

# United States Senate

WASHINGTON, DC 20510

February 15, 2018

The Honorable Scott Pruitt  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Pruitt:

We urge the Environmental Protection Agency (EPA) to promptly issue a rule updating the agency's lead-based paint and dust-lead hazard standards to reflect the prevailing science. EPA's current lead hazard standards are outdated and fail to protect public health. We expect the EPA to act without delay, in accordance with the recent decision by the U.S. Circuit Court of Appeals for the Ninth Circuit ("Court"), requiring the agency to issue a proposed rule updating these standards within 90 days.<sup>1</sup>

The Residential Lead-Based Paint Hazard Reduction Act of 1992 required the EPA to promulgate within 18 months standards for the identification of lead hazards, including lead-based paint, lead-contaminated dust, and lead-contaminated soil.<sup>2</sup> However, the EPA did not promulgate lead hazard standards until 2001, nearly a decade later. The EPA's lead hazard standards defined the allowable levels of lead as 40  $\mu\text{g}/\text{ft}^2$  (micrograms per square foot) for floor dust, 250  $\mu\text{g}/\text{ft}^2$  for windowsill dust, and 400  $\mu\text{g}/\text{g}$  (micrograms per gram) for play areas and 1,200  $\mu\text{g}/\text{g}$  for foundation perimeters.<sup>3</sup> While these standards purported to define what was "normal" and "safe," they were in direct contradiction to the prevailing science at the time they were adopted,<sup>4</sup> and they continue to lag behind prevailing science today. In 2016, the American Academy of Pediatrics evaluated the EPA's lead standards and determined that they "fail to protect children from lead toxicity" and "provide an illusion of safety."<sup>5</sup>

The EPA granted a rulemaking petition to update the standards in 2009.<sup>6</sup> However, the agency failed to move forward with a new proposed rule. In 2016, after nearly 7 years of delay, public health and housing organizations moved forward with a petition to compel the EPA to update its lead hazard standards. The Court found that under the Residential Lead-Based Paint Reduction Act and the Toxic Substances Control Act, the EPA has a duty to update its lead hazard standards consistent with the intent of Congress "to prevent childhood lead poisoning and

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<sup>1</sup> In re A Community Voice, et al. v. U.S. Environmental Protection Agency, No. 16-72816 (9th Cir. Dec. 27, 2017) (available at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2017/12/27/16-72816.pdf>).

<sup>2</sup> 15 U.S.C. § 2683.

<sup>3</sup> 40 CFR Part 745.

<sup>4</sup> Bruce Lanphear et al., *Lead-Contaminated House Dust and Urban Children's Blood Lead Levels*, American Journal of Public Health, Volume 86, No. 10 (October 1996).

<sup>5</sup> American Academy of Pediatrics, Policy Statement: Prevention of Childhood Lead Toxicity (July 1, 2016) (available at <http://pediatrics.aappublications.org/content/pediatrics/early/2016/06/16/peds.2016-1493.full.pdf>).

<sup>6</sup> U.S. Environmental Protection Agency Response to National Center for Healthy Housing et al. (Oct. 22, 2009).

eliminate lead-based paint hazards.”<sup>7</sup> In ordering the EPA to issue a proposed rule within 90 days and a final rule one year after the proposal, the Court noted that, “children exposed to lead poisoning due to the failure of EPA to act are severely prejudiced by EPA’s delay.”<sup>8</sup>

It is widely known and accepted that lead hazards present an urgent health and safety threat to children. Lead poisoning causes significant health, neurological, behavioral, intellectual, and academic impairments. According to the Centers for Disease Control and Prevention (CDC), there are nearly 535,000 children between the age of 1 and 5 that have elevated blood levels.<sup>9</sup> In 2012, the CDC found that there is no safe blood lead threshold for the adverse effects of lead on infants or child neurodevelopment.<sup>10</sup> Research shows that the annual economic burden associated with childhood lead exposures amounts to \$50.9 billion in the United States.<sup>11</sup> Furthermore, research has found that every dollar invested in lead paint hazard controls results in a return of \$17-\$221 or a net savings of \$181-\$269 billion. In light of this compelling body of evidence, it is clear that there is a dire and immediate need for the EPA to move quickly to update its lead-based paint and dust-lead hazard standards.

On January 13, 2017, the Department of Housing and Urban Development (HUD) revised its Lead Safe Housing Rule. HUD reduced its standard for elevated blood lead level requiring intervention from 20 micrograms of lead per deciliter of blood ( $\mu\text{g}/\text{dL}$ ) to 5  $\mu\text{g}/\text{dL}$ , matching current CDC guidance.<sup>12</sup> HUD also issued guidance lowering the dust-lead action levels for risk assessment and clearance. HUD explained that this revision “is supported by scientific evidence on the adverse effects of lead exposures at any measurable blood-lead level in children as well as the evidence on the feasibility of lower clearance levels being routinely achieved by lead hazard control programs.”<sup>13</sup> The EPA’s continued unwillingness to address this public health issue is indefensible, particularly after HUD’s appropriate decision to update its lead standards.

As the Court noted, the “EPA does not appear to dispute the factual record ... showing that, according to modern scientific understanding, neither the dust-lead hazard standard nor the lead-based paint standard are sufficient to protect children.”<sup>14</sup> As such, we urge the EPA to take immediate action and issue a rule to update these outdated and deficient standards in order to

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<sup>7</sup> *Id.*, at 11.

<sup>8</sup> *Id.*, at 17.

<sup>9</sup> Blood Lead Levels in Children Aged 1-5 Years – United States, 1999-2010, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention (April 5, 2013) (available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6213a3.htm>).

<sup>10</sup> Lead in Drinking Water and Human Blood Lead Levels in the United States, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention (August 10, 2012) (available at: <https://www.cdc.gov/mmwr/preview/mmwrhtml/su6104a1.htm>).

<sup>11</sup> Teresa M. Attina and Leonardo Trasande, Economic Costs of Childhood Lead Exposure in Low- and Middle-Income Countries, Environmental Health Perspectives, National Institute of Environmental Health Sciences, Volume 121, Issue 9 (September 2013) (available at: <https://ehp.niehs.nih.gov/1206424/>).

<sup>12</sup> Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels, 82 Fed. Reg. 4151 (to be codified at 24 C.F.R. pt. 35) (Jan. 13, 2017).

<sup>13</sup> U.S. Department of Housing and Urban Development Policy Guidance No. 2017-01, “Revised Dust-Lead Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors,” at 1.

<sup>14</sup> A Community Voice, at 7.

ensure children are adequately protected against lead exposure. If the EPA fails to do so, it will be continuing to knowingly jeopardize the health of children across the nation.

Please provide a response no later than March 2, 2018. Thank you for your prompt attention to this matter.

Sincerely,

  
Robert Menendez

  
Richard J. Durbin