



**United States Senate
Committee of Environment and Public Works**

**Lead and Children's Health Hearing
October 18, 2007**

**WRITTEN STATEMENT OF
THOMAS G. NELTNER, JD, CHMM**

**Representing the
Sierra Club
Improving Kids' Environment
and
Concerned Clergy of Greater Indianapolis**

Attachments:

1. Background on Tom Neltner and Organizations
2. Timeline of Key Events Regarding Lead in Consumer Products and Lead-Based Paint During Previous 24 Months
3. Sierra Club's Section 21 Petition to EPA and Subsequent Litigation
4. Sierra Club's Actions Against Companies
5. Results of Lead Content Screening of Children's Jewelry Indiana Black Expo, July 20-22, 2007
6. Sierra Club's April 17, 2007 Petition to CPSC and EPA
7. EPA's Letter to CPSC Regarding Quality Control
8. EPA's Typical Letter to Companies Regarding TSCA Section 8(e)
9. Connecticut Attorney General Blumenthal Letter to Mattel on August 16, 2007

The Situation:

Sixty-two recalls of more than 9.5 million items in 2007 with ten weeks to go before the end of the year. There were 43 recalls by the Consumer Product Safety Commission (CPSC) in the previous three years.¹

The public is dazed and confused. The CPSC is overwhelmed and left to triage recalls based on the magnitude of the danger. In the absence of federal leadership, state and local legislators scramble to adopt laws to fill gaps. State and local childhood lead poisoning prevention programs struggle with calls from the public. These calls draw their limited resources away from their core mission to protect children from the primary source of lead poisoning – lead-based paint in housing. By all accounts, product retailers and importers of children’s products are faring little better.

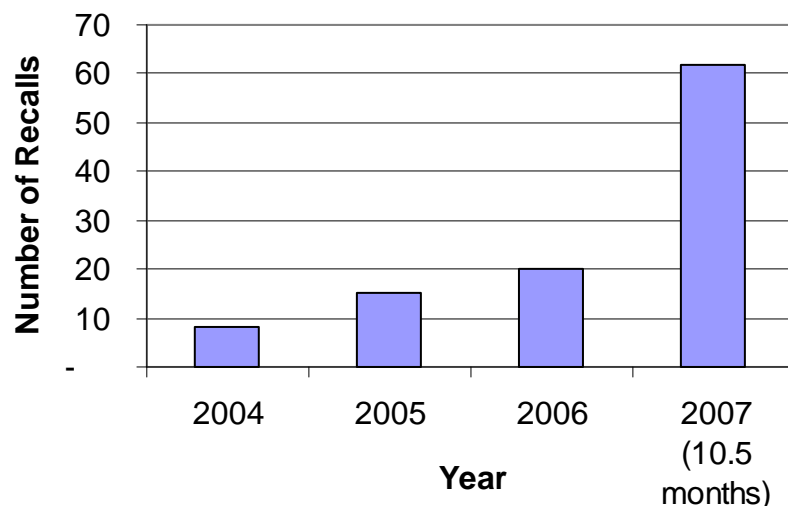
What is happening?

Put simply, parents, local health departments, and children’s health advocates have lost faith in the federal government’s ability and commitment to protect children from lead poisoning.

The Minnesota child’s death in February 2006 laid bare the tattered network designed to protect children from toxic chemicals in consumer products.² As a result, citizens took matters into their own hands and started testing products.

They used low-cost swabs that change color when the swabs contacted lead.³ They used expensive x-ray fluorescent (XRF) devices designed for lead-based paint to measure lead levels in plastic, metal, and coatings on toys.⁴

Figure 1
CPSC Recalls for Lead Contamination By Year



¹ See www.cpsc.gov/cpscpub/prerel/prerel.html.

² U.S. Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Dispatch, March 23, 2006 / 55(Dispatch);1-2.

³ National Center for Healthy Housing, *Testing for Lead in Consumer Products for Children*, August 14, 2007. See www.centerforhealthyhousing.org/factsheet-leadtestconprod.pdf

⁴ Id.

When they found lead, they filed complaints forcing action. When the federal government was slow to act, they went to their elected officials. California, Illinois, and Baltimore adopted laws.⁵ Indiana, New York and Illinois issued their own recalls.

Despite these efforts, the problem remains. At the Indiana Black Expo's Health Fair in August 2007, the Concerned Clergy of Greater Indianapolis and Improving Kids' Environment tested products brought in by patrons. Of the items tested, they found that 62% of almost 400 children's metal jewelry items and 32% of 85 plastic jewelry items contained more than 600 parts per million of lead – CPSC's screening level.⁶ The Indiana Pacer's cheerleaders were passing out *mardi gras* beads containing 1400 ppm of lead. Children were wearing this jewelry and some were mouthing it!

EPA's Complicity

While the focus has been on CPSC's shortcomings, the U.S. Environmental Protection Agency (EPA) has been complicit. EPA refused to use its authority under the Toxic Substances Control Act (TSCA) to support CPSC's effort. Only after a lawsuit from the Sierra Club and Improving Kids' Environment forced its hand did EPA act. The delay has cost us dearly.

If EPA had responded constructively to the Sierra Club's April 17, 2006, TSCA Section 21 petition⁷, EPA could have had the quality control procedures of companies such as Mattel in its hand one year before the failings of those procedures became painfully apparent. EPA could have identified the problems and taken steps to fix them. Instead of putting CPSC in a reactive mode triaging complaints Congress gave EPA the statutory authority to take action. EPA refused to exercise that authority.

Instead of acting immediately, EPA chose to take advantage of a loophole in the law claiming that Sierra Club could not force a regulation on quality control procedures without EPA first issuing orders to the companies. EPA refused to issue the orders – even to those companies who already had recalls. Sierra Club maintained that a recall was ample evidence that a company's quality control procedures had failed. Unfortunately, many of these companies had additional recalls after EPA denied the Sierra Club's petition.

In denying the petition, EPA said it planned to work “in coordination with CPSC to understand the scope of the problem.”⁸ EPA claimed that a “holistic and proactive approach may be more effective and less resource intensive than the case-by-case approach provided for under section 6(b).”⁹ Eighteen months and 72 recalls have passed and there is no tangible evidence that EPA has found that “holistic and proactive approach.”

⁵ California Statutes 2006, Chapter 415, Article 10.1.1 Lead Containing Jewelry. Illinois Public Act 094-0879: The Lead Poisoning Prevention Act of 2006. Baltimore City, Maryland regulations at www.baltimorehealth.org/jewelry.html.

⁶ See Attachment 5. “Results of Lead Content Screening of Children's Jewelry Indiana Black Expo, July 20-22, 2007” by Improving Kids' Environment.

⁷ See Attachment 6. Sierra Club's, April 17, 2006 Section 21 Petition to EPA and CPSC

⁸ EPA's July 20, 2006 Denial of Sierra Club's Section 21 Petition. See page 1.

⁹ Id. See page 2.

As a result, parents must work through complicated websites and conflicting guidance as they make decisions on Holiday presents for their children. Retailers must resort to testing products on their shelves to restore consumer confidence. And CPSC is left to issue repeated recalls on a case-by-case basis.

