

COMMUNITY OF PRACTICE ON LEAD IN PAINT

Organized by the SAICM Secretariat and the University of Cape Town

Issue: 4 of 2020

Discussion date: 10th November 2020

Discussion Digest

Topic of Discussion: Compliance and enforcement in a lead paint law

The fourth Lead in Paint Community of Practice (LiP CoP) discussion, presented by Amanda Rawls, ABA-ROLI, Negin Mostaghim, US EPA, and Evelyn Rivera-Ocasio, US EPA, reviewed three questions focusing on compliance and enforcement in a lead paint law. Developing effective compliance and enforcement systems is important to ensuring the success of laws. The purpose of enforcement is to provide incentive for the regulated community – those subject to requirements in the law -- to follow the law.

ABOUT THE PRESENTERS



Amanda Rawls is a lawyer and development professional currently based in Amman, Jordan. She has over

15 years of experience in Access to Justice, Rule of Law, and Legal System Strengthening. She has assisted Ministries of Justice and Health, Law Reform and Land Commissions, to draft law and policy ranging from Whistleblower Protection and Land Rights laws to national policies on expanding human resources for health and integrating customary and statutory justice. She has worked mainly in sub-Saharan Africa.



Negin Mostaghim is an enforcement attorney in the Office of Civil Enforcement at the U.S. Environmental Protection Agency. She also advises attorneys on

specific enforcement matters with particular emphasis on hazardous waste regulation. Previously, she has assisted with drafting country laws and has an LL.M. in International Environmental Law from the Washington College of Law.

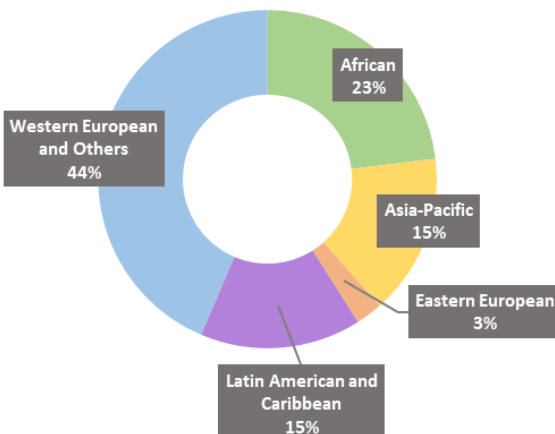


Evelyn Rivera-Ocasio has been working for the U.S Environmental Protection Agency since September 1998. First, as an enforcement officer and since 2013 as an

Assistant Regional Counsel at the Office of Regional Counsel – Caribbean Programs. Evelyn has Bachelor of Science Degree in Chemical Engineering from the University of South Florida, a Juris Doctor from the University of Puerto Rico School of Law, and a Master of Laws Degree in Environmental Law from Vermont Law School.

