Subcommittee on Labor of the House Education and Labor Committee has announced that it has scheduled five days of hearings beginning on September 13, 1972 to examine the substance of proposed administrative and legislative changes. This is the subcommittee with primary jurisdiction over OSHA and is chaired by Congressman Dominick V. Daniels (D. - N.J.).

2. "Metric Conversion Act" Passes Senate

The U.S. Metric Study, conducted by the Department of Commerce, concluded that eventually the U.S. would join the rest of the world in using the metric system. It stated that the U.S. is the only industrialized nation which has not established a national policy committing itself to conversion. The Study also found that increased use of the metric system in the U.S. was inevitable and recommended a national program to achieve a metric changeover.

On August 18, 1972, the Senate expressed its agreement with these findings by passing S. 2483, the "Metric Conversion Act of 1972." As passed, this bill sets forth the policy of the U.S. to be one of facilitating and encouraging the substitution of metric measurement units for customary measurement units in all sectors of the economy with a view toward making metric units the predominant, although not exclusive, language of measurement in all transactions occurring after 10 years from the date of enactment.

To accomplish the changeover, the bill creates an 11-member National Metric Conversion Board with members from business, labor, education, consumer protection, science, and technology. The Board would have responsibility to develop a comprehensive plan to accomplish the changeover which would have to be submitted to the President and Congress within 18 months after funds are appropriated to carry out the provision of the bill. The plan would include recommendations for legislation, Executive orders, directives, etc., and would be an overall national program with a target date of 10 years for becoming predominantly metric. Implementation of the plan would begin within 60 days after submission unless either the Congress or the President objected thereto. The Board would have no compulsory powers and conversion to the metric system by various sectors of the economy would be on a voluntary basis. However, the bill expresses the clear Congressional intent that Federal agencies convert to the metric system within 10 years and that Federal procurement policies be utilized to encourage a general conversion.

In the House of Representatives, the bill is under the jurisdiction of the Committee on Science and Astronautics, but that committee has not scheduled any hearings on it as yet. It is regarded as no better than 50-50 that the House will act on this measure before final adjournment. If it does not, chances are good that enactment will occur in the next Congress.

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