August 16, 2018

Re: Comments on Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint, Proposed Rule (July 2, 2018), EPA-HQ-OPPT-2018-0166

Dear Mr. Yowell,

The 73 undersigned individuals and organizations appreciate the opportunity to comment on EPA’s above-referenced proposal to revise the lead-based paint hazard standards under the Toxic Substances Control Act (“TSCA”). As the agency knows, lead is a potent neurotoxin that has no known safe level of human exposure and is especially damaging to children. The lead crisis in this country is widespread, and children in communities of color and low-income communities are exposed disproportionately more than other children. EPA’s action in this docket to address one of the most common causes of childhood lead exposure in this country is therefore long awaited and much needed. We believe that while the proposal takes an important step toward lowering the current dust-lead hazard standards, it does not go far enough to prevent childhood lead exposure from lead-based paint hazards. We offer our comments below.

Comments

1. EPA Should Simultaneously Revise Clearance Levels for Lead in Household Dust

Although EPA proposes to revise the dust-lead hazard standards, it does not propose to revise the clearance standard for dust-lead—a significant flaw that must be addressed in the final rule. Clearance levels are defined by EPA as “values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.”1 Currently, EPA’s regulations establish clearance levels that are the same as the dust-lead hazard standards: 40 μg/ft² for floors, 250 μg/ft² for interior window sills, and 400 μg/ft² for window troughs.2

If EPA revises the dust-lead hazard standards without simultaneously revising the clearance levels to at least meet the dust-lead hazard standards, that means risk assessors may find that a home contains a dust-lead hazard—that is, dust containing more lead than the proposed 10 μg/ft² on floors and 100 μg/ft² on window sills—but abatement of that hazard need

1 40 C.F.R. § 745.223.
only lower the lead in dust in that home to 40 μg/ft² on floors and 250 μg/ft² on window sills. This result makes no sense. It also does little to protect the occupants in that home from levels of lead in dust above the dust-lead hazard standards, which are, by definition, adverse to human health.3

We therefore urge EPA to revise the dust-lead clearance levels in this rulemaking to reflect the revised dust-lead hazard standards. To the extent that EPA relies entirely on the 2015 Lead Hazard Control Clearance Survey prepared by the Department of Housing and Urban Development (“HUD”) as the basis for assessing the technical achievability of its proposed dust-lead hazard standards,4 EPA already knows that clearance to the level of the revised dust-lead hazard standards is achievable using existing practices. Therefore, no additional research would be necessary to promulgate clearance standards that mirror the proposed dust-lead hazard standards.

2. EPA Should Revise the Definition of Lead-Based Paint

In the proposed rule, EPA chooses not to revise the definition of lead-based paint because it claims it “lacks sufficient information to conclude that the current definition requires revision or to support any specific proposed change to the definition of [lead-based paint].”5 We disagree. EPA claims that it cannot revise the definition of lead-based paint at this time because it lacks sufficient information “to establish a statistically valid causal relationship between concentrations of lead in paint (lower than the current definition) and dust-lead loadings which cause lead exposure.”6 This claim contradicts a regulatory scheme that recognizes the hazards of lead-based paint itself, separate and apart from any association between lead-based paint and floor dust.

Under TSCA, the term “lead-based paint hazards” refers to hazard standards for three media: dust lead, soil lead, and lead-based paint.7 The hazard standards for lead-based paint, referred to as “paint-lead hazard,” identifies as hazardous essentially any “deteriorated lead-based paint in any residential building or child-occupied facility.”8 In other words, the agency “has generally designated any amount of deteriorated [lead-based] paint as a lead-based paint lead hazard.”9 This regulatory framework, together with the fact that the Consumer Product Safety Commission (“CPSC”) banned, in 1978, paint containing nearly ten times less lead than

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5 Id. at 30,897.
6 Id.
8 40 C.F.R. § 745.65(a); see also id. § 745.227(h) (same).
what EPA considers lead-based paint due to its hazards to human health, calls for EPA to revise its definition of lead-based paint without further ado.10

Specifically, the definition should be lowered from the current levels—paint containing “lead equal to or in excess of . . . 0.5 percent by weight”11—at least to paint containing lead in excess of 0.06%, the level banned by CPSC as hazardous in 1978. EPA should also consider whether the definition could be lowered even further, to paint containing lead in excess of 0.009%, the level banned by CPSC as of 2009.12

3. The Proposed Dust-Lead Hazard Standards Are Too High to Adequately Protect Children’s Health

EPA proposes to lower the dust-lead hazard standards from 40 μg/ft² and 250 μg/ft² to 10 μg/ft² and 100 μg/ft² on floors and window sills, respectively. Although EPA’s lowering of these standards is long overdue and must be completed promptly, in fact, current science and data suggest that lower standards of 5 μg/ft² on floors and 40 μg/ft² on window sills are necessary to protect children’s health and are feasible.

