



United States  
**CONSUMER PRODUCT SAFETY COMMISSION**  
Bethesda, Maryland 20814

MEMORANDUM

DATE: August 22, 2006

TO : HSHS

Through: Todd A. Stevenson, Secretary, OS 

FROM : Martha A. Kosh, OS

SUBJECT: Petition Requesting Ban on Lead Toy Jewelry

ATTACHED ARE COMMENTS ON THE CH 06-3

| <u>COMMENT</u> | <u>DATE</u> | <u>SIGNED BY</u>   | <u>AFFILIATION</u>  |
|----------------|-------------|--|---|
| CH 06-3-1      | 6/15/06     | Simon Wynn<br>Asst. Attorney<br>General                    | State of New York<br>120 Broadway, 26 <sup>th</sup> Fl<br>New York, NY 10271  |
| CH 06-3-2      | 7/26/06     | Michael Gale<br>Exec. Director                             | Fashion Jewelry Trade<br>Association<br>1486 Stony Lane<br>North Kingstown, RI 02852  |
| CH 06-3-3      | 7/28/06     | Eileen Ouellette<br>President                              | American Academy of<br>Pediatics<br>Dept. of Federal Affairs<br>Homer Bldg, Suite 400N<br>601 13 <sup>th</sup> St, NW<br>Washington, DC 20005 |
| CH 06-3-4      | 8/15/06     | Nancy Cowles<br>Exec. Director                             | Kids In Danger<br>116 W. Illinois St.<br>Suite 5E<br>Chicago, IL 60610  |
| CH 06-3-5      | 8/15/06     | Joseph Ponessa<br>Extension<br>Specialist and<br>Professor | Housing, Indoor<br>Environments and Health<br>Rutgers University<br>New Brunswick, NJ   |
| CH 06-3-6      | 8/15/06     | Elizabeth O'Brien  | United Nations Assoc'n of<br>Australia<br>P.O. Box 161<br>Summer Hill NSW 2130<br>Australia   |

Petition Requesting Ban on Lead Toy Jewelry

|            |         |  |  |
|------------|---------|--|--|
| CH 06-3-7  | 8/16/06 | Patrick MacRoy<br>Epidemiologist   | City of Chicago Depart.<br>of Public Health<br>Childhood Lead Poisoning<br>Prevention Program 2 <sup>nd</sup> Fl<br>2133 West Lexington St<br>Chicago, IL 60612  |
| CH 06-3-8  | 8/18/06 | Michael Kershow<br>Counsel to the<br>Coalition for<br>Safe Ceramicware<br>and the Inter-<br>national Crystal<br>Federation | Kelley Drye<br>Collier Shannon<br>3050 K ST, NW, Suite 400<br>Washington, Dc 20007   |
| CH 06-3-9  | 8/18/06 | Deborah Nagin<br>Director  | The City of New York<br>Dept of Health & Mental<br>Hygiene<br>253 Broadway<br>11 <sup>th</sup> fl, CN-58<br>New York, NY 10007                                   |
| CH 06-3-10 | 8/18/06 | Olivia Farrow<br>Asst. Health<br>Commissioner  | City of Baltimore<br>Baltimore City Health<br>Department<br>Division of Environ-<br>mental Health<br>210 Guilford Ave, 2 <sup>nd</sup> fl<br>Baltimore, MD 21202 |
| CH 06-3-11 | 8/11/06 | Donald Mays<br>Sr. Director  | Consumers Union<br>Product Safety and<br>Consumer Sciences<br>Consumers Union/Consumer<br>Report<br>101 Truman Ave.<br>Yonkers, NY 10703                         |
| CH 06-3-12 | 8/21/06 | Lisa Madigan<br>Atty.  | State of Illinois<br>100 W. Randolph St.<br>11 <sup>th</sup> floor<br>Chicago, IL 60601  |



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
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*HQ 06-1  
Pet Comment*

ELIOT SPITZER  
Attorney General

PETER H. LEHNER  
Environmental Protection Bureau

June 15, 2006

U.S. Environmental Protection Agency  
Document Control Office (7407M)  
Office of Pollution Prevention and Toxics  
Attention: Docket ID No. EPA-HQ-OPPT-2006-0397  
1200 Pennsylvania Ave. NW  
Washington, DC 20460-0001

U.S. Consumer Products Safety Commission  
attn: Chairman Hal Stratton  
4330 East West Highway  
Bethesda, MD 20814

Re: Sierra Club's TSCA Section 21 Petition Concerning Lead in Toy Jewelry,  
71 Fed.Reg. 30921 (May 31, 2006), EPA Docket EPA-HQ-OPPT-2006-0397

Dear Sir/Madam and Mr. Stratton:

The Office of the New York Attorney General (NYAG) submits the following comments in support of the Sierra Club's petition under section 21 of the Toxic Substances Control Act (TSCA), requesting that the Consumer Products Safety Commission (CPSC) and Environmental Protection Agency (EPA) take action on toy jewelry containing lead.

The Sierra Club petition asks the CPSC to declare lead-containing toy jewelry a banned hazardous substance under the Federal Hazardous Substances Act (FHSA). The petition also asks that EPA, until the CPSC acts and to encourage action by the CPSC, exercise its authority under TSCA to: (1) require the submission of health and safety studies from manufacturers, importers, and processors of lead and lead salts; (2) report to the CPSC that toy jewelry containing more than 0.06% lead by weight presents an unreasonable risk of injury to health or the environment, and request that the CPSC act under FHSA to reduce or prevent this risk; (3) determine that the incorporation of lead into toy jewelry is a "significant new use" requiring 90-day notice before any business manufactures or imports such items; and (4) issue quality control orders to any manufacturer or processor of toy jewelry containing lead in excess of 0.06% by weight, requiring those entities to revise their procedures until lead in their products reaches the accepted level.

The NYAG has worked on many fronts to protect the citizens of New York from hazardous exposure to lead, including lead in consumer products. For example, the NYAG reached an agreement last fall with a major wholesaler of vinyl lunch boxes containing unlawful

levels of lead, recalling those items and halting their further distribution in New York.<sup>1</sup> The NYAG thus supports the Sierra Club's call for CPSC and EPA action on the severe and well-documented risks of lead in toy jewelry. A ban on lead in toy jewelry, backed by mandatory pre-market testing and vigorous enforcement against importers and distributors of such products, would provide reasonable protection to the public from this completely unnecessary source of exposure to lead. Such measures are long overdue, especially in light of recent cases of lead poisoning (one fatal) among children ingesting toy jewelry, as well as research suggesting that the use of lead in toy jewelry is widespread and that even minimal environmental exposure to lead poses a significant hazard to children.

### **The Presence of Lead In Toy Jewelry**

There have been at least three recent instances of serious lead poisoning caused by toy jewelry. In February 2006, a 4-year old boy came to a Minneapolis hospital complaining of vomiting. He was quickly released, but returned two days later with intractable vomiting, "sore tummy," and listlessness. Ten hours later, the boy suffered respiratory arrest and was placed on mechanical respiration. The next day, tests revealed that he had a blood lead level of 180 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ), 18 times the Center for Disease Control (CDC)'s "acceptable" level of 10  $\mu\text{g}/\text{dL}$ . He died shortly thereafter. The culprit, as the CDC reported in March, was a heart-shaped "Reebok" charm found in his stomach, with a lead weight content of 99%.<sup>2</sup> Similarly, in Oregon in 2003, doctors retrieved a toy medallion from the stomach of another 4-year old boy suffering constant vomiting and abdominal pain. The toy medallion, which consisted of 39% lead by weight, had elevated the boy's blood lead level to 123  $\mu\text{g}/\text{dL}$ .<sup>3</sup> In San Jose in December 2004, a 6-year old girl who had merely sucked on the charms of a homemade necklace was found to have elevated levels of lead in her blood.<sup>4</sup>

The New York State Department of Health has identified two cases of elevated blood lead levels in children in recent years in which ingestion of jewelry containing lead was suspected. In 2005, a young Cayuga County girl was found to have an elevated blood lead level. The girl was known to mouth her bracelet and at least one charm was missing therefrom. Laboratory testing revealed that the jewelry had a very high lead content. In 2004, a Monroe County child with a very high blood lead level was found to have swallowed a medallion that was too large to exit the stomach. It was thought that the jewelry had originally been gold plated, but the child's digestive acids had over time dissolved through the gold to the leaded base metal. This child had to undergo chelation therapy.

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<sup>1</sup> Press Release, NYAG, Vinyl Lunchboxes Containing Lead Recalled (November 29, 2005). [http://www.oag.state.ny.us/press/2005/nov/nov29a\\_05.html](http://www.oag.state.ny.us/press/2005/nov/nov29a_05.html)

<sup>2</sup> CDC, *Death of a Child After Ingestion of a Metallic Charm*, 55 Morbidity and Mortality Weekly Report 340 (March 31, 2006). <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5512a4.htm>

<sup>3</sup> CDC, *Lead Poisoning from Ingestion of a Toy Necklace*, 53 Morbidity and Mortality Weekly Report 509 (June 18, 2004). <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5323a5.htm>

<sup>4</sup> Alan Gathright, *Metal Charms Containing Lead Recalled*, The San Francisco Chronicle, March 5, 2005, at B2.

While the Minnesota, Oregon and California incidents led to recalls by the importers or distributors of the particular items involved, after-the-fact reactions are insufficient to protect public health and are not adequate to remove these hazards from the marketplace. Indeed, even though the Oregon poisoning spurred a 2004 recall of 150 million pieces of vending machine jewelry,<sup>5</sup> other sources of lead-containing jewelry still exist, as made clear by the Minnesota poisoning. Also after that recall, a 2005 study of 311 pieces of jewelry in California found 169 with at least 3% lead by weight; 123 with 50% or more; and 36 with more than 75% lead. The children's pieces tested had an average lead content of 28%.<sup>6</sup> Moreover, a substantial proportion (16%) of items with exposed metal transferred 10 µg of lead or more after just twenty seconds of simulated handling; one item released a startling 7500 µg of lead. To put those numbers in context, the CPSC has banned toys and other consumer products bearing paint with a lead content exceeding 0.06% by weight.<sup>7</sup> The CPSC has also determined that children should ingest no more than 15 µg of lead per day in order to maintain an acceptable blood lead level.<sup>8</sup>

Toy jewelry containing lead continues to be sold in New York as well. In mid-2005, a Rochester, N.Y.-based environmental group made 17 random purchases of inexpensive jewelry from 11 local Wegman's, Big Lots, and Eckerd Drug stores<sup>9</sup> and found two charm bracelets with lead levels of 2.8% and 6.2%; a beaded necklace containing 4.6% lead; another bracelet containing 2.5% lead; and an "angel pin" with a lead level of 0.55%.<sup>10</sup>

### **Risks and Impacts of Lead Exposure in Young Children**

Lead exposure in New York, though much reduced over the last twenty years, continues to pose a significant public health concern for citizens of the state. The last major state-level study of lead found that 1 in 37 upstate children (5,258 in all) had blood lead levels exceeding the

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<sup>5</sup> Press Release, CPSC, CPSC Announces Recall of Metal Toy Jewelry Sold in Vending Machines; Firms Agree to Stop Importation Until Hazard Is Eliminated (July 8, 2004). <http://www.cpsc.gov/CPSCPUB/PREREL/prhtml04/04174.html>

<sup>6</sup> R. P. Maas et al., *Lead Content and Exposure From Children's and Adult's Lead Jewelry Products*, 74 Bull. Environ. Contam. Toxicol. 437, 440-41 (Environmental Quality Institute, University of North Carolina-Asheville, 2005). The UNC-Asheville study concluded (at p. 443), "This research clearly shows that lead in low-cost jewelry is a significant threat to public health, and currently these items are being sold directly to the consumer without any form of warning."

<sup>7</sup> 16 C.F.R. 1303.

<sup>8</sup> CPSC Office of Compliance, *Interim Enforcement Policy for Children's Metal Jewelry Containing Lead 1* (2005). <http://www.cpsc.gov/businfo/pbjewelgd.pdf>

<sup>9</sup> Corydon Ireland, *High Lead Levels Found In Jewelry Here*, Rochester Democrat and Chronicle, June 11, 2005, at 2A.

<sup>10</sup> Press Release, Rochesterians Against the Misuse of Pesticides, Citizens' Environmental Coalition, and New York Public Interest Research Group, *High Levels of Toxic Lead Found In Children's Jewelry Sold at Rochester Retailers* (June 10, 2005). <http://www.cectoxic.org/lead-press-release.html>

CDC standard of 10 µg/dL;<sup>11</sup> the Department of Health identified 36 ZIP codes in which more than 1 in 20 children had elevated blood lead levels, most of those areas having high poverty rates and large concentrations of older housing stock.<sup>12</sup> New York City alone reported 3,193 new cases of elevated blood lead levels in 2004,<sup>13</sup> and in 2003 identified 587 children with blood lead concentrations higher than 20 µg/dL.<sup>14</sup>

Federal and state legislative bodies have taken action to reduce lead exposure (especially lead paint) since the 1970s, as medical evidence has mounted regarding its highly toxic effects even at low blood concentrations. Lead is particularly harmful to children, because of their smaller build and because they retain higher proportions of ingested lead than adults.<sup>15</sup> Children exposed to high levels of lead may develop anemia, brain damage, severe kidney damage, severe gastrointestinal distress, and muscle weakness. Even small amounts of exposure to lead can slow mental development and impair intellectual performance.<sup>16</sup> Indeed, adverse effects of lead exist at concentrations lower than the current CDC benchmark of 10 µg/dL. A 2005 study of 1,333 children found a decline in IQ of almost four points associated with a rise in blood lead levels from 2.4 to 10 µg/dL, with an additional 3 points of IQ decline occurring as blood lead concentrations increased from 10 µg/dL to 30 µg/dL. These researchers concluded that “environmental lead exposure in children who have maximal blood lead levels < 7.5 µg/dL is associated with intellectual deficits.”<sup>17</sup> The Agency for Toxic Substances and Disease Registry’s

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<sup>11</sup> New York State Department of Health, *A Report of Lead Exposure Status Among New York Children: 2000-2001*, p. iii. [http://www.health.state.ny.us/nysdoh/lead/exposure\\_report/index.htm](http://www.health.state.ny.us/nysdoh/lead/exposure_report/index.htm)

<sup>12</sup> *Id.*, at 8.

