

**Comments of the Attorneys General of
Illinois, California, Delaware, the District of Columbia, Hawaii, Maryland, Massachusetts,
Minnesota, New Jersey, New York, Oregon, Pennsylvania, and Rhode Island**

October 2, 2023

Via electronic submission to www.regulations.gov

U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Re: Docket ID No. EPA-HQ-OPPT-2023-0231-0001; Multistate Comments in Response to the U.S. Environmental Protection Agency’s Proposed Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels

Dear Administrator Regan:

The undersigned State Attorneys General of Illinois, California, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island and the Attorney General of the District of Columbia (“Attorneys General”) submit these comments supporting the U.S. Environmental Protection Agency’s (“EPA” or the “Agency”) proposed rules as it reconsiders its dust-lead hazard standards (“Hazard Standards”) and dust-lead post-abatement clearance levels (“Clearance Levels”), as authorized by the Toxic Substances Control Act (“TSCA”) (the “Proposal”).¹

The Attorneys General strongly support EPA’s efforts to strengthen the Agency’s Hazard Standards and lower its post-abatement Clearance Levels to further important public health protections against dangerous dust-lead and lead paint exposures. Setting the Hazard Standards for window sills, window troughs, and floors at any reportable level greater than zero appropriately reflects the scientific consensus that there is no safe level of lead exposure. The Attorneys General oppose EPA’s alternative, less protective approaches to setting the Hazard Standards. Moreover, the Attorneys General also urge EPA to adopt the proposed stricter primary dust-lead post-abatement Clearance Levels, which take into account “reliability, effectiveness, and safety” and are also more protective of human health than the alternative Clearance Levels.

EPA’s Proposal is especially necessary to address the longstanding disparate impact of dust-lead exposure on low-income communities and communities of color. Environmental Justice communities have the highest rates of lead exposure, creating serious health risks. These disparities are seen through our states’ first-hand experiences in combating the effects of dust-lead on our residents’ health. Accordingly, we urge EPA to promptly adopt its Proposal to begin to address these inequities.

¹ 88 Fed. Reg. 50,444 (Aug 1, 2023).

While the Attorneys General support EPA's Proposal, we also urge the Agency to promptly move forward with rulemakings addressing lead in soil and how lead paint is defined. EPA is legally obligated to update these rules pursuant to a court order. These rules work in tandem with the Hazard Standards and Clearance Levels, and we believe they are essential to meaningfully reduce the health impacts of lead exposure, particularly for children. We also urge EPA to effectively communicate the changes in this program to the public.

Herein, we describe background information related to EPA's Proposal, summarize the Proposal itself, and then offer the Attorneys General's suggestions for strengthening the Proposal in accordance with the Agency's mandate under TSCA to protect public health and the environment from highly toxic substances like lead paint.

I. Exposures to Lead Present Serious Risks to Public Health and Welfare

There is no safe level of exposure to lead in one's environment.² Lead exposure is most harmful to children younger than six, whose bodies are just beginning to develop and are more susceptible to lead's toxicity. Young children also have a greater tendency to engage in hand-to-mouth behavior, which can lead to gastrointestinal absorption of lead.³ Exposure to lead is associated with a variety of serious, potentially irreversible health effects: brain damage, harm to the nervous system, delayed growth and development, learning and behavioral issues, juvenile delinquency, impaired hearing and speech, reduced IQ and attention, lower school performance, seizures, and comas.⁴ According to the International Agency for Research on Cancer, lead compounds are also likely carcinogenic to humans.⁵

Blood-lead levels ("BLLs") below the Centers for Disease Control and Prevention blood lead reference value of 3.5 µg/dL have been associated with harmful health impacts in children and adolescents. One nationally representative study of U.S. children found that BLLs greater than 3 µg/dL were associated with tooth decay.⁶ In nationally representative studies of U.S. adolescents, BLLs as low as 3 µg/dL were associated with impaired kidney function⁷ and BLLs as low as 1.35 µg/dL with elevated cholesterol.⁸ In both studies, the dose-response relationships appeared linear. Even BLLs just exceeding 1 µg/dL may disrupt growth. Across the U.S., girls with BLLs greater than 1 µg/dL were shorter, had lower BMI and body fat, and had smaller waist

² EPA, *Basic Information About Lead in Drinking Water*, <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water>.

³ Centers for Disease Control and Prevention, *Childhood Lead Poisoning Prevention, Health Effects of Lead Exposure*, <http://www.cdc.gov/nceh/lead/prevention/health-effects.htm>; California Department of Public Health, *California's Progress in Preventing and Managing Childhood Lead Exposure* at 4, <https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/CLPPB/CDPH%20Document%20Library/CLPPBReport2020.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ Moss, M.E., *et al.*, *Association of Dental Caries and Blood Lead Levels*, JAMA (1999), 281, 2294-2298, <https://pubmed.ncbi.nlm.nih.gov/10386553/>.

⁷ Fadrowski, J.J., *et al.*, *Blood Lead Level and Kidney Function in U.S. Adolescents*, Arch. Intern. Med. (2010), 170, 75-82, <https://pubmed.ncbi.nlm.nih.gov/20065202/>.

⁸ Xu, C., *et al.*, *Associations Between Lead Concentrations and Cardiovascular Risk Factors in U.S. Adolescents*, Scientific Reports (2017), 7(1), 9121, <https://www.nature.com/articles/s41598-017-09701-4>.

circumference as they aged.⁹ In the Akwesasne Mohawk Nation, girls with BLLs greater than 1.2 µg/dL reached menarche 10.5 months later than girls with BLLs less than 1.2 µg/dL.¹⁰

Even very low BLLs also have been associated with neurodevelopmental and behavioral challenges. In nationally representative samples of U.S. children and adolescents, BLLs above 1.3 µg/dL and 2 µg/dL were associated with 2.3- and 4.1-times greater likelihood of attention deficit hyperactivity disorder (ADHD), respectively.¹¹ Effects were detected at similar exposure levels in Korea, where children with BLLs greater than 2.3 micrograms per deciliter (µg/dL) were 2.5 times more likely to have ADHD, and in North Carolina, where an increase in child BLL from 1 to 2 µg/dL was associated with higher a chance of math test failure.¹²

Considering there is no safe level of lead, even slight elevations in BLLs may increase the risks of health and behavioral issues. A nationally representative study of U.S. girls found that a 1 µg/dL increase in BLL was associated with a 2- to 6-month delay in sexual maturation.¹³ In children worldwide, increasing BLLs by 1 µg/dL has been associated with greater emotional reactivity and anxiety problems and developmental problems including poor language development.¹⁴

Studies of adults allow the estimation of mortality risk associated with blood-lead. Three studies evaluated the association between blood-lead and mortality in similar nationally representative samples of U.S. adults yet produced different findings.¹⁵ In one study, very low BLLs (at or above 2 µg/dL) were associated with myocardial infarction and stroke mortality. Another study went further, finding that a mere 0.1 µg/dL increase in BLL was associated with a 39% increase in all-cause mortality, a 35% increase in cardiovascular mortality, and a 47% increase in cancer mortality.¹⁶ In contrast, another study found that a tenfold increase in BLLs

⁹ Deierlein, A. L., et al., *Lead Exposure During Childhood and Subsequent Anthropometry Through Adolescence in Girls*, Environment International (2019), 122, 310–315, <https://www.sciencedirect.com/science/article/pii/S0160412018318488?via%3Dihub>.

¹⁰ Denham, M. et al., *Relationship of Lead, Mercury, Mirex, Dichlorodiphenyldichloroethylene, Hexachlorobenzene, and Polychlorinated Biphenyls to Timing of Menarche among Akwesasne Mohawk Girls*, Pediatrics (2005), 115, 127-134, <https://pubmed.ncbi.nlm.nih.gov/15653789/>.

¹¹ Braun, J.M., et al., *Exposures to Environmental Toxicants and Attention Deficit Hyperactivity Disorder in U.S. Children*, Environ. Health Perspect. (2006), 114, 1904-1909, <https://pubmed.ncbi.nlm.nih.gov/17185283/>.

¹² Miranda, M.L., et al., *The Relationship between Early Childhood Blood Lead Levels and Performance on End of Grade Tests*, Environ. Health Perspect. (2007), 115, 1242-1247, <https://pubmed.ncbi.nlm.nih.gov/17687454/>.

¹³ Selevan, S.G., et al., *Blood Lead Concentration and Delayed Puberty in Girls*, New Engl. J. Med. (2003), 346, 1527-1536, <https://pubmed.ncbi.nlm.nih.gov/12700372/>.

¹⁴ Liu J, et al., *Blood Lead Concentrations and Children's Behavioral and Emotional Problems: A Cohort Study*, JAMA Pediatrics (2014), 168(8):737–45, <https://pubmed.ncbi.nlm.nih.gov/25090293/>; Solon, O., et al., *Associations Between Cognitive Function, Blood Lead Concentration, and Nutrition among Children in the Central Philippines*, J. Pediatr. (2008), 152, 237-243, <https://pubmed.ncbi.nlm.nih.gov/18206696/>; Fariás, P., et al., *Prenatal Co-Exposure to Manganese, Mercury, and Lead, and Neurodevelopment in Children during the First Year of Life*, International Journal of Environmental Research and Public Health (2022), 19(20), 13020, <https://pubmed.ncbi.nlm.nih.gov/36293596/>.

¹⁵ Menke, A., et al., *Blood Lead Below 0.48 micromol/L (10 microg/dL) and Mortality among U.S. Adults*, Circulation (2006), 114(13), 1388–1394, <https://pubmed.ncbi.nlm.nih.gov/16982939/>.