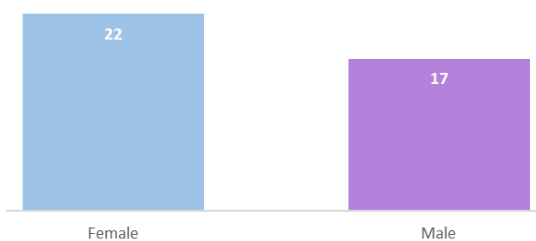
DISCUSSION 4 ATTENDANCE BREAKDOWN

Regional representation

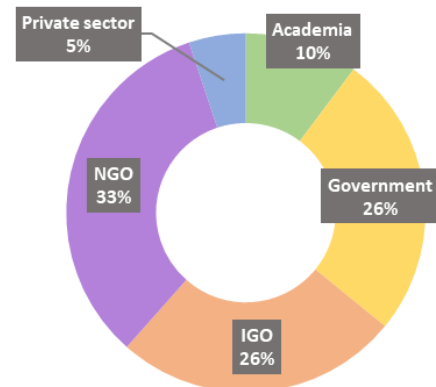


TOTAL ATTENDEES FOR DISCUSSION 4: 39

Gender representation



Sector representation



Key:
IGO – Intergovernmental Organisation
NGO – Non-governmental Organisation

Lead in Paint Community of Practice Discussion 4 Summary

1. For purposes of the LiP CoP Discussion, compliance and enforcement was considered to have three stages – **promoting compliance, documenting compliance and government enforcement** -- and the three discussions questions were organized around these three topics. These are key areas for national governments and the international community to focus on. It would be useful to have monitoring progress **indicators** for these.
2. **Promoting Compliance:** Promoting compliance helps ensure that the regulated community – those who must comply with the law - understands the requirements of the lead paint law. To promote compliance, government should provide the regulated community with useful and timely information to assist with key compliance requirements of the law. Participants noted the type of information needed by paint producers and importers, including information about the impacts of lead on human health and finding and accessing alternatives to lead compounds in paint. Challenges identified during the discussion included the need to identify laboratory capacity for testing in order to document compliance with a 90 ppm limit, and the need for government outreach to the paint industry and importers to promote compliance. Suggested solutions to the challenges included encouraging use of existing labs in other countries and government partnering with civil society to promote compliance and lessen some of the compliance assistance burden on government.
3. **Documenting Compliance:** Documenting compliance is crucial for an effective enforcement and compliance program. To be effective, a lead paint law should establish mechanisms for the regulated community (paint producer and importers) to document compliance. Examples of effective ways to document compliance provided by the participants included a Declaration of Conformity by producers and importers based on paint testing, registration of users of paint ingredients containing lead compounds in a government database, and lead safe paint certification by a third-party.
4. **Government Enforcement:** Government enforcement includes efforts by the government to verify compliance and to take action on violations of the lead paint law. Effective enforcement is essential because it provides incentives for compliance and helps eliminate unfair advantage for those who do not comply. Participants discussed ways the government can verify if paint producers and importers are in compliance, such as testing paint of colors most likely to contain lead, checking documentation, inspections and spot testing. Participants also shared government actions in response to violations, including informing the public of violations, recalling products, fines and administrative sanctions.

ANNEX

DETAILED SUMMARY OF DISCUSSION 4:

Disclaimer: The information in this digest represents the opinions of members participating from different stakeholder groups expressed during the discussion. The views expressed in this document do not necessarily represent the opinion or the stated policy of the United Nations Environment Programme, the SAICM Secretariat, the GEF or UCT, nor does citing of trade names or commercial processes constitute endorsement.

THE DISCUSSION WAS STRUCTURED AROUND THREE QUESTIONS AND THE KEY DISCUSSION INPUTS FROM PARTICIPANTS ARE PRESENTED UNDER EACH:

Q1. In your country, what information do paint producers and importers need to be able to comply with a new lead paint law? What challenges have arisen or might arise in providing this information?

Information needed by the regulated community to comply	Challenges to providing information
COLOMBIA (NGOs)	<ul style="list-style-type: none"> - Challenge related to demonstrating that the paint is below the limit of 90 ppm. - There are too many different types of paint formulations and the laboratory testing is expensive.
IRAN (Academia)	<ul style="list-style-type: none"> - Decades of academic research has been done on lead in paint and lead poisoning. - Global Report on the Status of Legal Limits on Lead in Paint by UNEP 2016 in Iran found no binding legal limit on Lead in Paint.
ISRAEL (Government)	<ul style="list-style-type: none"> - Data on alternatives is needed. - Lead in industrial paint is a challenge. - It is difficult to share lead paint law information with importers. - We have engagement with industry stakeholders, but less engagement with paint importers. - Concerns that compliance will be less with importers, as they have not been engaged with them as fully.
MADAGASCAR (Government)	<ul style="list-style-type: none"> - Convincing producers and importers of leaded paint to comply with a new lead paint law.
MEXICO (NGO)	<ul style="list-style-type: none"> - Necessary information on the consequences and risk of the use of lead on the environment and human health, especially for people working in the manufacture of lead paints, is needed. - Necessary information on alternatives solution to replace or limit lead in paints is needed. - Producers, importers, and especially users of lead paint need information on current regulations. - It is essential to conduct a test study to see the lead content in paints in the country. - Industry suggest reviewing of the safety sheets of the raw materials they use in their formulations. - No certified labs in México to do the testing. - Another concern is the cost of testing as many companies are small sized.
SERBIA (NGO)	<ul style="list-style-type: none"> - The EU approach (REACH) has been used for several years already. - Under REACH, there is no limit of lead in paints, but rather prohibition of production, trade and use of lead-containing compounds as chemicals of high concern. - After adoption of the regulation, the Government organized roundtables and seminars for producers. - Huge number of different products is a challenge for testing. - Each different colour/shade is a different product. - This should be considered. - [Note: The Alliance suggests utilizing “component part testing;” the testing of each ingredient rather than for each finished paint product (for example, each variant of color or shine). See Frequently Asked Question # 34 at

- Civil society organizations were involved in informing the industry about the law.
- There is obligation of industry to have certified chemical advisers who help companies to comply.