Acting a year earlier would not necessarily have avoided the recalls. But it would have given EPA and CPSC the opportunity to proactively address the situation in a systematic method. This proactive approach would have reassured the public and saved hundreds of thousands of dollars in wasted resources, especially at the state and local level.

While CPSC might have been able to take action on its own, the failure of CPSC and EPA to work together and leverage EPA's more powerful information gathering authorities was a lost opportunity.

EPA's failure is not limited to consumer products. Congress mandated that EPA adopted rules regarding the renovation, repair and painting of housing and child-occupied facilities by 1996.¹⁰ EPA issued a proposed rule on January 10, 2006 under pressure from a lawsuit by the Public Employees for Environmental Responsibility (PEER) and others.¹¹ It committed to finalizing the rule by January 2007 and is now hoping for March 2008.

Public confidence is going to take another hit if EPA finalizes this rule as proposed. In the proposed rule, EPA rejected the use of lead dust wipes to verify that contractors did not create lead hazards. Lead dust wipes had been repeatedly validated as the most reliable method to determine whether lead hazards were present or not. EPA's own rules relied on this method.¹²

EPA's proposed rule was virtually unenforceable. Contractors would have little documentation that they did or did not comply with the rules. Instead of empowering consumers with information and the means they needed to act, EPA proposed leaving consumers in the dark with generic pamphlets instead of actual information on the work that was done. Consumers who later tested their home would have to plead with an understaffed EPA Office of Enforcement and Compliance Assurance (OECA) to "recall" contractors to the home to clean up lead hazards left behind.

The situation would be a repeat of the children's products recalls of 2007 but instead of dealing with hundreds of importers, consumers would be left with hundreds of thousands of contractors.

¹⁰ Toxic Substances Control Act, Section 402(c)(3).

¹¹ January 10, 2006 Federal Register. Page 1587. See www.epa.gov/lead/pubs/renovation.htm.

¹² 40 CFR Part 745, Subpart D. See www.epa.gov/fedrgstr/EPA-TOX/2001/January/Day-05/t84.pdf.

What Goes Around, Comes Around

In the Pollution Prevention Act of 1990, Congress declared “it to be the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.”¹³

This pollution prevention hierarchy makes clear that our top priority should be to keep lead out of products. Recycling is a second choice.

Congress’ foresight was made starkly clear by research by Dr. Jeffrey Weidenhamer of Ashland University in Ohio¹⁴ and an investigation by the Wall Street Journal.¹⁵ They found that much of the lead in toy metal jewelry from China was apparently recycled electronic waste such as circuit boards from the West. Instead of recycling the lead from electronic waste, it appears that it may have been easier to remove the mixture of lead, copper and tin from the waste, melt it up, pour it into the jewelry mold to be shipped back to the United States for our children to use.

In the late 1990s, EPA had taken a leading role in working with electronics makers to phase lead out of their products. In June 2001, EPA published the “Electronics: A New Opportunity for Waste Prevention, Reuse, and Recycling.”¹⁶ Since 2001, EPA’s focus on prevention appears to have shifted from a balanced approach that emphasizes prevention to a recycling focus. The industry may very well have continued the prevention focus to engineer out lead. The lead that is found in metal toy jewelry may also be a relic of circuit boards from long ago. But EPA appears to have lost its leadership role on the issue.

Under the Resource Conservation Recovery Act, EPA is responsible for the broader management of solid wastes. Yet it has been silent on the issue of the management and disposal of the recalled products. CPSC apparently requires companies with recalls to follow federal, state and federal law.¹⁷ Many organizations, including the Sierra Club, are concerned that the lead-contaminated recalled product will be shipped overseas to a country with lower standards, resold in the U.S. on the second-hand market, or disposed of improperly.

¹³ Pollution Prevention Act of 1990, 40 USC 13101(b)

¹⁴ Jeffrey D. Weidenhamer and Michael L. Clement. 2007. Widespread lead contamination of imported low-cost jewelry in the US. *Chemosphere* 67 961–965.

¹⁵ Gordon Fairclough, Wall Street Journal, “Lead Toxins Take a Global Round Trip 'E-Waste' From Computers Discarded in West Turns Up In China's Exported Trinkets,” July, 12, 2007, <http://online.wsj.com/article/SB118420563548864306.html>

¹⁶ EPA 530-F-01-006. See www.epa.gov/osw/elec_fs.pdf

¹⁷ In addition, there is no emphasis on using the federal pollution prevention hierarchy to require strict quality control programs to ensure that lead is kept out of future products manufactured or importer.

The Los Angeles Times investigated the issue.¹⁸ It contacted many of the companies with recent recalls. Most refused to return the call or answer the question. Mattel said “Mattel said it planned to recycle as many components of its returned toys as possible, including selling or reusing zinc and some of the resins used to make the toys.”¹⁹

Once again, state and local elected officials stepped up when the federal government was silent. On August 16, 2007, Connecticut Attorney General Richard Blumenthal sent letters to Mattel’s Chief Executive Officer and its Senior Counsel for Regulatory Affairs asking for a response to detailed questions regarding the disposition of the recalled products.²⁰ Sierra Club applauds the leadership of Attorney General Blumenthal.

Mattel’s response was due September 16, 2007. As of October 4, Sierra Club understands that Mattel has not responded to the request.

Recommendations:

Regarding the EPA’s Renovation, Repair and Painting Rule, Congress should:

- Direct EPA to finalize the rule by January 2008 or prepare a detailed explanation for its delay. January 2008 is two years after the date of its initial proposal. The status report should describe EPA’s plans to finalize the rule and explain the delays in finalizing the rule.
- Direct EPA to prepare a report when the rule is finalized that explains:
 - How the rule will be enforced to achieve at least 75% compliance;
 - How the rule empowers citizens to:
 - Identify compliance problems that leave lead hazards in their residence; and
 - Force contractors to clean-up lead hazards contractors create without having to engage the federal government in the resolution of the problem;
 - How EPA will assess compliance with the rule and report results to Congress and the public on an ongoing basis.

Regarding lead in consumer products, Congress should revise the Toxic Substances Control Act to direct EPA to:

- Ban lead from children’s products unless it can be affirmatively demonstrated that the expected use of the product will not expose a child to lead;
- Routinely issue Section 6(b) quality control orders to companies that have recalls to determine whether their quality control procedures are adequate to exclude toxics from children’s products;
- Issue a Section 6(b)(2) rule establishing specific and effective quality control standards for all manufacturers and importers;
- Finalize the Section 8(d) rule as recommended by the Interagency Testing Committee before the end of November 2008;

¹⁸ Abigail Goldman, Los Angeles Times, “Disposal a murky issue in recall of lead-tainted items; State law holds sway, but there’s no uniform procedure in place.” October 8, 2007.

¹⁹ Id.

²⁰ See Attachment 9.

