

A Model Law and Guidance for Regulating Lead Paint

*Regional Workshop for Africa
Abidjan, Cote d'Ivoire
29-30 May 2019*

*Jay Monteverde
Director, Global Environmental Programs
Rule of Law Initiative, American Bar Association (ABA ROLI)*

**Global Alliance to
Eliminate Lead Paint**



Background: Lead Additives Are Not Needed in Paint

- ▶ Historically, lead compounds were added to oil-based decorative and industrial paints to provide certain properties:
 - ▶ Enhanced colour, faster drying time, or reduced corrosion on metal surfaces.
- ▶ Lead is most commonly found in oil-based paints, while water-based latex paints rarely contain intentionally added lead.
- ▶ Today, non-lead pigments, dryers and anti-corrosives are widely available for oil-based paints, and are used by many manufacturers to produce high quality paints.
- ▶ Paints may include some ingredients, such as natural clays, that contain lead as a contaminant. This is why “lead-free” paint is not technically possible, and why testing for lead is crucial.

Need for Effective Lead Paint Laws

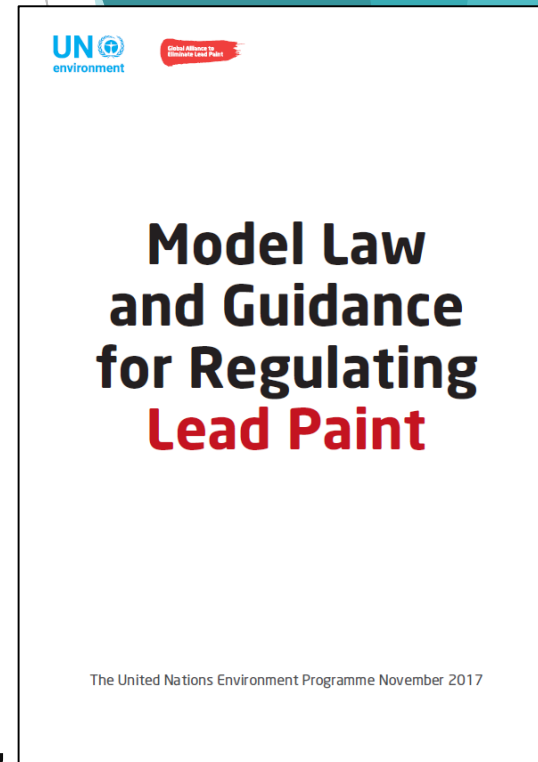
- ▶ Term “Lead Paint” as used by the Alliance means any paint with levels higher than a maximum limit, e.g., 90 ppm
- ▶ Legally-binding controls and effective enforcement are needed to successfully change the behavior of paint manufacturers and importers.
 - ▶ A voluntary lead limit, or only a labelling requirement, does not usually change behavior.
 - ▶ Knowledge of lead hazards is also not enough to change behavior, due to existing market incentives.

Impact of Lead Paint Laws on Paint Market

- ▶ **A law creates strong incentives for change:**
 - ▶ For paint manufacturers to reformulate paints to comply with law
 - ▶ For ingredient suppliers to produce more and better non-lead ingredients to sell to paint manufacturers
 - ▶ For paint importers to sell paints that comply with law
 - ▶ For commercial laboratories to enhance their capabilities to test for lead in paint
- ▶ **Strong laws have long-term benefits for industry:**
 - ▶ A country's law creates a fair competitive market for all paint manufacturers, importers and exporters.
 - ▶ Harmonized laws among countries can reduce trade barriers regionally and globally.

Purpose of the Model Law and Guidance

- ▶ Governments requested a model law to help phase out lead paint
- ▶ Developed by UN Environment with US EPA and WHO; currently available online in 6 UN languages
- ▶ Provides global best practices in regulating lead in paint and serves as a template for strong, straightforward, efficient lead paint limitations
- ▶ Not intended to be a one-size fits all approach, but to be adapted to each country's existing legal framework
- ▶ Lead paint “laws” can take various forms in a country, including statutes, regulations, and mandatory technical standards – as long as the “law” has enforcement provisions and penalties for non-compliance



Drafting Process for Model Law and Guidance

- ▶ Created through multi-stakeholder, participatory process over one year and finalized in 2017, then revised slightly in 2018
- ▶ Based on review of existing lead paint laws, with changes to make model law both easy to implement and customizable to national circumstances
- ▶ Worked with stakeholders (industry, civil society, technical experts) on the draft, and incorporated their comments
- ▶ Draft was provided on website of UN Environment Programme to solicit public comment from all stakeholders
- ▶ Available in all UN languages

Content of Model Law and Guidance

▶ **Guidance:**

- ▶ Health and economic costs of lead exposure, and benefits of laws to limit lead in paint.
- ▶ Key elements needed for effective lead paint laws, and specific recommendations

▶ **Appendix I:** Model Lead Paint Law

- ▶ Example of legal language for a lead paint law, including recommendations from the guidance

▶ **Appendix II:** List of international standards for paint sample preparation and lead test methods

Model Law & Guidance Provides Best Practical Approach to Developing Lead Paint Laws

▶ **Recommended Legal Approach: Establish a low maximum limit on total lead content in all paints**

- ▶ Relatively easy to understand, to measure compliance and to enforce
- ▶ Prevents future intentional use of all lead compounds in paints
- ▶ 35 countries use this approach, and more are now in process