<sup>13</sup> New York City Department of Health and Mental Hygiene, *City Health Information: Childhood Lead Poisoning*, Dec. 2005, at 59.

<sup>14</sup> New York City Department of Health and Mental Hygiene, *New York City Childhood Lead Poisoning Prevention Program: Annual Report 2003 6* (2004).

<sup>15</sup> Agency for Toxic Substances and Disease Registry, *Draft Toxicological Profile for Lead 8* (2005). <http://www.atsdr.cdc.gov/toxprofiles/tp13.html>

<sup>16</sup> *Id.*, at 10.

<sup>17</sup> B.P. Lanphear et al., *Low-level Environmental Lead Exposure and Children’s Intellectual Function: an International Pooled Analysis*, 113 *Environmental Health Perspectives* 894, 894 (2005). Canfield et al. reported results consistent with that finding in the *New England Journal of Medicine* in 2003; their study of 172 children found a 7.4 point decline in IQ as average blood lead concentrations rose from 1 to 10 µg/dL. They wrote, “These and other data suggest that there may be no threshold for the adverse consequences of lead exposure and that lead-associated impairments may be both persistent and irreversible.” R.L. Canfield et al., *Intellectual Impairment in Children With Blood Lead Concentrations Below 10 µg/dL*, 348 *New England Journal of Medicine* 1517, 1525 (2003). Those two studies confirm a much earlier survey of studies by Schwartz, reporting a negative relationship between children’s blood lead concentration and IQ at levels “well below” 7 µg/dL, and noting that the effect was largest at these low levels of exposure. J. Schwartz, *Low-level Lead Exposure And Children’s IQ: A Meta-Analysis and Search for a Threshold*, 65 *Environmental Research* 42, 52-53 (1994).

*Draft Toxicological Profile for Lead* concludes, “No safe blood lead level in children has been determined.”<sup>18</sup>

### Comments on Petitioners’ Proposed EPA Actions

Reports of widespread use of lead in toy jewelry, together with persuasive evidence that even minimal childhood exposure to lead has adverse effects on mental development, point to the conclusion that strong regulatory action is needed to curtail this completely unnecessary public health hazard. The optimal policy is a coordinated program of simple and stringent limits on lead content, preferably an outright ban, and mandatory product testing by importers, manufacturers, and distributors of toy jewelry.

Banning lead in toy jewelry, as proposed by Sierra Club and supported herein, is superior to the CPSC’s current Interim Enforcement Policy for Children’s Metal Jewelry<sup>19</sup> because it is simple to administer over a diverse set of products; ensures that no product hazardous to children, by accident or design, makes it to market; and recognizes the scientific reality that there is no known safe level of lead exposure for children.<sup>20</sup> The Interim Enforcement Policy tests “components” of jewelry (ill-defined, but essentially the separable parts of the product) and sets limits of 0.06% lead by weight and 175 µg of “accessible” lead for any tested component. As the Center for Environmental Health points out,<sup>21</sup> this standard – while an improvement over no guidance at all – unintentionally allows individual pieces of jewelry with a low *per-component* lead content, but high *overall* content, to evade enforcement. The Interim Enforcement Policy’s lead weight limits are also based on an “acceptable” blood lead concentration of 10 µg/dL which many studies have begun to question (see note 17, above).

The NYAG recommends the “preventive” approach suggested by experts in the field of childhood lead exposure.<sup>22</sup> Toy jewelry should be as free of lead as possible before it reaches the market, not hastily recalled – often with poor effectiveness<sup>23</sup> -- once a previously unknown

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<sup>18</sup> Agency for Toxic Substances and Disease Registry, *supra* note 15, at 10.

<sup>19</sup> CPSC, *supra* note 8.

<sup>20</sup> Agency for Toxic Substances and Disease Registry, *supra* note 15, at 10.

<sup>21</sup> Center for Environmental Health, *Analysis of CPSC Policy on Lead-Tainted Children’s Jewelry* (2005). <http://www.cehca.org/jewelry.htm>.

<sup>22</sup> *See, e.g.*, Canfield et al., *supra* note 17, at 1525. (“Because there is no effective treatment for children with moderately elevated blood lead concentrations, the collective evidence argues for a shift toward primary prevention of lead exposure in contrast to the current, almost exclusive emphasis on the treatment of children with elevated blood lead concentrations”).

<sup>23</sup> *See* CPSC, *CPSC Focuses Attention on Recall Effectiveness*, CPSC Monitor, May 1, 2003 (“Historically, rates of return have been very low on most products. (As low as 16% in 1996.)”).

hazard is discovered.<sup>24</sup> This approach would counsel a ban on lead in toy jewelry and a requirement that manufacturers of these items have their products independently tested before offering them for distribution. Tests for lead are relatively easy and inexpensive, and much less costly for the public (and for manufacturers) than dangerous products and large-scale recalls.

The NYAG fully supports the petition's request that the CPSC ban toy jewelry containing lead. Until such a ban, EPA should take the steps further requested in the petition. The NYAG offers the following observations on the proposed EPA actions, as a supplement to the arguments in the Sierra Club petition:

#### 1. TSCA §8(d) Health and Safety Reports

With respect to the request that EPA seek health and safety reports from manufacturers, processors, and distributors of lead and lead salts under TSCA §8(d), we note that the term "processors" is defined in TSCA §3 to include any entity who prepares a chemical substance or mixture for distribution in commerce *as part of an article* containing that substance or mixture.<sup>25</sup> Thus EPA should ensure that it extends its health and safety data reporting rule to such manufacturers within its jurisdiction of toy jewelry incorporating lead. EPA should also use the results of this rule to inform its risk report and recommendation to the CPSC under TSCA §9 as requested in the Sierra Club petition.

#### 2. TSCA §9 Report to the CPSC

The NYAG supports Sierra Club's request that EPA issue a risk report to the CPSC under TSCA §9 recommending action under the FHSA, and take appropriate regulatory steps under TSCA §9(a)(2) if the CPSC does not respond within 90 days.

As noted above, there is abundant evidence to provide the EPA with the "reasonable basis" required under TSCA §9(a)(1)<sup>26</sup> to conclude that lead in toy jewelry presents an "unreasonable risk of injury to health or the environment" and warrants stronger regulation under FHSA. In its TSCA report, EPA should recommend that the CPSC declare toy jewelry containing lead "banned hazardous substances" under the FHSA §2(q)(1)(B),<sup>27</sup> following the notice, hearing, and regulatory analysis procedures required under FHSA §3(f)-(i). Given the demonstrated human costs of past failure to regulate in this area, and the current widespread availability of inexpensive substitutes for lead in toy jewelry, EPA's recommended regulation should have no trouble satisfying the cost-benefit analysis required under FHSA §3(i)(1).<sup>28</sup> EPA should also recommend that the CPSC back up this regulation with a requirement that

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<sup>24</sup> See Kids in Danger, *Playing With Poison: Lead Poisoning Hazards of Children's Product Recalls, 1990-2004*, August 2004. [http://www.kidsindanger.org/04v1/publications/reports/2004\\_playingwithpoison.pdf](http://www.kidsindanger.org/04v1/publications/reports/2004_playingwithpoison.pdf)

<sup>25</sup> 15 U.S.C. §2602(10)(B) and (11) (2005).

<sup>26</sup> 15 U.S.C. §2608(a)(1) (2005).

<sup>27</sup> 15 U.S.C. §1261(q)(1)(B) (2005).

<sup>28</sup> 15 U.S.C. §1262(i)(1) (2005).

manufacturers and importers provide the agency with results of independent product testing by accredited laboratories, at least for an interim period.

If the CPSC does not act under FHSA in a way that reduces the risks that EPA identifies in its report, EPA has sufficient authority under TSCA §6(a)(2)<sup>29</sup> to enact a limit on lead in toy jewelry, as well as authority under TSCA §6(a)(4)<sup>30</sup> to require manufacturers of these products to “monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.”

### **3. Issuance of “Significant New Use Rule” Under TSCA §5(a)(2)**

The NYAG supports Sierra Club’s call for EPA to issue a significant new use rule under TSCA §5(a)(2), requiring firms which manufacture or import lead-containing toy jewelry to give 90-day notice to the Administrator before doing so. These notices could prove to be a valuable source of market information for EPA and the CPSC as these agencies regulate lead in toy jewelry.

### **4. Issuance of Quality Control Orders Under TSCA §6(b)**

The NYAG supports Sierra Club’s petition that EPA, if the CPSC does not issue a ban, exercise its authority under TSCA §6(b) to issue quality control orders to manufacturers of toy jewelry that contain lead. This action could reduce risks associated from unintentional lead contamination in toy jewelry due to poor quality control.

As the product tests cited earlier suggest, there is ample evidence of continued poor quality control in toy jewelry leading to extreme variability of lead content. After the lethal incident of lead poisoning in February of this year, for example, officials from the Minnesota Department of Regulatory Services collected identical “Reebok” charms with lead content varying from 0.07% by weight to 67%.<sup>31</sup> The Toy Industry of America has also recognized the importance of quality control, claiming that most cases of lead in its members’ products result from suppliers who fail to meet manufacturing specifications. However, the problem persists despite promises from the industry association since 1998 that its members would eliminate lead from their products.<sup>32</sup>

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<sup>29</sup>15 U.S.C. §2605(a)(2) (2005).

<sup>30</sup>15 U.S.C. §2605(a)(4) (2005)

<sup>31</sup> CDC, *supra* note 2.

<sup>32</sup> Kids in Danger, *supra* note 24, at 12.

**Conclusion**

The NYAG appreciates the opportunity to comment on this important petition. Please contact the undersigned for further clarification if needed.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Simon Wynn', with a long horizontal flourish extending to the right.

Simon Wynn  
Assistant Attorney General

On the comments:  
Tomas Carbonell  
law student assistant

# fashion jewelry

## trade association

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*Toy jewelry  
Pet Comment*

July 26, 2006

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

CPSC/OFC OF THE SECRETARY  
FREEDOM OF INFORMATION  
2006 JUL 31 P 1:54

**Re: Petition HP 06-1**  
**Petition Requesting Ban on Lead Toy Jewelry**

Dear Sir or Madam:

On behalf its members, the Fashion Jewelry Trade Association ("FJTA") appreciates the opportunity to provide background information on our industry and to submit comments on the April 17, 2006 petition from the Sierra Club concerning lead in toy jewelry. The FJTA is a trade association of NUMBER vendors of fashion jewelry, also known as costume jewelry. None of our members manufacture or distribute toy jewelry. However, some of our members manufacture and/or distribute costume jewelry for children and teens. Toy jewelry is inexpensive jewelry, and often given away or sold for a fraction of the price of costume jewelry

The Petition. The petition refers to a February 2006 report of a Minnesota child who allegedly died from lead poisoning after swallowing toy jewelry. The death of a child for any reason is a matter of concern for all. However, it is not clear from the reports whether medical professionals have determined the cause of death of this child. We are unaware of documented reports of serious illness or injury from the use of costume jewelry, and we understand that it is unlikely that a human digestive system is capable of dissolving a metal bracelet. We trust that the CPSC will seek to obtain and confirm facts about this reported loss of life and any causal relationship with the bracelet.

The petition also seeks (1) a ban on lead in all toy jewelry which is defined as jewelry with a minimal functional purpose valued at less than \$20 per item, and (2) conversion of the CPSC voluntary guidance into enforceable regulations. We submit comments on both points below.

Ban on Lead in Jewelry. We first start with explaining why lead is found in some costume jewelry components.

*Metals.* Lead has traditionally been part of the alloy used in costume jewelry manufacturing for hundreds of years. It is mixed with other metals to form an alloy that can be worked into a variety of shapes to form pieces that are pleasing to the eye and can be worn in a decorative fashion. Importantly, in costume jewelry, alloys containing lead are plated, generally with three metals—copper, nickel or a nickel substitute, and a finish coat of silver or gold—thereby encapsulating the lead. In contrast, we have heard but have not verified that some toy jewelry may not be plated and may contain very high levels of lead.

Lead in the alloy provides for a certain malleability of the metal to facilitate casting all types of intricate shapes. Lead improves the fluidity of the metal because it flows at lower temperatures. This greater fluidity also allows for smaller gates and vents that feed the mold cavity in the casting. The smaller gates allow cast parts to be broken from the gating system leaving little or no holes or extra metal that would need to be removed by filing or with polishing wheels. Mold life is also extended with the lower melting alloys. Larger pieces take a longer time to cool and allow for the formation of larger metal crystal within the piece that can create finishing problems such as porosity, surface oxidation and orange peel on the surface. These defects result in an increase of rejects. In costume jewelry, alloys containing lead are plated, generally with three metals – copper, nickel or a nickel substitute, and a finish coat of silver or gold – thereby encapsulating the lead.

The lead content in "white metal", the primary metal used for castings, has traditionally ranged up to approximately 65% lead. Other metals such as brass or copper have a lower lead content. Based on a recent settlement entered into with the California Attorney General, costume jewelry vendors have agreed to reduce the lead in metal to 10% lead for shipments by August 1, 2007 and further reduce lead to 6% for shipments after December 31, 2008. Significantly, for jewelry for children 6 and under, the limit is 0.06% for shipments as of February 1, 2007. Lower lead limits for metals subject to this court order would be infeasible because of material availability and design and cost constraints

*Other Components.* Lead can also be found in other components of costume jewelry. It is a component of crystal and can be used in some glasses to allow the glass to be cut. We understand that there is little likelihood of exposure to lead from crystal and glass in jewelry. The settlement with the California Attorney General limits the use of crystal and glass to 1 gram or 200 ppm lead for jewelry for children 6 and under.