- Send a letter, in cooperation with the CPSC, to all importers and manufacturers of children's products:
 - Explaining the company's responsibilities to comply with the new Section 8(d) rule;
 - Reminding the company of its long-standing obligations under Section 8(e) to submit 8(e) notices of recalls;
 - Identifying the factories that have produced lead contaminated children's products and encouraging the companies to check all of their products for lead if they used the factories.

Finally Congress needs to:

- Adequately fund EPA and CPSC to address lead in children's products in particular and toxic chemicals in consumer products in general.
- Build institutional links between CPSC and EPA so that CPSC relies on EPA for its toxicological expertise and waste management expertise and does not use its limited funding to duplicate this expertise.
- State that the level of concern for lead in children is any measureable level of lead. The current level of concern of 10 micrograms of lead per deciliter of blood should be reclassified as the level for individual case management.

On behalf of the Sierra Club, Improving Kids' Environment and Concerned Clergy of Greater Indianapolis, I greatly appreciate this opportunity to describe the situation to the Senate Committee on Environment and Public Works and make recommendations to the Committee for tangible action to protect children.

Sincerely,



Thomas G. Neltner

Attachment 1

Background on Tom Neltner and Organizations

Tom Neltner is a chemical engineer with a Bachelors of Science from the University of Cincinnati. He is an attorney licensed to practice law in Indiana and Washington, DC. He is also a Certified Hazardous Materials Manager. His positions include:

- Co-chair of Sierra Club's National Toxics Committee since 2005
- Director of Training and Education for the National Center for Healthy Housing since 2005
- Executive Director and Founder of Improving Kids' Environment from 1999 to 2005
- Chair of the Environmental Committee for the Concerned Clergy of Greater Indianapolis from 2001 to 2005
- Adjunct Professor for Indiana University School of Public and Environmental Affairs from 1991 to 1994 and 2000 to 2004
- Assistant Commissioner for the Office of Pollution Prevention and Technical Assistance for the Indiana Department of Environmental Management from 1993 to 1999
- Vice-President for the Environmental Management Institute from 1990 to 1993
- Co-Founder and President of Indiana Recycling Coalition from 1990 to 1993
- Policy Analyst for the Indianapolis Center for Advanced Research from 1988 to 1990
- Engineer for Eli Lilly and Company from 1982 to 1988
- Coop Engineer for Dow Corning from 1979 to 1981

Sierra Club:

Tom Neltner is co-chair of the National Toxics Committee of the Sierra Club. Sierra Club is America's oldest, largest and most influential grassroots environmental organization. It has 1.3 million members. Inspired by nature, the Sierra Club works together to protect our communities and the planet. For more information, see www.sierraclub.org/lead.

Improving Kids' Environment:

Tom Neltner founded Improving Kids' Environment in 1999. He served as its executive director from 1999 to 2005. IKE is a non-profit, advocacy coalition based in Indianapolis dedicated to improving children's health through reductions in environmental threats to children. For more information, see www.ikecoalition.org.

Concerned Clergy of Greater Indianapolis:

Tom Neltner served as the chair of the Concerned Clergy's Environmental Committee from 2001 to 2005. The Concerned Clergy is a faith-based organization dedicated to promoting civil justice in Indianapolis. It was founded in the early 1960s.

Attachment 2
**Timeline of Key Events Regarding Lead in Consumer Products
and Lead-Based Paint During Previous 24 Months**

Date	Event	CPSC Actions	EPA Actions
Nov. 2005	EPA's National Pollution Prevention and Toxics Advisory Committee (NPPTAC) submits formal recommendations to EPA regarding lead poisoning prevention from sources other than lead-based paint.		
Dec. 2005	PEER and others sue EPA to issue Renovation, Repair & Painting (RRP) rule		
Jan. 2006			Proposes Renovation, Repair & Painting Rule on 1/10/06
Feb. 2006	Child dies of lead poisoning from Reebok charm	1 recall / 0.03 million items	Holds RRP Public meetings
March 2006	CDC publishes analysis of child's death in 3/23/06 Morbidity & Mortality Weekly Report	5 recalls / 1.1 million items	Proposes Lead Paint Test Kit and Revised Consumer Booklet
April 2006	Sierra Club petitions EPA and CPSC under TSCA Section 21	1 recall / 0.06 million items	
May 2006		2 recalls / 0.7 million items	Dismisses part of Sierra Club's petition.
June 2006	Illinois prohibits lead in children's products with more than 600 ppm lead.		
July 2006			Denies remainder of Sierra Club petition
Aug. 2006		1 recalls / 0.3 million items	
Sept. 2006	Sierra Club and IKE sue EPA for denying petition.	1 recall / 0.03 million items	
Oct. 2006			
Nov. 2006	Association of Battery Recyclers intervenes in lawsuit.	3 recalls / 0.3 million items	
Dec. 2006	Baltimore bans lead in metal toy jewelry over 1200 ppm	6 recalls / 0.3 million recalls	
Jan. 2007	California Legislature enacts Proposition 65 settlement by the attorney general, Center for Env. Health and retailers regarding phase-out of lead in costume jewelry.	2 recalls / 0.1 million items Publishes ANPR on metal toy jewelry	

Attachment 2

**Timeline of Key Events Regarding Lead in Consumer Products
and Lead-Based Paint During Previous 24 Months**

Date	Event	CPSC Actions	EPA Actions
Feb. 2007		5 recalls / 0.5 million items	
March 2007		5 recalls / 0.1 million items	Publishes two new RRP studies.
April 2007	Sierra Club, IKEA, and Assoc. of Battery Recyclers settle lawsuit	2 recalls / 1.3 million items	<ul style="list-style-type: none"> • Reaches settlement on lead in consumer products lawsuit • Sends letter to CPSC • Sends letter on TSCA Section 8(e) to companies with recalls or settlements on lead.
May 2007	Federal Interagency Testing Committee publishes 60 th Report recommending EPA to require reporting of all measureable lead results by importers of children's products excluding metal toy jewelry.	9 recalls / 0.8 million items	
June 2007		3 recalls / 1.5 million items	Modifies proposed rule to include child-occupied facilities.
July 2007	Sierra Club files notice of intent to sue 10 companies for 8(e) notices	2 recalls / 0.1 million items	Publishes notice of ITC report on 7/27/07
Aug. 2007	Sierra Club files notice of intent to sue Mattel	8 recalls / 1.6 million items	
Sept. 2007	<ul style="list-style-type: none"> • California prohibits sales of lead-tainted children's jewelry • House Subcommittee on Commerce, Trade, and Consumer Products holds Hearing • Baltimore bans lead in metal toy jewelry over 600 ppm. 	10 recalls / 1.4 million items	Announces grant decisions on Rural Ed
Oct. 2007	Sierra Club, Env. Law Foundation and Center for Env. Health file Prop 65 notices with selected recall companies Senate Committee Hearing	16 recalls / 2.2 million items	Issue 8(d) Reporting rule for children's products?

