

SAICM/UCT Lead in Paint (LiP) Community of Practice

Discussion Forum

Title	Compliance and enforcement mechanisms in a lead paint law
Date	10th November 2020
Time	16:00 – 17:30 (GMT+2)
Facilitator	Andrea Rother, Univ. of Cape Town
Presenter	Evelyn Rivera-Ocasio, US Environmental Protection Agency Negin Mostaghim, US Environmental Protection Agency Amanda Rawls, American ABA Rule of Law Initiative
Chair	Maxine Brassell, MPH Student, Univ. of Cape Town

NOTE:

- ✓ Since this is a discussion, we encourage you to **prepare** or at least think about the questions prior to joining.
- ✓ **This guide** lays out the background to the questions, presents the questions and provides resources if you should wish to read further on the issue.



- **Details for joining this discussion are below.** To participate in this discussion you will need to have signed up in advance at:
<https://chemicalswithoutconcern.org/community>
- For **technical assistance** on the day of the discussion go to the CSDG CoP WhatsApp group: <https://chat.whatsapp.com/BKTKGwt5cnNCgG9BOzYK1i>
- **Connect** with laptops/PCs rather than phones since the discussion is about typing.

Presenter information

Amanda Rawls, ABA-ROLI



Amanda Rawls is a lawyer and development professional currently based in Amman, Jordan. She has over 15 years of experience in Access to Justice, Rule of Law, and Legal System Strengthening. She has assisted Ministries of Justice and Health, Law Reform and Land Commissions, to draft law and policy ranging from Whistleblower Protection and Land Rights laws to national policies on expanding human resources for health and integrating customary and statutory justice. She has worked mainly in sub-Saharan Africa.

Negin Mostaghim, US EPA



Negin Mostaghim is an enforcement attorney in the Office of Civil Enforcement at the U.S. Environmental Protection Agency. She also advises attorneys on specific enforcement matters with particular emphasis on hazardous waste regulation. Previously, she has assisted with drafting country laws and has an LL.M. in International Environmental Law from the Washington College of Law.

Evelyn Rivera-Ocasio, US EPA



Evelyn Rivera-Ocasio has been working for the U.S Environmental Protection Agency since September 1998. First, as an enforcement officer and since 2013 as an Assistant Regional Counsel at the Office of Regional Counsel – Caribbean Programs. Evelyn has Bachelor of Science Degree in Chemical Engineering from the University of South Florida, a Juris Doctor from the University of Puerto Rico School of Law, and a Master of Laws Degree in Environmental Law from Vermont Law School.

DISCUSSION INTRODUCTION

Developing effective compliance and enforcement systems is important to ensuring the success of laws. The purpose of enforcement is to provide incentive for the regulated community – those subject to requirements in the law -- to follow the law. In lead paint laws, the regulated community includes paint manufacturers and paint retailers.

We can think about compliance and enforcement in three stages:

1. Promoting compliance,
2. Documenting compliance, and
3. Government enforcement.

This Lead in Paint Community of Practice discussion is organized around these stages.

QUESTION 1 (16:05 GMT+2)

Background: Promoting Compliance - The first stage in effective enforcement and compliance is promoting compliance, so that the regulated community understands the requirements. Helping the regulated community understand its compliance obligations, including by involving them in the development of the law, helps foster compliance with the lead paint law.

Government can promote compliance by providing the regulated community with useful and timely information to assist with key compliance requirements of the law. For example, governments can provide the following information:

- How and where to access non-lead ingredients
- How to sample paint for testing
- How and where to find labs to send samples for testing (i.e., names and contact information)
- Where to get required documents/forms, and understanding what information is required
- Where to access continued assistance with compliance questions

Governments can partner with technical NGOs and business associations in order to promote sharing of information with the regulated community.

Question 1: In your country, what information do paint producers and importers need to be able to comply with a new lead paint law? What challenges have arisen or might arise in providing this information?

- **Resources/Information for the Discussion:** Model Law and Guidance for Regulating Lead Paint key elements D & E (pages 6-8, 11-12)
<https://www.unenvironment.org/resources/publication/model-law-and-guidance-regulating-lead-paint>

QUESTION 2 (16:30 GMT+2)

Background: Documenting Compliance - The second stage in effective enforcement and compliance is documenting compliance, in which the regulated community documents that it has fulfilled the requirements. To be effective, a lead paint law should establish mechanisms for the the regulated community (paint producers and importers) to document that they are complying with the legal requirements of the law.

