Eliminating Lead Paint

INECE Compliance Conversations
November 1 & 7, 9:30 a.m. (DC Time)

Speakers:
- Allan Meso, UNEP
- Amanda Rawls, ABA ROLI
- Cate Tierney, US EPA
- Steve Wolfson, US EPA, Moderator
Background on INECE

- Global network of governmental & non-governmental actors working on implementation, compliance and enforcement of environmental law
- ELI now houses the INECE Secretariat
- Celebrating our 30th anniversary year with an international conference March 10-13 in Adelaide, Australia. Find out more: http://2020aelert-inece.net
- Visit our website: http://inece.org/
Compliance Conversations – How to Participate

- Forum for direct communication between practitioners and other experts
- Centered on a specific, current challenge
- 2 sessions, time for both presentations and discussions
- To submit a question:
  - If you wish to be unmuted to ask the question out loud, use the Raise Hand function
  - If you wish for us to read the question aloud, submit the question via the questions tab
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UNEP EFFORTS TO SUPPORT ELIMINATION OF LEAD PAINT

A presentation made during the International Network for Environmental Compliance and Enforcement’s (INECE) Compliance Conversations on Eliminating Lead Paint

By Allan Meso, United Nations Environment Programme
1 & 7 November 2019
Introduction

➢ Lead exposure can cause chronic and devastating health impacts in all age groups, but it is particularly harmful to young children

➢ There have been concerted efforts globally to address the adverse impacts of lead to human health and the environment

➢ UNEP has played a leading and pivotal role

➢ Elimination of lead paint will contribute to the achievement of SDG targets 3.9 and 12.4
History of UNEP efforts

- UNEP has, over the last two decades, led efforts towards eliminating lead paint
- About 10 Governing Council/UNEA decisions and resolutions on lead paint
- Efforts can be traced to 2001 - UNEP Governing Council decision 21/6
- Push for eliminating unsafe uses of lead picked up by the WSSD in 2002 - See paragraph 57 of the Johannesburg Declaration on Sustainable Development
History of UNEP efforts – Cont’d

- In 2003 - governments to act urgently on the commitment of the WSSD to phase out lead-based paint - UNEP Governing Council decision 22/4 III

- In 2005 a review of scientific information on lead and cadmium to inform future discussions on the need for global action in relation to lead and cadmium - UNEP Governing Council decision 23/9 III

- In 2007 - secretariat to provide available information on lead and cadmium to address the data and information and to compile an inventory of existing risk management measures - UNEP Governing Council Decision 24/3 III

- In 2009 - Executive Director to finalize the scientific review taking into account the latest available information - UNEP Governing Council Decision 25/5 II
History of UNEP efforts – Cont’d

- In 2011 - noted a need for a continued focus to reducing the risks posed by lead and cadmium - UNEP Governing Council Decision 26/3

- In 2013 - emphasizes need for further actions to address the challenges posed by lead and urges governments to continue participating in and contributing to the Global Alliance to Eliminate Lead Paint - UNEP Governing Council Decision 27/12

- In 2014 – calls for capacity building on lead paint through possible regional workshops - United Nations Environment Assembly Resolution 1/5

- In 2017 - highlights the need to assist countries by providing capacity-building to implement regulatory frameworks and programmes on lead - United Nations Environment Assembly Resolution 2/7
In 2018 - highlights the importance of financial, technical, technological, and capacity building support to strengthen national capabilities for sound management of lead particularly for developing nations and economies in transition.
The Global Alliance to Eliminate Lead Paint

About the Alliance:

- Created following the identification of lead paint as a global priority under SAICM.
- Is a voluntary partnership formed by UNEP and WHO
- Formed to focus and catalyze efforts to achieve international goals to
  - prevent children’s exposure to lead from lead paints and;
  - minimize occupational exposures to such paint
- Currently has 104 partners
- Guided by an Advisory Council currently chaired by US EPA
The Global Alliance to Eliminate Lead Paint – cont’d

Objectives of the Alliance:

- *The overall goal* is to prevent children’s exposure to lead from paints and to minimize occupational exposures to lead paint.