Lead has also been used for coloring agents for certain colors. Most paints and other surface coatings meet the CPSC limit of 600 ppm lead.

We understand that lead can also be present in certain plastics such as PVC, but are not aware of any purpose for the lead. Achieving a lead limit of 600 ppm in PVC is difficult because most jewelry vendors purchase PVC on the secondary market and not from a manufacturer. In addition, it is difficult to obtain accurate laboratory assays of lead in plastic, especially in Asia

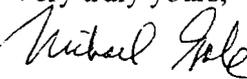
where most jewelry is currently manufactured. However, we understand that lead does not readily leach from plastic. Importantly, the settlement with the California Attorney General limits lead in plastic to 600 ppm for shipments by August 1, 2007 (February 1, 2007 for jewelry for children 6 and under) and reduces the limit to 200 ppm for shipments after December 31, 2008.

Conversion of CPSC Guidance to Regulation. The standards in the settlement entered into by many jewelry vendors and retailers with the California Attorney General will have the effect of establishing national standards for jewelry. This is because with national distribution systems, it is virtually impossible to segregate shipments to a single state. If CPSC believes that regulations are warranted, we urge to CPSC to adopt the California standards for the following reasons. The California lead standards are based on a total lead assay. These tests are relatively inexpensive, fast, and, with a few exceptions (such as the assay of lead in plastic), reproducible from lab-to-lab. Most labs in Asia have the equipment to conduct the test. In addition, the total lead assay can be performed on components before the finished piece is assembled. This allows a manufacturer to have assurance that the finished piece will be compliant with court ordered standards before a production run.

The FJTA would oppose the use of the CPSC leaching test for the following reasons. The test has not been sufficiently tested to assure repeatability and reproducibility of the shaker test. In addition, based on the results from a few tests, we have reason to believe that the shaker test causes galvanic corrosion that is not reflective of actual product use or even foreseeable misuse.

Finally, the California consent judgment has more stringent standards for children aged 6 and under. This is an appropriate demarcation for several reasons. As CPSC has documented, the phenomenon of sucking is generally limited to very young children. This age bracket is fairly easy to determine both by size as well as product areas within stores. Other age brackets such as 12 and under are not as easily defined by size or areas within stores. In addition, young teens are often attracted to items intended for others including adults.

We appreciate the agency's consideration of this information. If you have any questions, I can be reached at (401) 295-4564.

Very truly yours,  
  
Michael Gale  
Executive Director

CC: Doreen Cantor, EPA

American Academy of Pediatrics  
DEDICATED TO THE HEALTH OF ALL CHILDREN™



*Petition  
Lead Toy Jewelry  
Comment*

AAP Headquarters  
141 Northwest Point Blvd  
Elk Grove Village, IL 60007-1098  
Phone: 847/434-4000  
Fax: 847/434-8000  
E-mail: kidsdocs@aap.org  
www.aap.org

July 28, 2006

Ms. Nancy Nord  
Acting Chairwoman  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, Maryland 20814

Reply to  
Department of Federal Affairs  
Homer Building, Suite 400 N  
601 13th St NW  
Washington, DC 20005  
Phone: 202/347-8600  
Fax: 202/393-6137  
E-mail: kids1st@aap.org

Executive Committee  
President  
Eileen M. Ouellette, MD, JD, FAAP  
President-Elect  
Jay E. Berkelhamer, MD, FAAP  
Executive Director/CEO  
Errol R. Alden, MD, FAAP

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New Orleans, LA  
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Huntington Beach, CA  
District X  
John S. Curran, MD, FAAP  
Tampa, FL

Immediate Past President  
Carol D. Berkowitz, MD, FAAP

Dear Chairwoman Nord:

The American Academy of Pediatrics, a non-profit professional organization of 60,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults, appreciates this opportunity to offer comments on the notice entitled "Petition Requesting Ban on Lead Toy Jewelry" published in the *Federal Register* on June 20, 2006.

The American Academy of Pediatrics has long advocated for more stringent regulation of lead in various settings, including in toys and toy jewelry. Approximately one year ago, in a letter dated July 1, 2005, the Academy strongly urged the CPSC to reject *any* allowable lead content in any consumer product intended for use with or by children, as *there is no known safe level of lead exposure*:

Lead is a highly toxic substance, with health effects that are both pernicious and persistent. At present, research indicates that there is no safe level of lead exposure for children of any age. The current blood lead level of concern, as defined by the Centers for Disease Control and Prevention, is 10 mcg/dL. However, a growing body of research indicates that even levels below 10 mcg/dL pose significant dangers to infants and children, including the risk of behavioral problems and permanent loss of IQ points. ... The CPSC should therefore move swiftly to require toy manufacturers and importers to guarantee that their products are lead-free and to ban any children's products that contain more than a trace amount of lead.<sup>1</sup>

Since that letter was written just one year ago, the Commission has recalled over 8.3 million units of children's toy jewelry through ten separate recalls because of health risks posed by lead. Clearly, the agency's current lead policies are not preventing dangerous and even deadly items from entering the marketplace and falling into the hands of children. The numbers of dangerous toy jewelry and related products in commerce are unacceptable -- the agency is failing in its mission of protecting children.

The Commission recently received correspondence from the Sierra Club requesting that the agency classify toy jewelry containing more than 0.06% lead by weight as a banned

hazardous substance under the Federal Hazardous Substances Act (FHSA). The FHSA definition of "hazardous substance" requires that: (1) the product be "toxic," defined as "any substance... which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface"<sup>2</sup> and (2) that the product cause "substantial personal injury or substantial personal illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children."<sup>3</sup> One of the CPSC's recent jewelry recalls came in response to the death of a four-year-old child from Minnesota who swallowed a piece of a Reebok charm bracelet. Clearly, that product was ingested by a child and did indeed cause a substantial injury—in that case, death—satisfying both prongs of FHSA's definition of a "hazardous substance."

As stated in the Sierra Club's petition, the organization recognizes that the 0.06% recommendation is "not low enough to protect children," but selected it because that cutoff has already been established as the concentration cutoff for paint on consumer products.<sup>4</sup> The petitioner recommends that percentage as an interim step until a more appropriate cutoff can be determined. The Academy supports the Sierra Club's petition and urges the Commission to classify jewelry containing more than 0.06% lead by weight as a banned hazardous substance under the FHSA as a beginning step in moving toward an outright ban on lead in children's products. If the Commission were to make such a determination, then, as a "toy, or other article intended for use by children," toy jewelry products containing more than 0.06% lead by weight would automatically be banned under section 2(q)(1)(A) of the FHSA.<sup>5</sup>

In light of manufacturers' continued production of toys and toy jewelry containing toxic levels of lead, CPSC's persistent recalls of children's jewelry, and the CPSC's statutory obligations under the FHSA, the AAP urges the CPSC to take an initial step toward a complete ban on children's products containing more than a trace amount of lead by banning any children's products that contain more than 0.06% lead by weight. Again, the Academy joins the Sierra Club in recognizing that the 0.06% limit is insufficient to fully protect children from health harms caused by lead in consumer products. However, the AAP believes that setting such a limit will be more protective than the Commission's current lead policy.

The AAP appreciates the Commission's full and deliberate consideration of this matter. If the Academy can be of further assistance, please do not hesitate to contact Cindy Pellegrini in our Washington, DC office at 202-347-8600. We look forward to continuing to work with the Commission to protect the health of our nation's children.

Sincerely,

*Eileen M. Ouellette, M.D., J.D. FAAP*

Eileen M. Ouellette, MD, JD, FAAP  
President

<sup>1</sup> American Academy of Pediatrics letter to the Consumer Product Safety Commission, July 1, 2005.

<sup>2</sup> 15 U.S.C. §1261(g).

<sup>3</sup> 15 U.S.C. §1261(f)(1)(A).

<sup>4</sup> 15 U.S.C. §2681(9).

<sup>5</sup> 15 U.S.C. §1261(q)(1)(A).



KIDS IN DANGER<sup>SM</sup>

A nonprofit organization  
dedicated to protecting children by  
improving children's product safety

August 15, 2006

Linda E. Ginzel, Ph.D.  
Boaz Keysar, Ph.D.  
Co-Founders

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Kristine Anderson  
Molly Baltman  
Leslie M. Batterson  
Sonny Garg  
Shawn S. Kasserman  
Jill C. Rasmussen  
Heather Shinn  
Judy Sage  
Steven W. Swibel  
Robert R. Tanz, MD  
Lisa Turano Solano  
Board of Directors

Nancy A. Cowles  
Executive Director

**Comments on Petition HP06-1, Petition Requesting Ban on Lead  
Toy Jewelry**

On behalf of Kids In Danger, a nonprofit organization dedicated to protecting children by improving children's product safety, I would like to submit these comments in support of the Sierra Club petition to ban lead in children's jewelry. Clearly most parents already mistakenly believe that CPSC is protecting their children from lead in jewelry. The massive recalls of the past few years as well as the death of a Minnesota child shows that the current system isn't working.

Lead should be banned from any product a child uses or might put in their mouth. Jewelry clearly falls into this category. Watch any child with a necklace or bracelet and soon enough the chain or pendant is mouthed – even by children above the age of mouthing other products. There is no way that lead can be included in these products and not be accessible to the child. Any coating will wear off over time, exposing the child to the deadly neurotoxin.

This country has spent decades and millions of dollars to remove lead from children's environments. It is preposterous that we still allow it in product intended to be worn around the neck of children! CPSC must take strong action to remove this hazard.

Nancy A. Cowles  
Executive Director

116 W. Illinois Street, Suite 5E  
Chicago, IL 60610-4532  
312-595-0649 Phone  
312-595-0939 Fax

**DON'T LEARN ABOUT RECALLS FROM YOUR BABY**

www.KidsInDanger.org  
email@KidsInDanger.org

**Stevenson, Todd A.**

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**From:** Nancy A. Cowles [nancy@kidsindanger.org]  
**Sent:** Tuesday, August 15, 2006 12:21 PM  
**To:** Stevenson, Todd A.  
**Subject:** CPSC Lead in Jewelry ban letter  
**Attachments:** CPSC Lead in Jewelry ban letter.doc

August 15, 2006

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Comments on Petition HP06-1, Petition Requesting Ban on Lead Toy Jewelry**

On behalf of Kids In Danger, a nonprofit organization dedicated to protecting children by improving children's product safety, I would like to submit these comments in support of the Sierra Club petition to ban lead in children's jewelry. Clearly most parents already mistakenly believe that CPSC is protecting their children from lead in jewelry. The massive recalls of the past few years as well as the death of a Minnesota child shows that the current system isn't working.

Lead should be banned from any product a child uses or might put in their mouth. Jewelry clearly falls into this category. Watch any child with a necklace or bracelet and soon enough the chain or pendant is mouthed – even by children above the age of mouthing other products. There is no way that lead can be included in these products and not be accessible to the child. Any coating will wear off over time, exposing the child to the deadly neurotoxin.

This country has spent decades and millions of dollars to remove lead from children's environments. It is preposterous that we still allow it in product intended to be worn around the neck of children! CPSC must take strong action to remove this hazard.

Nancy A. Cowles  
Executive Director

Stevenson, Todd A.

*hand  
pet.* 5

**From:** PONESSA@AESOP.Rutgers.edu  
**Sent:** Tuesday, August 15, 2006 5:01 PM  
**To:** Stevenson, Todd A.  
**Cc:** PONESSA@AESOP.Rutgers.edu  
**Subject:** Sierra Club petition HP 06-1

To whom it may concern:

I wish to comment the Sierra Club petition HP 06-1 to ban toy jewelry containing more than 0.06% lead.

My formal training is in medical physiology and I have been working on the issue of lead poisoning prevention for about 15 years.

It is now very well established that young children, especially, can be irreversibly harmed by 'small' amounts of lead that were once thought harmless. Any product containing the amount of lead specified in the proposed ban can easily present a significant hazard to children, especially if swallowed (as was amply and tragically demonstrated in the recent death of a young boy in Minnesota last spring.)

In view of the fact that many environments and communities already present abundant opportunities for small chronic, repeated exposures to lead, no products targeted to children should be allowed to contain amounts that can add to this exposure.

Thank you for your consideration.

Sincerely,  
Joseph Ponessa, Ph.D.

Extension Specialist and Professor  
Housing, Indoor Environments and Health  
Rutgers University,  
New Brunswick NJ.

*lead pet.*

**Stevenson, Todd A.**

**From:** info@lead.org.au  
**Sent:** Wednesday, August 16, 2006 8:18 AM  
**To:** Stevenson, Todd A.  
**Subject:** Petition HP 06-1, Petition Requesting Ban on Lead Toy Jewelry

Dear CPSC,  
The LEAD Group - an international NGO dedicated to the elimination of lead poisoning globally and protection of the environment from lead, fully supports the Sierra Club's petition to ban lead toy jewelry and agrees that the cut-off level of 0.06% should be an interim level pending further research which will probably conclude that the level should be more stringent.

Yours Sincerely

Elizabeth O'Brien, Winner of the United Nations Assoc'n of Australia (UNAA) World Environment Day (WED) Award for Outstanding Service to the Environment, 2004.  
Manager, Global Lead Advice & Support Service (GLASS) run by The LEAD Group Inc.  
PO Box 161 Summer Hill NSW 2130 Australia  
Ph +61 2 9716 0132 Freecall 1800 626086  
[www.lead.org.au](http://www.lead.org.au)

REFERENCE:

<http://www.cpsc.gov/businfo/frnotices/fr06/leadban.html>  
[Federal Register: June 20, 2006 (Volume 71, Number 118)]  
[Notices]  
[Page 35416-35417]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr20jn06-27]

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CONSUMER PRODUCT SAFETY COMMISSION

[Petition HP 06-1]

Petition Requesting Ban on Lead Toy Jewelry

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

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SUMMARY: The United States Consumer Product Safety Commission (Commission or CPSC) has received a petition (HP 06-1) requesting that the Commission ban toy jewelry containing more than 0.06% lead. The Commission solicits written comments concerning the petition.