When EPA established the current dust-lead hazard standards in 2001, it did so on the basis of the agency’s estimate that those standards would result in a one to five percent probability of a child developing a blood lead level of 10 μg/dL, the level of concern set by the Centers for Disease Control and Prevention (“CDC”) at that time.13 In a 2009 study published by researchers with the National Center for Healthy Housing and HUD, data collected by CDC shows that at the proposed dust-lead hazard standard of 10 μg/ft², there is a 23.8 percent probability that children will have blood lead levels greater than CDC’s current reference level of 5 μg/dL.14 This is much too high a risk for our children to face.

Slightly more reasonably, at a dust-lead hazard standard of 5 μg/ft² for floors, children in pre-1978 housing would have a 14.4% probability of acquiring a blood lead level of 5 μg/dL.15 New, soon-to-be-published research shows that a dust-lead hazard standard of 5 μg/ft² for floors

10 Moreover, EPA’s contentions about the lack of information on the issue of technological feasibility is belied by information provided by other commenters in the record. See Comments of A Community Voice, California Communities Against Toxics, Healthy Homes Collaborative, New Jersey Citizen Action, New York City Coalition to End Lead Poisoning, Sierra Club, United Parents Against Lead National, and WE ACT for Environmental Justice on Proposed Rule, EPA-HQ-OPPT-2018-0166 (Aug. 16, 2018) (“Petitioners’ Comments”).
11 40 C.F.R. §§ 745.103, 745.223.
12 See 16 C.F.R. § 1303.1(a).
13 66 Fed. Reg. at 1215.
15 Id.
is entirely achievable, as is a dust lead hazard of 40 μg/ft² for window sills. This result is supported by the HUD Lead Hazard Control Clearance Survey on which EPA substantially relies, which suggests that a dust lead hazard standard of 5 μg/ft² for floors is achievable 72 percent of the time, and a dust lead hazard standard of 40 μg/ft² for windows is achievable 87 percent of the time—all using the most common, least intensive, currently-employed methods for lead hazard control.

4. EPA Must Also Revise the Soil-Lead Hazard Standards

Just like the dust-lead hazard standards, the current soil-lead hazard standards of “400 parts per million (μg/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard,” were set in 2001 and are outdated. Information provided by other commenters in the record demonstrate that these standards are outdated. In light of EPA’s own recognition that “[i]ngestion of lead-contaminated soil and dust is a major contributor to [blood lead levels] in children,” we urge the agency also to revise the soil-lead hazard standards in this rulemaking.

5. EPA Should Update the Definition of Elevated Blood Lead Level (“EBL”)

EPA should revise its definition of EBL under the TSCA regulations to reflect current science. Specifically, the agency should define EBL to mirror CDC’s reference blood lead level. Elevated blood lead level is defined by EPA as “concentration of lead in whole blood of 20 μg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 μg/dl in two consecutive tests taken 3 to 4 months apart.” This definition is wildly out of sync with current scientific understanding. In 2012, CDC established 5 μg/dL as the reference level that should trigger a public health response—a figure that it is committed to re-assessing every

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18 40 C.F.R. § 745.65.


20 See Petitioners’ Comments.


22 40 C.F.R. § 745.223.
four years. HUD has accordingly amended its Lead Safe Housing Rule to lower its standard for identifying children with elevated blood lead levels to “the most recent guidance published by the U.S. Department of Health and Human Services (HHS) on recommending that an environmental intervention be conducted”—in other words, CDC’s reference level. EPA should similarly amend its definition of EBL to reflect CDC’s most recent reference blood lead level for purposes of the lead regulations under TSCA.