¹⁶ Duan, W., et al., *Levels of a Mixture of Heavy Metals in Blood and Urine and All-Cause, Cardiovascular Disease and Cancer Mortality: A Population-Based Cohort Study*, Environmental Pollution (2020), 263(Pt A), <https://pubmed.ncbi.nlm.nih.gov/33618481/>.

raised associated cardiovascular mortality by 44%. All these studies concluded that blood-lead was associated with increased mortality, but they diverged in determining the level at which such effects may be observed.¹⁷

Lead exposure does not impact all children equally. Children living in poverty have the highest rates of lead exposure, and children of color suffer the highest risk of lead poisoning.¹⁸ In fact, “non-Hispanic Black children [are] nearly three times as likely as White children to have highly elevated blood lead levels and the subsequent disabling conditions.” Adults also suffer adverse effects from lead exposure, experiencing increased “risk for chronic renal failure, premature death, and hypertension and coronary heart disease.” Lead exposure exacts a profound toll on our economy, costing “billions of dollars in public spending on health care, special education, juvenile justice, and other social services.”¹⁹

According to the Centers for Disease Control and Prevention, some of the most common and harmful sources of lead exposure for young children are lead-based paint²⁰ and lead-contaminated dust in homes constructed before 1978.²¹ Children are exposed to lead-based paint when they eat chipping or peeling paint, or chew on buildings components such as windowsills. Lead-contaminated dust can be invisible.²² Children’s exposure to lead-contaminated dust can arise from a variety of sources, including from dust generated from high friction or high impact surfaces covered in lead-based paint (e.g., from opening a window and opening and closing a door).²³

On a nationwide scale, more than 37 million homes, comprising nearly 35 percent of all housing in the country, contain lead-based paint that will “become a lead hazard if not closely monitored and maintained.”²⁴ In the United States, “one in three homes with children under the age of six has significant lead-based paint hazards that place occupants at risk of grave harm.”²⁵

Environmental justice impacts from lead paint are directly observed in BLL monitoring of young people living in Illinois. The most recent lead surveillance report conducted by the Illinois Department of Public Health shows that children in Illinois’ “high-risk zip codes” (a

¹⁷ Aoki, Yutaka, *et al.* *Blood Lead and Other Metal Biomarkers as Risk Factors for Cardiovascular Disease Mortality*, *Medicine* (Baltimore) (2015), 95(1):p e2223, <https://pubmed.ncbi.nlm.nih.gov/26735529/>.

¹⁸ Emily A. Benfer, *et al.*, *Health Justice Strategies to Eradicate Lead Poisoning: An Urgent Call to Action to Safeguard Future Generations* (2020) 19 *Yale J. Health Pol'y, L. & Ethics* 146, 150–151.

¹⁹ *Id.*

²⁰ It is a common misconception that the federal government banned all lead from consumer paint in 1978. To the contrary, in 1978, the allowable lead content in most paints for consumer use was limited to 0.06%, and later to 0.009% in 2009. *See* 16 C.F.R. § 1303.1, 16 CFR Section 1303.2; 16 C.F.R. § 1303.4. California’s definition of lead-based paint is lead content in paint or “other surface coatings” amounting to or exceeding 1.0 mg/cm² or 0.5% by weight (5000 ppm). *See* Cal. Code Regs., tit. 17, § 35033.

²¹ Centers for Disease Control and Prevention (CDC), *Lead in Paint*, <https://www.cdc.gov/nceh/lead/prevention/sources/paint.htm>.

²² Department of Housing and Urban Development, *The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*, 1995, Ch. 15: Clearance, p. 15-20, https://www.hud.gov/sites/documents/CH15_CLEARANCE_121212.PDF.

²³ CDC, *supra* note 21.

²⁴ Benfer, *supra* note 18, at 149.

²⁵ *Id.*

metric determined by family income, among other factors) are twice as likely to have an elevated blood-lead level compared to “low-risk zip codes.”²⁶ Black or African American children in Illinois are also disproportionately affected by lead exposure, suffering from a higher incidence of blood-lead levels than any other tested race group in Illinois.²⁷

II. EPA’s Regulation of Lead-Based Paint and Dust

a. Previous EPA Regulations of Lead-Based Paint and Dust

In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act.²⁸ Congress enacted this law because “lead paint was a national problem that required an urgent response.”²⁹ The law’s stated purpose was “to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible.”³⁰

The 1992 law also amended TSCA, adding Title IV, entitled “Lead Exposure Reduction.”³¹ Title IV required EPA to promulgate regulations that identify, among other things, “lead-based paint hazards”, defined as “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the [EPA] Administrator under this subchapter.”³² “Identifying the levels of lead in paint, as well as in dust and soil, that created dangers to health seemed to be an essential step in the effort to protect our nation’s children from the toxic effects of lead.”³³

The standards serve several important purposes.³⁴ For example, the standards “inform the public about what constitutes dangerous levels of lead in order to further risk assessment and abatement strategies.” States also “rely on the national standards in setting forth their own lead programs.”³⁵ Furthermore, “[p]ublic disclosures about lead dangers in most older housing must include the standards.”³⁶

Congress directed EPA to identify lead-based paint hazards within 18 months.³⁷ Yet, EPA did not adopt regulations determining lead-based paint hazard until 2001.³⁸ These regulations determined what constitutes lead-contaminated dust, lead-contaminated soil in residential

²⁶ Illinois Department of Public Health, 2020 Lead Surveillance Report at 21, <https://dph.illinois.gov/content/dam/soi/en/web/idph/publications/idph/topics-and-services/environmental-health-protection/lead-poisoning-prevention/lead-surveillance-report-2020.pdf>.

²⁷ *Id.* at 19.

²⁸ Pub L. 102-550, 106 Stat. 3672.

²⁹ *A Cmty. Voice v. EPA*, 997 F.3d 983, 988 (9th Cir. 2021) (the “2021 Decision”).

³⁰ 42 U.S.C. § 4851a(1).

³¹ 15 U.S.C. §§ 2681-92.

³² *Id.* at § 2681(10).

³³ *A Cmty. Voice*, 997 F.3d at 988.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ 15 U.S.C. § 2683.

³⁸ 66 Fed. Reg. 1206 (Jan. 5, 2001).

settings, and related Clearance Levels showing that the hazards have been cleaned. EPA based these regulations on then-current scientific knowledge about the health effects of lead in blood and set the “blood-lead level of concern” at 10 µg/dL.³⁹ With this in mind and while considering the costs of lead risk reduction, EPA established dust-lead Hazard Standards of 40 micrograms per square feet (µg/ft²) for floors and 250 µg/ft² for interior window sills.⁴⁰ Clearance Levels were set at 40 µg/ft² for floors, 250 µg/ft² for interior window sills, and 400 µg/ft² for window troughs. *Id.* EPA also set soil standards at 400 parts per million (ppm) by weight for play area bare soil and 1,200 ppm for bare soil in the remainder of a yard.⁴¹

“Within a few years, however, scientific knowledge had progressed to the point where it was generally understood that there is no safe level of lead, so that the previous lead-based paint standards were inadequate.”⁴² In 2009, a group of environmental advocates petitioned EPA to lower its Hazard Standards and modify its definition of lead-based paint.⁴³ EPA agreed to begin a new rulemaking but did not provide assurances on the rulemaking’s schedule or outcome. EPA failed to fulfill its promise before the petitioners were granted a writ of mandamus from the U.S. Court of Appeals for the Ninth Circuit in December 2017.⁴⁴ The Ninth Circuit’s writ required EPA to issue a final rule within one year. The Ninth Circuit concluded that TSCA’s “statutory framework clearly indicates that Congress did not want EPA to set initial standards and then walk away, but to engage in an ongoing process, accounting for new information, and to modify initial standards when necessary to further Congress’s intent: to prevent childhood lead poisoning and eliminate lead-based paint hazards.”⁴⁵

In 2019, EPA finalized a new rule updating its Hazard Standards and its definition of lead paint.⁴⁶ In this rulemaking, EPA acknowledged that there is no known safe level of lead in blood.⁴⁷ EPA reduced the Hazard Standards to 10 µg/ft² for floors and 100 µg/ft² for window sills. *Id.* In establishing these values, EPA explicitly considered whether they were achievable, whether laboratories could reliably detect these values, and other non-health considerations.⁴⁸ EPA also declined to change its definition of lead-based paint, asserting that more information was necessary to show a connection between concentrations of lead paint and dust-lead.⁴⁹ EPA did not alter Clearance Levels at this time but did so in a later rule.⁵⁰

³⁹ *Id.* at 1214-15.

⁴⁰ *Id.* at 1211.

⁴¹ *Id.*

⁴² *A Cmty. Voice*, 997 F.3d at 987.

⁴³ Letter from National Center for Healthy Housing, *et al.*, to EPA, “Citizen Petition to EPA Regarding the Paint and Dust Lead Standards,” (Aug. 10, 2009), https://www.epa.gov/sites/default/files/2015-10/documents/epa_lead_standards_petition_final.pdf.

⁴⁴ *A Cmty. Voice v. EPA*, 878 F.3d 779 (2017).

⁴⁵ *Id.* at 784.

⁴⁶ 84 Fed. Reg. 32,632 (July 9, 2019).

⁴⁷ *Id.* at 32,633.

⁴⁸ *Id.* at 32,638.

⁴⁹ *Id.* at 32,643.

⁵⁰ 86 Fed. Reg. 983 (Jan. 7, 2021).

When this rule was proposed, the Illinois Attorney General urged EPA to simultaneously reduce Clearance Levels and consider even lower Hazard Standards.⁵¹ That letter argued that a Hazard Standard of 5 µg/ft² would be more protective of health than the proposed standard while still being practically achievable.

b. 2021 Ninth Circuit Decision

In 2019, the same engaged environmental advocacy groups challenged the 2019 rule again before the Ninth Circuit.⁵² The petitioners argued that TSCA requires EPA to establish Hazard Standards exclusively based on health risk, without considering other non-risk factors such as compliance costs, and further asserted that declining to update the definition of lead-based paint and soil-lead hazard standards was arbitrary and capricious under the law.

In determining whether EPA could permissibly consider factors other than health when establishing the Hazard Standards, the court analyzed the statutory definition of “lead-based paint hazards”, mentioned above.⁵³ EPA, though acknowledging that there is no known safe level of lead in blood, argued that the statute empowers the Administrator to establish levels of lead that “would result in adverse human health effects”—thereby giving EPA discretion to account for factors other than health.⁵⁴ However, the court concluded that this was a flawed interpretation, and instead ruled that Congress had directed EPA to establish what conditions could cause harm.⁵⁵ Explaining its rationale, the court noted that the statute separates its directives on how to identify the danger from lead paint from its directives on how to implement those standards. The court also compared these TSCA provisions with other environmental statutes that use an identification/implementation dichotomy such as National Ambient Air Quality Standards and the Resource Conservation and Recovery Act.⁵⁶

The court then evaluated EPA’s decision not to revisit the definition of lead-based paint. EPA had not updated the definition since it was first established by statute in 1992 due to what the Agency characterized as uncertainty, even though the agency conceded that the definition was out-of-date given recent scientific advances. The court found that EPA could no longer rely on this uncertainty to defer action.⁵⁷

The court also examined EPA’s soil-lead hazard standards. As the court noted, when the soil-lead standards were adopted in 2001, they were designed so that 95% of children would have under 10 µg/dL of lead in their blood—the value that was at that time considered the level of concern.⁵⁸ The 2019 rule asserts that because the environmental petitioners did not address the soil-lead level in their 2009 petition, EPA was not obligated to reevaluate soil at that time. However, the court concluded that EPA was nevertheless under a statutory obligation to do so.