8/16/2006

DATES: The Office of the Secretary must receive comments on the petition by August 21, 2006.

ADDRESSES: Comments on the petition may be filed by e-mail to [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Comments may also be filed by facsimile to (301) 504-0127,

or delivered or mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7923. Comments should be captioned "Petition HP 06-1, Petition Requesting Ban on Lead Toy Jewelry." The petition is available on the CPSC Web site at <http://www.cpsc.gov>. A request for a hard copy of the petition may be directed

to the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway; telephone (301) 504-6833, e-mail [rhammond@cpsc.gov](mailto:rhammond@cpsc.gov).

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Sierra Club requesting that the Commission classify toy jewelry containing more than 0.06% lead as a banned hazardous substance under the Federal Hazardous Substances Act (FHSA). The request for a ban on toy jewelry containing more than 0.06% lead was docketed as petition number HP 06-1 under the Federal Hazardous Substances Act, 15 U.S.C. 1261-1278.

The Sierra Club states that the Commission should 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 under the FHSA. The Sierra Club also states that the 0.06% level may not be low enough to protect children and should be an interim step until a determination of a more appropriate cutoff is made. In addition, the Sierra Club asserts that it 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. According to the Sierra Club, people are less likely to store such low-cost jewelry in secure containers or out of reach from children.

Interested parties may obtain a copy of the petition on the CPSC Web site at <http://www.cpsc.gov> or by writing or calling the Office of

the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

[[Page 35417]]

Dated: June 14, 2006.  
Todd A. Stevenson,  
Secretary, Consumer Product Safety Commission.

8/16/2006

[FR Doc. E6-9658 Filed 6-19-06; 8:45 am]

BILLING CODE 6355-01-P



City of Chicago  
Richard M. Daley, Mayor  
Chicago Department of Public Health

Terry Mason, M.D., F.A.C.S.  
Commissioner

Childhood Lead Poisoning  
Prevention Program

2nd Floor  
2133 West Lexington Street  
Chicago, Illinois 60612  
(312) 746-7820  
(312) 747-9888 (24 hours)

<http://www.cityofchicago.org>

CPSC/OFC OF THE SECRETARY  
FREEDOM OF INFORMATION

August 16, 2006

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

RE: Petition HP 06-1, Petition Requesting Ban on Lead Toy Jewelry

To Whom It May Concern:

The City of Chicago would like to take this opportunity to thank the Consumer Product Safety Commission for allowing us to provide feedback on the above referenced petition requesting the CPSC to consider the regulation of lead in toy jewelry. Chicago has found dangerously high levels of lead in half of the children's toy jewelry we tested, and have had cases of lead poisoned children where we suspect toy jewelry to be the main cause. Despite our efforts to regulate this problem locally, we believe that only Federal action can effectively address this problem. Therefore, the City of Chicago is extremely supportive of the petition's requests, and encourages the CPSC to classify toy jewelry containing more than 0.06% lead as a banned hazardous substance under the Federal Hazardous Substances Act (FHSA). We further implore the CPSC to consider expanding the petition's request to include children's products beyond toy jewelry.

As you are well aware, childhood lead poisoning remains a critical health concern, especially amongst children in urban areas such as Chicago. Along with our Federal Partners, the City of Chicago is committed to eliminating lead poisoning as a public health problem by the year 2010. In Chicago, as in most larger, older, cities, most children are exposed to lead from deteriorating lead based paint in their homes. However, lead in consumer products is becoming an increasing concern, and remains an area where federal regulation has been sorely lacking. Although we are proud of our record in identifying and addressing lead in consumer products, including toy jewelry, in the City of Chicago, the solution to this problem truly requires federal action.

During the summer of 2004, the City of Chicago launched an investigation into the lead content of toy jewelry sold by in gumball-like vending machines in the city. We purchased 42 items from stores across the city, and had them analyzed for total lead content by the Illinois Department of Public Health Laboratory, a NLLAP accredited lab. The results were startling. Half (21) of the items, had lead content exceeding 600 PPM (or 0.06%), the level set by CPSC for new residential paint. Eighteen of the



items had lead content exceeding 5000 PPM, or 0.5% lead, the standard in place under the Illinois Lead Poisoning Prevention Act for a lead-bearing substance. Sixteen of the items had lead levels exceeding 180,000 PPM, 14 exceeding 500,000 PPM, and 10 of them exceeded 600,000PPM. The highest item had 680,000 PPM. That's 68% lead by weight, and over 1,100 times greater than the amount of lead allowable in residential paint. There is absolutely no doubt that these levels pose a serious risk to children who either suck on or accidentally swallow these objects, a fact tragically demonstrated this past February when a Minnesota boy died from lead poisoning after swallowing a similarly leaded trinket.

In the immediate aftermath of our investigation, the City of Chicago ordered the removal of thousands of similar toy jewelry items from stores across the city, seizing items as necessary to prevent their further distribution. Working with area vending companies, we secured the removal of tens of thousands of additional items that had not been tested but were likely contaminated, and several vending companies entered into agreements to only sell plastic toy jewelry to prevent further potential exposures to lead. Although we believe our work helped to remove a serious threat and protected children in the City of Chicago, our jurisdiction is clearly limited to stores and retailers within the city, and many of the products known to us to be dangerous remained readily available in suburban areas outside of our corporate limits. Fortunately in this situation, not long after our enforcement program began, the CPSC announced it's historic nationwide recall of 150 million pieces of toy jewelry. However, we believe this clearly demonstrates the need to regulate these products on a larger level.

Since our 2004 investigation into toy jewelry, we have continued to perform occasional tests and smaller scale investigations into lead content in Children's products. Although we have largely found the bulk vending jewelry to be safe (most venders are continuing to only offer plastic items within the City of Chicago), we continue to find problems in slightly more expensive jewelry items found in discount and general retail stores. In the last year, we have had two cases of children with elevated lead levels that we believe to be directly tied to their mouthing or chewing of leaded toy jewelry. In addition to jewelry products, we have discovered elevated lead levels in vinyl lunchboxes<sup>1</sup>, certain herbal medicines<sup>2</sup>, and some "traditional" cosmetic products used by children such as "surma," which have been known to be lead contaminated for more than a decade,<sup>3</sup> but remain commonly available. We have continued to take enforcement action when possible against the retailers of these products, but no matter how vigilant we are within the City of Chicago, unless Federal action is taken, these products will likely continue to be widely available.

Until the Federal Government assumes leadership in this area, we are committed to doing everything possible to remove this needless threat to our children's safety and health. The City of Chicago was proud to support statewide legislation, HB4853<sup>4</sup>, which

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<sup>1</sup> CDPH Press Release, November 2<sup>nd</sup>, 2005, available online at: <http://egov.cityofchicago.org/health>

<sup>2</sup> CDPH Press Release, July 26<sup>th</sup>, 2005, available online at: <http://egov.cityofchicago.org/health>

<sup>3</sup> See, for example, <http://wonder.cdc.gov/wonder/prevguid/m0021165/m0021165.asp>

<sup>4</sup> Available on-line at <http://www.ilga.gov/legislation/94/HB/PDF/09400HB4853lv.pdf>

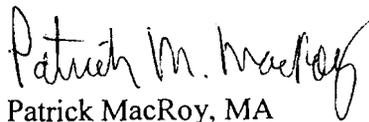
amended the Illinois Lead Poisoning Prevention Act to prohibit the sale of children's jewelry and other children's consumer products with a lead level over 600PPM. This bill was signed into law on June 20<sup>th</sup> of this year as Public Act 94-0879. We have also proposed amendments<sup>5</sup> to our municipal ordinance, which would set similar limits and give the city direct enforcement authority. These amendments are currently before the City Council.

In addition to the legislation here in Chicago and Illinois, other states and localities have been filling the Federal void on this issue. The CPSC should be aware that the Attorney General of California, along with a several public interest plaintiffs, reached a settlement with a large number of toy jewelry manufacturers and retailers over the failure to disclose the lead content of these products as may be required under California law. As a stipulation of this agreement<sup>6</sup>, the defendant manufacturers and retailers will be required to ensure that all children's jewelry have less than 600 PPM lead in any metal component.

We believe these local legislative policies and legal agreements clearly demonstrate that regulating lead content in children's jewelry, and other children's products, is both possible and desirable from a public health and public policy perspective. Given the industry's agreement to the California settlement, it's clearly technologically possible to manufacture children's jewelry without dangerous levels of lead. We implore the CPSC to favorably respond to the petition submitted and take the steps needed to set Federal rules that will prevent more children from being harmed needlessly from what are essentially disposable, low-value products.

Should you have any questions regarding this letter, please do not hesitate to contact Patrick MacRoy at 312-746-5007 or [MacRoy\\_Patrick@cdph.org](mailto:MacRoy_Patrick@cdph.org).

Sincerely,



Patrick MacRoy, MA  
Epidemiologist

---

<sup>5</sup> Available on-line at

[http://egov.cityofchicago.org/webportal/COCWebPortal/COC\\_EDITORIAL/Leadpaintord.htm](http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/Leadpaintord.htm)

<sup>6</sup> Available on-line at <http://ag.ca.gov/prop65/pdfs/peoplevburlington.pdf>

8

**KELLEY DRYE**  

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**COLLIER SHANNON**

Michael R. Kershow  
Special Counsel  
202.342.8580  
MKershow@kelleydrye.com

August 18, 2006

Todd A. Stevenson  
Secretary  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: Petition HP 06-1, Petition Requesting Ban on Lead Toy Jewelry**

Dear Secretary Stevenson:

On behalf of the Coalition for Safe Ceramicware, Inc. ("CSC" or "Coalition") and the International Crystal Federation, Inc. ("ICF" or "Federation"), voluntary non-profit trade associations whose memberships comprise the majority of the world's leading manufacturers and distributors of ceramic and lead crystal tableware, respectively, we are writing to comment briefly on the Sierra Club's petition urging the Consumer Product Safety Commission ("CPSC" or "Commission") to ban "toy jewelry" containing more than 0.06% lead by weight. *See* 71 Fed. Reg. 35,416 (June 20, 2006).

The businesses of most members of the CSC and ICF are focused on the production of ceramic and lead crystal tableware products, respectively, which as food contact articles, are subject to regulation by the U.S. Food & Drug Administration ("FDA") and its counterparts around the world. Perhaps needless to say, as companies engaged in the business of producing products that contact food, the members of the CSC and ICF are acutely sensitive to the potential risks posed to public health by the use of lead in ceramic glazes and in lead crystal glass. Industry, standards organizations (such as the International Organisation for Standardisation ("ISO")), and national and international regulators (including not only FDA and its counterparts, but such bodies as the Organisation for Economic Cooperation and Development ("OECD")) have long recognized that lead can be safely used in properly-formulated ceramic glazes and crystal glass, as the lead is chemically "locked in" to a glass matrix and is only accessible to the extent that acids in food cause small amounts of the bound lead to leach from the glaze or glass surface. Since the inception of the CSC and ICF in the early 1990s, their member companies have worked hard to adopt material and process improvements aimed at reducing the potential of lead to leach from their tableware products – and those efforts have yielded dramatic reductions in leach rates for both ceramic and lead crystal tableware.

These comments on the Sierra Club's petition are occasioned by the fact that individual member companies in the CSC and ICF also produce non-tableware items, including giftware (e.g., vases, candlesticks, figurines, etc.) and in a few cases, ceramic or lead crystal items, such as brooches and beads, that are sold to jewelry makers. While we believe that such jewelry

Kelley Drye & Collier Shannon LLP • Washington, DC • New York, NY • Chicago, IL • San Francisco, CA • Los Angeles, CA • Denver, CO  
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components seldom (if ever) find their way into the kind of “toy jewelry” apparently targeted in the Sierra Club’s petition, we believe it is important for the Commission to recognize that the use of lead in ceramic and lead crystal jewelry components presents only a negligible risk to health. While the CSC and ICF support the Sierra Club’s call for federal regulatory action to address lead-containing children’s jewelry (properly defined), there is no basis for banning all components in children’s jewelry that contain more than 0.06% lead in any form – including, in particular, ceramic or lead crystal components. Rather, the CSC and ICF believe that the agency’s interim enforcement policy on lead in jewelry – which focuses, ultimately, on limiting exposure to “accessible” lead – represents an intelligent response to the hazards presented, and should be elevated to the level of a formal regulation under the Federal Hazardous Substances Act (“FHSA”).

More specifically, our comments are as follows:

**1. The CPSC Should Address Children’s Jewelry in Regulations Issued Under the FHSA**

Thus far, the issue of children’s jewelry has been addressed through legislation at the state level – and with little consistency. This risks subjecting manufacturers and distributors of jewelry products (including jewelry components) to a host of conflicting requirements as they ship their products in interstate commerce. Whether or not the burdens posed by these state bills would be significant enough to give rise to successful constitutional challenges, it is clear that the interests of all concerned – both the public and industry – would be best served if there were one set of rules at the federal level.

For this reason, the CSC and the ICF believe that the CPSC should step in and issue regulations under the FHSA. Under the FHSA, consumer products are deemed “hazardous substances” if they contain lead or other toxic chemicals in quantities sufficient to cause substantial illness as a result of reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children. 15 U.S.C. § 1261(f)(1)(A). If the consumer product contains lead “in such manner as to be susceptible of access by a child to whom such . . . article is entrusted,” then it constitutes a “banned hazardous substance” under the FHSA. *Id.* § 1261(q)(1)(A). Under the FHSA, then, the Commission is authorized to ban jewelry intended for use by children to the extent that any lead present in the jewelry is “accessible” to the child (including through ingestion) in quantities sufficient to cause substantial illness.

One of the benefits of regulation pursuant to the FHSA is that manufacturers and distributors of jewelry products would be certain of their legal obligations, regardless of where their products were distributed in the country. The 1976 amendments to the FHSA provide that if the Commission issues regulations to “protect against a risk of illness or serious injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement

established under such regulations.” *Id.* § 1261, note. Such preemptive regulations would be in the interests of both the public and industry.