- *Specific objectives*
  - To raise awareness about the toxicity of lead in paints and the availability of technically superior and safer;
  - Catalyze the design and implementation of appropriate prevention-based programmes to reduce and eliminate risks from the use of lead in paints and products coated with lead paints.
The Global Alliance to Eliminate Lead Paint – cont’d

Specific objectives (cont’d)

- To help identify paint manufacturers and formulators that continue to produce and market paints containing lead to foster actions to phase out lead from their products;

- To promote the establishment of appropriate national regulatory frameworks to stop the manufacture, import, export, sale and use of lead paints and products coated with lead paints;

- To promote international third-party certification of new paint products to help consumers to recognize paint and coatings without added lead;

- To share guidance and promote assistance to identify and reduce potential lead exposures.
Achievements of the Alliance:

- Development of tools to support countries adopt lead paint laws e.g model law and toolkit for establishing laws to eliminate lead paint;
- Supporting countries to adopt lead paint laws – currently 73 out of 194 countries
- Facilitating awareness raising events - International lead poisoning prevention week of action
Thank you

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Model Law and Guidance for Regulating Lead in Paint

International Network for Environmental Compliance and Enforcement
Compliance Conversation Webinars, 1 & 7 November 2019

Cate Tierney
Office of Enforcement and Compliance Assurance
US Environmental Protection Agency
Model Law and Guidance For Regulating Lead in Paint
July 2018

- Published by United Nations Environment Programme
- Also attached as a ‘Handout’ on the webinar
Key Principles of the Model Law

- **Prevention**: A strong law to limit lead content in new paints will prevent new exposures to lead.

- **Achievable low maximum limit**: Recommended limit of 90 ppm total lead is achievable when manufacturers stop the intentional use of lead additives such as lead pigments.

- **Industry Pays for Testing**: Manufacturers and importers are responsible for testing their paints and certifying compliance with lead limit.

- **Compliance responsibility throughout value chain**: All businesses along the value chain are responsible for ensuring compliance, including manufacturers, importers, distributors, and retailers.
Key Considerations for Adapting Model Law to Fit National Conditions

- Model Law can be used to draft a statute, regulation, and/or mandatory technical standard
  - Countries have taken different approaches, depending on their individual legal frameworks
  - Components of the Model Law can be separated and added to existing laws

- Governments are encouraged to use a **multi-stakeholder process** to develop a lead paint law. Benefits include:
  - **Buy-in** from key stakeholder groups, including civil society and industry organizations
  - Valuable technical **input** from industry
Key Provisions and Recommendations of the Model Law

- **Scope of coverage:** What paints / coatings are included?

- **Maximum limit on total lead content:** 90 ppm

- **Effective dates of requirements:** What is the deadline to comply?

- **Compliance and enforcement mechanisms:** How do manufacturers and importers document compliance?

- **Enforcement responsibility and authority:** Who will enforce the law, and how?

- **Consequences for non-compliance:** How will violations be addressed?
Scope of Coverage

- The Model Law recommends including **all paints**, which simplifies enforcement and is most protective.

- In the event of any **exceptions** allowing lead for special uses, precautionary labeling should always be used:

  “DANGER: CONTAINS LEAD. DO NOT APPLY TO SURFACES ACCESSIBLE TO CHILDREN OR PREGNANT WOMEN.”

- The Model Law does NOT recommend labeling provisions for paints as “**lead free**,” since it is not technically possible to eliminate lead contamination from all ingredients.

  ▶ Instead, setting the very low limit of 90 ppm is recommended.
Effective Dates

- Effective dates provide industry with a clear deadline for compliance.

- Effective dates for compliance should allow reasonable time for:
  - Manufacturers to alter paint formulations and production processes.
  - Manufacturers, importers, distributors and retailers to sell or safely dispose of existing stocks of paint with lead above new max. limit.

- Possible options for choosing effective dates:
  - Uniform dates for all paints (typically 1 year), or
  - Phased dates for different uses of paints (for example, 1 year for household paints, 2 or 3 years for industrial paints).
Compliance & Enforcement Mechanisms

- The Model Law uses a “Declaration of Conformity” process that places the obligation for compliance on manufacturers and importers.