▶ **Recommended Maximum Limit: 90 ppm total lead**

- ▶ Lowest level that is technically feasible for manufacturers to achieve for all types of paint
- ▶ Provides best available health protection
- ▶ Lowest maximum level currently required by any country
- ▶ Becoming an accepted international standard for new and revised laws around the world

Key Provisions and Recommendations of the Model Law

- ▶ **Scope of coverage:** All uses of paints/similar coatings
- ▶ **Max. limit on total lead content:** 90 ppm
- ▶ **Effective dates of requirements:** Two options
- ▶ **Compliance and enforcement mechanisms:**
 - ▶ Manufacturers and importers are responsible for issuing a written “Declaration of Conformity” for all paints produced or imported, based on lead testing by accredited third-party lab.
- ▶ **Enforcement responsibility and authority:**
 - ▶ Specify responsible government agency/organization, and its authority to inspect facilities and test paints
- ▶ **Consequences for non-compliance:**
 - ▶ Specify prohibited acts; civil and criminal penalties, injunctive relief, etc.

Scope of Coverage

- ▶ The Model Law recommends including all paints, which simplifies enforcement and is most protective
- ▶ In the event of any exceptions allowing lead for special uses, precautionary labeling should always be used:
 - ▶ **“DANGER: CONTAINS LEAD. DO NOT APPLY TO SURFACES ACCESSIBLE TO CHILDREN OR PREGNANT WOMEN.”**
- ▶ The Model Law does not recommend labeling provisions for paints as “lead free,” since it is not technically possible to eliminate lead contamination from all ingredients. Instead, setting the very low limit of 90 ppm is recommended.

Effective Dates

- ▶ Effective dates provide industry with a clear deadline for compliance.
- ▶ Effective dates should allow reasonable time for:
 - ▶ Manufacturers to alter paint formulations and production processes.
 - ▶ Manufacturers, importers, distributors and retailers to sell or safely dispose of existing stocks of paint with lead above new max. limit.
- ▶ Possible options for choosing effective dates:
 - ▶ Delayed effective dates for all paints (typically 1 year), or
 - ▶ Phased effective dates for different uses of paints (for example, 1 year for household paints, 2 or 3 years for industrial paints).

Compliance & Enforcement Mechanisms

- ▶ The Model Law uses a “**Declaration of Conformity**” process to promote compliance and provide a mechanism for enforcement. It places the obligation for compliance on manufacturers and importers.
- ▶ Manufacturers and importers must:
 - ▶ Ensure that all paints are tested for lead by an accredited third-party laboratory. The laboratory does not have to be in-country.
 - ▶ Sign a Declaration of Conformity, including a sworn affidavit, that all their paints comply with the maximum lead limit.
 - ▶ Provide the Declaration of Conformity for all paints to distributors and retailers, and to the government upon request.
- ▶ Failure to provide a Declaration of Conformity subjects them to penalties recommended in the Model Law.

Compliance & Enforcement Mechanisms (continued)

- ▶ **Prohibited Acts**: For enforcement purposes, it is important to clearly define all prohibited activities.
- ▶ The Model Law includes these prohibited acts and makes it illegal for *any person* to engage in them:
 - ▶ Manufacturing, selling, distributing, or importing paint containing lead over the legal limit.
 - ▶ Failing to cooperate with government inspection and testing.
 - ▶ Failing to provide a Declaration of Conformity or making a false declaration.
 - ▶ Attempting to exert undue influence over a third-party laboratory's testing of paint or reporting of test result.

Enforcement Responsibility and Authority

- ▶ **Government Role in Ensuring Compliance:** Government inspections are critical to ensuring that paints are manufactured and imported in conformity with country's lead limit.
- ▶ Law should provide government with authority for:
 - ▶ Inspections of facilities or stores
 - ▶ Review of company testing data, Declarations of Conformity, and related records
 - ▶ Government testing of paint
- ▶ Law should identify the government ministry, agency or organization that is responsible for implementing the law, including enforcement activities.

Key Considerations for Adapting Model Law to Fit National Conditions

- ▶ Model Law can be used to draft a statute, regulation, and/or mandatory technical standard
 - ▶ Countries have taken different approaches, depending on their individual legal frameworks
 - ▶ Components of the Model Law can be separated and added to existing laws
- ▶ Governments are encouraged to use a multi-stakeholder process to develop a lead paint law. Benefits include:
 - ▶ Buy-in from key stakeholder groups, including civil society and industry organizations
 - ▶ Valuable technical input from industry

Assistance Available from ABA ROLI

- ▶ ABA ROLI is providing legal support to countries for drafting lead paint laws, coordinating with UN Environment and many other international, regional, and national experts, including US EPA and WHO.

Assistance Available from ABA ROLI

- ▶ Legal support may include:
 - ▶ Legal research summarizing existing national controls on lead in paint, toxic chemicals in consumer products, or other relevant topics
 - ▶ Organizing national-level meetings or webinars with appropriate stakeholders to discuss topics such as the Model Law, drafting national lead paint laws, ABA ROLI legal research or recommendations, or related issues
 - ▶ Recommendations for drafting lead paint laws, in cooperation with national stakeholders
 - ▶ Legal review and feedback on draft lead paint laws

Thank you for your attention

Jay Monteverde

Director, Global Environmental Programs
ABA ROLI Washington, DC Office
jay.monteverde@abaroli.org
+1-202-662-1952