Attachment 3

Sierra Club’s Section 21 Petition to EPA and Subsequent Litigation

- On April 17, 2006, Sierra Club filed a petition under Section 21 of the Toxic Substances Control Act (TSCA).
- On May 26, 2006, EPA dismissed two requests in the petition.
- On July 19, 2006, EPA dismissed the remaining two requests in the petition.
- On September 14, 2006, Sierra Club and Improving Kids’ Environment sued EPA challenging its denial of the petition.
- On November 29, 2006, the Association of Battery Recyclers intervened in lawsuit.
- On April 13, 2007, the parties signed a settlement to the lawsuit. See www.epa.gov/lead/pubs/toyjewelry.htm.
- On June 26, 2007, the court dismissed the case.

Outcome of Sierra Club and IKE’s Lawsuit Against EPA Regarding Consumer Products

Sierra Club Request	EPA Decision	Settlement Outcome
<p>Pursuant to TSCA Section 8(d), (15 USC 2607(d)) EPA should require manufacturers, importers, and processors of lead and its salts that are reasonably likely to be incorporated into consumer products to provide EPA with lists and/or copies of ongoing and completed unpublished health and safety studies related to the six factors identified by CPSC as critical to determine the lead-safety of a product.</p>	<p>Denied on 7/19/06. EPA claimed that it would not gain significant new information.</p>	<p>The Interagency Test Committee stated that “EPA needs the following information to assess the extent and degree of exposure and potential hazard associated with these substances:</p> <ul style="list-style-type: none"> • Studies that relate to the lead content of consumer products that are intended for use by children (includes studies showing any measurable lead content), and/or • Studies that assess children’s exposure to lead from such products (including studies of bioavailability). • With regards to grade or purity, studies showing any measurable lead content in such products are of interest.” <p>EPA posted the proposal for public comment in July 27, 2007 <i>Federal Register</i>. EPA received one comment – from the Association of Battery Recycling – supporting the proposal as written. EPA should finalize the proposal in the Fall 2007 with reporting due in June 2008.</p>

Outcome of Sierra Club and IKE's Lawsuit Against EPA Regarding Consumer Products

Sierra Club Request	EPA Decision	Settlement Outcome
Pursuant to TSCA Section 9, (15 USC 2608)formally report to CPSC that CPSC should undertake rulemaking to ban lead in toy jewelry and, if CPSC fails to act within the statutory timelines, take action under TSCA Section 6 on its own.	Denied on May 26, 2006 without considering merits of request determining it was not eligible under Section 21.	EPA agreed to send letter to CPSC encouraging CPSC to address quality control issues. EPA sent letter on April 30, 2007.
Pursuant to TSCA Section 5, (15 USC 2604) issue a significant new use restriction to require companies to notify EPA if they manufacture or import toy jewelry containing lead.	Denied on May 26, 2006 without considering merits of request determining it was not eligible under Section 21.	No action.
Pursuant to TSCA Section 6(b), (15 USC 2605(b)) require manufacturers, importers, and processors to submit their quality control procedures regarding lead and, if those procedures are inadequate, require upgrades to address problems.	Denied on July 19, 2007 citing burden of case-by-case method and lack of authority to require rulemaking without EPA issuing order.	EPA agreed to send letter to companies with recalls or settlements involving lead contamination regarding their obligations to submit TSCA Section 8(e) notices. EPA sent letters on April 30, 2007.

Attachment 4
Sierra Club's Actions Against Companies

Pursuant to the settlement, EPA sent letters to more than 100 companies on April 30, 2007 regarding their responsibilities pursuant to TSCA Section 8(e). The companies were those subject to the California Costume Jewelry Proposition 65 Settlement , CPSC Recalls, and various state recalls.

In June, Sierra Club learned that EPA has not received any TSCA 8(e) notices in response to the April 30, 2007 letter from EPA. Therefore, Sierra Club issued Notices of Intent to Sue eleven companies pursuant to Section 20 of TSCA for failure to comply with TSCA. The companies had multiple CPSC recalls. The following is the status of the Notices of Intent to Sue. Sierra Club is preparing lawsuits based on the responses.

Company	Date Mailed	Status as of 10/16/07
Mattel	8/4/2007	No Response
US Toy	7/24/2007	Phone discussion
Target	7/24/2007	10/1/07 Letter
Samara	7/24/2007	Apparently out of business
Dollar General	7/24/2007	Submitted 8(e) Notice per phone discussion
Oriental Trading	7/24/2007	Refused to comply per 9/24/07 letter
A&A Global	7/24/2007	Submitted 8(e) Notice per 8/14/07 Letter
Cardinal	7/24/2007	Submitted 8(e) Notice per 8/23/07 Letter
RC2	7/24/2007	Submitted 8(e) Notice per 9/21/07 Letter
Rhode Island Novelty	7/24/2007	Phone discussion
Atico	7/24/2007	Phone discussion

On October 17, Sierra Club joined with Environmental Law Foundation and Center for Environmental Health to file Notices of Violation pursuant to the California Safe Drinking Water and Toxic Enforcement Act (Proposition 65) against more than twelve importers and retailers for failure to properly label the lead content of their products.

Results of Lead Content Screening of Children's Jewelry Indiana Black Expo, July 20-22, 2007

Executive Summary – Improving Kids Environment (IKE) coordinated a booth to screen children's jewelry for lead content at the Indiana Black Expo. Thermo Scientific donated the use of two NITON XRF Analyzers and travel costs for an operator. Several hundred items were analyzed. Of the 396 metal jewelry items screened, 62% had a lead content above 600 ppm. Of the 85 plastic items tested, 33% had a lead content above 600 ppm. No separate analysis was performed on paint and coatings.

Methodology – Screening of lead content in jewelry was performed by Bill Radosevich, acting as a volunteer. Two Thermo Scientific NITON XRF Analyzers were used during the event – a NITON XLt 797 and a NITON XLp 300. Both test stand and free-standing analysis was performed in the booth. Rental costs for the NITON XRF Analyzers and travel costs for Mr. Radosevich were donated by Thermo Scientific. In accordance with Thermo Scientific policy, brand names are omitted from this report.

The instruments perform a self calibration check, in addition comparison checks against known standards (multi-element in PVC, lead in tin) were performed at the start and end of each screening session and at about 2 hour intervals.

Parents passing the booth were invited to have their children's or their own jewelry tested for lead content. Some participants received t-shirts with an IBE lead-safe message in exchange for participation.

Please note that the sample pool was not random for the following reasons: Duplication of items (i.e. both earrings), self-selection of jewelry (reluctance to hand Mr. Radosevich gold or diamonds), self-selection of volunteers, or variation in incentives (t-shirt availability).

Results – During the three day event, analysis was performed on 481 items.

	Total # analyzed	Items with lead content above 600 ppm	Percent > 600ppm
Metal	396	246	62%
Plastic	85	28	33%
Total	481	274	57%

A trend emerged during the screening event. Many of the items with the highest lead content were purchased at a nationwide accessory retailer chain focusing on the babysitter demographic.

One item of note was the *mardi gras* beads being handed out by a local sport team's cheerleaders. Results indicate that the dark blue beads contained up to 1,400 ppm lead, and other colors generally contained over 600 ppm lead. Despite being notified of the lead content, the team continued to distribute the items.

