National Pollution Prevention and Toxics Advisory Committee (NPPTAC)

November 22, 2005

Honorable Stephen L. Johnson
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Dear Administrator Johnson,

On behalf of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC), I am pleased to present to you three Committee recommendations and an Overview Document on Nanoscale Materials for your consideration. The NPPTAC was established in September 2002 to provide EPA with advice, information, and recommendations on the overall policy and operations of programs undertaken by the Office of Pollution Prevention and Toxics (OPPT).

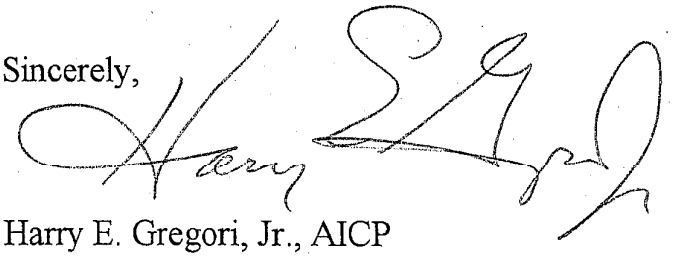
The first two recommendations deal with Tribal issues. One calls for Focused OPPT-Tribal Conversations on Tribal Access to, and Utilization of, Publicly Available Chemical Hazard and Exposure Data, and the second is aimed at Increasing Green Building Adoption on Tribal Lands. The third recommendation applies broadly to OPPT programs and deals with Lead Poisoning Prevention from Sources other than Lead-Based Paint.

The Committee is also providing to EPA for consideration an Overview Document on Nanoscale Materials. The Overview Document originated from efforts of the NPPTAC's Interim Ad Hoc Workgroup on Nanoscale Materials which met via numerous conference calls in August, September, and October 2005, held a September 29 public session to obtain broad stakeholder input, and considered public comments received during a June 2005 EPA public meeting on nanoscale materials. After Committee discussion and deliberation, the NPPTAC has determined that EPA should consider the Overview Document's analysis and views of a framework for EPA's approach to a voluntary program for engineered nanoscale materials, a complementary approach to new chemicals nanoscale

requirements under the Toxic Substances Control Act (TSCA), and other relevant issues presented. EPA should also consider issues raised by stakeholders, the public, and the NPPTAC at the two public meetings and during NPPTAC sessions on nanoscale materials.

On behalf of the Committee, I thank you for the opportunity to participate in EPA's policy and program activities through the NPPTAC, and for considering these recommendations and the Overview Document on Nanoscale Materials.

Sincerely,



Harry E. Gregori, Jr., AICP
Co-Chair

Enclosures

cc: NPPTAC Members

National Pollution Prevention and Toxics Advisory Committee (NPPTAC) Recommendations to the EPA Administrator and Deputy Administrator on Lead Poisoning Prevention from Sources Other than Lead-Based Paint

November 17, 2005

BACKGROUND

NPPTAC's Broader Issues Work Group has considered the current status of the federal goal, established in 2000, of eliminating elevated blood lead levels (BLLs) in children as a major public health concern by 2010. While more is needed to achieve the federal goal, tremendous progress has been made. A May 27, 2005 report from U.S Centers for Disease Control and Prevention (CDC) shows that the number of children with elevated blood lead levels has declined from 890,000 in 1991-94 to 310,000 in 1999-2002 The report concludes that identifying "remaining lead hazards and children at risk for lead exposure is needed to meet this [2010] goal."[1]

Federal agencies, such as Department of Housing and Urban Development, Centers for Disease Control and Prevention, Environmental Protection Agency, and Consumer Product Safety Commission, all indicate that lead-based paint in residential housing continues to be the dominant cause of elevated blood lead levels in children. EPA has several regulations aimed at addressing this source of exposure including standards that govern the identification and abatement of lead-based paint hazards. By the end of 2005 the Agency is also planning to issue a proposed regulation to address lead hazards resulting from renovations in homes with lead-based paint. EPA has asked NPPTAC to advise on strategic approaches to dealing with sources of lead other than lead-based paint that fall within the EPA authorities under TSCA. EPA also asked about ways for EPA to work with its Federal partners (e.g. Consumer Product Safety Commission, Centers for Disease Control and Prevention, and Food and Drug Administration) to develop an approach to this problem.