## **2. The Regulations Should Clearly Define “Children’s Jewelry”**

The petition fails to adequately identify the products to be regulated. The petition is very vague as to how it would define “lead-containing children’s jewelry” or “toy jewelry,” but appears to apply it to any non-functional decorative item valued under \$20 that contains more than 0.06% lead in any form. *See* Sierra Club Petition at 3. Aside from the excessively broad and vague scope of this definition, the rationale used to justify it – that “{p}eople are less likely to store such low-cost jewelry in secure containers or out of reach from children” (*id.*) – is questionable, to say the least.

Any regulations addressing “lead-containing children’s jewelry” should more precisely define “children’s jewelry” in terms of physical characteristics (*e.g.*, size, marketing focus, etc.). Clearly, only jewelry products intended for use by children – as opposed to jewelry products marketed for general use that might happen to be used by children – should be covered by the regulations. It would seem reasonable to define the term “child” for this purpose as children 6 years of age and younger.

## **3. The Regulations Should Not Treat All Jewelry Components Containing More than 0.06% Lead as Hazardous**

The petition’s presumption that a product containing more than 0.06% lead content is necessarily harmful is not scientifically supportable. As the Sierra Club recognizes (*see* Sierra Club Petition at 2), the 0.06% limit is the CPSC’s threshold for defining “lead-containing paint,” which the Commission has long banned for consumer applications under the FHSA. *See* 16 C.F.R. pt. 1303. The public record on the hazards of lead paint is extensive, and no longer subject to credible debate. Because of its propensity to chip, flake, and produce dust, and the highly bioavailable character of the particular lead compounds used in paint, lead paint poses a uniquely serious public health hazard; indeed, even today, almost 30 years after being banned, and despite decades of remediation efforts, lead paint continues to be the leading source of lead exposure in children.

The 0.06% threshold was adopted by the Commission because that low level was, at the time, the lowest level of lead that the paint industry could achieve in a paint to which no lead was intentionally added. While the Commission’s lead paint regulations properly treat any paint containing more than this unavoidable background level of lead as subject to the regulatory ban, the 0.06% threshold should not be the universal standard by which all potential lead hazards are assessed.

Regulatory agencies (*e.g.*, FDA) and international standards bodies and other organizations (*e.g.*, ISO, OECD) have long recognized that lead chemically locked into a glass

matrix – such as in crystal glass or a ceramic glaze – does not pose a significant risk to public health,<sup>1</sup> and generally presents an exposure hazard only when subjected to acid attack. In food contact applications, the *lead content* of ceramic glazes and crystal glass is an irrelevancy; all that matters is the level of *leachable lead* – that is, the amount of lead that can migrate from the glass surface and into foods. Where ceramics or lead crystal are used to make jewelry components, lead content is also of no relevance; as with food contact applications, the issue is leachability – in this case, the potential of the component to release lead into stomach acid if swallowed.

#### **4. The Regulations Should be Based on the Agency's Interim Enforcement Policy on Lead in Jewelry**

Any CPSC regulations should be based on the agency's interim enforcement policy on lead in jewelry<sup>2</sup> – which the Sierra Club appears to overlook entirely. The Commission's policy properly uses the 0.06% threshold not as a necessary indicator of a hazard, but as a screening tool for conducting further testing aimed at determining the level of "accessible" lead in the jewelry component, using an acid extraction test designed to model conditions in the human alimentary tract.<sup>3</sup> The policy calls for enforcement action to be taken against any children's jewelry component that has more than 175 micrograms of "accessible" lead using the acid extraction test. The Commission's analysis demonstrated that such an exposure could raise a child's blood lead level above the 10 microgram per deciliter level of concern recognized by the Centers for Disease Control.<sup>4</sup>

Under such regulations, the use of lead metal in children's jewelry would presumably be banned in most, if not all, cases – which is appropriate, given the significant exposure risk that lead metal presents. By contrast, the CSC and ICF are confident that lead crystal or ceramic components of jewelry would not violate the 175 microgram standard contained in the interim policy, and would not, therefore, be banned under the proposed regulations. This would be consistent with the recognition by FDA and other bodies that lead can safely be used in ceramic glazes and lead crystal glass in even the most sensitive consumer applications, such as the production of food contact articles.

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<sup>1</sup> Indeed, the Commission's regulations banning lead-containing paint implicitly recognize this by providing that "materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing," fall outside the definition of "paint." 16 C.F.R. § 1303.2(b)(1).

<sup>2</sup> See <http://www.cpsc.gov/businfo/pbjewelgd.pdf>.

<sup>3</sup> See <http://www.cpsc.gov/businfo/pbjeweltest.pdf>.

<sup>4</sup> See <http://www.cpsc.gov/businfo/pblevels.pdf>.

Todd A. Stevenson  
August 18, 2006  
Page 5

The CSC and ICF appreciate the Commission's consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Kershow". The signature is written in a cursive style with a long, sweeping tail on the letter "w".

MICHAEL R. KERSHOW

Counsel to the Coalition for Safe  
Ceramicware and the International Crystal  
Federation



# THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg  
Mayor

Thomas R. Frieden, M.D., M.P.H.  
Commissioner

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nyc.gov/health

August 18, 2006

Office of the Secretary  
Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: Petition HP 06-1, Petition Requesting Ban on Lead Toy Jewelry**

Dear Sir or Madam:

The New York City Department of Health and Mental Hygiene (NYC DOHMH) is writing to comment on Petition HP 06-1, submitted by the Sierra Club to the Consumer Product Safety Commission (CPSC), requesting that CPSC issue regulations to ban lead in all toy jewelry. The NYC DOHMH strongly supports this request.

### **Childhood Lead Poisoning in NYC**

Childhood lead poisoning is a serious but preventable public health problem. Over the last 35 years, New York City (NYC) has made significant progress in reducing childhood lead poisoning. Both the number of lead poisoning cases and the severity of cases in children have steadily declined. This success is largely attributable to government regulations introduced over the past four decades. These regulations prohibit the use of lead in gasoline, paint and other consumer products; and require the remediation of lead paint hazards in older housing. Government policies also promote the early identification of children with elevated blood lead levels (BLLs) through blood lead testing.

NYC has itself played an active role in efforts to prevent lead poisoning. The sale of paint containing lead for residential use was banned in 1960 and NYC law now requires the proactive repair of lead paint hazards in multi-unit residential buildings constructed before 1960 to protect children from exposure to lead before they are poisoned. When a child is identified with blood lead level greater than or equal to 15 micrograms per deciliter ( $\geq 15 \mu\text{g/dL}$ ), the NYC DOHMH conducts an in-home risk assessment to identify both lead paint and non-paint sources of lead exposure and requires abatement of any lead paint hazards identified.

Despite the progress in NYC and the nation in reducing incidence and severity of childhood lead poisoning, it remains a serious public health problem. In 2004, 3,234 NYC children less than 6 years of age were newly identified with BLLs of 10  $\mu\text{g/dL}$  or greater.

While lead paint and lead dust remain the primary sources of lead poisoning in NYC children, lead exposure from non-paint sources is a growing area of concern. In addition to lead paint hazards, children may also be exposed to lead in jewelry and other children's products; imported foods, spices, cosmetics, and health remedies contaminated with lead; and lead-glazed pottery used in food preparation.

## **Evidence Supporting the Sierra Club Petition**

### A Clear Threat to Children's Health

In February 2006, a child in Minnesota died of lead poisoning after swallowing a jewelry charm containing lead; the charm was later found to be nearly 100% lead.<sup>1</sup> In July 2003, a 4 year-old boy in Oregon was hospitalized with a blood lead level of 123 µg/dL after swallowing a medallion purchased from a vending machine; when the medallion was analyzed it was found to be nearly 40% lead.<sup>2</sup> These cases demonstrate the need for strong federal action to protect children from acute as well as chronic exposure to lead in jewelry.

### A Nationwide Problem

Since September 2003, CPSC has issued at least 12 recalls of jewelry containing lead. The approximately 160 million pieces of jewelry involved in these recalls ranged from vending machine jewelry that was sold for less than \$1.00 to a Juicy Couture brand necklace retailing for \$95.<sup>3</sup> Jewelry involved in the recalls had been sold by major, nationwide retailers such as Wal-Mart, Walgreen's, Michael's Arts and Crafts Stores and the American Girl Stores, a division of Mattel, Inc.

In 2005, researchers at the University of North Carolina published the results of their analysis of the lead content of 285 pieces of costume jewelry sold in California by major retailers. Of the 311 samples taken (including duplicates for some items), 40% contained more than 50% lead. Thirty-six samples (12% of the total) contained more than 75% lead.<sup>4</sup> A market survey by Health Canada in the year 2000 of jewelry that cost less than \$20.00 found that 69% of the 95 samples collected had a lead content of 50 to 100 percent.<sup>5</sup> The results of these surveys raise concern about the extent of the problem and the potential for additional poisoning in young children.

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<sup>1</sup> Centers for Disease Control and Prevention, "Death of A Child After Ingestion of a Metallic Charm – Minnesota, 2006." *Morbidity and Mortality Weekly Reports*, March 23, 2006

<sup>2</sup> Centers for Disease Control and Prevention, "Brief Report: Lead Poisoning from Ingestion of a Toy Necklace – Oregon, 2003". *Morbidity and Mortality Weekly Report* June 18, 2004

<sup>3</sup> Consumer Product Safety Commission "Juicy Couture Children's Jewelry Recalled for Lead Poisoning Hazard" May 10, 2006

<sup>4</sup> Maas RP, Patch SC, Pandolfo PJ, Druhan JL, and Gandy NF "Lead Content and Exposure from Children's and Adult's Jewelry Products." *Bull. Environ. Contam. Toxicol.* (2005) 74; 437-444. Another 8% of the samples contained 10-50% lead, and 7% contained 3-10% lead. The remaining 46% contained less than 3% lead – suggesting that it is feasible for manufacturers to substantially lower lead content. (Total equals more than 100% due to rounding.)

<sup>5</sup> 'Health Canada Warns of Lead Danger from Children's Jewelry' *Canadian Medical Association Journal* January 8, 2001; "Health Canada Details Rules for Lead in Kids Jewelry" CTV.ca June 1, 2005

While DOHMH supports the growing efforts by states and cities to enact legislation to address the problem of children’s jewelry that contains lead, it is clear that federal action would be most appropriate because the problem is nationwide and because much of the lead-containing jewelry is manufactured abroad.

### The Failure of Voluntary Guidance

In 1998, CPSC issued voluntary guidance to manufacturers recommending that they “eliminate the use of lead that may be accessible to children from products used in or around households, schools or in recreation,” The guidance document also advised manufacturers, importers, distributors, and retailers to ensure that products containing a hazardous amount of lead do not reach the market by having a sample of the products tested prior to distribution.<sup>6</sup> In 2005, CPSC issued additional voluntary guidance focused solely on children’s jewelry. This document sought to clarify the amount of lead CPSC would consider hazardous. It also outlined the protocols that would be used by CPSC in testing products suspected of containing excessive lead.<sup>7</sup>

It is clear this voluntary guidance has failed to deter manufacturers from producing children’s jewelry that contains lead. The evidence of this failure includes the 12 jewelry recalls issued by CPSC over the last 3 years; 8 of those recalls occurred after the release of the 2005 CPSC guidance document, cited above, that deals specifically with toy jewelry. Just last week, on August 14, 2006, the Baltimore Department of Health released a report on tests it conducted on 17 samples of children’s jewelry. Four of the items contained more than 600 parts per million (ppm) of lead. Of these, one contained more than 68,000 ppm of lead; another, more than 3,500 ppm.<sup>8</sup>

### **Recommendations**

The 1998 guidance document issued by CPSC -- if converted into regulations – could provide an effective framework to protect children from exposure to lead in jewelry. The document makes it clear that manufacturers are responsible for addressing the problem at the point of production but it also holds importers, distributors and retailers responsible for assuring that the jewelry they sell is lead-safe or lead-free before it reaches the marketplace. CPSC regulations also should:

- Apply to plastic as well as metal jewelry since polyvinyl chloride (PVC) often contains lead.

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<sup>6</sup> Consumer Product Safety Commission “Codification of Guidance Policy on Lead in Consumer Products” 16 CFR Part 1500 .

<sup>7</sup> Consumer Product Safety Commission “Interim Enforcement Policy for Children’s Metal Jewelry Containing Lead” February 3, 2005

<sup>8</sup> Baltimore City Health Department “Lead Contamination Found in More Children’s Jewelry” Press Release, August 14, 2006

- Set a limit on lead content that is no higher than 600 ppm; the level should be lower if that is necessary to protect children who swallow or mouth the jewelry from acute as well as chronic exposure.<sup>9</sup>
- Define children's jewelry to include costume jewelry that is likely to be accessible to young children even if it is marketed to teenagers or adults.
- Be designed not only to promote compliance with mandatory limits on the lead content of children's jewelry but also to spur manufacturers to produce jewelry for both adults and children that is completely lead-free.

When CPSC identifies manufacturers, distributors or retailers who have knowingly sold children's jewelry containing lead, the agency should seek the maximum penalties provided in the Federal Hazardous Substances Act.

We urge CPSC to move as quickly as possible to address this serious problem.

Yours truly,

***Deborah Nagin***

Deborah Nagin, Director  
Lead Poisoning Prevention Program  
NYC Department of Health and Mental Hygiene

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<sup>9</sup> In determining the maximum lead content for children's jewelry, CPSC should not treat a BLL of 10µg/dL as a safe level of exposure as it has done in both the 1998 and 2005 guidance documents. After reviewing the latest scientific research, CDC has concluded that the data demonstrate that there is "no 'safe' threshold for blood lead levels in young children." Centers for Disease Control and Prevention, "Preventing Lead Poisoning in Children" August 2005

**Stevenson, Todd A.**

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**From:** Deborah Nagin [dnagin@health.nyc.gov]  
**Sent:** Monday, August 21, 2006 9:47 AM  
**To:** Stevenson, Todd A.  
**Cc:** RNickerson@cityhall.nyc.gov; Carol Steinsapir; Frances Paris; Jessica Leighton; Nancy Clark; Samuel Friedman  
**Subject:** NYC DOHMH Comments: Petition HP 06-1, Petition Requesting Banof Lead Toy Jewelry  
**Attachments:** jewelrycommentsCPCSfinal.doc



jewelrycommentsCP  
CSfinal.doc (...)