<https://www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/global-alliance-eliminate-lead-paint/faq>]

**US EPA
(Lead Paint
Alliance
Advisory
Council Chair)**

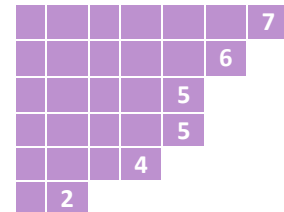
- Each country does not need to have its own laboratory for it to base compliance on accredited, third-party testing.
- Current lack of in-country laboratory capacity need not be an impediment to implementation of a lead paint law, as manufacturers and importers can still comply with the law by sending paint samples for testing to accredited, third-party laboratories in other countries or relying on testing provided by the raw material suppliers.
- Countries can also build domestic capacity for paint testing by encouraging laboratories to acquire the necessary equipment, expertise and accreditation for testing lead paint.

Throughout the discussion, informal polls were conducted to help encourage discussion among the participants. They do not provide any representative data but rather provide a snapshot of participant views.

Poll 1 Results (N=7)

What actions has your government taken on compliance and enforcement? (more than one response could be selected)

- Collaborate with NGOs and industry associations to share information:
- Inform regulated community of requirements:
- Engage regulated community in drafting process:
- Provide testing information:
- Answer compliance questions of regulated community:
- On-site testing of paints from company's manufacturing plants using XRF:



Q2. In your country, what are some efficient and effective ways (e.g., registration, declaration of conformity, laboratory testing by third-party, self-reporting, etc.) for paint producers and importers to document compliance?

Country	Ways to document compliance
COLOMBIA (NGO)	<ul style="list-style-type: none"> - This issue is still under discussion and no strategy has been defined yet.
ECUADOR (NGO)	<ul style="list-style-type: none"> - The project of law that is still pending approval (Technical Regulation 061 Paints) promotes as control mechanism, the declaration of conformity and the conduct of analysis by a third-party laboratory. - This last point is of great concern to paint manufacturers because there is currently only one accredited laboratory in Ecuador to perform the lead in paint analysis.
ISRAEL (Government)	<ul style="list-style-type: none"> - Ministry of Economy promotes declaration of conformity as means for demonstrating compliance. - Ministry of Health prefers (periodic) laboratory testing by third party labs. - Perhaps working with industry and importers on a scheme that would include both self-declaration and periodic testing would be a good approach at gaining "buy-in" and building trust. - Regulators prefer the approach that requires testing but the burden on industry and importers needs to be considered. - We have had cases with other products (not paints) where supplier report has been unreliable. - A potential problem with self-reporting is that importers do not always know what they are importing, they are relying on reporting of producer or supplier. - Perhaps with industry self-reporting is more reliable because industry knows exactly what they are producing.
MADAGASCAR (Government)	<ul style="list-style-type: none"> - To be efficient and effective it is necessary to have a regulatory framework to limit lead in paints with mechanisms to allow paint producers and importers to prove that they comply with the legal requirements of the law.
MEXICO (NGO)	<ul style="list-style-type: none"> - "Lead safe paint certification" by a third party could be included/considered in legislation as compliance. - Perhaps a combination between self-declaration and regulatory testing with high fines would work. - Mexican legislation calls for declaration of conformity, however there is no explanation about how this declaration should work.
PHILIPPINES (NGO)	<ul style="list-style-type: none"> - Importers and users of lead compounds need to register with a government database. - According to the Environment Department, as of 2020, no more companies under the paint industry sector are importing lead compounds. - The two biggest paint manufacturers in the Philippines, as well as a medium-sized company, have third-party certification of their paint brands, including industrial paint brands. - These brands comprise of about 85-90% of the market share. - This certification is submitted to the Environment Department as additional documentation to show compliance with the law.
SERBIA (NGO)	<ul style="list-style-type: none"> - If there is an exception (legal) to use lead in paints, then the producer or distributor must label the product as "for professional use only". - There are labs that do the testing if the inspection suspects that there may be non-compliance with the law. - Therefore, the approach is self-declaration, combined with certified lab testing as required by the inspection.
SWEDEN (Government)	<ul style="list-style-type: none"> - A legal requirement for a supplier to classify and give the components of a mixture (at least hazardous ones) to the receiver for example under GHS will make it possible to enforce throughout the supply chain. - Testing can be necessary, but just gives a snapshot. - The GHS (CLP-regulation in the EU) requires the supplier to classify and give composition of mixtures to receiver (when hazardous), the producer of the paint will then have legal documents (safety data sheets) from their suppliers (if they are in the EU) that show whether the pigment or other chemical contains lead. - Inspectors can control the safety data sheets early in the supply chain (importer, manufacturer) or further down e.g. paint retailer.
US EPA (Lead Paint Alliance Advisory Council Chair)	<ul style="list-style-type: none"> - Some form of self-implementing regulation may be helpful to save resources. - EU REACH approach, which regulates the paint ingredients, and can be effective. - Another approach is to set a low lead limit in paint; then the government does not need to conduct risk assessments for each chemical. - Lead Paint Alliance website has some details on testing schemes. See FAQs on component testing option to help reduce the amount of testing needed and the <i>Model Law and Guidance for Regulating Lead Paint</i> (Model Law) discussion of testing. - Lead Paint Alliance FAQ link: https://www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/global-alliance-eliminate-lead-paint/faq