Respectfully submitted by Bill Radosevich, October 8, 2007.



April 17, 2006

Steve Johnson, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Hal Stratton, Commissioner
U.S. Consumer Products Safety Commission
4330 East West Highway
Bethesda, MD 20814

Re: Citizen Petition to CPSC and EPA Regarding Lead in Consumer Products, Especially Toy Jewelry

Dear Commissioner Stratton and Administrator Johnson:

Enough is enough! In February of 2006, a Minnesota child died from lead poisoning after swallowing toy jewelry offered as a “bonus” to buyers of Reebok shoes.¹ This child’s death follows a July 8, 2004 voluntary recall of 150 million metal toy jewelry items by four major importers pursuant to an agreement with the Consumer Products Safety Commission.² It also follows a severe case of lead poisoning from a toy necklace in that occurred in 2003. Both of these poisonings resulted from products that were distributed in violation of the CPSC’s

¹ U.S. Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Dispatch, March 23, 2006 / 55(Dispatch);1-2

² U.S. Consumer Products Safety Commission, News from CPSC, “CPSC Announces Recall of Metal Toy Jewelry Sold in Vending Machines: Firms agree to stop importation until hazard is eliminated”, originally issued July 8, 2004 and revised on March 1, 2006. See www.cpsc.gov/CPSCPUB/PREREL/prhtml04/04174.html.

December 22 1998 Codification of Guidance Policy on Lead in Consumer Products.³ These are not isolated incidents.⁴

The federal government has set a goal of eliminating childhood lead poisoning by 2010. Realizing that goal seems even more distant when we learn of a child dying of lead poisoning and ineffectual efforts by our federal government to prevent the child's death. For poor children and children of color, the implications are even more serious since they are likely to be exposed to dangerous levels of lead. These exposures continue to contribute to the health disparities that characterize lead poisoning.⁵ They represent an environmental injustice that must be resolved.

Environmental justice demands that all people live free of the dangers posed by lead. By threatening the health and survival of our children, lead exposure threatens our future generations. We have a responsibility to our future generations to be especially protective of their health and well being.

The current system is not working. CPSC has not fulfilled its responsibilities to the public. EPA and CPSC must take stronger action regarding lead in jewelry and other products which may be ingested by children. The Sierra Club believes that lead is unacceptable in products that children use. There has to be a better way!

Petition to U.S. Consumer Product Safety Commission:

In this letter, the Sierra Club petitions the Consumer Products Safety Commission pursuant to 5 U.S.C. § 553(e)⁶ to issue regulations to ban lead in all toy jewelry using its authorities under the Federal Hazardous Substances Act.⁷ Specifically, the Sierra Club asks the CPSC act with utmost speed to:

1. **Classify Toy Jewelry Containing Lead as Banned Hazardous Substance**
Adopt regulations declaring that any toy jewelry containing more than 0.06% lead by weight for which there is a reasonably foreseeable possibility that children could ingest be declared a banned hazardous substance pursuant to Section 2(q)(1)(B)⁸ and Section 3.

³ U.S. Consumer Products Safety Commission, "Codification of Guidance Policy on Lead in Consumer Products." December 22, 1998 *Federal Register*, Vol. 63, No. 245, pp. 70648-70649.

⁴ U.S. Consumer Products Safety Commission, List of Recalled Toys, www.cpsc.gov/cpscpub/prerel/category/toy.html and List of Recalled Infant/Child Products (not including toys), www.cpsc.gov/cpscpub/prerel/category/child.html.

⁵ U.S. Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Dispatch, March 23, 2006 / 55(Dispatch);1-2.

⁶ 5 U.S.C. § 553(e) (2006). "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."

⁷ Federal Hazardous Substance Act, P.L. 86-613, 74 Stat. 372 (1960), codified at 15 U.S.C. 1261-1278,

⁸ Federal Hazardous Substance Act Section 2(q)(1)(B) (2006). It states that "any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce."

CPSC should begin by immediately issuing an advanced notice of proposed rulemaking pursuant to Section 3(f).⁹

The Sierra Club recommends 0.06% as an interim step because that cutoff has already been established as the concentration cutoff for paint on consumer products.¹⁰ Like jewelry, paint is not intended to be ingested, but children do it anyway. The Sierra Club does not believe that 0.06% of lead by weight in jewelry is low enough to protect children and recommends that EPA undertake other actions in cooperation with CPSC to determine a more appropriate cutoff in a different action described below.

The Sierra Club believes that toy jewelry is any item that serves a decorative but no or minimal functional purpose that is valued at less than \$20 per item. People are less likely to store such low-cost jewelry in secure containers or out of reach from children.

2. **Revise Guidance to Reflect Latest Science**

CPSC must revise its December 22, 1998 Codification of Guidance Policy on Lead in Consumer Products¹¹ to reflect the latest science regarding lead poisoning. In the guidance, CPSC states that the “scientific community generally recognizes a level of 10 micrograms of lead per deciliter of blood as a threshold level of concern with respect to

⁹ Federal Hazardous Substance Act Section 3(f) (2006). It states that “A proceeding for the promulgation of a regulation under section 2(q)(1) classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section shall be commenced by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

- (1) identify the article or substance and the nature of the risk of injury associated with the article or substance;
- (2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);
- (3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);
- (4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;
- (5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation under section 2(q)(1) or subsection (e) of this section; and
- (6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

¹⁰ 15 U.S.C. § 2681(9), (Toxic Substances Control Act Section 401(9)) (2006). It states the “term “lead-based paint” means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development, as defined in section 4822(c) of title 42, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

¹¹ U.S. Consumer Products Safety Commission, “Codification of Guidance Policy on Lead in Consumer Products.” December 22, 1998 *Federal Register*, Vol. 63, No. 245, pp. 70648-70649.

lead poisoning. To avoid exceeding that level, young children should not chronically ingest more than 15 micrograms of lead per day from consumer products.”¹²

These statements contradict conclusions by the U.S. Centers for Disease Control and Prevention in its August 2005 “Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control and Prevention.”¹³ CDC states that:

“In 1991 the CDC recommended lowering the level for individual intervention to 15 µg/dL and implementing communitywide primary lead poisoning prevention activities in areas where many children have BLLs >10 µg/dL. Some activities, such as taking an environmental history, educating parents about lead, and conducting follow-up blood lead monitoring were suggested for children with BLLs of >10 µg/dL. However, this level, which was originally intended to trigger communitywide prevention activities, has been misinterpreted frequently as a definitive toxicologic threshold.”

“As the accompanying review of recent studies indicates, additional evidence exists of adverse health effects in children at BLLs <10 µg/dL. The available data are based on a sample of fewer than 200 children whose BLLs were never above 10 µg/dL and questions remain about the size of the effect.”¹⁴

It is clear that CDC never intended for CPSC to use the 10 µg/dL as a level that must not be exceeded. Rather it serves as a trigger for investigation by the community to determine the cause of serious problem. CDC makes it clear that there is no safe level of exposure for children to lead. While Sierra Club believes the evidence for serious adverse health effects at levels less than 10 µg/dL is more compelling than CDC suggests, CDC’s doubts about the size of the effect do not justify ignoring these adverse health effects.