⁵¹ Illinois Attorney General, Comment on EPA’s Review of Dust-Lead Hazard Standards and Dust-Lead Clearance Levels (Aug. 16, 2018), <https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0166-0296>.

⁵² *A Cmty. Voice v. EPA*, 997 F.3d 983 (9th Cir. 2021).

⁵³ See 15 U.S.C. § 2681(10).

⁵⁴ *Id.*

⁵⁵ *A Cmty. Voice*, 997 F.3d at 990.

⁵⁶ *Id.* at 991.

⁵⁷ *Id.* at 993.

⁵⁸ *Id.* at 994.

Finally, the court considered EPA’s Clearance Levels, which the 2019 rule did not change. Reiterating its analysis of the Hazard Standards, the court discussed the hazard identification/implementation dichotomy to determine that the statute gives EPA the discretion to consider “reliability, effectiveness, and safety” in setting Clearance Levels.⁵⁹ However, because the Clearance Levels are closely related to the Hazard Standards, the choice to change the Hazard Standards means that EPA must also consider changing the Clearance Levels at the same time, ensuring that “[b]oth sets of standards . . . work together to effectuate Congress’ intent to end the hazards of lead poisoning in our children.”⁶⁰

c. 2023 EPA Proposal to Revise Hazard Standards and Clearance Levels

EPA’s Proposal is a first step to respond to the Ninth Circuit’s 2021 decision.⁶¹ EPA proposed to lower both the Hazard Standards and Clearance Levels, while also making other changes, including updating language to reflect the new Hazard Standards. EPA also proposed to change the definition of “target housing”—defining which housing is subject to the lead-based paint rules—to exclude housing for older adults or people with disabilities. “Target housing” generally includes housing or child-occupied facilities (e.g., a daycare) built before 1978.

EPA proposes to make an important change in how the Hazard Standards are determined. In accordance with the Ninth Circuit’s directive, EPA considered no factors other than health when proposing its Hazard Standards. And because EPA acknowledged that there is no safe level of lead in blood, the Agency proposes to set the Hazard Standards for floors and window sills at a “non-numeric value called GTZ [greater than zero] or any reportable level of dust-lead”⁶² By “any reportable level,” EPA means “any level greater than or equal to the lowest value a laboratory can reliably report” EPA predicts that the GTZ approach will be more protective of child health than the existing regulations or other approaches that EPA considered to determine the [Hazard Standards].⁶³

As directed by the Ninth Circuit, EPA simultaneously considered the Clearance Levels in conjunction with its changes to the Hazard Standards. As interpreted by the court, TSCA directs EPA to identify harm through the Hazard Standards, and then implement the means to address that harm through the Clearance Levels. Following this approach, EPA proposed to decouple the Clearance Levels from the Hazard Standards—the Clearance Levels are proposed at 3 $\mu\text{g}/\text{ft}^2$, 20 $\mu\text{g}/\text{ft}^2$, and 25 $\mu\text{g}/\text{ft}^2$ for floors, window sills, and window troughs, respectively.⁶⁴ EPA’s proposed Clearance Levels were chosen based several factors including “reliability, effectiveness, and safety”—considering evidence showing the proposed values are achievable, modeling showing that the proposed Clearance Levels would benefit child health, and laboratory capacity to process dust samples at these levels.⁶⁵

⁵⁹ *Id.* at 995, quoting 15 U.S.C. § 2687.

⁶⁰ *Id.*

⁶¹ 88 Fed. Reg. 50,444.

⁶² *Id.* at 50,454.

⁶³ *Id.* at 50,458-459.

⁶⁴ *Id.* at 50,460.

⁶⁵ *Id.* at 50,459-62.

In addition to lowering the Hazard Standards and Clearance Levels, the Proposal would make other regulatory changes to reflect the new standards, update procedures, and align with recent legislation. For instance, certain regulatory language reflects conditions where the Hazard Standards and Clearance Levels are equal. To avoid confusion, EPA proposes to restate those regulations to decouple these figures.⁶⁶

III. States Have a Strong Interest in Ensuring that EPA's Hazard Standards and Clearance Levels Protect Human Health

The Attorneys General have a strong interest in ensuring that EPA's Hazard Standards and Clearance Levels protect human health and the environment. Some state-specific interests include the following examples.

a. Illinois

Illinois has an interest in strong federal lead-dust and lead paint standards. For instance, Illinois' Lead Poisoning Prevention Act requires sales or leases of a residence built before 1978 to give prospective lessors or buyers information about potential health hazards.⁶⁷ This information must be compliant with the EPA's regulations at 40 C.F.R. Part 745, the section that EPA proposes to change in this rulemaking. Furthermore, Illinois' regulatory definition of "lead bearing substance" relies on EPA standards for lead paint.⁶⁸ Illinois regulations also explicitly rely on 40 C.F.R. Part 745 for approval of lead training program providers.

b. California

Over 75 percent of California's housing stock was built before 1978 and may contain lead paint.⁶⁹ California has its own EPA-authorized lead abatement program that the California Department of Public Health administers. The program certifies instructors for and individuals engaged in lead-related construction work performed in housing, preschools, and public buildings, including schools and daycare centers.⁷⁰ California has a robust lead abatement program, including conferring the authority on health department or other code enforcement officers to order the abatement of lead hazards in residential and public buildings and designating the presence of lead hazards as actionable under state housing law.⁷¹ Failure to obey code enforcement orders to abate lead hazards is punishable by a fine, and additional violations are punishable as misdemeanor fines and/or imprisonment.⁷² California has established its own

⁶⁶ *Id.* at 50,464.

⁶⁷ 410 ILCS 45/1 (2022).

⁶⁸ 35 Ill Adm. Code 845.20.

⁶⁹ Clifford L. Rechtschaffen, *The Lead Poisoning Challenge: An Approach for California and Other States*, 21 *Harvard Envtl. Law Rev.* 387, 395 (1997).

⁷⁰ Cal. Code Regs., tit. 17, § 35001 et seq.; Health & Safety Code §§ 105250-105257. "Public buildings" are defined as "a structure, or part of a structure, and its land, which is generally accessible to the public, including but not limited to, schools, daycare centers, museums, airports, hospitals, stores, convention centers, government facilities, office buildings and any other building which is not an industrial building or a residential building." Cal. Code Regs., tit. 17, § 35045.

⁷¹ Health & Safety Code §§ 105255-10525; 17920.10.

⁷² *Id.*

Childhood Lead Poisoning Prevention Program to identify areas in the state with a high prevalence of children with elevated blood lead levels, screen for childhood lead exposure, provide case management to children with qualifying blood lead levels, and use code enforcement in lead-poisoned children’s homes to compel remediation of lead hazards.⁷³

c. District of Columbia

In the District of Columbia, the District’s Lead Hazard Prevention and Elimination Act (LHPEA), which is administered by the District’s Department of Energy and the Environment, protects residents from exposure to toxic lead paint.⁷⁴ The District’s LHPEA prohibits the presence of a lead-based paint hazard in all residential dwelling units, common areas of multifamily properties, and in child-occupied facilities, such as day cares, built before 1978. Any paint in or on a pre-1978 structure is presumed to be lead-based and if that paint is chipping or peeling, it is automatically considered hazardous. A key preventive provision in the LHPEA is the required clearance examination whenever a pre-1978 residential rental property is about to be occupied by a pregnant woman or child under the age of six. Specifically, the property owner must furnish a passing clearance report, issued within the previous 12 months, including documented proof that the rental unit contained no lead-based paint hazards, including deteriorated lead-based paint or lead-contaminated dust or soil. This information must be disclosed before a buyer or renter is obligated to purchase or lease the unit. The District enforces the EPA’s current Clearance Levels as the required levels that must be met in these clearance reports. Pursuant to the LHPEA, the District OAG has been able to secure court orders requiring property owners to eliminate any lead hazards at the property as well as recover monetary and injunctive relief for harmed tenants.⁷⁵

d. Hawaii

The State of Hawaii has a lead-based paint activities program authorized by EPA, with state rules based on 40 CFR Part 745.⁷⁶ The Hawaii Department of Health, under the authority of chapter 342P, Hawaii Revised Statutes, enforces accreditation requirements for lead-based paint activities training programs, certification requirements for individuals and firms engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities within the State. Lead-based paint activities include inspection, risk assessment, and abatement of lead-based paint in target housing and child-occupied facilities, including day care centers, preschools, and kindergartens. In March 2023, Hawaii updated its administrative rules to lower Hazard Standards and Clearance Levels to provide children with added protection against lead exposure, in accordance with EPA’s 2019 and 2021 rules. Finalization of EPA’s current proposal will pave the way for Hawaii’s lead-based paint activities program to adopt an even more

⁷³ See Health & Safety Code §§ 105275-105310, 124125-124165.

⁷⁴ D.C. Code § 8-231.01 et seq.

⁷⁵ See, e.g., Office of the Attorney General for the District of Columbia, *AG Racine Announces Neglectful Landlord Must Clean Up Toxic Lead at Ward 4 Apartment Buildings* (Mar. 4, 2020), <https://oag.dc.gov/release/ag-racine-announces-neglectful-landlord-must-clean>; *AG Racine Sues Ward 7 Landlord for Exposing Tenants to Toxic Lead Paint* (July 30, 2019), <https://oag.dc.gov/release/ag-racine-sues-ward-7-landlord-exposing-tenants>.