Dear Sir or Madam:

Attached are the comments of the NYC Department of Health & Mental Hygiene (DOHMH) - Lead Poisoning Prevention Program (LPPP) regarding the petition to the Consumer Products Safety Commission (CPSC) requesting the issuance of regulations by the CPSC banning the use of lead in toy jewelry (Petition HP 06-1).

DOHMH-LPPP strongly supports this request. Please be adviced that 5 hardcopies will be sent under separate copy through the mail.

Thank you in advance for your consideration.

Deborah Nagin, Director  
NYCDOH - Lead Poisoning Prevention Program  
253 Broadway, 11th floor, CN-58  
New York, NY 10007

(212) 676-6105  
(212) 676-6122  
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CITY OF BALTIMORE

MARTIN O'MALLEY, Mayor



HEALTH DEPARTMENT

JOSHUA M. SHARFSTEIN, M.D., Commissioner  
210 Guilford Avenue  
Baltimore, MD 21202

The Office of the Secretary  
Consumer Product Safety Commission  
4330 East-West Highway  
Bethesda, Maryland 20814

August 18, 2006

RE: *Petition HP 06-1, Petition Requesting Ban on Lead Children's Jewelry*

To the Commission:

We are writing to comment on Sierra Club petition HP 06-1 that calls for the ban of children's jewelry containing more than 0.06% lead.

The Baltimore City Health Department has recently conducted its own random testing of jewelry purchased throughout the city of Baltimore. Four of the 17 items tested contained elements with more than 600 parts per million of lead, the federal standard for lead in paint. The four items were:

- o A pearl ring sold at Claire's as part of the "Princess Collection" which contained elements as high as 68,071 parts per million of lead. Claire's has voluntarily withdrawn this ring from the market in Baltimore City.
- o A ring with hearts sold at Wal-Mart as part of "Girl Connection" jewelry set with 3,540 parts per million of lead. Wal-Mart is voluntarily removing the item from its stores nationwide.
- o A ring sold at Claire's with the flower containing 874 parts per million of lead and the ring 622 parts per million of lead.
- o A ring sold at Claire's with the ring containing 682 parts per million of lead.

On the basis of our findings, the Department has proposed a regulation that would ban the sale of children's jewelry in which any component contains more than 0.06% lead. Our full proposal includes a discussion of the failure of current federal standards. It is attached.

The full results of the testing are online at  
<http://www.baltimorecity.gov/government/health/jewelry.html>.

If you have any questions, please feel free to contact Olivia Farrow at 410-396-4422.

Sincerely,

Olivia Farrow, Esq., R.S.  
Assistant Health Commissioner  
Baltimore City Health Department  
Division of Environmental Health  
210 Guilford Avenue, 2<sup>nd</sup> Floor  
Baltimore, Maryland 21202  
410 396-4422  
[Olivia.Farrow@Baltimorecity.gov](mailto:Olivia.Farrow@Baltimorecity.gov)



**Proposed Regulatory Action on Lead in Children's Jewelry  
Request for Public Comment**

**Baltimore City Health Department  
August 14, 2006**

## I. SUMMARY

The Commissioner of Health of Baltimore City is proposing to declare children's jewelry with excess levels of lead to be a nuisance to public health. The Commissioner of Health is requesting comments from the public and interested parties on this proposal. The comment period will end on September 29, 2006.

## II. BACKGROUND

### A. Legal Authority

The Health Commissioner has the legal authority to regulate health nuisances pursuant to two sections of the Baltimore City Health Code. Title 2 of the Health Code relates generally to the Department of Health, while Title 5 relates more specifically to nuisance control. See Health Code §§ 2-101, *et seq.* and §§ 5-101, *et seq.* Title 2 provides that the Commissioner is responsible for "enforcing all laws for the preservation of the health of the inhabitants of the City" and preventing disease and nuisances affecting public health. Health Code § 2-104. It is the duty of the Commissioner "to remove and abate nuisances...." Health Code § 2-105(5). Title 5 of the Health Code sets forth examples of nuisances and states that nuisance "includes...any other health or safety hazard." Health Code § 5-101(b). Excessive levels of lead in children's jewelry are clearly a health hazard, as described below in the fatal case of a child ingesting jewelry with excessive levels of lead. Pursuant to Title 5, "[t]he Commissioner of Health is responsible for...requiring the removal of all nuisances...." Health Code § 5-102. Thus, Titles 2 and 5 of the City Health Code provide the legal authority by which the Health Department and Health Commissioner can regulate health nuisances in the City.

### B. Lead in Children's Jewelry Threatens Children's Health

The nuisance addressed by this proposed regulations is lead poisoning from lead-containing children's jewelry.

Lead is a heavy metal and potent toxin that can cause life-threatening poisoning at high doses and insidious damage at low doses. The Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services has found that lead causes a range of significant adverse effects in children and adults.<sup>1</sup>

Lead is especially toxic to the brains of young children. According to the Agency for Toxic Substances and Disease Registry, high doses of lead – which are associated with blood lead levels above 70 micrograms per deciliter – can cause children to suffer

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<sup>1</sup>Agency for Toxic Substances & Disease Registry, *Case Studies in Environmental Medicine: Lead Toxicity* (October 2000).

life-threatening encephalopathy and “lasting neurologic and behavioral damage.”<sup>2</sup> Exposure to low doses of lead has been linked to lower IQ scores, school failure, attention deficit hyperactivity disorder, and deficits in vocabulary, fine motor skills, reaction time, and hand-eye coordination.<sup>3</sup> There is no known lower threshold for the adverse effects of lead on children’s development.<sup>4</sup>

The Centers for Disease Control and Prevention (CDC) has determined that an important source of lead exposure for children are consumer products. According to CDC, in some areas of the country, as many as one-third of children with lead poisoning are exposed to items containing lead that can be brought into the home. As a result, CDC recommends “restriction or elimination of nonessential uses of lead in consumer products” as part of a “proactive strategy that prevents exposure to these products and is preferable to relying on case finding to identify lead exposure hazards.”<sup>5</sup>

Children’s jewelry are among the most prominent consumer products that can expose children to unacceptable levels of lead. Exposure can happen via contact with the hands, direct oral contact, or ingestion.

In June 2004, CDC reported the case of a child who suffered lead poisoning from ingesting a toy necklace.<sup>6</sup> On March 23, 2006, the Reebok Corporation announced that a four-year-old child in Minneapolis died from lead intoxication after swallowing a piece of children’s jewelry that was distributed with a new pair of shoes.<sup>7</sup>

According to the Centers for Disease Control and Prevention, the patient was brought to a hospital in Minneapolis, Minnesota for vomiting. He developed abdominal pain, dehydration, and listlessness before suffering a severe seizure and requiring mechanical ventilation. He then suffered severe brain swelling that required emergency neurosurgery. On the fourth day of hospitalization, he had no brain activity and was removed from life support. Upon autopsy, a heart-shaped pendant bearing the name

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; American Academy of Pediatrics, *Lead Exposure in Children: Prevention, Detection and Management*, Pediatrics, 1036-1048 (October 2005).

<sup>4</sup> Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children* (August 2005).

<sup>5</sup> Centers for Disease Control and Prevention, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity and Mortality Weekly Reports (Mar. 23, 2006).

<sup>6</sup> Centers for Disease Control and Prevention, *Brief Report: Lead Poisoning from Ingestion of a Toy Necklace --- Oregon, 2003*, Morbidity and Mortality Weekly Reports, 509-511 (June 18, 2004).

<sup>7</sup> Reebok, *Reebok Recalls Bracelet Linked to Child’s Lead Poisoning Death* (Mar. 23, 2006).

“Reebok” was removed from his stomach. Testing revealed the pendant to be 99.1% lead.<sup>8</sup> Reebok subsequently recalled of 300,000 pieces of the jewelry.<sup>9</sup>

The recall was one of 16 recalls of children’s jewelry because of dangerous levels of lead in the past three years:

- On May 10, 2006, Liz Claiborne Inc, of North Bergen, New Jersey recalled about 2,800 pieces of Juicy Couture Children’s Jewelry with phrases including “Viva La Juicy” printed on the front.<sup>10</sup>
- On April 27, 2006, Selected Trading Corp. of Miami, Florida recalled about 55,000 choker-style necklaces with the phrase “in style” printed on the front.<sup>11</sup>
- On March 30, 2006, American Girl Children’s Jewelry of Middleton, Wisconsin recalled 180,000 American Girl necklaces, bracelets, earrings, and hair accessories for girls.<sup>12</sup>
- On March 23, 2006, Dollar Tree Distribution Inc. of Chesapeake, Virginia, recalled about 580,000 necklaces and rings in a variety of designs with a toy “gem” in the center. Among the designs were “mood rings” and “glow in the dark” necklaces.<sup>13</sup>

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<sup>8</sup> Centers for Disease Control and Prevention, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity and Mortality Weekly Reports (Mar. 23, 2006).

<sup>9</sup> Consumer Product Safety Commission, *Reebok Recalls Bracelet Linked to Child’s Lead Poisoning Death* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06119.html>).

<sup>10</sup> Consumer Product Safety Commission, *Juicy Couture Children’s Jewelry Recalled for Lead Poisoning Hazard* (May 10, 2006)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06160.html>).

<sup>11</sup> Consumer Product Safety Commission, *Children’s Necklaces Recalled for Lead Poisoning Hazard* (Apr. 27, 2006)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06150.html>).

<sup>12</sup> Consumer Product Safety Commission, *Children’s Jewelry Sold at American Girl Stores Recalled for Lead Poisoning Hazard* (Mar. 30, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06123.html>).

<sup>13</sup> Consumer Product Safety Commission, *Dollar Tree Stores Inc. Toy jewelry Recalled for Lead Poisoning Hazard to Children* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml06/06118.html>).

- On March 23, 2006, Oriental Trading Company Inc. of Omaha, Nebraska, recalled about 25,000 beaded photo charm bracelets.<sup>14</sup>
- On February 23, 2006, Provo Craft & Novelty Inc. of Spanish Fork, Utah recalled about 29,000 metal charms, including some in the shape of pumpkins.<sup>15</sup>
- On November 30, 2005, Stravina Operating Co., LLC, Of Chatsworth California recalled about 6 million metal necklaces and zipper pulls, each bearing a child's name.<sup>16</sup>
- On September 22, 2005, Dollar General Corporation of Goodlettsville, Tennessee recalled about 455,000 necklace and earring sets with floral designs.<sup>17</sup>
- On September 22, 2005, Monogram International Inc., of Pinellas Park, Florida recalled about 145,000 Disney Princess bracelet keyrings.<sup>18</sup>
- On May 12, 2005, Dollar General Corp of Goodlettsville, Tennessee recalled about 80,000 pendants shaped as hearts.<sup>19</sup>
- On January 11, 2005, Riviera Trading Inc. of New York, New York recalled about 7,1000 metallic costume bracelets with phrases including "I like movies" and "I like sports" printed on them.<sup>20</sup>

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<sup>14</sup> Consumer Product Safety Commission, *Lead Poisoning Hazard Prompts Recall of Metal Charm Bracelets* (Mar. 23, 2006) (one at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06538.html>).

<sup>15</sup> Consumer Product Safety Commission, *Metal Charms Recalled for Lead Poisoning Hazard to Children* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06093.html>).

<sup>16</sup> Consumer Product Safety Commission, *CPSC, Stravina Operating Co. Announce Recall of Children's Metal Necklaces and Zipper Pulls* (Mar. 23, 2006) (online at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06042.html>).

<sup>17</sup> Consumer Product Safety Commission, *CPSC, Dollar General Corp. Announce Recall of Costume Jewelry* (Sept. 22, 2005) (online at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml05/05278.html>).

<sup>18</sup> Consumer Product Safety Commission, *CPSC, Monogram International Inc. Announce Recall of Bracelet Keyrings* (Sept. 22, 2005)(online at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml05/05277.html>).

<sup>19</sup> Consumer Product Safety Commission, *CPSC, Dollar General Corp. Announce Recall of Metal Heart-Shaped Pendants* (May 12, 2005)(online at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml05/05171.html>).

- On December 17, 2004, Raymond Geddes Co. Inc. of Baltimore, Maryland recalled about 155,000 necklaces depicting frogs, dolphins and a “sunshine smiley face.”<sup>21</sup>
- On July 8, 2004, four children’s jewelry importers recalled 150 million pieces of children’s jewelry sold in vending machines across America. The four firms were A&A Global Industries, Inc. of Cockeysville, Maryland; Brand Imports, LLC of Scottsdale, Arizona, Cardinal Distributing Company of Baltimore, Maryland, and L.M. Becker & Co. Inc., of Kimberly, Wisconsin. The children’s jewelry was sold between January 2002 and June 2004, at a cost of between \$0.25 and \$0.75 per item.
- On March 2, 2004, Brand Imports LLC of Scottsdale, Arizona recalled 1 million children’s rings in designs featuring hearts and stars.<sup>22</sup>
- On Sept. 10, 2003, L.M. Becker & Co. of Kimberly, Wisconsin recalled 1.4 million toy necklaces with assorted symbols.<sup>23</sup>

C. Action by Baltimore City Is Necessary To Protect Children

The Consumer Product Safety Commission (CPSC) is responsible for protecting children from lead poisoning from children’s jewelry. However, the Commission has failed to do so. CPSC has adopted a weak policy that permits unacceptable levels of lead to be present in children’s jewelry. Action by Baltimore City is necessary to protect children from harm.

