

COMMENTS SUBMITTED TO U.S. ENVIRONMENTAL PROTECTION AGENCY
Draft of EPA’s Strategy to Reduce Lead Exposures and Disparities in U.S. Communities

EARTHJUSTICE * [insert others]

Docket EPA-HQ-OLEM-2021-0762 (Submitted via Regulations.gov)

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It is long past time to finally end lead exposure—via all pathways and routes—to prevent the irreversible health harms it causes, especially to this Nation’s children. As groups and individuals who work to protect communities from lead and who seek to lift up and support the work of colleagues and partners, we submit these comments on the *Public Comment Draft of the EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities* (“Draft Lead Strategy”), prepared by the United States Environmental Protection Agency (“EPA”), to urge this Administration to take the bold and aggressive actions that are desperately needed to protect our children from lead.¹

We are grateful to the Biden/Harris Administration for its commitment to protecting people from lead with a focus on communities facing disproportionately high exposures—but commitment is not enough. For decades, new administrations have entered the White House, claiming that they will finally solve the lead crisis that plagues our children—especially in communities of color and low-wealth communities—only to leave office having accomplished little. We are more than one year into this Administration’s first term, and it has not yet stated publicly what concrete actions it will take, nor the timeframes by which it will take them, in order to protect the public from lead. Unless this Administration quickly identifies bold and innovative actions that dramatically reduce exposure to lead from all sources, and then aggressively starts to implement those actions, it too will fail. We implore you to rectify this situation as soon as possible by identifying the specific steps the Administration will take to significantly reduce lead exposure and to create the regulatory frameworks needed to reach the goal of ensuring that no human in the United States is harmed by lead.

WHY BOLD ACTION IS NEEDED NOW

The devastating and irreversible harms lead exposure causes cannot be disputed. Nor can it be disputed that children from communities of color and low-wealth communities suffer the most. According to EPA, among children with the highest blood lead levels in 2013-16, Black

¹ *Strategy To Reduce Lead Exposures and Disparities in U.S. Communities*, 86 Fed. Reg. 59,711-02 (Oct. 28, 2021), *Draft EPA Strategy to Reduce Lead Exposures and Disparities in U.S. Communities; Comment Request; Correction*, 86 Fed. Reg. 70,124-02 (Dec. 9, 2021).

children’s blood lead levels were the highest.² Children living in poverty had higher blood lead levels than children above the poverty line, and Black children living below the poverty line had markedly higher blood lead levels than children in any other demographic reported. These disparities deprive many children of equal protection and of the bright future that all children deserve – increasing the likelihood of developmental delays and related harm, putting them at greater risk of multiple serious health problems, and subjecting them to significant lost earnings over their lifetime.³ This outrageous and blatant environmental injustice is unacceptable and must end.

Nonetheless, exposure to lead is not limited to children from communities of color or low-wealth communities. Although children living in areas with the highest percentages of pre-1950s housing and low incomes are at greatest risk of having lead in their blood, one out of every two children living in the United States under the age of six has detectable levels of lead in their blood.⁴ This is alarming because adverse health effects have been associated with the presence of lead in human blood at every measurable concentration. According to the World Health Organization:

At lower levels of exposure that cause no obvious symptoms, lead is now known to produce a spectrum of injury across multiple body systems. In particular, lead can affect children’s brain development, resulting in reduced intelligence quotient (IQ), behavioural changes such as reduced attention span and increased antisocial behaviour, and reduced educational attainment. Lead exposure also causes anaemia, hypertension, renal impairment, immunotoxicity and toxicity to the reproductive organs. The neurological and behavioural effects of lead are believed to be irreversible.⁵

² EPA, America’s Children and the Environment, *Lead in children ages 1 to 5 years: Median concentrations in blood by race/ethnicity and family income, 2013-2016*, Indicator B2 (Aug. 2019), <https://www.epa.gov/americaschildrenenvironment/ace-biomonitoring-lead#B2> 2019), <https://www.epa.gov/americaschildrenenvironment/ace-biomonitoring-lead#B2>