⁷⁶ Chapter 11-41, Hawaii Administrative Rules. The state rules are mainly based on 40 CFR part 745 subpart L, which includes most sections this rule proposes to amend (40 CFR sections 745.223 to 745.238); most of the amendments to other sections are described by EPA as conforming changes.

protective definition of dust-lead hazard⁷⁷ and more protective post-abatement Clearance Levels.⁷⁸

e. Massachusetts

Recognizing that hundreds of young children are poisoned by lead paint in Massachusetts each year, the Commonwealth's laws and regulations protect a child's right to a lead-safe home. The Massachusetts lead law requires the removal or covering of lead paint hazards in homes built before 1978 where any children under six years old live. Lead paint hazards include loose lead paint, lead paint on windows and friction surfaces, and other surfaces accessible to children. Owners both of rental property and those living in their own single-family home are responsible for complying with the law, with financial assistance provided as appropriate through tax credits, grants and loans.⁷⁹

f. New Jersey

In New Jersey, the Department of Community Affairs (DCA) is responsible for issues related to lead evaluation and abatement in buildings or in soil, including specific programs for the identification of lead-based paint in certain dwellings; the Department of Health oversees lead poisoning prevention programs designed to screen and monitor children for lead exposure, particularly in high-risk areas; and the Department of Environmental Protection's (NJDEP) responsibilities include prevention, regulation, monitoring and disposal of lead in water, soil, air, and toxic waste (including lead paint).

New Jersey adheres to the federal guidance on lead standards and regulations, whereby knowledge of lead-based paint hazards must be disclosed prior to the sale or lease of housing built before 1978. In addition to the earlier requirements for large multiunit rental properties from pre-1978 to conduct lead inspections and risk assessments, New Jersey's current lead law,⁸⁰ adopted in 2021, and related DCA regulations, adopted in 2023,⁸¹ require rental dwelling units to be inspected for lead-based paint, remediation of hazards from lead-paint through abatement or hazard control measures, and inspection of certain dwellings for lead paint hazards every three years or upon tenant turnover. The level of testing (visual inspection versus dust wipes) required is dependent in part on whether the 3% or more of children up to six years of age tested in the municipality have a blood lead level greater than or equal to five micrograms per deciliter.

The State of New Jersey is an EPA-authorized state, and DCA regulations rely on the EPA standards for lead-based paint, Hazard Standards, and Clearance Levels. DCA regulations⁸² state that New Jersey lead abatements will follow EPA regulations at 40 C.F.R 745, the section that EPA proposes to change in this rulemaking. These regulations include the current EPA Hazard Standards/Clearance Levels, which EPA proposes to lower, as benchmarks for

⁷⁷ Sections 11-41-3(b) and 11-41-6(h)(3), Hawaii Administrative Rules.

⁷⁸ Section 11-41-6(e)(8)(H), Hawaii Administrative Rules.

⁷⁹ See M.G.L. c. 111, §§ 189A-199B; 105 CMR 460.

⁸⁰ P.L.2021, c.182. 5.

⁸¹ N.J.A.C. 5:28A, https://www.nj.gov/dca/divisions/codes/codreg/pdf_rule_adoptions/DCA_5_28A.pdf.

⁸² N.J.A.C. 5:17, https://www.nj.gov/dca/divisions/codes/codreg/pdf_regs/njac_5_17.pdf.

recommending a full lead evaluation, to determine whether a lead hazard is present, and for clearance at residential buildings and child occupied facilities. The DCA also licenses lead evaluation contractors who are responsible for performing lead inspections and risk assessments and licenses lead abatement contractors who are responsible for undertaking abatement work, often when lead-based paint is found as a result of a confirmed elevated blood-lead level.

As discussed in the proposed EPA rule, TSCA defines a lead-based paint hazard including hazards arising from lead contaminated dust and soil, as well as lead-based paint itself. However, as noted in the draft letter, EPA’s proposal does not address soil-lead hazard standards and states that the Agency will address those standards in a separate rulemaking. Regarding lead-contaminated soil, the NJDEP has a residential oral-dermal soil remediation standard of 400 mg/kg, consistent with current EPA guidance, based on incidental soil ingestion in children that applies to residences, school, and childcare facilities.

g. New York

Lead paint and dust are of particular concern in New York State given that the state has the oldest housing stock in the nation.⁸³ Approximately 78% of New York’s housing stock was built before 1978, the year in which the federal government banned lead paint.⁸⁴ New York also has more known cases of children with elevated blood levels than any other state.⁸⁵ Approximately 28,820 children born in New York in 2019, or 12% of births, reportedly have blood lead levels greater than 2 µg/dL.⁸⁶ Children of color and low-income children in New York are also disproportionately impacted by childhood lead exposure.⁸⁷ For example, in Buffalo, children from neighborhoods of color are twelve times as likely as children from predominantly white neighborhoods to have elevated blood lead levels.⁸⁸ Lead exposure among New York children born in 2019 is projected to carry an estimated \$6.4 billion lifetime economic burden due to reduced lifetime productivity, premature mortality and increased spending on health care utilization, education and social assistance.⁸⁹

Various measures have been enacted in New York to help address the dangers of lead paint and dust, some of which are summarized below.

New York State Public Health Law

In 1970, finding that childhood lead poisoning was a “major public health concern”, the New York State Legislature enacted Title X of Article 13 of the Public Health Law.⁹⁰ The Public Health Law banned the use and sale of lead-based paint in New York State.⁹¹ The Law authorized the State Commissioner of Health, local county health departments, and local housing

⁸³ Lead Free Kids New York, <https://leadfreekidsny.org/lead-in-ny/>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ N.Y. Public Health Law § 1370 *et seq.*

⁹¹ *Id.* §§ 1371 – 1372.

code agencies to designate areas of residential dwellings with paint “condition[s] conducive to lead poisoning” and order the removal of these conditions.⁹² Conditions conducive to lead poisoning include lead-based paint that is chipping, peeling, or otherwise accessible for ingestion or inhalation by children.⁹³

In 1992, the Public Health Law was amended to authorize, inter alia, mandatory blood lead level screenings for children and the creation of a Lead Poisoning Prevention Program within the State Department of Health.⁹⁴ Physicians and other medical providers who provide care to children must screen children at 12 and 24 months of age, and at each well-child visit or annually up to age six (6).⁹⁵ The results of all blood lead tests must be reported to the state and local health departments.⁹⁶

When a blood lead level test is administered pursuant to state public health law, the testing site must report all blood lead level test results to the state and local health departments.⁹⁷ In 2019, Public Health Law § 1370 and its implementing regulations were amended to lower the definition of an elevated blood lead level in a child from 10 µg/dL to 5 µg/dL.⁹⁸ In practice, the results are registered with the state health department, which then enters the elevated blood lead level test results into the state’s Lead Tracking and Environmental Reduction (“Leadweb”) Registry. The local health department is responsible for proactively checking the Leadweb Registry for county cases involving categorical elevated blood lead level results, and for following up on those cases.

Once a child with elevated blood lead levels has been identified to the local health department, the department shall perform a lead exposure assessment evaluating conditions “conducive to lead poisoning” for any dwelling, child facility, or other area in which the child spends a significant period of time.⁹⁹ Such investigation may involve the sampling and testing of peeling or chipping paint in an approved laboratory or the use of x-ray fluorescence testing.¹⁰⁰

If the lead exposure assessment identifies a condition conducive to lead poisoning, the local health department must provide the property owner with written notice and demand for discontinuance.¹⁰¹ Actions required to abate a lead-based paint hazard condition may include “encapsulation, replacement, enclosure, or removal” and may involve the removal of chipping paint, the replacement of building components with lead-free materials, and the scraping and/or sanding of surfaces to remove paint.¹⁰² If the owner of a dwelling fails to comply with the notice

⁹² *Id.* §§ 1370(2), 1373(1).

⁹³ *Id.* § 1370(3).

⁹⁴ *Id.* §§ 1370- (a)(2); 1370-a.

⁹⁵ 10 NYCRR § 67-1.2.

⁹⁶ *Id.* § 67-3.1(b).

⁹⁷ N.Y. Public Health Law § 1370-(e)(1).

⁹⁸ *See* 10 NYCRR § 67-1.1(e).

⁹⁹ *Id.* § 67-2.3.

¹⁰⁰ *Id.* § 67-2.4.

¹⁰¹ *Id.* § 67-2.7.

¹⁰² *Id.* §§ 67-2.2(a); 67-2.7.

and demand, the county health department may conduct a formal hearing and, on proof of violation, may order the abatement of the paint condition and assess a penalty of up to \$2,500.¹⁰³

New York Property Maintenance Code

The State Code is part of the New York State Fire Prevention and Building Code.¹⁰⁴ The State Code requires that all exterior building surfaces, including but not limited to doors, door frames, window frames, and porches, be maintained in “good condition.”¹⁰⁵ It further provides that “[p]eeling, flaking, and chipped paint shall be eliminated and surfaces repainted.”¹⁰⁶ The State Code also requires that all interior building surfaces, including doors and windows, be maintained in “good, clean and sanitary condition” and provides that “[p]eeling, chipping, flaking or abraded paint shall be repaired, removed or covered.”¹⁰⁷

Appendix J of the State Code sets forth provisions that apply to the repair, alteration, change of occupancy, addition, and relocation of existing buildings.¹⁰⁸ Specific to lead-based paint, the State Code provides:

In addition to requirements of this code, 40 CFR 745 (titled “Lead-based Paint Poisoning Prevention in Certain Residential Structures”), a regulation issued and enforced by the Federal Environmental Protection Agency, applies to certain activities in buildings that may contain lead-based paint, including renovations performed for compensation in “target housing” and “child-occupied facilities,” “abatement” of lead-based paint hazards and other “lead-based paint activities” (as those terms are defined in 40 CFR Part 745).¹⁰⁹

Any person who violates an order to remedy a condition pursuant to the State Code or who knowingly violates the State Code is subject to a fine of up to \$1,000 per day.¹¹⁰

New York Warranty of Habitability

In 1975, the New York State Legislature codified the common law warranty of habitability by enacting Real Property Law § 235-b. The statute requires that all leased residential premises be “fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety.”¹¹¹ A rental property

¹⁰³ N.Y. Public Health Law § 1373(3).

¹⁰⁴ See State Code § 101.1.

¹⁰⁵ *Id.* § 304.2.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* § 305.3.

