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TO: All Members of the Lead Industries Association
All Members of the LIA Environmental Health Committee

FROM: Jerome F. Cole

SUBJECT: Status Report on OSHA and EPA Court Cases

The past several months have been very active in pressing our court challenges to the EPA National Ambient Air Quality Standard for Lead and the OSHA Occupational Health Standard for Lead. Briefs were filed by LIA in June of 1979 on both cases. EPA and OSHA briefs were submitted toward the end of the summer with the LIA answering briefs submitted in September. Oral argument before the U.S. Court of Appeals of the District of Columbia on the OSHA case was made on November 1 by our counsel, Mr. Standish F. Medina, Jr. of the firm Debevoise, Plimpton, Lyons and Gates. In addition to Mr. Medina, oral arguments were presented on behalf of the "other industry" petitioners, the National Association of Recycling Industries (NARI), the United Steelworkers of America, and EPA. The oral argument on the challenge to the EPA standard was made on November 8, 1979. LIA was represented by Mr. Edwin H. Seeger of the firm Prather, Seeger, Doolittle and Farmer. Others presenting oral arguments were St. Joe Minerals Corporation, the Natural Resources Defense Council and EPA. Both cases were heard by the same three-judge panel consisting of Judges Wright, Mac Kinnon and Robinson. We are now awaiting the decision of the court on both these cases.

Subsequent to the oral argument, there have been a number of developments related to these cases. EPA and OSHA have commissioned a major study to evaluate the economic impact of the combined standards on the primary and secondary lead industry. A contract was let to Charles River Associates and Radian Corporation to carry out the study. LIA has been active in serving as a focal point for industry action on this study. While a meeting was scheduled to be held with Douglas Costle, Administrator of EPA, and Dr. Eula Bingham, Assistant Secretary of Labor for OSHA, on January 16, 1980, the meeting was postponed because of Mr. Costle's unavailability. Another meeting is planned for the near future. Related to this, NARI has filed a petition in the D.C. Circuit Court requesting that no decision be made on the OSHA case, but that it be remanded back to OSHA on the grounds that the existence of the study indicates that OSHA had not properly determined that their standard is feasible. In response to this, LIA has filed a memorandum with the Court supporting in part NARI's position and requesting that the Court take the existence of the study into account in reaching their decision which we feel should be a vacatur and remand of the standard.

In another recent development, the Bunker Hill Company has petitioned the Court for an amendment to the partial stay of the OSHA standard which was granted on March 1, 1979. Bunker Hill petition requested the Court to stay the requirements for medical removal protection beginning at a blood lead of 70 ug/100 ml, which would take effect on March 1, 1980. Presently, medical removal protection begins at a blood lead of 80 ug/100 ml. LIA has filed a memorandum in support of the Bunker Hill petition suggesting that the standard be vacated and remanded to OSHA while maintaining the "status quo" of the stand-

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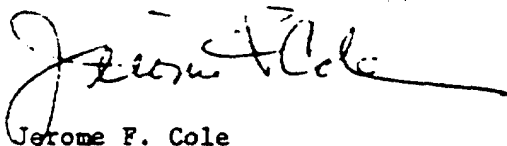
ard as stayed on March 1, 1979. This would include no further reduction of the blood lead "trigger" for medical removal protection.

All of these activities have involved considerable time for the LIA staff and its legal counsel. Therefore, while all of the main papers have been filed and the arguments have been made, peripheral matters continue to arise requiring LIA legal action. This will, undoubtedly, continue to occur in an unpredictable manner until the matters are finally resolved. All the while, we continue to maintain LIA's role as central coordinator of the legal activities of LIA and those of the many other industry petitioners involved in these cases.

While no one knows what the resolution of the two cases will be, it is likely that there will be further legal action whatever the outcomes. In the event of a remand to the Agencies, which is what we are requesting, the standards-setting process would begin again, requiring the continued heavy activities of the LIA staff and LIA attorneys on these matters. If we fail to prevail, consideration must be given to further court action within the same court or in the Supreme Court.

Certainly, we will keep our members fully advised of any events or major activities concerning these two cases. When the decisions are announced, we will promptly supply you with summaries of them. In the meantime, if there are any questions or need for clarification, please contact either Jerome F. Cole or Donald R. Lynam of LIA.

Sincerely,



Jerome F. Cole
Director, Environmental Health

cc: ILZRO Lead Environmental Health Committee