



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.<sup>1</sup> 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.<sup>2</sup> 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

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

<sup>2</sup> 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](http://www.cpsc.gov/CPSCPUB/PREREL/prhtml04/04174.html).

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

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.<sup>5</sup> 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)<sup>6</sup> to issue regulations to ban lead in all toy jewelry using its authorities under the Federal Hazardous Substances Act.<sup>7</sup> 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)<sup>8</sup> and Section 3.

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<sup>3</sup> 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.

<sup>4</sup> U.S. Consumer Products Safety Commission, List of Recalled Toys, [www.cpsc.gov/cpscpub/prerel/category/toy.html](http://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](http://www.cpsc.gov/cpscpub/prerel/category/child.html).

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

<sup>6</sup> 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."

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

<sup>8</sup> 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).<sup>9</sup>

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.<sup>10</sup> 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 Products<sup>11</sup> 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

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.”<sup>12</sup>

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.”<sup>13</sup> 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.”<sup>14</sup>

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.

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<sup>12</sup> Id at 70649.

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

<sup>14</sup> 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”)<sup>15</sup> 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.”<sup>16</sup>

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),<sup>17</sup> 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;

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<sup>15</sup> 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.

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

<sup>17</sup> 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.<sup>18</sup> On December 2, 2005, it sought comments on two volumes of its Air Quality Criteria Document for Lead.<sup>19</sup>

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.<sup>20</sup> 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),<sup>21</sup> 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.

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<sup>18</sup> 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).

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

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

<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> In this order, EPA should require the manufacturer or processor to modify its quality control procedures to the extent necessary to remedy the inadequacy.

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<sup>22</sup> 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](http://www.cpsc.gov/CPSCPUB/PREREL/prhtml04/04174.html).

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

<sup>24</sup> 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).<sup>25</sup>

Sincerely,

Ed Hopkins  
Director, Environmental Quality Program

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