¹⁰⁸ *Id.* § AJ101.2.

¹⁰⁹ *Id.* § AJ102.6.

¹¹⁰ See Executive Law §382.

¹¹¹ *Id.*

that has conditions conducive to lead poisoning is unfit for human habitation and violates the warranty of habitability owed by the landlord to all tenants of such property.¹¹²

New York City Laws

In 2004, the New York City Council, finding that childhood lead poisoning from paint was a preventable public health crisis, enacted the New York City Childhood Lead Poisoning Prevention Act of 2003.¹¹³ The Act establishes a rebuttable presumption that the paint in apartments built prior to January 1, 1960 where a child under six resides is “lead-based paint.”¹¹⁴ The Act requires owners of apartment buildings where children under six live “to prevent the reasonably foreseeable occurrence” of lead-based paint hazards and expeditiously remediate those hazards.¹¹⁵

“Lead-based paint hazards” are lead dust, and lead-based paint that is peeling (e.g., paint that is chipping, curling, or “not completely adhered to the underlying surface”) or is present on chewable surfaces (e.g., interior window sills), deteriorated subsurfaces (e.g., rotting or decayed wood), friction surfaces (e.g., painted surfaces that touch other painted surfaces, such as doors, hinges, and window frames), and impact surfaces (e.g., any interior painted surface that show chipping, marking, or denting).¹¹⁶

The Act directs owners to conduct investigations at least annually for “peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces” in apartments in regulated buildings where a child under six resides and to expeditiously remediate all lead-based paint hazards and underlying defects.¹¹⁷ Upon turnover of the tenants in any apartment in an apartment building constructed prior to January 1, 1960, owners must:

- (1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;
- (2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;
- (3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and
- (4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.¹¹⁸

After an owner has completed work upon turnover, a lead-contaminated dust clearance test must be performed by a third party (neither the owner nor the individual or company that

¹¹² See, e.g., *Chase v. Pistolese*, 190 Misc.2d 477 (City Court of NY, Watertown 2002).

¹¹³ NYC Admin. Code § 27-2056.1 *et seq.*

¹¹⁴ *Id.* § 27-2056.5; 24 R.C.N.Y. § 173.14(b) (a “child of applicable age” is a child under six years of age).

¹¹⁵ *Id.* § 27-2056.3.4

¹¹⁶ *Id.* §§ 27-2056.2(1), (3), (4), (5), (6), (10).

¹¹⁷ *Id.* §§ 27-2056.3, 27-2056.4(a).

¹¹⁸ *Id.* § 27-2056.8(a).

performed the turnover work).¹¹⁹ Owners must certify compliance with the turnover provisions in a notice provided to a new tenant upon signing a lease.¹²⁰ Between 2019 and 2021, New York City lowered their lead dust clearance and lead dust hazard risk assessment testing standards twice. Specifically, New York City lowered their standards for floors, window sills and window wells (*i.e.*, troughs), respectively, from 40 µg/ft², 250 µg/ft², and 400 µg/ft² to 10 µg/ft², 50 µg/ft², and 100 µg/ft² in 2019 (effective June 12, 2019)¹²¹ and again to 5 µg/ft², 40 µg/ft², 100 µg/ft² in 2021 (effective June 1, 2021).¹²²

Erie County Laws

The County Code was promulgated and adopted by the Erie County Board of Health on May 7, 1948 pursuant to § 347 of the New York State Public Health Law and § 504 of the Erie County Department of Health Charter. The County Code seeks ensure “that the quality of housing and other properties is adequate for protection of public health,” including “safety from lead poisoning.”¹²³ Dwellings cannot be occupied or leased to another unless the premises “are clean, sanitary, fit for human occupancy” and compliant with all applicable laws.¹²⁴

The County Code mandates that “[t]he owner of any ... premises, dwellings, dwelling units, or parts thereof shall take action to prevent the occurrence of conditions conducive to lead poisoning and shall expeditiously correct an identified or presumed lead hazard using Lead Safe Work Practices,”¹²⁵ A “condition conducive to lead poisoning” is defined to include, *inter alia*: (1) when children with elevated blood lead levels have been previously identified in the building; (2) when lead paint is accessible for ingestion or inhalation; or (3) where deterioration of lead paint, through peeling, chipping, chalking or cracking, is likely to occur.¹²⁶ The existence of conditions conducive to lead poisoning in residential properties is classified as a “Nuisance.”¹²⁷ Lead-based paint is presumed to be present in residential properties constructed before January 1, 1978.¹²⁸

The County Code further defines Lead Safe Work Practices to include, in part, “implementing dust control and clean-up methods discussed in the EPA Renovation, Repair and Painting Rule or as approved by the Erie County Commissioner of Health.” *Id.* Art. IX § 1.7(ee). Article IX of the County Code further requires that “[a]ll correction and control of lead hazards and regular maintenance, painting or renovation performed in housing constructed prior to January 1, 1978 must be performed by an individual certified by the EPA or who possesses other

¹¹⁹ *Id.* §§ 27-2056.11(a)(3), 2056.11(b), 28 R.C.N.Y. §§ 11-06(b)(2)(iii), (3)(ii), (4), and (g)(3).

¹²⁰ 28 R.C.N.Y. § 11-05(d).

¹²¹ New York City Dept. of Health and Mental Hygiene, Lead Dust Standards <https://www.nyc.gov/assets/doh/downloads/pdf/lead/lead-in-dust-standards.pdf>.

¹²² New York City Dept. of Health and Mental Hygiene, New Lead Dust Standards for New York City, <https://www.nyc.gov/assets/doh/downloads/pdf/lead/lead-in-dust.pdf>.

¹²³ County Code, Article IX § 1.2.

¹²⁴ *Id.* Art. IX § 1.8.

¹²⁵ *Id.* Art. IX § 1.22(i)(3)(i).

¹²⁶ *Id.* Art. IX § 1.7(e).

¹²⁷ *Id.* Art. IX § 1.22(i)(1)(i).

¹²⁸ *Id.* Art. IX § 1.22(i)(1).

lead safe certification as approved by the Erie County Commissioner of Health.” *Id.* Art. IX § 1.22(i)(3)(i)(a).

Where the Erie County Department of Health (County Health) has issued a notice of conditions conducive to lead poisoning, the owner of the subject property must submit a work plan or lead-based paint reduction plan (Lead Safe Work Plan) for approval by County Health prior to the owner commencing any work.¹²⁹ Proof of EPA or other approved lead safe certification for the individual performing the corrections must be provided to County Health prior to the commencement of any work and shall be included as part of the work plan or lead-based paint hazard reduction plan.¹³⁰

All identified or presumed lead hazards must be corrected within 45 days of receiving a Notice or as agreed upon with County Health.¹³¹ Violators are subject to civil penalties of up to \$250 per day for each violation of the County Code.¹³² and penalties of up to \$500 per violation per day if, upon County Health reinspection, the violation has not been remedied¹³³. Each day a violation continues constitutes a separate offense. *Id.* The County may bring an action to enforce the County Code in any court of competent jurisdiction.¹³⁴

Onondaga County Laws

The Onondaga County Sanitary Code seeks “to protect, preserve, and promote the physical and mental health and social well-being of the people” by ensuring that “the quality of housing is adequate for protection of public health, safety, and general welfare.”¹³⁵ The County Code establishes minimum housing standards to prevent conditions “likely to affect adversely the public health,” and to “achieve and maintain such levels of residential environmental quality.”¹³⁶ Among these standards, the County Code mandates that “[n]o owner or other person shall occupy or let to another person any vacant dwelling or dwelling unit unless it and the premises are clean, sanitary, fit for human occupancy, and comply with the requirements of ... all applicable laws.”¹³⁷

Article VII of the County Code generally prohibits a property owner to allow a condition to persist on any premises that creates a nuisance or a condition which may be dangerous to life or health.¹³⁸ Under the County Code, for all dwellings constructed prior to 1978, it is presumed that the paint thereon is lead-based paint.¹³⁹ The County Code declares the existence of conditions conducive to lead poisoning in any dwelling or part thereof to be a nuisance.¹⁴⁰ The

¹²⁹ *Id.* Art. IX § 1.22(i)(3)(ii)(a).

¹³⁰ *Id.* Art. IX § 1.22(i)(3)(i)(b).

¹³¹ *Id.* Art. IX § 1.22(i)(3)(ii)(c).

¹³² *Id.* Art. I § 5(e)(ii),

¹³³ *Id.* Art. I § 5(a)(5).

¹³⁴ *Id.*; see also N.Y. Public Health Law § 348.

¹³⁵ County Code, Article X § 21.2. 28.

¹³⁶ *Id.* art. X § 21.1. 29.

¹³⁷ *Id.* art. X § 21.8. 30.

¹³⁸ *Id.* art. VII. 31.

¹³⁹ *Id.* art. X § 21.20(k)(1).

¹⁴⁰ *Id.* art. X, § 21.20(k)(3)a.

County Code also requires the use of Lead Safe Work Practices and prohibits certain unsafe practices, when addressing lead hazards in dwellings.¹⁴¹

City of Buffalo Laws

The City Code has requirements for the control of lead-based paint hazards. The City Code requires owners to maintain exterior and interior surfaces of buildings, including walls, ceilings, doors, and windows, in a “clean, safe and sanitary manner” and “[f]ree of substantial deterioration.”¹⁴² “Substantial deterioration” is defined to include “specific instances of disrepair, including but not limited to substantial conditions of peeling, chipping, [or] cracking.”¹⁴³

The City Code provides that, if a child is identified as having an elevated blood lead level, the City may conduct an inspection of the child’s dwelling and/or secondary residence.¹⁴⁴ If a lead-based paint violation is found, the City shall issue a notice requiring abatement of the violation.¹⁴⁵ Each violation is subject to a penalty of up to \$1,500.¹⁴⁶ Each day that a violation continues is a separate violation.¹⁴⁷

Any building that is unfit for human habitation or otherwise violates the housing standards set forth in Chapter 242 of the City Code is a public nuisance.¹⁴⁸ Houses that contain lead-based paint in a condition violative of the City Code are unfit for human habitation and are a public nuisance. The City Code provides that “[l]ead-based paint violations are subject to fines” and further provides that, “upon testing of paint in the property, any owner found to have a property with existing lead-based paint violations must remediate the violation.”¹⁴⁹ The City Code incorporates the State Code described above below.¹⁵⁰ Under the City Code, any violations of the State Code are subject to a penalty of up to \$1,500 per violation.¹⁵¹ Each day a violation continues is, for penalty purposes, a separate violation.¹⁵²

City of Syracuse Laws

The Property Conservation Code of the City of Syracuse, Chapter 27 of the Revised General Ordinances of the City of Syracuse, establishes uniform standards governing the “condition, occupancy and maintenance of all premises” to “enhance the residential neighborhoods and to protect the safety, health and welfare of the persons who live, work and recreate in the city.” City Code § 27-2. The City Code has explicit requirements for the maintenance of paint and the control of lead-based paint hazards.