Recently, reports indicate that exposures to sources other than lead-based paint may be a continuing cause of concern. In August 2005, the U.S. Centers for Disease Control and Prevention released its *"Preventing Lead Poisoning in Young Children"* Report.[2] CDC states that

> "[b]ecause areas of the United States report that as many as 35% of children identified with elevated BLLs have been exposed to items decorated or made with lead, in some cases resulting in life-threatening BLLs, the second crucial element of a primary prevention strategy is identification and restriction or elimination of nonessential uses of lead, particularly in both imported and domestically manufactured toys, eating and drinking utensils, cosmetics, and traditional medicines. This effort requires identifying communities where cultural practices and traditional medicines may put children at risk

[1] U.S. Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report Volume 54 (20): pages 513-516, May 27, 2005. See http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5420a5.htm

[2] U.S. Centers for Disease Control and Prevention, "Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control and Prevention" August 2005. See http://www.cdc.gov/nceh/lead/lead.htm.

and incorporating lead poisoning prevention activities into health and community services that reach families at high risk for lead exposure from non-paint sources."[3]

Once the CDC report is officially published, Federal agencies will be determining future action.

With regard to sources of lead exposure other than lead-based paint, background information has been provided to the Work Group by the NPPTAC Federal Technical Advisors (FTAs) participating in Work Group discussions (CDC, FDA and CPSC). FTAs offered views that:

- FDA has legal authority under the Federal Food, Drug and Cosmetic Act to address hazards that are posed by the presence of lead in food, drugs and cosmetics which apply both domestic and imported products. In some cases, e.g., lead soldered food cans, ceramicware, FDA has established restrictions governing the use of lead in such articles. FDA uses other approaches in other situations such as case-by-case enforcement actions, working with foreign governments to prevent potential problems at the manufacturing level in the source country, and educational outreach to targeted sub-populations.
- "CPSC protects children from hazardous exposures to lead ...in consumer products under the Consumer Product Safety Act...and the Federal Hazardous Substances Act (FHSA)... In 1978, CPSC banned paint containing in excess of 0.06% lead by weight intended for consumer use...The Commission can take action against a product that contains lead ... or any other toxic substance under the FHSA, but it must find that the product is a 'hazardous substance' as that term is defined...A toy or other article intended for use by children which contains a hazardous substance that is accessible to children is a banned hazardous substance..."[4] CPSC does not have pre-market approval. These authorities apply to domestic and imported products.
- CPSC has a policy in place which states that "firms can avoid CPSC enforcement action by ensuring that the total lead content of each component of [children's] metal jewelry they offer for sale is below the 600ppm benchmark"[5]. This policy applies to domestic and imported products.

RECOMMENDATIONS[6]

In the context of efforts to support the federal goal established in 2000 of eliminating elevated blood lead levels in children as a major public health concern by 2010, NPPTAC recommends that EPA protect children from exposure to sources other than lead-based paint through the following recommendations.

1. **Office of Pollution Prevention and Toxics should, pursuant to its authorities and in cooperation with other federal, state, and local agencies, as well as Tribal governments,**

[3] Id at pages 4 and 5.
[4] Consumer Product Safety Commission, "CPSC Staff Report on Lead and Cadmium in Children's Polyvinyl Chloride (PVC) Products" November 1997.
[5] Consumer Product Safety Commission, "Interim Enforcement Policy for Children's Metal Jewelry Containing Lead" February 3, 2005.
[6] This recommendation is not meant to suggest a contingency, implied or otherwise, on EPA's ability to act under TSCA.

undertake to prevent lead exposure to children from uses other than lead-based paint. OPPT should use TSCA authorities and other means to identify sources of potential exposure to children from uses of lead other than lead-based paint. Based on the information gathered, EPA should develop areas for action and should prioritize these, based on the likelihood of lead exposure to children and opportunities for risk reduction and pollution prevention considering the lifecycle of products.

