

June 26, 2020

Maine Center for Disease Control  
Maine Department of Health and Human Services  
286 Water Street  
Augusta, ME 04333

Re: 10-144 CMR ch. 292 - Rules Relating to The Lead Poisoning Control Act

To Whom It May Concern:

Thank you for the opportunity to provide comment on the proposal to update the definitions of dust lead hazards included in 10-144 CMR ch. 292 on behalf of both the Environmental Health Strategy Center and the Conservation Law Foundation.

The Environmental Health Strategy Center is a Maine-based charitable nonprofit that works to create a world where all people are healthy and thriving, with equal access to safe food and drinking water and products that are toxic-free and climate friendly. The Strategy Center has worked on issues related to childhood lead poisoning prevention in Maine since our founding 2002.

Conservation Law Foundation protects New England's environment for the benefit of all people. Founded in 1966, CLF is a non-profit, member-supported organization with offices located in Maine, Massachusetts, Vermont, Rhode Island and New Hampshire. CLF has been a leading advocate for healthy communities in Maine and throughout New England and is engaged in numerous efforts to address the threat of emerging contaminants, including lead, throughout New England.

We appreciate the need for the Department to have issued the emergency rules to conform Maine's dust-lead hazard standards to at least the ceiling levels promulgated by the US EPA. But now that the Department is proposing final standards of 10  $\mu\text{g}/\text{ft}^2$  on floors and 100  $\mu\text{g}/\text{ft}^2$  on window sills, we are extremely disappointed to see it has not used this opportunity to update the levels to reflect lower levels actually necessary to protect children, rather than accept the weak (and likely legally insufficient) standards of the Trump administration. At a minimum, the Department must lower the regulatory definitions of lead dust hazards to 5  $\mu\text{g}/\text{ft}^2$  on floors and 40  $\mu\text{g}/\text{ft}^2$  on window sills. Additionally, the Department should use this opportunity to update the long-outdated definition of lead-based paint, reducing it to the 600 ppm (or .06%) level that was set as the legal limit in consumer paint at the federal level in 1978.

#### [Statutory Requirements & Federal Standards](#)

The Department cites 22 MRSA § 1315-A as its authority for these rules, which grant the commissioner authority "...to protect the public from lead poisoning." § 1323 further authorizes the adoption of rules to carry out the purposes of the statute and, "...to ensure that

state law relating to lead poisoning satisfies minimum requirements of federal law in all respects.” Both the plain reading of this requirement and the Department’s historic application of this has been that state rules must be *at least as stringent* as Federal law. There is no prohibition in the Department carrying out its mandate to “protect the public” by *exceeding* the requirements of federal law and establishing stricter standards.

As further detailed below and in the attachments to these comments, the scientific evidence is clear that stricter standards are required in order to effectively protect the public from lead hazards. It would appear that the Department, however, has made no effort to consider alternatives to simply adopting the minimum (and minimal) requirements of the Federal law as recently promulgated by the US EPA.<sup>1</sup>

### Need for a Lower Dust Standard

The EPA rule was the result of a 2009 Citizen Petition that demonstrated the need for stricter lead dust levels based on science that was already well established ten years ago.<sup>2</sup> EPA’s failure to act on this petition resulted in the Ninth Circuit Court of Appeals issuing a Writ of Mandamus in December of 2017 requiring the agency to issue a lower dust lead level. In the decade since the initiating petition, the science on the dangers of lead exposure, especially on young children, has grown. Notably, in the interceding years, the U.S. Centers for Disease Control has determined that there is no safe level of lead exposure and backed away from using a level of 10 µg/dL as a target for young children. Indeed, in 2015, Maine’s statute was revised to define “lead poisoning” to be what was then a value of 5 µg/dL<sup>3</sup>, and the Maine Center for Disease Control and Prevention has also affirmed that there is no safe level of lead in a child’s body.<sup>4</sup>