Two federal statutes address the lead content of toys. Under the Consumer Product Safety Act, regulations ban paint containing lead in a concentration of greater than 600 parts per million.<sup>24</sup> The Federal Hazardous Substances Act bans products that

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<sup>20</sup> Consumer Product Safety Commission, *CPSC, Riviera Trading Inc. Announce Recall of Children’s Costume Bracelets* (Jan. 11, 2005)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05082.html>).

<sup>21</sup> Consumer Product Safety Commission, *CPSC, Raymond Geddes Co. Announce Recall of Children’s Necklaces* (Dec. 17, 2004) (online at <http://www.cpsc.gov/cpscpub/prerel/prhtml05/05072.html>).

<sup>22</sup> Consumer Product Safety Commission, *CPSC, Brand Imports, LLC Announce Recall of Children’s Rings* (Mar. 2, 2004)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml04/04090.html>).

<sup>23</sup> Consumer Product Safety Commission, *CPSC, L.M. Becker & Co. Inc. Announce Recall of Toy Necklaces* (Sept. 10, 2003)(online at <http://www.cpsc.gov/cpscpub/prerel/prhtml03/03178.html>).

<sup>24</sup> 16 CFR 1303.

expose children to “hazardous substances” through routine handling or reasonably foreseeable use, including ingestion.”<sup>25</sup>

CPSC has the authority to implement these statutes. The agency could establish clear standards for lead content and testing to minimize the likelihood that hazardous products are ever sold. However, CPSC has not done so. Instead, it has provided wide latitude to the industry in conducting testing prior to marketing, with the result that the standardized testing can be grossly inadequate. The agency has also issued a weak and ineffective policy on the acceptable levels of lead in children’s jewelry.

Industry testing standards for toys, published by the American Society of Testing and Materials, only include a single test for lead.<sup>26</sup> This test involves bathing a scraping of the outer surface of the toy in a weak hydrochloric acid solution and assessing the lead content of the solution. It does not require an assessment of products without an outer coating. Nor does it require an assessment of the overall lead content of the product. On January 13, 2005, Congressman Henry A. Waxman wrote CPSC summarizing concerns with the industry’s testing standard.<sup>27</sup>

On February 3, 2005, the CPSC announced a new policy addressing lead in children’s metal jewelry.<sup>28</sup> The new policy is premised on the claim 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 lead poisoning.”<sup>29</sup> This claim is wrong. CDC has concluded that “no ‘safe’ threshold for blood lead levels ... in young children has been identified.”<sup>30</sup> In fact, CDC has specifically rejected the regulatory approach used by the CPSC of modeling risk based on blood lead levels over 10 micrograms per deciliter.<sup>31</sup>

After starting from a false premise, CPSC’s policy sets out a weak and ineffectual approach to protecting children from lead in children’s jewelry.

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<sup>25</sup> 15 USC 1261-1278.

<sup>26</sup> American Society of Testing and Materials, *Standard Consumer Safety Specification for Toy Safety* (2003).

<sup>27</sup> Letter from Congressman Henry A. Waxman to Chairman of the Consumer Product Safety Commission Hal Stratton (Jan. 13, 2005).

<sup>28</sup> Consumer Product Safety Commission, *CPSC Announces New Policy Addressing Lead in Children’s Metal Jewelry* (Feb. 3, 2005)(online at <http://www.cpsc.gov/cpscpub/prere1/prhtml05/05097.html>).

<sup>29</sup> Consumer Product Safety Commission, *Interim Enforcement Policy for Children’s Metal Jewelry Containing Lead* (Feb. 3, 2005).

<sup>30</sup> Centers for Disease Control and Prevention, *Preventing Lead Poisoning in Young Children* (Aug. 2005).

<sup>31</sup> *Id.*

Under the new policy, CPSC staff first conducts a screening test to determine the “lead content of each type of component in a piece of jewelry.” If the lead content is less than or equal to 600 parts per million, then “no corrective action will be sought.”

If a piece of the jewelry exceeds the 600 parts per million threshold, then CPSC proceeds to the second step: testing using an acid extraction method. If the acid extraction yields less than or equal to 175 micrograms of accessible lead, then “no corrective action will be sought.”

If, however, a piece of the product yields more than 175 micrograms of accessible lead, then CPSC moves to the third step. In this step, staff “decides what corrective action may be appropriate on a case-by-case basis.” According to the CPSC policy, “[s]taff will consider the age of the children who are most likely to wear the jewelry, the level of accessible lead, the size and shape of the jewelry components, the probable routes of exposure and other factors.”

CPSC’s policy fails to protect children from harm. It explicitly permits an unsafe amount of lead – 175 micrograms – to be present in any single component of a single piece of children’s jewelry. As a result, a single piece of jewelry could contain significantly more than 175 micrograms. It also establishes no clear level for enforcement. A manufacturer can believe that even children’s jewelry with high levels of lead will not face any regulatory action.

Citing the failure of CPSC’s policy, Congressman Waxman and Senator Barack Obama have introduced legislation to ban lead from children’s products.<sup>32</sup> This legislation has been endorsed by the American Academy of Pediatrics.

Since the CPSC policy announcement, there have been 11 recalls of approximately 7 million pieces of children’s jewelry because of the threat of lead exposure and one known death.

Because of the ongoing risk to children of lead in children’s jewelry, and because of the inadequacy of action by the CPSC to protect children, the Commissioner of Health proposes to declare children’s jewelry with excess levels of lead to be a nuisance. For the purpose of this regulatory action, “excess levels of lead” would mean any piece of children’s jewelry in which any component part has a lead concentration exceeding 600 parts per million. This standard mirrors the federal standard for lead in paint, which was set to be protective of children’s health.<sup>33</sup>

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<sup>32</sup> H.R. 668 and S. 2048.

<sup>33</sup> 16 CFR 1303.

It is also the same standard for metal alloys in children's jewelry agreed to in a settlement between the state of California and 71 major retailers and distributors in January 2006.<sup>34</sup>

The Centers for Disease Control and Prevention has stated "alternatives to lead are available" for children's jewelry.<sup>35</sup> Referring to lead in candy and other consumer products, the chief of the Lead Poisoning Prevention Branch of CDC has stated, "It is ... important to think about why is lead in any of those products, and if it doesn't need to be there, let's get it out."<sup>36</sup>

If one item of children's jewelry is found to contain excess lead, there is a high likelihood of other items having excess lead. As a result, the Commissioner of Health will deem all similarly constructed and packaged items from the same manufacturer or distributor a nuisance to the public health.

## II. PROPOSED REGULATION

### A. Standards

The Commissioner of Health has determined that any piece of children's jewelry in which any component part has a lead concentration exceeding 600 parts per million contains excess levels of lead.

1. The Commissioner of Health has determined that any piece of children's jewelry that contains excess levels of lead is a health hazard and a nuisance. Children's jewelry is jewelry with a reasonably foreseeable use by children under age 6.
2. If an item of children's jewelry is found to contain any component with excess levels of lead, the Commissioner of Health will deem all similarly constructed and packaged items from the same manufacturer or distributor a health hazard and a nuisance.

### B. Testing

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<sup>34</sup> *People of the State of California vs. Burlington Coat Factory Warehouse Corporation, et al.*, Case RG 04-162075 (2006)(online at [http://ag.ca.gov/newsalerts/cms06/06-009\\_0a.pdf?PHPSESSID=9e493493a321a5b072cf5baf0f2ed3e8](http://ag.ca.gov/newsalerts/cms06/06-009_0a.pdf?PHPSESSID=9e493493a321a5b072cf5baf0f2ed3e8)).

<sup>35</sup> Centers for Disease Control and Prevention, *Death of a Child After Ingestion of a Metallic Charm – Minnesota, 2006*, Morbidity and Mortality Weekly Reports (Mar. 23, 2006).

<sup>36</sup> *Bill Would Ban Lead in Candy Wrappers*, Orange County Register (Mar. 28, 2005).

1. The Baltimore City Health Department shall conduct random testing of children's jewelry sold in the City for a period of at least six months. The testing will assess the lead concentration of component parts of children's jewelry according to the laboratory method defined by the Consumer Product Safety Commission. At least 100 items of children's jewelry will be tested.
2. At least monthly, the Health Department will release the results of its testing to the public.

### C. Notice

If a testing result reveals a concentration of 600 ppm in any component part of a piece of children's jewelry, the Health Department will take the following steps:

1. The Health Commissioner may issue a written notice to the owner, operator, or resident agent for the retail establishment at which the children's jewelry containing a component with lead concentration exceeding 600ppm (the "children's jewelry") was found. Such written notice shall:
  - a. Identify the children's jewelry and the associated health hazard;
  - b. Declare the children's jewelry to be a nuisance;
  - c. Specify the corrective action to be taken (e.g., specify that the establishment must immediately stop the sale and/or distribution of such children's jewelry);
  - d. State the time within which that action must be taken; and
  - e. Set forth penalties that may be imposed if the corrective action is not timely taken.
2. The notice shall be served in accordance with section 5-204 of the Baltimore City Health Code.
3. The Health Commissioner may publish notice in a newspaper of general circulation in the City that:

- a. Identifies the children's jewelry and the associated health hazard;
- b. Declares all similarly constructed and packaged items from the same manufacturer or distributor to be a nuisance;
- c. Specifies the corrective action to be taken by any establishment containing such an item (e.g., specifying that all establishments must immediately stop the sale and/or distribution of such similarly constructed and packaged items from certain manufacturers or distributors);
- d. States the time within which that action must be taken; and
- e. Sets forth penalties that may be imposed if the corrective action is not timely taken.

#### D. Penalties

Any person who fails to take the corrective action specified in the nuisance notice may be subject to one or more of the following penalties:

1. Any person who fails to comply with a nuisance notice is guilty of a misdemeanor and, if convicted, subject to a fine of not more than \$1,000 for each offense. Health Code § 5-210.
2. Any person who "knowingly obstruct[s], resist[s], or interfere[s] with the Commissioner or any officer or employee of the Department while carrying out their powers and duties" is guilty of a misdemeanor and, if convicted, subject to a fine of up to \$500 for each offense. Health Code §§ 2-205, 2-212.
3. Any person who "fail[s] to comply with any order or notice issued under this article or under the authority of the Health Commissioner" is guilty of a misdemeanor and, if convicted, subject to a fine of up to \$200 for each offense plus \$50 for each day that the offense continues. Health Code §§ 2-207, 2-213.
4. An Environmental Control Board citation with a penalty of \$100 can be issued for a violation of a nuisance abatement

notice issued under the Health code. City Code Art. 1, § 40-14(e)(7).

**D. REQUEST FOR COMMENT**

The Commissioner of Health is requesting comments on this regulatory proposal. The comment period will end on September 29, 2006. All comments must be received by this date.

Please address comments to Olivia Farrow, Assistant Commissioner for Environmental Health, Baltimore City Health Department, 210 Guilford Avenue, Baltimore MD 21202. Email: [Olivia.Farrow@baltimorecity.gov](mailto:Olivia.Farrow@baltimorecity.gov).

**Stevenson, Todd A.**

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**From:** Durham, Carrie [Carrie.Durham@baltimorecity.gov]  
**Sent:** Monday, August 21, 2006 10:20 AM  
**To:** Stevenson, Todd A.  
**Cc:** Sharfstein, Josh M.D.; Farrow, Olivia  
**Subject:** Comments to Petition HP 06-1  
**Attachments:** Comment on Petition HP06-1.pdf; ProposedRegulationJewelry.pdf

Attached is the Baltimore City Health Department's comment on Petition HP 06-1. A supplementary document to the comment is also attached.

Carrie A. Durham  
Health Program Administrator  
Division of Environmental Health  
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# Consumers Union

ADVOCATE OF  
PUBLIC INTEREST  
PUBLISHER OF  
CONSUMER REPORTS

Lead  
Toy  
Jewelry

August 21, 2006

Office of the Secretary  
U. S. Consumer Product Safety Commission  
Room 502  
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Bethesda, Maryland 20814  
Via: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).  
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**Comments of Consumers Union of the U.S., Inc.  
to the U.S. Consumer Product Safety Commission on  
Petition HP 06-1  
"Petition Requesting Ban on Lead Toy Jewelry"**

## Introduction

Consumers Union (CU), publisher of *Consumer Reports* magazine, submits the following comments in response to the U.S. Consumer Product Safety Commission's (CPSC or Commission) Notice, "Petition Requesting Ban on Lead Toy Jewelry (Petition)".<sup>1</sup> The CPSC has published this Notice soliciting comments concerning a petition filed by the Sierra Club requesting that the CPSC ban toy jewelry containing more than 0.06% lead. CU strongly supports the Petition, and urges the CPSC to establish the requested ban – and convert its voluntary guidance on lead in consumer products, issued December 22, 1998<sup>2</sup>, to enforceable regulations.

## Background

The well-documented effects of lead toxicity are often acute, severe and irreversible. Lead accumulates from multiple sources to generate average body burdens that continue to exceed 10 µg/dl, the level identified by the CDC as

<sup>1</sup> 71 Fed. Reg. 35416 (June 20, 2006).

<sup>2</sup> Codification of Guidance Policy on Lead in Consumer Products

cause for concern. Because not all sources can be easily eliminated and because no safe exposure threshold has been established for lead, it is imperative that we eliminate as many avoidable sources as possible. There is simply no reason for continued use of this chemical in paints or plastics, especially those used in products designed for children. CPSC's current guidance threshold for lead in consumer products, lead levels that result in no more than 15 µg of ingested lead per day, is ineffective and contributes nothing toward the federal government's goal of eliminating childhood lead poisoning by 2010. Instituting a ban and stronger regulations for lead in consumer products is a critical step in achieving this important goal.

Federal regulations have been effective in eliminating lead from gasoline, paint, and other consumer products. However, regulations have not been effective at preventing lead-laden children's jewelry from infiltrating the marketplace. In the last three years, one death and some 20 recalls resulted from lead in children's jewelry. In total more than 164 million units have been recalled; collectively more than any other single recalled product in history.