The Model Law on Regulating Lead Paint provides sample legal text for requiring paint manufacturers and importers to complete declarations that their paints comply with the limit on lead content in paint, based on testing conducted in accredited labs, and make those declarations available.

Question 2: In your country, what are some efficient and effective ways (e.g., registration, declaration of conformity, laboratory testing by third-party, self-reporting, etc.) for paint producers and importers to document compliance?

Resources/Information for the Discussion:

- Model Law and Guidance for Regulating Lead Paint key elements D (pages 6-7)
<https://www.unenvironment.org/resources/publication/model-law-and-guidance-regulating-lead-paint>
- WHO Brief guide to analytical methods for measuring lead in paint
<https://www.who.int/publications/i/item/9789240006058>
- INECE, Principles of Environmental Compliance and Enforcement Handbook
<https://nepis.epa.gov/Exe/ZyNET.exe/P1005AO9.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2006+Thru+2010&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfile%5CIndex%20Data%5C06thru10%5CTxt%5C00000011%5CP1005AO9.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>

QUESTION 3 (17:00 GMT+2)

Background: - Enforcement (government response) The third stage in effective compliance and enforcement is government enforcement, in which the government verifies whether companies have fulfilled the requirements and takes action to punish violators if needed. Thus government enforcement includes verifying compliance (or identifying violations) and penalizing violations. Enforcement provides incentive for compliance and eliminates unfair advantage for those who do not comply.

Compliance can be verified by government through:

- Inspecting compliance documentation to ensure it is complete and accurate;
- Inspecting production facilities, points of entry, and points of distribution and sale to ensure compliance procedures are being followed (i.e. that documentation accompanies paint through the supply chain)
- Spot testing paint and comparing results to documentation provided.

When violations are found, there are a range of actions government can take in response, depending on the severity of the violation. These responses can include administrative sanctions, seizure of product, fines paid by the company or the responsible individual, or potentially in extreme cases, incarceration.

Question 3: In your country what are the ways (e.g., document review, site inspection, spot testing) government could verify if paint producers and importers are in compliance? What government actions could be used in response to violations?

Resources/Information for the Discussion:

- Model Law and Guidance for Regulating Lead Paint key elements D & E (pages 6-8, 11-12) <https://www.unenvironment.org/resources/publication/model-law-and-guidance-regulating-lead-paint>
- Lead Paint Alliance Frequently Asked Questions (FAQ) on Compliance Assurance <https://www.unenvironment.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/global-alliance-eliminate-lead-paint-2#Compliance>

Instructions for joining this discussion on the set date:

This discussion will be held in **Microsoft (MS) Teams**.

- After joining the CoP, a link to this discussion will be circulated to you via email and sent out as an Outlook calendar invite.
- If your organisation already has MS Teams, you will need to switch from your organisations MS Teams to your University of Cape Town Guest Teams account in the following manner:
 - a. You can do this by going into your MS Teams and navigating to the top right corner of the page to where your profile picture is
 - b. Here you should see the name of your organisation and small arrow indicating a drop-down menu
 - c. Click on this arrow and choose "University of Cape Town"
- Find the email sent to you with the MS Teams link to this discussion.
- Click the link that says, "Join Microsoft Teams Meeting" and you should be taken into the discussion.

If you have not received an email with the link, make sure you are signed up for the Chemicals and SDGs Community of Practice or send an email to: uctcops@outlook.com

Format of how the discussion will operate:

- To participate in this discussion, sign up at: <https://chemicalswithoutconcern.org/community>
- Should you require assistance or have questions, contact: uctcops@outlook.com
- ✓ This live discussion will be run in Microsoft Teams in the chat section on the set day. . Members will introduce themselves upon arrival into the chat room.
- ✓ The discussion presenter will briefly present a verbal introduction.
- ✓ Three questions will be posted during the 1 ½ hour discussion for 25 minutes discussion. The presenter/s will address comments in the chat section of Teams and all are encouraged to engage.
- ✓ All are welcome to join the discussion which will be held in English. Feel free to write in another language if you are struggling with English and members will assist where possible.

This activity is supported by the Global Environment Facility (GEF) project ID: 9771 on *Global Best Practices on Emerging Chemical Policy Issues of Concern under the Strategic Approach to International Chemicals Management (SAICM)*.