- Manufacturers and importers must:
  - Ensure that all paints are tested for lead by an accredited third-party laboratory. The laboratory does not have to be in-country.
  - Sign a Declaration of Conformity, including a sworn affidavit, that all their paints comply with the maximum lead limit.
  - Provide the Declaration of Conformity for all paints to distributors and retailers, and to the government upon request.
  - Failure to provide a Declaration of Conformity must subject them to penalties.
Enforcement Responsibility and Authority

- The Model Law defines the Government role in enforcing compliance

- **Identify** the government ministry, agency or organization that is responsible for implementing the law, including enforcement activities.

- **Authorize** the identified government body to:
  - **Inspect** facilities or stores
  - **Review** company testing data, Declarations of Conformity, and related records
  - **Test** paint itself to verify reported results
Consequences for Non-compliance

- **Prohibited Acts**: The Model Law makes it illegal for *any person* to:
  - Manufacture, sell, distribute, or import paint containing lead over the legal limit.
  - Fail to cooperate with government inspection and testing.
  - Fail to provide a Declaration of Conformity or make a false declaration.
  - Attempt to influence a third-party laboratory’s testing of paint or reporting of test result.

- **Civil and Criminal Penalties**: The model law provides for:
  - Injunctive relief
  - Civil and Criminal penalties – cross-referenced to existing law, or specific to violations of this law
  - Citizen suits
Thank you

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Compliance Challenges

INECE Compliance Conversations Webinar
1 & 7 November 2019

Amanda Rawls
Project Director, Lead Paint Project
Rule of Law Initiative, American Bar Association (ABA ROLI)
Compliance components

**Will**
- Desire to comply
  - Social Conscience
  - Market Pressure
  - Consequences

**Behavior**

**Skills**
Knowledge of how to comply
- Technical
- Procedural

**Resources**
Required Tools to comply
- Access
- People
- Funds
Example 1: Manufacturer “M”

**Compliance issue:** manufacturing paint using imported pigments with no documentation of their content

- **Skills:** How can M confirm compliance?
  - Get pigment composition from its manufacturer
  - Get paint tested himself
  - Technical understanding of reformulation

- **Resources:** Can M actually confirm compliance?
  - Cost of testing
  - Availability of alternate pigment suppliers

- **Will:** What incentives discourage M from compliance?
  - Market pressure: consumers are unaware so don’t demand paint without lead additives
  - Low likelihood of enforcement:
    - No Declaration of Conformity provision so no paperwork to provide
    - No obligation to provide documentation of lead content
    - Few inspectors
    - Consequences are minimal – impound batch, but no fine, no loss of license

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**Declaration of Conformity**

**Awareness Campaigns**

**Penalties**
Example 2: Seller “S”

Compliance issue: selling paint labelled “for industrial use only” to consumers for household use

Skills: How can S confirm compliance?
- Get lab test results from manufacturer
- Get paint tested himself
- Follow label

Resources: Can S actually confirm compliance?
- Clarity of labeling
- Availability of compliant paint sources

Will: What incentives discourage S from compliance?
- Knowledge: does not understand danger to consumers
- Market pressure: consumers are unaware so don’t demand paint without lead additives
- Low likelihood of enforcement:
  - Paint itself falls under a legal exception
  - Few inspectors

Require separate license
Awareness Campaigns
Minimize Exceptions
Example 3: Inspector “G”

**Compliance issue:** inspectors allowing leaded paint through customs points

- **Skills:** How can G confirm compliance?
  - Is it really her responsibility?
  - What should she inspect for?
  - How does she sample the paint?
  - Where are samples to be sent?
  - How long do results take to come back?

- **Will:** What incentives discourage G from compliance?
  - Relationship pressure: vendors are repeat customers
  - Consequences of allowing paint through?

- **Resources:** Can G actually confirm compliance?
  - Where should paint stock be kept pending results?
  - Who pays for testing?
  - Are test kits available?

**Assign enforcement responsibility**

**Allocate resources to enforcement**

**Paperwork is easiest to review**

**Tie to performance incentives**
Thank you for Attending!
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Don’t miss Session 2
November 7 at 9:30 a.m. (DC Time)

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