When EPA established the dust-lead hazard standard of 40 µg/ft<sup>2</sup> on floors, and 250 µg/ft<sup>2</sup> on window sills in 2001, it did so on the basis of the agency’s estimate that those standards would result in a one to five percent probability of a child developing a blood lead level of 10 µg/dL.<sup>5</sup> In contrast, in a 2009 study published by researchers with the National Center for Healthy Housing and the U.S. Department of Housing and Urban Development using data collected by CDC, shows that at the proposed dust-lead hazard standard of 10 µg/ft<sup>2</sup>, there is a 23.8 percent probability that children in pre-’78 housing will have blood lead levels greater than 5 µg/dL.<sup>6</sup>

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<sup>1</sup> 84 *Fed. Reg.* 32632

<sup>2</sup> Petition of R. Morley, P. MacRoy, T. Neltner, et al. to Lisa Jackson, Adm’r, EPA (Aug. 10, 2009). Accessible at: <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2009-0655-0002>

<sup>3</sup> PL 2015, c. 267, Part LLLL defining it based on a quantile of national data which was the equivalent to 5 when it was enacted. Revised again in 2019 to specifically state 5, PL 2019, c. 201.

<sup>4</sup> Maine Center for Disease Control and Prevention, “Study Supports Effectiveness of Maine’s Lower Lead Inspection Threshold,” April 18, 2019. Accessible at: <https://www.maine.gov/dhhs/mecdc/press-release.shtml?id=1264794#:~:text=%22There%20is%20no%20safe%20level,and%20development%20will%20be%20affected.%22>

<sup>5</sup> 66 *Fed. Reg.* 1215.

<sup>6</sup> Dixon et al., Exposure of U.S. Children to Residential Dust Lead, 1999-2004: II. The Contribution of Lead-Contaminated Dust to Children’s Blood Lead Levels, 117 *Env’tl Health Perspectives* 468, 473 Tbl. 6 (2009). Accessible at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661919/pdf/ehp-117-468.pdf>

**Put more plainly, the proposed rule is establishing a definition of dust lead hazard at which nearly one in four children living at that level would meet the state’s definition of lead poisoning.** Writing off nearly a quarter of our children is clearly inconsistent with the legislative mandate to protect the public from lead poisoning.

In response to EPA’s proposal setting the standards that the Department is relying on, over 13,400 comments were submitted, nearly all of them calling upon the agency to adopt more stringent protections. Notably, the American Academy of Pediatrics commented, “...there is no safe level of lead exposure for children. An appropriate health-based standard would be 0  $\mu\text{g}/\text{ft}^2$ . In pursuing the optimal public health outcome, EPA should ensure that DLHS is as close to 0 as possible.”<sup>7</sup> We agree completely with the AAP, and believe that the proper question for the Department to be considering, in line with its statutory mandate to protect the public from lead poisoning, is what level of lead dust is achievable in our housing stock.

There is no question that a level of 5  $\mu\text{g}/\text{ft}^2$  on floors and 40  $\mu\text{g}/\text{ft}^2$  on window sills is achievable. A detailed overview of both federal government and independent research that demonstrates this, as thoroughly laid out in Section II(B) (pages 7-9) of the comments from Earthjustice, et al, to the US EPA, which are attached and we incorporate entirely herein by reference.<sup>8</sup> However, suffice it to say that nearly two decades ago, HUD demonstrated that its lead abatement programs achieved geometric mean dust lead levels under 10  $\mu\text{g}/\text{ft}^2$  on floors and under 20  $\mu\text{g}/\text{ft}^2$  on window sills.<sup>9</sup>

It’s also worth noting that a significant justification of EPA’s in promulgating a floor standard of 10  $\mu\text{g}/\text{ft}^2$  was the “challenge” of laboratories in meeting certification standards for a lower level of 5  $\mu\text{g}/\text{ft}^2$ .<sup>10</sup> However, the analysis EPA relied upon to reach this conclusion was shockingly sloppy, based on conversations with a handful of mostly government labs in discussions that failed to even collect or report on estimated volumes for all the labs it interviewed or how these compare to the entire market. The agency highlighted its estimate that over 40% of laboratories would have to change their processes to meet a lead dust standard under 10  $\mu\text{g}/\text{ft}^2$ , but failed to note that there is no evidence available in the record to determine what actual percentage of the total market for wipes this would represent given the wide differences in market share amongst labs. EPA’s interviews show that all six of the labs it spoke with who lacked the more sensitive GFAAS or ICP/MS testing equipment processed fewer than 3,000 wipes a year. In contrast, Environmental Hazards Services (EHS), one of the largest commercial lead laboratories in the country that processes nearly 180,000 wipes a year, was not consulted