Having identified and prioritized these sources, act on situations where OPPT can contribute to the restriction or elimination of sources of exposure to children from lead, other than lead-based paint, for example:

a) **Develop a systematic approach to help ensure that manufacturers, importers, processors and retailers are aware of the potential hazards from exposure to lead and that they consider whether children may be exposed to lead hazards from the expected uses of their product.**

b) **Work cooperatively with product manufacturers, importers and processors, as well as other federal agencies, to identify situations where uses of lead can be substituted with safer alternatives.**

c) **Work with manufacturers, importers and processors that have experienced significant and repeated problems with unintended lead contamination in their products to institute measures to reduce the lead contamination.**

2. **EPA should ensure through its water, air, remediation and solid waste offices, backed by its enforcement authority and consistent with regulations, that exposures to lead are eliminated or limited. OPPT should coordinate with EPA's other offices to more effectively consider aggregate lead exposure in risk assessment and management activities, including monitoring and control efforts.**

3. **Education of manufacturers, importers, processors, retailers and consumers is an essential step in achieving this goal. OPPT should develop educational programs to inform manufacturers, retailers and consumers about potential sources of lead exposure to children other than lead-based paint as well as alternative technologies and products.**

EPA should work cooperatively with the regulated community, federal, state, and local agencies, and other stakeholders to implement these recommendations. It should ensure that the effort is consistent with existing authorities of the other federal agencies. EPA should report back to NPPTAC on its progress with regard to these issues periodically through 2006, with an initial report to the January 2006 NPPTAC meeting, including the state of play of any potential regulatory actions.

EPA'S TSCA AUTHORITIES

Within EPA's authority and jurisdiction under TSCA to regulate chemicals in commerce, a number of actions could be pursued in implementing the NPPTAC recommendation, including.

- EPA could issue Section 8(a) rules to gather information that would support a better understanding of exposures associated with chemical substances or mixtures containing lead. Information gathered under Section 8(a) could include the amount of lead in a substance or mixture, how the substance or mixture is used, and whether and how children are exposed. Section 8(a) could be used to gather information from people who intend but have not yet commenced using lead for a particular purpose. Section 8(a) can also be used to gather existing data concerning health and environmental effects.
- EPA could evaluate Section 8(c) records of significant adverse effects to health or the environment for indications that adverse effects are being caused by a quality control problem.
- EPA could use Section 8(d) rules to obtain health and safety studies on chemical substances or mixtures containing lead.
- EPA screens Section 8(e) notices of substantial risk to determine whether further risk management or risk assessment action is needed. 8(e) notices revealing hitherto unrecognized sources of exposure to lead may result in risk management actions such as voluntary agreements, Section 6(a) rules or 6(b) orders.
- EPA reviews Section 5 PMNs for all new chemical substances including those that include lead. If necessary, following review of a PMN notice or a significant new use notice, EPA could issue an order under Section 5(e) or 5(f) to restrict the proposed use of the chemicals substance of mixture.
- EPA could issue a Section 5 SNUR for discontinued uses of lead in order to capture and codify sources of exposure other than lead-based paint.
- EPA could issue a rule under Section 6(a) to control unreasonable risk. Under Section 6 (a) EPA may issues rules to:
    - prohibit (or limit) the manufacture, processing, or distribution in commerce of a substance/mixture;
    - prohibit (or limit) the manufacture, processing, or distribution in commerce of substance/mixture for a particular use or for a particular use at a particular concentration;
    - require a substance/mixture, or any article containing the substance/mixture, to be labeled or accompanied by warnings and instructions for use, distribution, or disposal;
    - require manufacturers and processors of a substance/mixture to keep records of manufacturing/processing methods and conduct reasonable monitoring or testing necessary to assure regulatory compliance;
    - prohibit or otherwise regulate commercial use of a substance/mixture;
    - prohibit or otherwise regulate disposal of a substance/mixture, or any article containing the substance/mixture, by manufacturers, processors, or anyone who uses it, or disposes of it, for commercial purposes; or

    - require manufacturers or processors to notify distributors, other persons in possession of the substance/mixture, and the general public of the risk of injury and replace or repurchase the substance/mixture.
- EPA may issue a quality control order under Section 6(b). If EPA determines that a particular manufacturer's or processor's quality control procedures are inadequate to prevent an unreasonable risk, EPA may order the manufacturer or processor to modify its quality control procedures to the extent necessary to remedy the inadequacy. In addition, if EPA determines that a chemical which presents an unreasonable risk has been distributed, EPA may order the manufacturer or processor to notify its customers and the general public, and to replace or repurchase the chemical as necessary to protect health and the environment.