- Providing self-implementing measures for industry to take to relieve the burden on the government - the declaration of conformity is, in a way, a self-implementing measure, where the burden is on industry to demonstrate compliance and present its documentation. This is a less resource intensive means to demonstrate compliance than registration.
- The Model Law contemplates spot testing by government as a back up to ensure reliability of testing by companies (paint manufacturers and importers).
- Link to Model Law:
https://wedocs.unep.org/bitstream/handle/20.500.11822/22417/Model_Law_Guidance_%20Lead_Paint.pdf?sequence=7
- Model Law is also available in other U.N. languages at
<https://www.unenvironment.org/resources/publication/model-law-and-guidance-regulating-lead-paint>

Poll 2 Results (N=11):

Whom does your regulated community include? (more than one response could be selected)



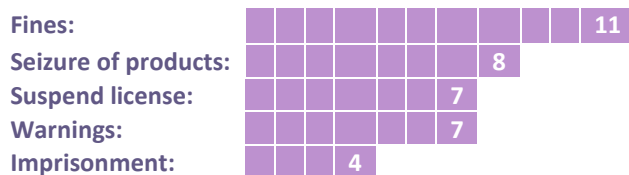
Q3. In your country what are the ways (e.g., document review, site inspection, spot testing) government could verify if paint producers and importers are in compliance? What government actions could be used in response to violations?

	Ways to verify compliance	Response to violations
BENIN (NGO)	- Government organized activities for regulating lead paint.	
COLOMBIA (NGO)	- Government should concentrate on those which are most likely to have lead compounds (i.e., colour yellow, red, orange, and green).	
IRAN (Academia)	- Government information should be based on academic review and analysis for lead content. - There are plenty of academic studies on different lead poisonings which should be used.	
ISRAEL (Government)		- Government action in case of violations include informing the public - this is a form of "shaming" of the company. - This is combined with recall of products. - Perhaps if countries have limited capacity for testing - response needs to be harsh in case of noncompliance. - This provides a major incentive to be compliant even if chance of "getting caught" is low.
MADAGASCAR (Government)	- Within the framework of this project multi-sectorial stakeholders will work for the verification of compliance such as: <ul style="list-style-type: none"> - Customs officers will ensure inspection of ports of entry for compliance documentation to ensure that it is complete and accurate. - Industry inspectors will provide inspections of production sites and facilities. - The (CNRE) Centre National de Recherche sur l'Environnement will conduct the on-site tests and compare the results with the documentation provided. 	- In the case of a violation the government may proceed: <ul style="list-style-type: none"> - Verbal reminder. - Administrative sanctions. - Fines paid by the company or the person in charge. - Seizure of the product. - Prohibition of production or importation of paint.

