April 21, 1972

Commissioner John Byrne
Consumer Sales, Weights and Measures
City Hall
121 N. LaSalle Street
Chicago, Illinois 60602

Dear Commissioner Byrne:

I appreciate your taking the time to discuss with us the labeling requirements of the Chicago Lead-Based Paint Ordinance.

As I indicated to you, the position of our Company is that we do not object to either the .06% limit for lead in paints accessible to children or the time for achieving that standard. Admittedly, the evidence with regard to the toxicity of lead in modern coatings is inconclusive. However, the question for us has been what is the position of a responsible manufacturer faced with evidence that his product may be harmful.

Our only concern with the recent order by FDA is with its scope. Included are coatings which clearly do not pose a health hazard to children either because the surface coated is not generally accessible to children, e.g., automobile finishes, or because the nature of the paint film is such that it is inconceivable that a child could ingest the paint, e.g., appliance finishes.

Our response to this order is going to be a petition for amendment to exclude certain lines of coatings which we can demonstrate pose no health hazard. Included in this petition, will be a recommendation that a warning appear on the label of all coatings which are excluded from the operation of the regulation.

I am recommending that FDA adopt the language contained in the Chicago ordinance, excluding only the reference to "other toxic heavy metals", since FDA has not yet set levels for these substances. Because of the Federal pre-emption contained in the Federal Hazardous Substances Act, this means the language of the Chicago warning, if adopted by FDA, will be mandated throughout the nation.

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I recognize that the position that I am relating to you in this letter may seem inconsistent with the position that we have taken publicly in Chicago and at the Federal level. Without further explanation of this inconsistency, I would just ask that you appreciate the fact that we do have pressures from other sources which complicate our actions. In any event, I would expect that our public position will be clarified with the filing, in a matter of weeks, of a proposed amendment to the FDA regulation.

Very truly yours,

CGBretz:blg

cc: Mr. R. G. Bull
Group Vice President - Coatings
The Sherwin-Williams Company

Mr. M. W. Hurdelbrink, President
The Martin-Senour Company

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