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<sup>7</sup> American Academy of Pediatrics comments to EPA-HQ-OPPT-2018-0166. Accessible at: <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OPPT-2018-0166-0295&attachmentNumber=1&contentType=pdf>

<sup>8</sup> Earthjustice, et al. Comments on EPA-HQ-OPPT-2018-0166. (2018). Accessible at <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OPPT-2018-0166-0311&attachmentNumber=1&contentType=pdf>

<sup>9</sup> Galke et al., Evaluation of the HUD Lead Hazard Control Grant Program: Early Overall Findings, 86 Environ Res. 149, 152 (2001), Accessible at: [http://nchharchive.org/Portals/0/Contents/Early\\_Overall\\_Findings.pdf](http://nchharchive.org/Portals/0/Contents/Early_Overall_Findings.pdf)

<sup>10</sup> 84 Fed. Reg. 32639-40

by the agency. In a sworn statement provided as part of litigation against the agency, EHS's Laboratory Director stated that they currently could accommodate a standard of 5 µg/ft<sup>2</sup> and have excess capacity immediately available to run additional wipes at that level if other labs were to cease offering dust wipe analysis.<sup>11</sup>

Rather than rely on EPA's shoddy work and poor justification, if the Department is to fulfill its mandate to protect the public from lead poisoning, it must actually determine if access to dust wipes for projects in Maine would be significantly curtailed by a change in the dust standard.

### Need for a Lower Paint Standard

While the USEPA has neglected to propose updates to the definition of lead-based paint, there is no reason that the Department cannot update its rules to address the longstanding gap between lead limits for paint on the wall versus what could be legally sold. The Department's current rules, like those of USEPA, define lead-based paint as that which has more than 0.5%, or 5000 ppm, lead by weight, or a lead concentration of 1.0 mg per square centimeter. Yet we base our definition of regulated housing on the year it was built, the result of the 1978 implementation of a Consumer Product Safety Commission (CPSC) rule prohibiting the sale of paint with more than 600 ppm (or 0.06%) of lead. More recently, the CPSC standard has been lowered to 90 ppm.

Much of the historic basis for allowing paint already on the wall to have a higher level of lead than newly applied paint related to ease of measuring. Specifically, early portable XRF technology had a difficult time discerning levels under 1.0 mg/cm<sup>2</sup>. There is no clear evidence that paint with 5,000 ppm is safe. In fact, Congress specifically directed the CPSC to consider a level of 5,000 ppm instead of 600 ppm, with the CPSC determining in 1977 that, "available scientific information is insufficient to establish that a level of lead in paint above 0.06 percent but not over 0.5 percent is safe."<sup>12</sup>

As we continue to identify hazards from lead exposure at lower levels and drop the "acceptable" level of lead in children accordingly, it's only logical that we need to examine the fundamental definition of lead paint. Paint with 4,900 ppm of lead is currently exempt from all regulatory protections, including gross disturbances such as power sanding or torching. This wasn't safe in 1977, and it certainly is not safe today. Modern XRF equipment can reliably measure much lower levels in paint, and it is long past time to at the very least sync the 1978 target housing definition based on the 600 ppm rule with the definition of lead paint to ensure that we are not unnecessarily exposing children to dangerous renovations and paint removal in pre-'78 housing with paint over 600 ppm.

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<sup>11</sup> A Community Voice, et al. v. United States Environmental Protection Agency. 9<sup>th</sup> Cir. Case # 19-71930. "PETITIONERS' PROPOSED SUPPLEMENTS TO THE RECORD." January 15, 2020.

<sup>12</sup> 42 Fed. Reg. 9404.

Thank you once again for the opportunity to provide these comments. Please do not hesitate to contact Patrick MacRoy at [PMacRoy@PreventHarm.org](mailto:PMacRoy@PreventHarm.org) and Phelps Turner at [pturner@clf.org](mailto:pturner@clf.org) with any questions about them.

Sincerely,

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