INECE Compliance Conversation: Eliminating Lead Paint

Session 1 Notes (November 1)

The second session of this Compliance Conversation will take place on November 7 at 9:30 am (DC time). Please register here to join us for a follow up discussion during which we will delve deeper into the questions posed below. If you would like to submit any questions or comments to be addressed during the next session, we encourage you to send them to info@inece.org.

Introduction to the Issue:
Despite widespread agreement on its adverse health impacts, many countries have not yet passed laws to ban lead paint and many companies have not yet switched to lead-free ingredients. Over 100 countries still allow lead paint, which can impair cognitive function in children and have a variety of other health impacts. Today’s discussion addresses legal approaches to tackle this issue, based on a Model Law developed by UN Environment for the Global Alliance to Eliminate Lead Paint. More information about the session can be found on our program site. The Model Law is available at https://www.unenvironment.org/resources/publication/model-law-and-guidance-regulating-lead-paint.

Panelists:

Steve Wolfson (Moderator), Senior Attorney at the U.S. Environmental Protection Agency (US EPA) Office of General Counsel. Steve has trained environmental lawyers in Africa, Asia, and Latin America, and leads the EPA-China Environmental Law Initiative.

Allan Meso, Legal Officer for the International Law Unit at the United Nations Environment Programme. Mr. Meso contributed and has played a key role in the development of several UNEP reports including the Model Law and guidance on eliminating lead paint; The Training Curriculum on Environmental Law for Judges and Magistrates in Africa; Environmental Law Making and Oversight for Sustainable Development – A guide for Legislators and; The First Global Report on the Environmental Rule of Law.

Amanda Rawls, Project Director of the Lead Paint Project for the American Bar Association – Rule of Law Initiative. Ms. Rawls was previously Director of ABA ROLI’s Africa Division, having joined ABA ROLI in July 2013.

Cate Tierney, Senior Attorney at the US Environmental Protection Agency (US EPA) Office of Civil Enforcement. Ms. Tierney’s current practice focuses on Clean Water Act enforcement with a specialty in cases involving oil discharges. She is also a member of EPA’s Lead Paint Alliance team and helped draft the Model Law and Guidance for Regulating Lead Paint.
1 - Allan Meso began by introducing UNEP’s engagement with the international community to phase out lead paint.

- The global community has been working since 2001 to address lead exposure problems
- One such effort is The Global Alliance to Eliminate Lead Paint (Lead Paint Alliance)
  - Established in 2009
  - Has 104 partners, including the paint industry, NGOs, academia and governments, and is guided by an Advisory Council chaired by U.S. EPA, Secretariat is UNEP and WHO
  - Main objective: to prevent children’s exposure to paint containing lead and to minimize occupational exposure to lead paint
    - Other specific objectives include: Raising awareness; Catalyzing the design and implementation of appropriate prevention-based programs; Promoting establishment of appropriate national regulatory frameworks to stop the manufacture, import, export, sale, and use of lead paints; Sharing guidance and promoting assistance to identify and reduce potential lead exposure
  - Development of tools to support countries’ phase out of lead paint
  - 73 out of 194 countries have some sort of binding agreement to phase out lead paint – not all have adopted legislation, some have rules or agreements

2- Cate Tierney (U.S. EPA) presented the Key Provisions of the Lead Paint Alliance’s Model Law and Guidance for Regulating Lead in Paint.

- The law was developed by working with multiple partners to pull together key principles that would work in a model law
- Purpose of model law: to limit lead content in paints to limit exposure to lead
  - Main way to do this is setting a low maximum concentration limit – 90 ppm total lead limit → The lowest technically achievable level
  - There are currently 35 countries using a concentration limit approach and more in progress

Key considerations for adapting the model law to fit national conditions:

- Model law is intended to fit multiple national circumstances with many different legal frameworks including legislation like consumer protection laws, standards bureaus, and chemicals management laws
- Success occurs in countries that use a multi-stakeholder process in which conversations are held with civil society, industry groups and government

Key provisions of model law – the most important things for a lead paint law to cover:

- **Scope of coverage**: which lead paints, activities, or people are covered by the law?
  - Model recommends that it applies to ALL paints (i.e. industrial, agricultural, etc.) – this is both the most health protective and easiest approach
However, Model Law recognizes that some countries may enact laws that do not cover all paints (e.g. art or vehicle paints), but strongly recommends EXPLICIT WARNINGS on labels of these paints

- **Setting a limit** on total lead content: e.g. 90 ppm total lead
  - Lowest, technically achievable level
- **Provide clear, effective dates** for compliance
  - This is important for folks to know when the requirements of the lead paint law come into effect because change can’t happen overnight → manufacturers need time to figure out how to comply
  - The model law lays out two options for effective dates:
    - A *uniform, delayed effective date*: the law is promulgated on X date and within a year the 90ppm limit must be complied with, OR
    - *Phased effective dates for different uses/types of paint*: the law promulgated on X date and then specific types of paint have different dates to come into compliance → This approach recognizes that there are different hazard levels with different types of paint
- **Provide clear and robust compliance and enforcement mechanisms**
  - Model law uses a “Declaration of Conformity” process – manufacturers and importers are required to make sure that their paints are tested by an accredited, third-party lab
    - Must sign a Declaration of Conformity that all their paints comply with the 90 ppm total lead limit
    - Must provide the Declaration of Conformity to distributors, retailers, and governments upon request
  - Failure to provide these declarations subjects the manufacturers and importers to penalties
  - The model law ensures that the required testing isn’t too duplicative
    - Send a sample of the first production lot of paint to a lab to make sure that it complies
    - Importers can rely on foreign manufacturer’s testing under certain conditions
- **Specify which agencies will be responsible for implementing & enforcing** the law
  - The model law recognizes that gov’t inspections are important to ensure compliance with the law
  - And allows entrance into places where paint is stored and sold, and that the government has the authority to inspect paint for compliance with the lead limit
- **Lay out the specific consequences for non-compliance**: injunctive relief, criminal penalties, civil penalties?
  - Lay out what the prohibited acts are → E.g. the model law makes it illegal for ANY PERSON to:
    - Manufacture, sell, distribute, or import paint over the legal limit
    - Fail to cooperate w/ government inspection and testing
    - Fail to provide a declaration of conformity
    - Attempt influence third party lab’s testing of paint or reporting false results
Amanda Rawls concluded the presentation sessions by discussing some of the compliance issues and challenges that have come up since the law was developed.

- **Compliance components:** new laws try to affect behaviors of different stakeholders in a system
  - Three main components:
    - Whether any individual actor has the desire or will to make that change
      - Could be a social conscience issue, could be a market pressure issue, or could be a question of the cost-benefit analysis of the person putting it on the market
    - Whether any individual actor has the knowledge or skills to make that change → do they have the technical and procedural skills to turn knowledge into action?
    - Whether any individual actor has the resources or access to tools, people, financial resources to make a change

- **Example 1: Manufacturer “M”**
  - Context: A country trying to change the lead limit from 600 ppm to 90 ppm
  - Compliance issue: manufacturing paint using imported pigments with no documentation of their content
  - Does M have the required knowledge and skills to make compliant paint?
    - Knowledge of lead content in pigments
    - Knowledge of lead content of mixed paint (through testing)
    - Skills to reformulate paint if lead content is too high?
  - Does M have required resources to make complaint paint?
    - Is it cost or availability of alternatives?
  - Does M have the will to make paint compliant?
    - Market pressure – maybe consumers are unaware, so they don’t demand paint w/o lead additives
      - **Solution** (non-legal): Raise public awareness to change that market pressure dynamic
    - Low likelihood of enforcement:
      - No declaration of conformity provision
      - No obligation to provide documentation of lead content
        - **Solution** (legal): Enact a Declaration of Conformity requirement to make it easier to verify compliance
  - Few inspectors
  - Consequences are minimal – impound batch, but no fine, no loss of license
    - **Solution** (legal): Impose higher penalties on M