3. **Convert Voluntary Guidance into Enforceable Regulations**

After making the revisions called for above, CPSC must convert its December 22, 1998 Codification of Guidance Policy on Lead in Consumer Products from voluntary guidance into enforceable requirements. Clearly the voluntary guidance was insufficient. With enforceable regulations in place, CPSC can more effectively prevent mistakes from happening and more quickly react when they do occur.

¹² Id at 70649.

¹³ U.S.CDC, “Lead Levels – United States, 1999-2002”, Vol 52 / No. 20, pp 513 to 516.

¹⁴ Id at page 2.

Petition to U.S. Environmental Protection Agency:

In this letter, the Sierra Club also petitions the U.S. Environmental Protection Agency pursuant to Section 21 of the Toxic Substances Control Act (“TSCA”)¹⁵ to take action in coordination with CPSC to protect children from lead in toy jewelry. Specifically, the Sierra Club asks that EPA adopt regulations as follows:

1. Require TSCA Section 8(d) Health and Safety Data Reporting for Lead and Lead Salts

In CPSC’s December 22, 1998 Codification of Guidance Policy on Lead in Consumer Products, CPSC stated that “to avoid the possibility of a Commission enforcement action, a manufacturer who believes it necessary to use lead in a consumer product should perform the requisite analysis before distribution to determine whether the exposure to lead causes the product to be a “hazardous substance.” If the product is a hazardous substance and is also a children’s product, it is banned. If it is a hazardous household substance but is not intended for use by children, it requires precautionary labeling. This same type of analysis also should be performed on materials substituted for lead.”¹⁶

CPSC identified the following factors as critical to determining whether a potential hazard exists and whether the product may be a banned hazardous substance:

- a. The total amount of lead contained in a product;
- b. The bioavailability of the lead;
- c. The accessibility of the lead to children;
- d. The age and foreseeable behavior of the children exposed to the product;
- e. The foreseeable duration of the exposure; and
- f. The marketing, patterns of use, and life cycle of the product.

Assuming product manufacturers and importers having taken heed of CPSC’s guidance – guidance which deals with lead in all consumer products not just toy jewelry – then EPA needs to use its authority under TSCA §8(d),¹⁷ to obtain information on the six items listed above to enable EPA and CPSC to take more effective action to protect children from lead in consumer products.

EPA must at utmost speed require producers, importers, and processors of lead and its salts that are reasonably likely to be incorporated into consumer products to provide EPA with lists and/or copies of ongoing and completed unpublished health and safety studies related to the six factors identified by CPSC. The health and safety studies include:

- a. Epidemiological or clinical studies;
- b. Studies of occupational exposure;
- c. Health effects studies;

¹⁵ 15 U.S.C. § 2620 (Toxic Substance Control Act, Section 21) (2006). It states that (a) “Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title.

¹⁶ U.S. CPSC Codification of Guidance Policy on Lead in Consumer Products at page 70649.

¹⁷ 15 U.S.C. § 2607(d) (Toxic Substance Control Act, Section 8(d)) (2006).

- d. Ecological effects studies; and
- e. Environmental fate studies (including relevant physicochemical properties).

2. **Submit TSCA Section 9 Report to CPSC Regarding Lead and Lead Salts**

EPA has undertaken several significant rulemaking efforts in the past few months designed to prevent lead poisoning. On January 10, 2006, it proposed a rule to regulate renovation, repair and paint activities in target housing.¹⁸ On December 2, 2005, it sought comments on two volumes of its Air Quality Criteria Document for Lead.¹⁹

With the wealth of information from these rulemaking efforts as well as the recalls and reports on lead in toy jewelry, EPA needs to exercise its authority under TSCA Section 9.²⁰ EPA must report to the CPSC that it has a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of lead destined to be used in toy jewelry presents or will present an unreasonable risk of injury to health or the environment and that EPA determines that such risk may be prevented or reduced to a sufficient extent by action taken under the Federal Hazardous Substance Act. This report must be published in the Federal Register. It must describe the risk posed by lead to children and include a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk.

The report shall also request that CPSC:

- (A)(i) determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and
 - (ii) if CPSC determines that such risk may be so prevented or reduced, issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and
- (B) respond to EPA with respect to the matters described in subparagraph (A).

Pursuant to TSCA Section 9(a)(2),²¹ if CPSC does not respond within 90 days or its response is inadequate, EPA should proceed to use its authorities under Section 6 and adopt regulations declaring that manufacturers and importers may not add lead in excess of 0.06% lead by weight to any toy jewelry for which there is a reasonably foreseeable possibility that children could ingest is prohibited from manufacture or importation.

¹⁸ U.S. EPA Proposed Renovation, Repair and Painting Rule, 71 Fed. Reg. 1588 (2006) (to be codified at 40 C.F.R. Part 745) (proposed January 10, 2006).

¹⁹ U.S. EPA Air Quality Criteria Document for Lead, 70 Fed. Reg. 231 (December 2, 2005) pages 72300-72301.

²⁰ 15 U.S.C. § 2608 (Toxic Substance Control Act, Section 9) (2006)

²¹ Id at Section 9(a)(2)(2006)

3. Issue Significant New Use Notification Regarding Lead and Lead Salts in Toy Jewelry

On July 8, 2004, CPSC reached an agreement with four toy jewelry importers to eliminate lead in jewelry.²² Apparently, these companies manufacture or import the vast majority of the toy jewelry. EPA must adopt a Significant New Use Notification Rule pursuant to TSCA Section 5 requiring any business from manufacturing or importing toy jewelry containing lead at levels greater than 0.06% by weight to provide advance notice of its action.²³ While this action would not prevent the importation of manufacture of lead-containing toy jewelry, it would allow EPA to be aware of the pending action and take appropriate action.

4. Issue Section 6(b) Quality Control Order Regarding Production of Toy Jewelry

EPA should work with CPSC to identify the manufacturer or processor that produces any toy jewelry with more than 0.06% lead by weight. If EPA identifies any manufacturer or processor that it has jurisdiction over using its TSCA authorities, it should immediately issue Section 6(b) quality control orders.²⁴ In this order, EPA should require the manufacturer or processor to modify its quality control procedures to the extent necessary to remedy the inadequacy.

²² U.S. Consumer Products Safety Commission, News from CPSC, “CPSC Announces Recall of Metal Toy Jewelry Sold in Vending Machines: Firms agree to stop importation until hazard is eliminated”, originally issued July 8, 2004 and revised on March 1, 2006. See www.cpsc.gov/CPSCPUB/PREREL/prhtml04/04174.html.

²³ 15 U.S.C. § 2604 (Toxic Substance Control Act, Section 5) (2006)

²⁴ 15 U.S.C. § 2605(b) (Toxic Substance Control Act, Section 6(b)) (2006)

Conclusion

The Sierra Club requests that CPSC and EPA act in the manner described above to protect children from lead poisoning by consumer products. The current system is not working. EPA and CPSC must take stronger action regarding lead in jewelry and other products which may be ingested by children.