¹⁴¹ *Id.* art. X, § 21.20(k)(3)b. and c.

¹⁴² City Code § 341-7(B).

¹⁴³ *Id.* § 341-7(A).

¹⁴⁴ *Id.* § 261-2.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* § 261-7 (citing *id.* § 1-15).

¹⁴⁷ *Id.* § 1-15.

¹⁴⁸ *Id.* §§ 294-4(E) and 294-4(I).

¹⁴⁹ *Id.* § 264-13(C).

¹⁵⁰ *Id.* § 103-1.

¹⁵¹ *Id.* § 1-15.

¹⁵² *Id.*

The City Code provides, in relation to “Protective coating for wood surface,”

All exterior wood surfaces of a structure or building that are not of a species inherently resistant to decay shall be treated when necessary with a protective coating or other preservative to prevent deterioration. However, any exterior surface which has had a protective coating or preservative applied to it, must be maintained to prevent deterioration.¹⁵³

Interior surfaces of floors, walls and ceilings must also be maintained “free of deterioration in a clean and sanitary condition.”¹⁵⁴ Owners must remove any paint revealed by inspection containing more than one percent of lead from its surface and cover the surface with paint containing less than .06% of lead, or may cover the lead-based paint without first removing it “if the material and the method used to cover the surface are approved” by the Division of Code Enforcement of the Department of Community Development of the City of Syracuse.¹⁵⁵

In 2020, the City of Syracuse’s Common Council enacted the Lead Abatement and Control Ordinance, Chapter 54 of the Revised General Ordinances of the City of Syracuse, which will allow City inspectors to inspect homes for lead and site appropriate violations of the presence of lead in homes. The stated intent of the Lead Ordinance is to help prevent the poisoning of its residents by requiring that the presence of deteriorated lead-based paint on the interior and exterior of pre-1978 residential structures and on the exterior of pre-1978 nonresidential structures be identified and be correctly addressed by reducing and controlling lead-based paint hazards which may be present, in order to prevent human exposure to such hazards.¹⁵⁶ The Lead Ordinance took effect on October 1, 2020.

Under the Lead Ordinance, all paint on residential buildings constructed prior to 1978, is presumed to be lead-based paint.¹⁵⁷ Among other things, the Lead Ordinance requires residential buildings to “be maintained free of lead-based paint hazards.”¹⁵⁸ The Lead Ordinance also mandates the use of lead safe work practices for correcting lead hazards in buildings as well as EPA certified personnel and firms.¹⁵⁹ The existence of conditions conducive to lead poisoning in a residential rental property is a nuisance, a condition which may be dangerous to life or health and violates the City Code.

New York Attorney General’s Enforcement of Lead Hazard Laws

New York Attorney General Letitia James has taken various actions against landlords for violations of federal, state, and local lead hazard laws. For example, in July 2023, Attorney General James, Onondaga County Executive Ryan McMahon, and Syracuse Mayor Ben Walsh

¹⁵³ City Code § 27-32(d)(1).

¹⁵⁴ *Id.* § 27-33(e)(1).

¹⁵⁵ *Id.*

¹⁵⁶ City Ordinances § 54-1.

¹⁵⁷ *Id.* § 54-4(A).

¹⁵⁸ *Id.* § 54-4(D).

¹⁵⁹ *Id.* § 54-9 through § 54-11.

filed a lawsuit against William D'Angelo and his company Marpat LLC for repeatedly and persistently violating lead safety laws at nearly two dozen rental properties in Syracuse.¹⁶⁰ Also in July 2023, Attorney General James filed a lawsuit against Syracuse landlord Todd Hobbs for repeated and persistent violations of lead safety laws at more than a dozen rental properties. Attorney General James also filed a motion for a preliminary injunction against Hobbs, seeking to stop him from selling off his properties while litigation is pending.¹⁶¹

In March 2023, Attorney General James sued Buffalo landlord Farhad Raiszadeh for repeated and flagrant violations of lead safety laws at dozens of properties in East Buffalo.¹⁶² In November 2022, Attorney General James secured \$5.1 million in restitution and penalties to fund ongoing childhood lead poisoning prevention programs administered by the City of Buffalo and Erie County, as a result of a September 2020 lawsuit against a group of individuals and companies in the Buffalo region for illegally allowing lead paint-related hazards to proliferate in their rental properties.¹⁶³

In June 2022, Attorney General James shut down Syracuse landlord John Kiggins and his company, Endzone Properties, Inc., for repeatedly violating lead paint laws and failing to address lead paint hazards, which resulted in the lead poisoning of 18 children living in Endzone properties in Syracuse.¹⁶⁴

In September 2021, Attorney General James announced an agreement in her lawsuit against Chestnut Holdings of New York, Inc., a property management corporation, over its failures to protect children from lead paint hazards in New York City.¹⁶⁵ Also in September 2021, Attorney General James reached a pre-suit agreement with A&E Real Estate Holdings, LLC to ensure that children living in its New York City apartments are protected from dangerous lead-based paint.¹⁶⁶

¹⁶⁰ New York State Attorney General, *Attorney General James Sues Syracuse Landlord for Failing to Properly Address Lead-Based Paint Hazards* (July 27, 2023), <https://ag.ny.gov/press-release/2023/attorney-general-james-sues-syracuse-landlord-failing-properly-address-lead>.

¹⁶¹ New York State Attorney General, *Attorney General James Sues Syracuse Landlord for Violating Lead Safety Laws and Endangering Children* (July 17, 2023), <https://ag.ny.gov/press-release/2023/attorney-general-james-sues-syracuse-landlord-violating-lead-safety-laws-and>.

¹⁶² New York State Attorney General, *Attorney General James Sues Buffalo Landlord for Failing to Properly Address Lead-Based Paint Hazards* (March 28, 2023), <https://ag.ny.gov/press-release/2023/attorney-general-james-sues-buffalo-landlord-failing-properly-address-lead-based>.

¹⁶³ New York State Attorney General, *Attorney General James Wins \$5.1 Million from Notorious Buffalo Landlord to Fund Childhood Lead Poisoning Prevention in Erie County* (Nov. 7, 2022), <https://ag.ny.gov/press-release/2022/attorney-general-james-wins-51-million-notorious-buffalo-landlord-fund-childhood>.

¹⁶⁴ New York State Attorney General, *supra* at note 160.

¹⁶⁵ New York State Attorney General, *Attorney General James Takes Action to Protect Children and Families from Lead Poisoning in NYC* (Sept. 23, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-takes-action-protect-children-and-families-lead-poisoning>.

¹⁶⁶ New York State Attorney General, *Attorney General James Protects NYC Children from Lead Poisoning in Housing* (Sept. 17, 2021) <https://ag.ny.gov/press-release/2021/attorney-general-james-protects-nyc-children-lead-poisoning-housing>.

h. Oregon

Oregon has administered an EPA-authorized Lead-Based Paint Activities (LBPA) program since 1998. In 2010, Oregon received EPA authorization to administer the Renovation Repair and Painting (RRP) program. These two programs, administered by the Oregon Health Authority (OHA) in conjunction with the Construction Contractors Board, accredit lead-based paint training providers, certify firms and individuals to perform LBPA and RRP work on pre-1978 housing and child-occupied facilities, and enforce laws related to lead-based paint. In 2021, OHA received statutory authority from the State Legislature to require responsible parties to remediate lead-based paint hazards. This goes beyond what OHA is empowered to do under the EPA authorization, which does not empower OHA (or any similarly authorized state) to require remediation.

IV. The Attorneys General’s Comments on EPA’s Proposal

a. The Attorneys General Support Adopting the Proposed Hazard Standards

The Attorneys General support EPA’s Proposal to revise the Hazard Standards to any reportable level of dust-lead— that is, anything “greater than zero”. As discussed above, there is no safe level of lead in blood and the presence of any amount of lead can be devastatingly harmful to human health, particularly in children. Setting the Hazard Standards to any reportable level greater than zero reflects the existing science on the health effects of lead.

In the Proposal, EPA amply justifies that the greater-than-zero approach complies with legal requirements under both TSCA and the Ninth Circuit’s 2021 decision. The TSCA definition of “lead-based paint hazards” includes *any* condition that causes exposure to lead-contaminated dust or paint that would result in adverse human health effects.¹⁶⁷ The statutory definition recognizes no other criteria for how EPA should determine a lead-based paint hazard. And as the Ninth Circuit noted, TSCA’s definitions of lead-contaminated soil and lead-contaminated dust also recognize no criteria besides adverse effects to human health, while other provisions recognize factors such as reliability and effectiveness.¹⁶⁸

While the Attorneys General support the Proposal, we believe the Agency should closely look at its choice to set the Hazard Standards at any *reportable* level of dust-lead rather than any *detectable* level of dust-lead. This choice could mislead members of the public who, informed there is no *reportable* lead in their home, may then inadvertently be exposed to lead. The Proposal defines “reportable level” as “the lowest analyte concentration (or amount) that does not contain a ‘less than’ qualifier and that is reported with confidence for a specific method by a laboratory recognized by EPA under TSCA section 405(b).”¹⁶⁹ Because some dust-lead could exist below reportable levels but at detectable levels, this regulatory definition seems to rely on factors other than health. The Attorneys General urge EPA to base its “greater than zero” standard on any *detectable* level of dust-lead rather than any *reportable* level.

¹⁶⁷ 15 U.S.C. § 2681(10).

¹⁶⁸ See *A Cmty. Voice*, 997 F.3d at 1002, *citing* 15 U.S.C. § 2681(11), (12).