	<ul style="list-style-type: none"> - Trade inspectors will conduct inspections, distribution, and sales points to ensure compliance procedures are followed - Labour inspectors ensure compliance and the equipment and health of workers. - The OPJs of the environment (Judicial Police Officer) will ensure the coordination of these inspections with the stakeholders concerned. 	
MEXICO (NGO)	<ul style="list-style-type: none"> - Due to economic and personnel capacity constraints, the only possible way for government to verify compliance would be document review. - Spot testing by non-involved parties is very useful too. 	<ul style="list-style-type: none"> - In Mexico the standards which regulate lead in paint have no violation sanctions.
PHILIPPINES (NGO)	<ul style="list-style-type: none"> - The Chemical Control Order (CCO) for Lead and Lead Compounds mandate regional offices of the Environmental Management Bureau (the agency responsible for drafting and implementing the law) monitor company compliance based on submitted self-monitoring reports <ul style="list-style-type: none"> - The EcoWaste Coalition/IPEN in the Philippines conduct studies on lead content in paints. In July 2020, they published a study on Lead in Spray Paints in the Philippines: https://ipen.org/documents/lead-spray-paints-consumer-use-philippines. - After sharing the study with relevant government agencies, the Food and Drug Administration (FDA) of the Philippines on September 2020 released a Public Health Advisory against the purchase and use of leaded spray paints based on the EcoWaste/IPEN study. 	<ul style="list-style-type: none"> - In cases of complaints of non-compliance, sampling and testing (on-site/spot and lab) are undertaken to confirm that lead concentrations of paints do not exceed 90 ppm. - Any violations of the requirements set under the Philippine CCO subject persons/companies to applicable administrative and criminal sanctions provided under existing laws.
SERBIA (NGO)	<ul style="list-style-type: none"> - Document review - Spot testing - Random inspections. - Some international companies have their own auditing schemes that could help to eliminate hazardous/prohibited raw materials. 	<ul style="list-style-type: none"> - As the sanctions are concerned, they range from mild such as monetary fine, through seizure of goods to revoking license to produce/distribute paints.
SOUTH AFRICA (Academia)	<ul style="list-style-type: none"> - Spot testing by academics who then publish the findings has been useful. - Highlighting which companies are not complying. 	
SOUTH AFRICA (Private sector)	<ul style="list-style-type: none"> - Spot testing is a very quick way to gauge the level of compliance within the industry. 	
SWEDEN (Government)		<ul style="list-style-type: none"> - Recall of product (if enforced) and publication of result (shaming) is probably as effective or more than fines (unless those are substantial). - For selling a product with prohibited substances in it, the fine in Sweden would be set by the prosecutor (or the court if the company does not accept the prosecutor's decision) based on the turn-over of the company.
US EPA (Lead Paint Alliance Advisory Council Chair)	<ul style="list-style-type: none"> - Component testing is an option as well. - If testing shows the components are without lead, testing of the final mixture would not be necessary. - The Model Law approach is that compliance can be achieved by showing the components were tested or by showing the paints were tested, and within the limit. 	

Poll 3 Results (N=12):

What enforcement mechanisms do you consider appropriate for non-compliance?
(more than one response could be selected)



Helpful resources:

- **Model Law and Guidance for Regulating Lead Paint, key elements D & E (pages 6-8, 11-12)**
<https://www.unenvironment.org/resources/publication/model-law-and-guidance-regulating-lead-paint>
- **WHO Brief guide to analytical methods for measuring lead in paint**
<https://www.who.int/publications/i/item/9789240006058>
WHO Technical and Policy briefs on Global elimination of lead paint: why and how countries should take action
<https://www.who.int/publications/i/item/9789240005143>
- **INECE, Principles of Environmental Compliance and Enforcement Handbook**
<https://nepis.epa.gov/Exe/ZyNET.exe/P1005AO9.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2006+Thru+2010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C06thru10%5Ctxt%5C00000011%5CP1005AO9.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>
- **Lead Paint Alliance Frequently Asked Questions (FAQ) on Compliance Assurance**
<https://www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/global-alliance-eliminate-lead-paint-2#Compliance>

LIP CoP: The Secretariat of the Strategic Approach to International Chemicals Management (SAICM) and the Environmental Health Division at the University of Cape Town (UCT) created this Community of Practice (CoP) to foster online discussions and address key issues on Lead in Paint (LiP) among stakeholders from governments, international organizations, industry, academia and civil society.

This CoP is contributing to the SAICM/GEF project on Emerging Chemicals Policy Issues Knowledge Management Component. This activity is supported by the Global Environment Facility (GEF) project ID: 9771 on *Global Best Practices on Emerging Chemical Policy Issues of Concern under the Strategic Approach to International Chemicals Management (SAICM)*.

If you have any question or require clarification on this initiative, please contact the SAICM Secretariat at saicm.chemicals@un.org or UCT at uctcops@outlook.com.

Join the LiP CoP at: <https://chemicalswithoutconcern.org/community>

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