There has to be a better way.

The Sierra Club looks forward to EPA's response to this petition within 90 days, as required by TSCA, 15 U.S.C. § 2620(b)(3).²⁵

Sincerely,

Ed Hopkins
Director, Environmental Quality Program

²⁵ 15 U.S.C. § 2620(b)(3) (Toxic Substance Control Act, Section 21(b)(3)) (2006)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 30 2007

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Jacqueline Elder
Assistant Executive Director
Office of Hazard Identification and Reduction
U.S. Consumer Product Safety Commission
4330 East West Highway, Room 702
Bethesda, MD 20814

Dear Ms. Elder:

As you know, in 2006, the Sierra Club petitioned both the Consumer Product Safety Commission (CPSC) and the Environmental Protection Agency (EPA) to take certain measures to address risks from lead in toy jewelry. The Sierra Club's petition to EPA requested, among other things, that EPA require health and safety data reporting for lead and lead salts under section 8(d) of the Toxic Substances Control Act (TSCA) and that EPA issue TSCA section 6(b) quality control orders regarding the production of toy jewelry. EPA denied these requests in July 2006. In September, the Sierra Club and Improving Kids Environment filed suit in the U.S. District Court for the Northern District of California challenging EPA's denial and seeking to compel EPA to perform the requested actions.

EPA and the plaintiffs have now signed a settlement agreement establishing a process that will conclude with the dismissal of the lawsuit. During settlement negotiations, the plaintiffs raised questions about the adequacy of quality control measures by companies importing and/or distributing children's jewelry. For example, the Centers for Disease Control and Prevention (CDC) reported that lead levels in the Reebok charm that resulted in the poisoning of a young boy last year varied widely between suppliers and production lots.¹ This type of variation may indicate an absence of quality control measures with respect to lead content. In fact, several of the comments EPA received on the Sierra Club's petition identified a lack of quality control as a problem. This and other information EPA has reviewed raise questions about the adequacy of quality control measures by companies importing and/or distributing children's jewelry.

EPA is concerned about the continuing use of lead in toy jewelry, and is committed to the

¹CDC, Morbidity and Mortality Weekly vol. 55, March 23, 2006; available at:
<http://www.cdc.gov/mmwr/PDF/wk/mm55d323.pdf>

Federal goal of eliminating childhood lead poisoning by 2010. We understand that CPSC has undertaken numerous recalls in an attempt to reduce risks from lead in toy jewelry, and recently published an advance notice of proposed rulemaking to ban children's metal jewelry containing more than 0.06% lead. EPA supports CPSC's efforts addressing lead in metal toy jewelry, and in an attempt to learn more about childhood lead exposure, EPA will seek unpublished health and safety studies regarding lead in other consumer products intended for children. We look forward to working with you to develop a comprehensive approach to this public health challenge.

Sincerely,

A handwritten signature in black ink that reads "Maria J. Doa". The signature is fluid and cursive, with a long horizontal line extending to the right.

Maria J. Doa, Ph.D.

Director

National Program Chemicals Division

cc: Lori Saltzman, CPSC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C., 20460



OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

April 30, 2007

Ms. Jane Doe
President
XYZ Manufacturing, Inc.
123 Elm Street
Anytown, US 00001

Dear Ms. Doe:

The U.S. Environmental Protection Agency (EPA or Agency) is committed to doing its part to contribute to the federal goal of eliminating childhood lead poisoning by 2010, and is concerned about a number of reports involving lead in toy jewelry and other products intended for use by children.¹ You are receiving this letter because XYZ Manufacturing, Inc. is one of many companies that EPA has identified as having participated in a recall related to lead in a consumer product or a settlement with the State of California last year regarding lead in jewelry. For this reason, EPA is writing to ensure that you are aware of the reporting requirements under the Toxic Substances Control Act (TSCA) section 8(e) (15 U.S.C. § 2607(e)), which provides:

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

Toxicity data that indicate a substantial risk of injury to health or the environment are the most common kinds of information received by EPA under TSCA section 8(e), but the Agency also often receives information on exposure, environmental persistence or other kinds of information that indicate a substantial risk of injury to health or the environment.

The health of consumers who are exposed to lead through use of lead-containing products may be at risk. For example, young children often put objects in their mouths. When those

¹See e.g., CDC, Morbidity and Mortality Weekly vol. 55, March 23, 2006; available at: <http://www.cdc.gov/mmwr/PDF/wk/mm55d323.pdf>

objects, such as toy jewelry, contain lead, a child can suffer from lead poisoning as a result of this exposure. Lead may cause a range of health effects, from behavioral problems and learning disabilities, to seizures and death. For more information on the health effects of lead please visit the EPA's lead homepage at www.epa.gov/lead.

As you probably know, the U.S. Consumer Product Safety Commission (CPSC) has authority under the Consumer Product Safety Act and the Federal Hazardous Substances Act to take certain actions to address risks from consumer products. The CPSC has undertaken numerous recalls and other actions in an attempt to reduce risks from lead in toy jewelry. On January 9, 2007, CPSC published an advance notice of proposed rulemaking (72 FR 920) to ban children's metal jewelry containing more than 0.06% lead. EPA also is working to address health risks from lead in children's products, by assessing the problem and gathering information that may be useful in determining future efforts to reduce risks from these products.

Your company can play a role in identifying and reducing these potential risks. In addition to possible obligations under the Consumer Product Safety Act and the Federal Hazardous Substances Act, persons who manufacture, process, or distribute lead in products also may have obligations under TSCA.

With respect to TSCA section 8(e), EPA guidance issued in September 2006 and currently available on the Agency's website² states:

Q.25. Are studies or reports showing absorption from manufactured products or articles of a chemical known to be capable of causing serious health effects potentially reportable under TSCA section 8(e)? For example, are studies or reports showing absorption of lead following oral or dermal exposure to a particular type of article for which it was not previously known that such absorption could occur potentially reportable under TSCA 8(e)?

A.25. Yes – The discovery of previously unknown and significant human exposure to a chemical, when combined with knowledge that the subject chemical is recognized or suspected as being capable of causing serious adverse health effects (e.g., cancer, birth defects, neurotoxicity), provides a sufficient basis to require the reporting of the new-found exposure data to EPA under section 8(e).

Q.26. Is the discovery of a hazardous or toxic constituent in a product reportable under TSCA section 8(e)?

A.26. Reporting of the presence of a hazardous or toxic constituent that was previously unknown to be contained in a product, including manufactured articles, should occur under TSCA section 8(e) where data shows that widespread or significant exposure to the

²“September 2006 Frequent Questions,” available at <http://www.epa.gov/oppt/tsc8e/pubs/frequentlyaskedquestionsfaqs.htm#health2>.

toxic component has occurred or is substantially likely to occur, and such exposure presents a substantial risk of injury to health or the environment. Persons subject to TSCA 8(e) reporting should consider the toxicity of the constituent, the constituent's concentration in the product, and whether significant exposure to the toxic component has occurred or is likely to occur at any stage in the product's lifecycle from production through disposal. In cases of extremely toxic chemical substances in products in commerce, exposure may generally be presumed.