¹⁶⁹ 88 Fed. Reg. at 50,479, *citing* proposed § 745.63.

b. The Attorneys General Oppose EPA Adopting Any of Its Alternative Approaches to Setting the Hazard Standards

EPA's Proposal discusses two approaches to setting the Hazard Standards other than its chosen "greater than zero" approach—a "numeric standard" and a "post-1977 background approach." EPA should not adopt these alternatives because they are less protective of human health than its chosen "greater than zero" approach and would not comply with EPA's mandate under TSCA and the Ninth Circuit decision.

Under the "numeric standard," EPA would "need to establish a health or exposure metric of interest (*i.e.*, target [blood-lead level] or IQ change) that would be acceptably protective of human health."¹⁷⁰ In addition to being less protective than the "greater than zero" approach, by setting an "acceptable" level of harm to human health, the "numeric standard" approach falls short of EPA's statutory duty to determine when a "lead-based paint hazard" would result in *any* adverse human health effect.¹⁷¹

The "post-1977 background approach" similarly is less protective than the "greater than zero" approach and falls short of EPA's legal requirements. Under this approach, the Hazard Standards would be set based on "dust-lead levels in housing built after lead-based paint was banned [*i.e.*, 1977]", presuming that dust-lead in post-1977 housing is not due to lead-based paint.¹⁷² However, this approach is, at best, tangentially based on adverse health effects and therefore, as EPA recognizes, does not "directly address the 2021 Court Opinion" while also being less protective than the "greater than zero" approach.¹⁷³

c. The Attorneys General Support Adopting the Proposed Clearance Levels

The Attorneys General urge EPA to adopt its proposed Clearance Levels¹⁷⁴—3 µg/ft² for floors, 20 µg/ft² for window sills, and 25 µg/ft² for window troughs—because they are more protective of human health than the alternative Clearance Levels, comply with EPA's legal requirements, and are achievable.¹⁷⁵ The Attorneys General also support lowering the Clearance Levels even further when feasible.

EPA projects that its Clearance Levels will lead to greater reductions of dust-lead impacts to children beyond the currently established Clearance Levels or the alternative Clearance Levels that EPA considered—the proposed Clearance Levels will lead to both a lower blood-lead level

¹⁷⁰ 88 Fed. Reg. at 50,456.

¹⁷¹ 15 U.S.C. § 2681(10).

¹⁷² 88 Fed. Reg. at 50,457-458.

¹⁷³ *Id.* at 50,458.

¹⁷⁴ The Attorneys General also urge EPA to consider setting the clearance levels for window sills and window troughs both at 20 µg/ft². This clearance level can easily be detected by many laboratories and setting different standards for sills and troughs complicates the process of determining clearance without significantly decreasing the risk of lead exposure.

¹⁷⁵ *National Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1039 (D.C. Cir. 2012) (upholding EPA's health-protective change to the Renovation, Repair, and Painting rule as meeting the "reliable, effective, and safe" standard under TSCA § 2682).

in two-year-old children and a reduced IQ detriment for six-year-old children.¹⁷⁶ Because its proposed Clearance Levels are the most protective option that EPA is considering, the Agency should adopt them.

EPA's approach in setting the Clearance Levels also complies with the Agency's legal requirements under TSCA and the Ninth Circuit's 2021 decision. As the Ninth Circuit recognized, EPA may take "into account reliability, effectiveness, and safety" when implementing its Hazard Standards through the Clearance Levels.¹⁷⁷ By proposing to change its Clearance Levels at the same time it proposes to change its Hazard Standards, EPA meets its overall duty to lower exposure to dust-lead.

Furthermore, this standard is achievable in practice. EPA's analysis shows that many laboratories already have the necessary equipment to process wipe samples at the Clearance Levels, though some laboratories may need to invest in new equipment and training.¹⁷⁸ Increased efficiency at laboratories that can already process samples at the Clearance Levels, as well as investments in laboratories that currently cannot, could be done during a phase-in period before the Clearance Levels are fully implemented. As discussed later in this comment, the Attorneys General would not oppose such a phase-in period to ensure appropriate laboratory capacity if necessary.

d. Environmental Justice

Lead exposure does not impact all children equally. Children living in poverty have the highest rates of lead exposure and children of color suffer the highest risk of lead poisoning.¹⁷⁹ Black children are particularly susceptible to lead exposure. A study published in 2020 of young children who were White, Latino, and predominantly African American or Black United States citizens revealed that Black race was the second greatest risk factor for increased blood lead levels in early childhood.¹⁸⁰ In fact, "non-Hispanic Black children [are] nearly three times as likely as White children to have highly elevated blood lead levels and the subsequent disabling conditions."¹⁸¹ The authors of the 2020 study partially attributed Black children's disproportionate lead exposure in early childhood to unequal access to habitable housing and other environments free of environmental health hazards.¹⁸² Other experts have reached similar conclusions.¹⁸³ Residential segregation of Black residents, to which redlining and

¹⁷⁶ 88 Fed. Reg. at 50,461.

¹⁷⁷ *A Cmty. Voice*, 997 F.3d at 990, citing 15 U.S.C. § 2682(a)(1).

¹⁷⁸ 88 Fed. Reg. at 50,462.

¹⁷⁹ Benfer, *supra*, note 18 at 150–51.

¹⁸⁰ Deniz Yeter, et al., *Disparity in Risk Factor Severity for Early Childhood Blood Lead Among Predominantly African-American Black Children: The 1999 to 2010 US NHANES*, *Int'l J. of Env'tl Res. & Public Health* (2020) 17(5) at 19, <https://pubmed.ncbi.nlm.nih.gov/32121216/>.

¹⁸¹ Benfer et al. *supra*, note 18, at 150–151.

¹⁸² Yeter, et al., *supra*, note 180, at 20; Max Weintraub, *Racism and Lead Poisoning*, 87 *Am. J. of Pub. Health* (1997), 1871, 1871, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1381185/>.

¹⁸³ Weintraub, *supra*, note 182, at 1871, citing BP Lanphear et al., *Racial Differences in Urban Children's Environmental Exposures to Lead*, 86 *Am. J. Pub. Health* (1996), 1460, 1460–1463, <https://pubmed.ncbi.nlm.nih.gov/8876521/>.

racially-restrictive covenants have contributed, may be other instigators to the disproportionate burden of lead exposure borne by Black children.¹⁸⁴

Social determinants of health, such as poverty and inadequate access to food—including food with key nutrients—compound the impacts of lead exposure from lead-based paint hazards. A survey from the U.S. Department of Housing and Urban Development performed between March 2018 and June 2019 documented a greater concentration of lead-based paint hazards in low-income households than in households with higher incomes.¹⁸⁵ On an empty stomach, lead enters a child’s digestive tract at a volume of three to four times the rate as when a child has eaten.¹⁸⁶ Those who are pregnant or breastfeeding and suffering from calcium deficiencies may draw calcium from bone tissue and simultaneously leach lead stored in their bones into their bloodstreams, which a fetus or infant will absorb.¹⁸⁷ Eating foods with high levels of Vitamin C, calcium, and iron can inhibit the body’s absorption of lead, yet an earlier study found that minorities and low-income communities experience the highest risk of iron and calcium deficiencies.¹⁸⁸ In particular, nutritional deficiencies in zinc, iron, and calcium can exacerbate the impacts of lead exposure on “cognitive and behavioral development.”¹⁸⁹ Lead exposure can also impact lifetime earnings, entrenching communities in poverty.¹⁹⁰

Adults also suffer adverse effects from lead exposure, experiencing increased “risk for chronic renal failure, premature death, and hypertension and coronary heart disease.”¹⁹¹ Lead exposure exacts a profound toll on our economy, costing “billions of dollars in public spending on health care, special education, juvenile justice, and other social services.”¹⁹²

For example, environmental justice impacts from lead paint are directly observed in blood-lead level monitoring of young people living in Illinois. These disparities in Illinois demonstrate how environmental justice communities are disproportionately exposed to hazards of lead paint. The most recent lead surveillance report conducted by the Illinois Department of Public Health shows that children in Illinois’ “high-risk zip codes” (a metric determined by family income, among other factors) are twice as likely to have an elevated blood-lead level compared to Illinois’ “low-risk zip codes.”¹⁹³ Black or African American children in Illinois are

¹⁸⁴ Weintraub, *supra*, note 182, at 1871, citing Lanphear et al., *supra*, note 183, at 1460-1463; Hope Kerpelman, *Let Them Eat Paint: Childhood Lead Paint Poisoning as the Denial of Constitutional and Civil Rights*, 51 Colum. Hum. Rts. L. Rev. 282, 844-845 (2020).

¹⁸⁵ U.S. Dep’t of Hous. & Urban Dev., *American Health Homes Survey II: Lead Findings*, iii (2021),

https://www.hud.gov/sites/dfiles/HH/documents/AHHS%20II_Lead_Findings_Report_Final_29oct21.pdf.

¹⁸⁶ Wisconsin Department of Health Services, *Chapter 9: Nutrition and Childhood Lead Poisoning*. (Nov. 2014), at 3, <https://www.dhs.wisconsin.gov/publications/p00660.pdf>.

¹⁸⁷ *Id.* at 2.

¹⁸⁸ Benfer, *supra* note 18 at 47; Kathryn R. Mahaffey, *Nutrition and Lead: Strategies for Public Health*, Environ Health Perspect. (1995) at 103, (Suppl 6), <https://pubmed.ncbi.nlm.nih.gov/8549473/>.

¹⁸⁹ Wisconsin Department of Health Services, *supra*, note 186, at 2.

¹⁹⁰ Benfer, et al., *supra*, note 18, at 186.

¹⁹¹ *Id.* at 150–151.