6. EPA Should Establish a Six-Month Implementation Period

EPA is proposing to allow States, territories, and tribes up to two years to implement EPA’s new standards, but offers no support for providing such an extended implementation period. In light of the unreasonable delay that has already occurred in revising the current dust lead hazard standards and the pressing urgency to protect children living in this country’s pre-1978 homes, we urge EPA to adopt a six-month implementation period instead.

7. EPA Should Amend Its Regulations Defining Target Housing to Make Them Consistent With Recently Amended Statutory Language

In 2017, Congress amended the definition of target housing under TSCA to include 0-bedroom dwellings in which a child under six lives. EPA’s regulations under TSCA have not since been updated to reflect the statute’s new inclusion of 0-bedroom dwellings inhabited by children, and still defines “target housing” more narrowly to exclude all 0-bedroom dwellings. EPA should address this inconsistency in this rulemaking by revising the regulatory definitions to match the recently amended statutory language.

24 24 C.F.R. § 35.110; see also 83 Fed. Reg. at 30,892.
26 See Pub. L. No. 115-31, Div. K, Title II, § 237(c), 131 Stat. 789 (May 5, 2017) (amending 15 U.S.C. § 2681 to read “‘target housing’ means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing)”).
27 See 40 C.F.R. § 745.103 (defining target housing as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0–bedroom dwelling”); see also id. § 745.223 (same).
**Conclusion**

EPA has called lead poisoning the number one health threat in the U.S. for children ages 6 and younger.\(^{28}\) With this rulemaking, the agency has an opportunity to address this threat meaningfully by establishing clearance levels to match lower dust lead-hazard standards of 5 \(\mu g/ft^2\) on floors and 40 \(\mu g/ft^2\) on window sills; revising the definition of lead-based paint, the soil-lead hazard standards, and the definition of elevated blood lead level to accurately reflect the current state of science; and adopting a six-month implementation period.

Thank you for considering these comments,

\[\text{[Signature]}\]
Hannah Chang  
Staff Attorney  
Earthjustice  
212-845-7382  
hchang@earthjustice.org

On behalf of:

Tom Neltner  
Chemicals Policy Director  
Environmental Defense Fund

Emily A. Benfer  
Co-Principal  
Health Justice Innovations, LLC

Eric Buehlmann  
Deputy Executive Director for Public Policy  
National Disability Rights Network

Cecil D. Corbin-Mark  
Deputy Director/Director of Policy Initiatives  
WeACT

Caroline Cox  
Senior Scientist  
Center for Environmental Health

---

Erik Olson
Senior Director for Health & Food
Natural Resources Defense Council

Howard Varner
Lab Director – General Manager
EHS Laboratories
Environmental Hazards Services, LLC

Felipe Aguirre
Executive Director
PROUNO

Joan Ascheim
Executive Director
New Hampshire Public Health Association

Rubén D. Arvizu
Director General for Latín America
Ocean Futures Society

Marice Ashe, JD, MPH
Founder and CEO
ChangeLab Solutions

Cynthia Babich
Executive Director
Del Amo Action Committee

Colin Bailey
Executive Director & Managing Attorney
The Environmental Justice Coalition for Water

Patricia Barnes
Executive Director
Ohio Healthy Homes Network

John Bartlett
Executive Director
Metropolitan Tenants Organization, Chicago

Rebecca Bratspies
Professor of Law
Director, CUNY Center for Urban Environmental Reform
Beth Butler  
Executive Director  
A Community Voice

Carla Campbell, MD, MS, FAAP  
Associate Professor of Public Health  
College of Health Sciences, University of Texas at El Paso

Andrea Carvalho  
Program Assistant  
Causewave Community Partners

Debbie M. Chizewer  
Montgomery Foundation Environmental Law Fellow  
Environmental Advocacy Clinic, Bluhm Legal Clinic  
Northwestern Pritzker School of Law

Paula Cox  
Environmental Health Manager  
Guilford County Dept. of Public Health

Kerstin Cornell, Esq.  
Staff Attorney  
New Hampshire Legal Assistance

Emily Coffey  
Staff Attorney, Housing Justice  
Sargent Shriver National Center on Poverty Law

Doug Dalsing  
Co-Owner  
Testudo LLC Environmental Consultancy

Lee Francis, MD, MPH  
President & CEO  
Erie Family Health Centers

Patricia Fron  
Executive Director  
Chicago Area Fair Housing Alliance

Debra Gardner  
Legal Director  
Public Justice Center
George D. Gould  
Senior Attorney  
Community Legal Services, Inc.