We hope this letter will assist you in assessing your company's potential obligations under TSCA. More information on TSCA section 8(e) reporting is available on the TSCA section 8(e) website at www.epa.gov/opptintr/tsca8e; directions on how to send 8(e) submissions to EPA is provided at <http://www.epa.gov/oppt/tsca8e/pubs/contactus.htm>. Please refer questions on TSCA section 8(e) requirements to Walter Cybulski at (202) 564-2409.

If you have general questions regarding TSCA requirements, please contact the TSCA Assistance Information Service (TSCA Hotline) at (202) 554-1404. The TSCA Hotline can also be reached via email at tsca-hotline@epa.gov.

Sincerely,



fn

James B. Willis
Director

Chemical Control Division
Office of Pollution Prevention and Toxics

cc: Lori Saltzman, CPSC

JK

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford

August 16, 2007

Via facsimile 310-252-2179

Bob Eckert
Chief Executive Officer
Mattel, Inc.
333 Continental Boulevard
El Segundo, CA 90245-5012

Dear Mr. Eckert:

I write in regard to your announcement of another recall of Mattel toys containing dangerous lead paint. I agree with your statement that there is nothing more important than the health and safety of our children. I hope that you and Mattel remain committed to protecting consumers, especially our young people, from chemicals as dangerous as lead.

While a recall is an essential first step to resolving this issue, this is only the first in a series of steps Mattel must take to ensure that the lead in its toys will not cause further harm. It is essential that any disposal in Connecticut of toys containing lead fully comply with the environmental statutes and regulations governing such disposal. Connecticut, like many states, seeks to protect the health and safety of its citizens by minimizing and eventually eliminating the release of dangerous chemicals, such as lead, into our environment. If we are to truly protect our children, the lead in these toys must not be allowed to contaminate our environment.

In accordance with state and federal hazardous waste regulations, including section 22a-449(c)-102(a)(1) of the Regulations of Connecticut State Agencies (RCSA), incorporating 40 CFR 262.11, Mattel must determine whether the products to be disposed of will constitute hazardous waste and whether Mattel or involved retailers or distributors, in disposing of these wastes, will become generators of hazardous waste. If so, Mattel must ensure compliance with all legal requirements.

Therefore, I request that you certify in writing within thirty (30) days that any disposal of Mattel toys containing lead in the state of Connecticut will be conducted in compliance with applicable federal and state laws. If disposal will be conducted by the individual retailers or distributors of these toys within the state of Connecticut, you should contact each and every retailer and distributor to instruct them to dispose of these products in accordance with applicable Connecticut and federal law. I further request that you certify in writing within thirty (30) days that you have done so and have instituted a plan to monitor disposal. My office and other

Connecticut state agencies will continue to review this matter, and we do not foreclose the initiation of enforcement action to ensure compliance with environmental law.

I expect that Mattel will continue to take responsibility for the complete and safe removal of these products from the hands of our children, and further, will ensure that the lead is not released into the environment. Please contact me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Blumenthal", written in a cursive style.

RICHARD BLUMENTHAL

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL



Hartford

August 17, 2007

Michael A. Monahan
Senior Counsel - Regulatory Affairs
Mattel, Inc
333 Continental Boulevard
El Segundo, CA 90245

Re: Fisher Price and Mattel Recall

Dear Mr. Monahan:

I write regarding the voluntary recall of various Fisher-Price and Mattel toys by your company in cooperation with the U.S. Consumer Product Safety Commission ("CPSC"). This letter raises additional and different concerns than the letter I sent yesterday to Mr. Eckert regarding proper disposal of recalled toys. According to statements by both the CPSC and Mattel, the surface paints on approximately 1.2 million toys contain excessive levels of lead. Mattel has also recalled millions of other toys because small magnets inside the toys can fall out. If swallowed by children, the magnets can cause serious injury or death.

While the recalls are plainly appropriate and necessary, I remain concerned about how Mattel could have distributed these products in the first place. The Connecticut Child Protection Act, Conn. Gen. Stat. § 21a-335 *et seq.*, prohibits the "introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance." Conn. Gen. Stat. § 21a-337(1). A "banned hazardous substance" is defined as:

[A]ny toy, or other article intended for use by children, which is a hazardous substance, or which contains a hazardous substance in such manner as to be susceptible to access by a child to whom such toy or article is entrusted

Conn. Gen. Stat. § 21a-335(p)(A). A "hazardous substance", in turn is defined in part as "any substance or mixture of substances which ... is toxic." Conn. Gen. Stat. § 21a-335(e)(1)(A)(i). To the extent that Mattel distributed these toys in Connecticut, its conduct could be deemed to violate the Child Protection Act. Continued violations of the

Act would constitute unfair and deceptive trade practices pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*

So that I may understand how these events came about, and to ensure that such conduct does not occur again in the future, I request that you provide the following information regarding Mattel's business practices:

- The total number of toys subject to the recalls that were distributed or delivered to the State of Connecticut.
- The identity of all retailers in the State of Connecticut who sold the recalled toys.
- The total number of recalled toys returned to Mattel by such retailers. In your response, also identify the specific reason(s) each toy was recalled.
- The total number of recalled toys returned to Mattel by Connecticut consumers.
- The names and addresses of any Connecticut consumers who have complained to you about any of the recalled toys, along with copies of such complaints.
- The identity of any laboratory which analyzed the toys in question for the presence of toxic substances, along with copies of any test reports.
- The identity of the company or companies that manufactured and supplied the toys at issue to you.
- When and how Mattel first learned that the surface paints used in the production of your toys contained lead.
- The reason or reasons lead paint was used in the production of your toys.
- When and how Mattel first learned that the magnets in the toys could fall out.
- The reason or reasons the magnets fall out.
- Any reported injuries or deaths that have been attributed or allegedly attributed to the magnets dislodging from the toys and, if so, how many, and when and how they reportedly occurred.
- Whether any Connecticut consumers were involved in the reported injuries or deaths, and, if so, the nature and extent of their injuries, as well as the names and addresses of such consumers.

- The identity of the person(s) responsible for designing the recalled toys, and the specific nature of the redesign
- Mattel's procedures for ensuring that toys intended for use by children do not contain hazardous substances susceptible to access by children
- Any changes to those procedures implemented or being considered by Mattel in response to the events giving rise to the toy recall.

These requests cover the period of January 2005 to the present. I ask that you provide this information in writing by the close of business on August 31, 2007. You may send your response directly to Assistant Attorney General Gary Tan by mail, fax, or e-mail. His mailing address is 110 Sherman Street, Hartford, CT 06105; his fax number is (860) 808-5593; and his e-mail address is: gary.tan@po.state.ct.us. If you have any questions or wish to discuss this in more detail, please contact Assistant Attorney General Tan at (860) 808-5400. Thank you.

Very truly yours,



RICHARD BLUMENTHAL

RB/pas