¹⁹² *Id.*

¹⁹³ Illinois Department of Public Health, 2020 Lead Surveillance Report at 21,

<https://dph.illinois.gov/content/dam/soi/en/web/idph/publications/idph/topics-and-services/environmental-health-protection/lead-poisoning-prevention/lead-surveillance-report-2020.pdf>.

also disproportionately affected by lead exposure, suffering from a higher incident of blood-lead levels than any other tested race group in Illinois.¹⁹⁴

In the New Jersey *Environmental Justice Mapping, Assessment and Protection (EJMAP) Tool*¹⁹⁵, the percentage of housing older than 1950 is used as a proxy for predicting increased blood lead levels in early childhood.¹⁹⁶ Nearly three quarters (74%) of Overburdened Communities (OBCs; identified by socioeconomic indicators including percentage of minority, low-income, or limited English proficiency) are considered adversely impacted for the “age of housing” environmental stressor in New Jersey, compared to 57% of non-OBCs.¹⁹⁷

e. Phasing-In the Clearance Levels

EPA’s proposal seeks input on “a phased approach of establishing the alternative, higher [Clearance Levels] first (5/40/100 $\mu\text{g}/\text{ft}^2$), and then in a specified amount of time (e.g., three years) lowering it to the primary [Clearance Levels] (3/20/25 $\mu\text{g}/\text{ft}^2$).”¹⁹⁸ Recognizing that meeting the primary proposed Clearance Levels will require additional investment and training at some laboratories, the Attorneys General understand that such a phased approach may be necessary. We note that, in addition to these concerns, some commenters have raised concerns about some abatement contractors’ ability to meet the new standards. A phase-in would give the abatement contractor market time to adjust as well.

However, EPA notes that laboratories using FAAS technology (which is widely available and does not generally require additional training to use) “can numerically quantify dust-lead levels of 5 $\mu\text{g}/\text{wipe}$.”¹⁹⁹ Indeed, New York City has successfully implemented clearance levels of 5 mg/ft^2 for floors.²⁰⁰ Given this capability, the Attorneys General recommend that EPA begin its phase-in period at 5/20/25 $\mu\text{g}/\text{ft}^2$ rather than at 5/40/100 $\mu\text{g}/\text{ft}^2$.²⁰¹

If EPA adopts this approach, it must commit to implementing the primary Clearance Levels within a specific length of time and should make that length of time only as long as necessary to make improvements at laboratories currently unable to process testing wipes that meet the proposed Clearance Levels.

¹⁹⁴ *Id.* at 19.

¹⁹⁵ NJDEP, Environmental Justice Mapping, Assessment and Protection Tool (EJMAP) (accessed 9/25/2023), <https://experience.arcgis.com/experience/548632a2351b41b8a0443cfc3a9f4ef6>.

¹⁹⁶ Yeter, *supra* note 182 at 17(5).

¹⁹⁷ NJDEP, Environmental Justice (EJ) Law Combined Stressor Summary for New Jersey (7-31-2023 to 1-30-2024) (accessed Sept 25, 2023), <https://njogis-newjersey.opendata.arcgis.com/datasets/cbfeefc67d2a4f71bdcc1eda9a629fa40/explore>.

¹⁹⁸ 88 Fed. Reg. at 50,470.

¹⁹⁹ 88 Fed. Reg. at 50,463.

²⁰⁰ *See* 88 Fed. Reg. at 50,463.

²⁰¹ The Attorneys General are suggesting EPA consider setting the clearance levels for window sills and troughs both at 20 $\mu\text{g}/\text{ft}^2$. *See supra* at note 174. If EPA agrees to this suggestion, the Agency should also begin the phase-in period at 5/20/20 $\mu\text{g}/\text{ft}^2$.

f. The Attorneys General Urge EPA to Promptly and Effectively Communicate its Proposal to All Members of the Public

For most of the history of these regulations, EPA has set its Hazard Standards equal to the Clearance Levels. This set expectations and understanding of how EPA’s program operated in practice and conveyed a clear and consistent message—dust-lead should be below a certain value to avoid adverse health effects. If EPA sets the Hazard Standards at any reportable level “greater than zero” while setting the Clearance Levels at a different value, then in some circumstances a hazardous level of dust-lead could lawfully be found in a home that has successfully completed abatement to Clearance Levels. This disconnect could confuse the public about how to ensure their children are protected from dust-lead.

Given this possible confusion, EPA should effectively communicate what these changes mean for the public. EPA’s proposal would take a step in this direction by changing the regulatory definition of “abatement” such that “recommendation for action applies when dust-lead loadings are at or above the [Clearance Level] . . . rather than at or above the [Hazard Standard] as has been the case historically.”²⁰² The change “is intended to align with the proposed decoupling of the [Hazard Standards] and [Clearance Level] and to focus impacted entity resources (*e.g.*, HUD, city, state) on the situations that present the most risk.”²⁰³ In other words, this change would indicate to consumers that “the recommendation for action applies when dust-lead loadings are at or above the [Clearance Level].”²⁰⁴ The Attorneys General support this change.

Further, it is very important that EPA use a clear and effective advisory statement to address situations where lead-contaminated dust remains after lead abatement jobs. This advisory statement should allow the public to understand why their home or child-occupied facility passed clearance while lead-dust hazards remain.²⁰⁵ Recognizing this challenging communications issue, we recommend that EPA engage with members of the public and convene a community-based advisory group to inform the final language that EPA uses.

For example, EPA could alter its terms to more transparently convey its meaning. The terminology of Hazard Standards and Clearance Levels could be renamed, for instance, the “dust-lead hazard standard” to “dust-lead hazard level” while renaming the “dust-lead clearance level” to “dust-lead action level.” A change of this kind could make it easier for the public to understand the effects of the required abatement work. If EPA makes a change to terminology, however, it must do so with consideration of how these terms and related wording are used in other federal and state regulations.²⁰⁶

²⁰² 88 Fed. Reg. at 50,464.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ 88 Fed. Reg. 50,444-01, 50482 (Aug. 1, 2023).

²⁰⁶ *E.g.*, N.J.A.C. 5:17, https://www.nj.gov/dca/divisions/codes/codreg/pdf_regs/njac_5_17.pdf.

g. EPA’s Soil-Lead Hazard Standards and Definition of Lead Paint

EPA is court-ordered to update both its soil-lead hazard standards and definition of lead paint.²⁰⁷ EPA says it intends to address the soil-lead hazard standards—last updated in 2001—in a separate rulemaking due “to resources considerations and to act as expeditiously as possible” to revise the dust-lead regulations.²⁰⁸ Similarly, EPA did not propose to update its definition of lead-based paint, which has not changed since Congress’ original 1992 legislation.²⁰⁹

EPA argues that these rulemakings are time- and work-intensive, and that they prioritized the dust-lead regulations first. However, EPA does not account for the close interplay between these regulations in the overall effort to holistically reduce lead’s adverse effects to human health. EPA’s dust-lead Proposal would be reinforced by stronger soil-lead hazard standards and an updated definition of lead-based paint, and vice versa. To achieve these reductions, the Attorneys General request that EPA immediately comply with its legal obligation to update its soil-lead hazard standards and definition lead-based paint.

h. EPA Must Continually Consider Further Reductions to Clearance Levels

While the Attorneys General support the Proposal, the Agency must continue to evaluate remediation techniques and laboratory capacity in future rulemakings to consider further reductions to the Clearance Levels. For example, the EPA should explore whether applying lead-free sealants to floors, window sills, and window troughs after cleaning an abatement area can further reduce lead levels. These techniques are like those recommended in the 1995 HUD Guidelines for the Evaluation and Control of Lead Hazards.²¹⁰ Moreover, as laboratory technology advances, it is likely that laboratories will be able to process dust wipes with greater precision and decreased expense. As new information and techniques become available, EPA must consider lowering Clearance Levels in kind.²¹¹

i. Definition of Target Housing, Electronic Submission of Paperwork for Lead-Abatement Work, and Federal Funding for Lead-Abatement Activities

The Proposal changes the regulatory definition of target housing, which determines what types of housing are subject to lead-based paint regulations. Under the Proposal’s definition, studio apartments, housing for the elderly, and housing for people with disabilities are not considered target housing, and therefore not subject to lead-based paint rules.²¹² However, these types of housing are still covered by the regulations if “any child who is less than [six] years of age resides or is expected to reside in such housing.”²¹³ This definition follows language from statutory revisions to TSCA in 2017, but the Attorneys General urge EPA consider alternative ways to minimize lead exposure to people living in these types of housing. Furthermore, we

²⁰⁷ *A Cmty. Voice*, 997 F.3d at 994-95.

²⁰⁸ 88 Fed. Reg. at 50,451.

²⁰⁹ *Id.* at 50,452.

²¹⁰ HUD, Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Ch. 14: Cleaning, 14-3, 14-16, 14-20 (1995), available at <https://apps.hud.gov/offices/lead/lbp/hudguidelines/Ch14.pdf>.

²¹¹ See *A Cmty. Voice*, 878 F.3d at 784.

²¹² 40 C.F.R. § 745.223.

²¹³ *Id.*

encourage EPA to clarify exactly what “expected to reside” means as used in this provision; there is no intuitive or clear way to determine when a child under the age of six is “expected to reside” in a certain house.

Moreover, the Attorneys General proposes that EPA continue to allow the lead-abatement workforce to submit payments and applications to the EPA in hard copy rather than requiring electronic submission, as some members of the workforce have limited proficiency with and access to technology.

The Attorneys General also recognize that lower standards may increase the number of target housing units and child-occupied facilities that are considered to have a hazardous amount of dust-lead on its floors and windowsills, potentially leading to expenses associated with abatement of these hazards. To address this potential increase, the coalition suggests that EPA dedicate funding for owners of target housing and child-occupied facilities to conduct lead abatement.

V. Conclusion

Science has long recognized that there is no safe level of lead in blood. For the first time, EPA has proposed to base its regulatory Hazard Standards exclusively on adverse effects to human health as TSCA requires. If adopted, EPA’s proposed Hazard Standards and Clearance Levels will reduce the adverse health effects associated with lead exposure, especially in the environmental justice communities that currently bear a disproportionate burden from lead. The Attorneys General strongly support EPA’s Proposal and urge the Agency to promptly adopt it.

The Attorneys General also urge EPA to revise its soil-lead hazard standards and definition of lead paint. Updates to these important regulations that work in tandem with the dust-lead Hazard Standards and Clearance Levels will further reduce adverse health effects from lead. Clear communication to the public will be necessary to effectively implement EPA’s Proposal, so the Attorneys General also ask EPA to transparently explain the ways that the program is changing, including even by altering terminology that is used to describe dust-lead hazards and clearance. EPA must also continue to monitor developments in sampling and testing that could support further reducing the Clearance Levels. The Attorneys General appreciate this opportunity to comment on these significant measures aimed at protecting public health and the environment.

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