- **Example 2: Seller “S”**
  - Compliance issue: selling paint labeled “for industrial use only” to consumers for household use
  - Does S have knowledge and skills to comply?
    - Knowledge of lead content:
      - through lab test results from manufacturer
or independent testing of paint
• Knowledge of how to follow label
  o Resources: can S actually confirm compliance?
    • Clarity of labeling, availability of compliant paint sources
      • Solution (legal): require a separate license to sell industrial use paint
  o Will: What incentives discourage S compliance?
    • Knowledge: does not understand danger to consumers
    • Market pressure: consumers are unaware
      • Solution (non-legal): awareness campaigns
    • Low likelihood of enforcement – paint itself falls under a legal exemption, few inspectors
      • Solution (legal): minimize exemptions

• Example 3: Inspector “G”
  o Compliance issue: leaded paint is being allowed through customs points
  o Does G have the required knowledge and skills to enforce the law?
    • Knowledge of scope of responsibility
    • Knowledge of what to inspect for
    • Knowledge of power to sample and test, and skills to do so
      • Solution (legal): assign clear enforcement responsibility; implement Declaration of Conformity provision to simplify inspection process
  o Does G have required resources to enforce the law?
    • Where should paint stock be kept pending results?
    • Are test kits available?
    • Who pays for testing?
      • Solution (non-legal): Allocate resources to enforcement
  o Does G have the will to enforce the law?
    • Relationship pressure: vendors are repeat customers
    • What are the consequences of allowing paint through?
      • Solution (non-legal): what performance incentives apply; what are the consequences for inspectors for failing to inspect

Q&A Discussion:

- What is the place of academia and research in reducing lead paint?
  • Academia, nonprofit groups, and industry has an important role to play to assist with technical research and with legislation
    • Partnerships: University of Maryland Law School links up with legal clinics at law schools in Africa and other parts of the world to work on adapting the Model Laws to local legal systems / regulatory structures in other countries, and using their expertise
    • Encourage countries to reach out to academia and other groups
  • Research can be drawn on to make the case for reducing lead exposure
- EPA also has good research on how long it takes to remediate the problem, e.g. waiting 5 years creates a much bigger pipeline problem
- World Health Organization studies on how lead paint levels effect blood levels in humans

- When all countries accept the need for testing lead in paint, there has to be a uniform base rule. How will we go about making a uniform base test method when we are leaving this test up to manufacturers?
  - One point of this international effort to move towards global consistency in banning lead paint. The Model Law spells out that the testing needs to be carried out by an accredited, third party lab that uses standardized international standards.

- Can there be an alternative to lead paint that does not have harmful health effects?
  - Yes, there are available alternatives to lead paint that are less harmful.
  - 100% lead-free paint is not possible, because lead is naturally occurring in some of the ingredients used for paint.
    - That’s why the Model Law recommends the lowest possible threshold, which is technically feasible
    - 0% lead in paint would of course be preferable, but it is not possible when non-lead additives are used, paints have low levels of lead.
  - Countries can encourage the use of alternatives by banning paint with high levels of lead

- Is there any need in countries developing laws for regulations that would minimize the release of existing lead paint? EPA’s focus has been on enforcing the rules on minimizing releases through the renovations of homes and schools. Is that part of the plan here, or is that not such a need elsewhere?
  - In this effort, we are focused on cutting off the pipeline, but recognize that this is an important issue and it may be something to address in the future
  - Can share the guidance developed in the US for safe lead paint remediation.

- We have an information gap on the health hazards of using lead-based paints. How does the Model Law provide a remedy for that?
  - Not sure that we do have an information gap on health hazards, there’s extensive information on risks of lead-based paint
    - Good data on the specific biological pathways the ways that lead attacks the body
    - The World Health Organization has lots of materials
      - They’re able to share so that there’s broader public knowledge about what the dangers are
      - These reports are shareable in all UN languages
      - [Childhood Lead Poisoning Publication](https://www.who.int/lead/childhood-poisoning-publication)
      - [UNEP’s Model Law and Guidance for Regulating Lead Paint](https://www.unepprisinglead.org) in various languages
  - Perhaps issue is access to the information - if there are areas that are lacking, please let us know
Please send any additional questions or comments to be addressed during the next session on November 7 to info@inece.org.