Michelle Grossman  
President and Chief Executive Officer  
Community Health Charities of Nebraska

Paul Haan  
Executive Director  
Healthy Homes Coalition of West Michigan

Megan Haberle  
Deputy Director  
Poverty & Race Research Action Council

Yvonka Hall  
Executive Director  
The Northeast Ohio Black Health Coalition

Yvonka Hall  
Outreach Director  
Cuyahoga County Progressive Caucus

Madeline Howard  
Senior Attorney  
Western Center On Law & Poverty

Tom Irwin  
Vice President and Director  
Conservation Law Foundation New Hampshire

Rebecca Jim  
Executive Director and Tar Creekkeeper  
LEAD Agency, Inc. (Local Environmental Action Demanded Agency)

Dr. Kathleen Lauckner  
Adjunct, UNLV Public Health  
Advisory Board Member, Nevada Institute for Children's Research and Policy

Nancy C. Loeb  
Clinical Associate Professor of Law  
Director, Environmental Advocacy Clinic, Bluhm Legal Clinic  
Northwestern Pritzker School of Law
Patrick MacRoy
Deputy Director
Environmental Health Strategy Center

Morri Markowitz MD
Professor of Pediatrics, Albert Einstein College of Medicine
Director, Lead Poisoning Treatment and Prevention Program
Montefiore Medical Center

Jesse Marquez
Executive Director
Coalition for a Safe Environment

Vincent M. Martin
Environmental Justice Consultant
MEJC, Original United Citizen of SW Detroit

Paul L. Masaba, MD, MPH&TM, DTM&H, CPH
Director of Public Health/Health Officer
Somerset County Department of Health

Douglas Meiklejohn
Executive Director
New Mexico Environmental Law Center

Beth Messersmith
North Carolina Senior Campaign Director
MomsRising.org

Barbara Miller
Director
Silver Valley Community Resource Center

Pamela Miller
Executive Director
Alaska Community Action on Toxics

Randy Moore
Director of Policy and Advocacy
Virginia Housing Alliance

Andreanecia M. Morris
Executive Director
HousingNOLA
Beth Orlansky  
Advocacy Director  
Mississippi Center for Justice

Jeanette Mott Oxford  
Executive Director  
Empower Missouri

Bob Palmer  
Policy Director  
Housing Action Illinois

Rip Patten, PE, LSP, LEED-AP  
Vice President  
Credere Associates, LLC

Elyse Pivnick, MCP  
Senior Director of Environmental Health  
Isles, Inc.

Mark A. Pokras, BS, DVM  
Associate Professor Emeritus  
Center for Conservation Medicine, Cummings School of Veterinary Medicine

Dianne Prado  
Executive Director  
HEART L.A.

Ellen Tohn  
Principal, Tohn Environmental Strategies, LLC  
Assistant Professor of Practice, Brown School of Public Health

Joyce A. Ravinskas, RN BSN  
Program Manager  
UPMC Pinnacle Lead Poisoning Prevention & Education Program

Richard Reibstein  
Lecturer, Environmental Law and Policy  
Boston University and Harvard Continuing Education

Bill Rowe  
General Counsel/Deputy Director of Advocacy  
North Carolina Justice Center
Lorisa Seibel  
Director of Housing Programs  
Reinvestment Partners

Michael C. Sharp  
Director of Training & CEO  
Hazard Management Services, Inc.

Queen Zakia Rafiq Shabazz  
Executive Director  
United Parents Against Lead

Mary Sliney  
Executive Director  
The Way Home

Robina Suwol  
Executive Director  
California Safe Schools

Lyle Talbot  
Founding Board Member  
Desert Citizens Against Pollution

Mark Templeton  
Clinical Professor of Law and Director of the Abrams Environmental Law Clinic  
University of Chicago Law School

Keith F. Thibault  
Chief Development Officer  
Southwestern Community Services

Deborah Thrope  
Supervising Attorney  
National Housing Law Project

Steven Wagner  
Executive Director  
Universal Health Care Action Network of Ohio

Deborah Weinstein  
Executive Director  
Coalition on Human Needs
Richard S. Whiting  
Executive Director  
Auburn (Maine) Housing Authority  

Jane William  
Executive Director  
California Communities Against Toxics