#### Failures of the recall system

The recall system is a reactive process that simply does not work to protect children from lead in toys. Toy jewelry is small, quickly dispersed in the marketplace and virtually impossible to track once it's sold. Pieces are not labeled, there is no serial number and there are usually few, if any unique features that would enable consumers to identify recalled products. In addition, consumers have no practical way to screen these products for lead. Screening tools available to enable consumers to detect lead, such as the LeadCheck swabs, don't work on most toy jewelry. In fact, safety of this product category has been so unreliable that consumers can no longer be sure that any toy jewelry they purchase is safe.

Even when products are recalled, there is no guarantee that they will remain off store shelves. Our own investigation of the recall system, published in the November of 2004 issue of *Consumer Reports*<sup>3</sup>, found recalled products, including toy jewelry, with unsafe lead levels being sold in dollar stores in the U.S. as well as in other countries.

The situation reflects trends in the global economy that have made it easier for hazardous materials and off-spec products to enter and remain in the marketplace and harder to keep unscrupulous manufacturers from continuing to supply unsafe products. Clearly the situation is dire, and without the serious consequences of a ban, manufacturers don't have sufficient incentive to ensure that lead is kept out of children's products. CPSC needs to exercise its full authority to fulfill its responsibilities to protect consumers.

### Conclusion

In light of the serious consequences of lead toxicity to children, the ubiquitous and uncontrolled distribution of lead-laden children's jewelry, and the ineffectiveness of the recall system for this product, we support the proposed ban of lead in children's jewelry. We urge CPSC to look beyond toy jewelry and consider expanding a ban to all children's products, or at least converting the current voluntary guidance on lead in consumer products to enforceable regulation. Our own tests have confirmed the presence of lead in children's vinyl lunchboxes.<sup>4</sup>

For the foregoing reasons, we strongly urge the Commission to move quickly to ban jewelry, intended for use by children, containing more than 0.06% lead.

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<sup>3</sup> *Hazard in Aisle Five*, November 2004, *Consumer Reports* magazine

<sup>4</sup> *Safety Alert: Boy's Death Linked to Lead Bracelet, but Hazards go Beyond Jewelry*, March 2006, *Consumer Reports* magazine; and *Prevent Holiday Hazards*, December, 2005, *Consumer Reports* magazine.

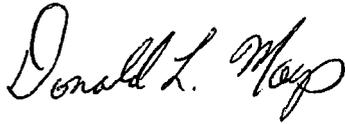
Respectfully submitted,



Janell Mayo Duncan  
Senior Counsel for Legal and  
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Senior Director,  
Product Safety and Consumer Sciences

**Stevenson, Todd A.**

---

**From:** MAYSDO@consumer.org  
**Sent:** Monday, August 21, 2006 4:58 PM  
**To:** Stevenson, Todd A.  
**Cc:** DUNCJA@consumer.org; cairca@consumer.org; MAYSDO@consumer.org;  
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**Subject:** Attached image data.  
**Attachments:** 28990.pdf



28990.pdf (200 KB)

Please see attached.

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

August 21, 2006

Office of the Secretary  
United States Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

**Re: Petition HP 06-1, Petition Requesting Ban on Lead Toy Jewelry**

To whom it may concern:

Lead-poisoning is the most preventable environmental disease impacting young children. Illinois is particularly sensitive to this problem because it reports the highest number of lead-poisoned children in the nation, every year. According to the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention ("CDC"), 310,000 preschool children in the United States have harmful levels of lead in their blood. While they are most commonly exposed to lead through lead-based paint in older homes, tainted food, candy, toys, water or other items can also be significant sources of lead exposure for children ages six and younger. Children can be lead-poisoned by a single lead exposure or cumulative small exposures over time.

With the federal goal of eliminating childhood lead-poisoning by 2010, it is imperative that the U.S. Consumer Product Safety Commission ("CPSC") take all action necessary to reduce childhood exposure to lead. One way is to prevent children from exposure to lead in children's products. Sierra Club's request for CPSC action under 5 U.S.C. § 553(e) makes good sense.<sup>1</sup>

First, CPSC should adopt regulations declaring that any toy jewelry containing more than 0.06% lead by weight for which there is a reasonably foreseeable possibility

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<sup>1</sup> On June 15, 2006, the Office of the Illinois Attorney General submitted comments to the Environmental Protection Agency ("EPA") regarding the Sierra Club's petition to the EPA.

that children could ingest be declared a banned hazardous substance pursuant to §§ 2(q)(1)(B) and 3 of the Federal Hazardous Substance Act, 15 U.S.C. 1261-1278. Adopting these regulations should be an interim step as CPSC works to determine if a lower lead concentration is more appropriate in children's products.

Second, CPSC should revise its December 22, 1998 Codification of Guidance Policy on Lead in Consumer Products ("Guidelines") to reflect CDC's most recent statement and study results regarding children's lead-poisoning. In 2005, CDC released a statement indicating that the 0.10% lead level on which CPSC's Guidelines were based was not intended to serve as a toxicologic threshold; it was intended to represent a level at which parents and communities should be alerted to danger and take action to prevent lead-poisoning. Furthermore, CDC's review of recent studies states that there were adverse health effects in children at BLLs <10µg/dL, indicating that 0.10% is not a safe threshold level for lead in children's products.

Finally, CPSC should convert its Guidelines into enforceable regulations. While the Guidelines are useful as a reference, they lack the force to change industry practice. If CPSC does not take preventative measures and enact federal regulations setting the maximum level of lead at 0.06% or lower, manufacturers and importers will continue to gamble on child safety by using hazardous amounts of lead in toy jewelry.

To this day, lead is used again and again in products for its most vulnerable victims – children.<sup>2</sup> Lead paint still coats everything from infant's romper snaps to Radio Flyer wagons, and lead has been found in crayons, sidewalk chalk, and vending machine jewelry at levels almost 550 times what is considered toxic in paint. To truly safeguard children against lead-poisoning, the 0.06% (or lower) standard should be applied to all children's products, not just toy jewelry. The Office of the Illinois Attorney General recommends that CPSC regulate children's exposure to lead in additional items including toys and clothing, because children can be lead-poisoned by anything to which they have access.

The need for federal regulation of lead levels in toy jewelry should not be underestimated. Just this year, the following manufacturers recalled almost two million units of toy jewelry for high lead contents: Art Accentz™ Changlz™ Metal Charms recalled 29,000 units of metal charms;<sup>3</sup> American Girl Inc. recalled 180,000 of children's jewelry;<sup>4</sup> Reebok International Ltd. recalled 300,000 units of heart-shaped charm bracelets;<sup>5</sup> Dollar Tree Stores Inc. recalled 580,000 mood necklaces and rings, glow-in-

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<sup>2</sup> KIDS IN DANGER, PLAYING WITH POISON: LEAD POISONING HAZARDS OF CHILDREN'S PRODUCT RECALLS, 1990-2004, available at [http://kidsindanger.org/04v1/publications/reports/2004\\_playingwithpoison.pdf](http://kidsindanger.org/04v1/publications/reports/2004_playingwithpoison.pdf).

<sup>3</sup> U.S. Consumer Product Safety Commission, available at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06093.html>, Release #06-093.

<sup>4</sup> U.S. Consumer Product Safety Commission, available at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06123.html>, Release #06-123.

<sup>5</sup> U.S. Consumer Product Safety Commission, available at <http://www.cpsc.gov/cpsc/pub/prerel/prhtml06/06119.html>, Release #06-119.

the dark necklaces and rings, and UV necklaces and rings;<sup>6</sup> Oriental Trading Company recalled 25,000 units of beaded photo charm bracelets;<sup>7</sup> Selected Trading Corp. recalled 55,000 units of children's necklaces;<sup>8</sup> Liz Claiborne Inc. recalled 2,800 units of Juicy Couture children's jewelry;<sup>9</sup> and Twentieth Century Fox Home Entertainment recalled 730,000 units of metal charms enclosed with certain DVDs.<sup>10</sup>

Kids In Danger, a nonprofit organization dedicated to improving children's product safety, reported that between 1990 and 2004 over 152 million pieces of vending machine toy jewelry were recalled because of elemental lead.<sup>11</sup> Some of the toy jewelry contained 30% lead, a level that is over 550 times that which is considered to be toxic in paint and soil.<sup>12</sup> Moreover, of the products with known locations of manufacture between 1990 and 2004, only one was manufactured in the United States. Over 50% were manufactured in China.<sup>13</sup> With the increase in children's products coming from outside the U.S., it is imperative that regulations prohibit unsafe products *before* they enter the market.<sup>14</sup> In 2005, the two largest recalls were also for dangerous lead levels in toy jewelry.<sup>15</sup> Stravinia Operating Co. recalled 6 million units of children's necklaces and zipper pulls, and Hirschberg Schultz & Co. recalled 2.8 million metal picture frame charms sold at Michael's, Recollections and Hancock Fabrics stores.<sup>16</sup> In both 2004 and 2005, lead levels in the children's products with the highest number of recalls were not discovered until children became ill from lead-poisoning.<sup>17</sup> This year, the serious risk the products posed to children was demonstrated by the death of a child from Minneapolis, Minnesota who swallowed a piece of a trinket with high lead content.

The Office of the Illinois Attorney General works actively to reduce childhood lead-poisoning, in part because Chicago and Illinois have the most lead-poisoning cases in the nation. Given that the Illinois Department of Public Health estimates that more than 81,000 children are being harmed by lead, we view lead-poisoning prevention as imperative. Some efforts in which the Office of the Attorney General has engaged include participating in a state-wide embargo of imported Mexican candy with dangerous

<sup>6</sup> U.S. Consumer Product Safety Commission, *available at* <http://www.cpsc.gov/cpsc/pub/prerec/prhtml06/06118.html>, Release #06-118.

<sup>7</sup> U.S. Consumer Product Safety Commission, *available at* <http://www.cpsc.gov/cpsc/pub/prerec/prhtml06/06538.html>, Alert #06-538.

<sup>8</sup> U.S. Consumer Product Safety Commission, *available at* <http://www.cpsc.gov/cpsc/pub/prerec/prhtml06/06150.html>, Release #06-150.

<sup>9</sup> U.S. Consumer Product Safety Commission, *available at* <http://www.cpsc.gov/cpsc/pub/prerec/prhtml06/06160.html>, Release #06-160.

<sup>10</sup> U.S. Consumer Product Safety Commission, *available at* <http://www.cpsc.gov/cpsc/pub/prerec/prhtml06/06156.html>, Release #06-156.

<sup>11</sup> KIDS IN DANGER, PLAYING WITH POISON, *supra* note 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, see 4-5 and 7-8 (tables for children's products recalled since 1990 for lead paint hazards and elemental lead hazards, respectively).

<sup>15</sup> KIDS IN DANGER, DANGERS AT PLAY: CHILDREN'S PRODUCT RECALLS IN 2005, *available at* [http://kidsindanger.org/04v1/publications/reports/2006\\_Dangers.pdf](http://kidsindanger.org/04v1/publications/reports/2006_Dangers.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> KIDS IN DANGER, HAZARDS OF CHILD'S PLAY: CHILDREN'S PRODUCT RECALLS IN 2004, *available at* [http://kidsindanger.org/04v1/publications/reports/2005\\_ChildsPlay.pdf](http://kidsindanger.org/04v1/publications/reports/2005_ChildsPlay.pdf).

levels of lead and issuing consumer alerts on recalled children's products containing lead. In 2003, our office joined forty-nine other Attorneys General in an agreement with paint manufacturers aimed at educating and warning consumers about the risk of lead paint exposure during repainting and renovation work. Currently, we are working to ensure that lunch bags do not contain excess levels of lead, and to strengthen Illinois' own Lead Poisoning Prevention Act ("LPPA").

The Illinois Legislature and Governor also recognize the seriousness of childhood lead-poisoning. Most recently, the Legislature passed HB 4853<sup>18</sup> which amended the LPPA, and on June 20, 2006, Governor Rod Blagojevich signed HB 4853 into law as PA 94-0879.<sup>19</sup> PA 94-0879 defines a lead bearing substance as any item containing or coated with more than 600 PPM lead (0.06%). It also broadens the definition of products banned in Illinois based on their lead content (above 0.06%) and use by children to include clothing, accessories, jewelry, decorative objects, edible or chewable items, candy, food and dietary substances. Additionally, PA 94-0879 requires manufacturers to clearly mark with warning labels, products containing excess levels of lead (above 0.06%) that are intended for use by the general public. Our office was proud to support this important legislation.

The Office of the Illinois Attorney General has enforcement authority under the LPPA, which we use to the best of our ability to track down lead-containing products. Ultimately, however, the only way to fully protect our children is to ensure that those products never enter the market in the first instance, through federal action that applies to all children's products. No matter how large our resource outlay to enforce the LPPA, there are some lead-containing products that will fall through the enforcement cracks and potentially harm children. What is more, such enforcement – necessitated by the failure thus far of federal agencies to prohibit the manufacture of lead-containing children's products – puts a severe strain on the resources of our office and other responsible state agencies, as we are compelled to spend our limited time and budgets chasing down lead-containing products that should never have been placed on the market in the first place. These efforts drain resources away from our efforts to address lead poisoning through other avenues, most notably enforcement of laws governing lead paint. Clearly, the more resource-efficient approach to protecting our children from lead is a front-end prohibition from the federal government rather than after-the-fact state investigations.

Sierra Club's requests of preventative measures and enforcement will make toy jewelry lead-safe for children. There is simply no functional benefit, besides purported cost savings, to manufacturing children's products with lead as opposed to alternative materials. No child's developmental potential should be jeopardized for playing with a toy or wearing an article of clothing.

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<sup>18</sup> Available on-line at <http://www.ilga.gov/legislation/94/HB/PDF/09400HB4853lv.pdf>.

<sup>19</sup> Available on-line at <http://ilga.gov/legislation/publicacts/94/PDF/094-0879.pdf>.

On behalf of the citizens of Illinois, I thank you for your consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a smaller, more compact script than the last name "Madigan".

Lisa Madigan, Illinois Attorney General

Sent via facsimile