³ The lifetime earnings lost due to childhood lead exposure are estimated to be 46-55% higher for Black children than for White or Hispanic children. Joseph Boyle, et al., *Estimated IQ points and lifetime earnings lost to early childhood blood lead levels in the United States*, *Sci. Total Environ.*, 2021 Jul 15;778:146307. doi: 10.1016/j.scitotenv.2021.146307, <https://pubmed.ncbi.nlm.nih.gov/34030355/>

⁴ Marissa Hauptman, et al., *Individual- and Community-Level Factors Associated with Detectable and Elevated Blood Lead Levels in U.S. Children: Results from a National Clinical Laboratory*, *JAMA Pediatrics*, 2021 Dec 1;175(12):1252-1260, doi: 10.1001/jamapediatrics.2021.3518, <https://pubmed.ncbi.nlm.nih.gov/34570188/>.

⁵ Fact Sheet, World Health Organization, Lead Poisoning (Oct. 11, 2021), <https://www.who.int/en/news-room/fact-sheets/detail/lead-poisoning-and-health>.

There is also an association between higher childhood blood lead levels and violent or anti-social behaviors resulting in entry into the criminal justice system later in life.⁶

The dangers posed by lead exposure are not limited to children and therefore EPA must take into account the serious risks to adults as it designs its policies and standards. Low-level lead exposure is a causal risk factor for hypertension and cardiovascular disease mortality, with a recent large-scale study finding that 400,000 deaths per year in the U.S. are attributable to adult lead exposure.⁷ Lead is also a likely carcinogen, adding to the effect of other carcinogens in our environment.⁸

KEY TAKEAWAYS

1. We agree with EPA that lead exposure disproportionately impacts communities of color and low-wealth communities and remedying this disparity is morally compelled. We therefore fully endorse EPA’s goal of “reducing lead exposure in communities as a means to reduce persistent disparities in children’s blood lead levels and promote environmental justice.”⁹
2. The focus on communities that are most exposed is just the beginning. It is also imperative for EPA to identify eliminating exposure to lead in *all* communities – for people of all ages, since the dangers of lead are not limited to children – as a long-term goal, and set in place standards, rules, and policies that will get the United States

⁶ John Paul Wright et al., *Association of Prenatal and Childhood Blood Lead Concentrations with Criminal Arrests in Early Adulthood*, 5 PLoS Med. e101 (May 2008); Howard W. Mielke & Sammy Zahran, *The urban rise and fall of air lead (Pb) and the latent surge and retreat of societal violence*, 43 Env’t Intl 48 (Aug. 2012).

⁷ Lanphear B et al., *Low-level lead exposure and mortality in US adults: a population-based cohort study*, [https://doi.org/10.1016/S2468-2667\(18\)30025-2](https://doi.org/10.1016/S2468-2667(18)30025-2); Brown L et al. *Developing a Health Impact Model for Adult Lead Exposure and Cardiovascular Disease Mortality*. 2020. *Environmental Health Perspectives* 128:097005-1, <https://doi.org/10.1289/EHP6552>.

⁸ “EPA has considered lead to be a probable human carcinogen, and, under more recent assessment guidelines, it would likely be classified as likely to be carcinogenic to humans.” EPA, *Lead Compounds, Health Hazard Information*, <https://www.epa.gov/sites/default/files/2016-09/documents/lead-compounds.pdf>. The National Toxicology Program (“NTP”) has listed lead and lead compounds as “Reasonably Anticipated to Be Human Carcinogens.” See NTP, *Report on Carcinogens, Substances Listed in the Thirteenth Report on Carcinogens (13th ed. 2014)*, available at http://ntp.niehs.nih.gov/ntp/roc/content/listed_substances_508.pdf. The International Agency for Research on Cancer has found that inorganic lead compounds are probably carcinogenic to humans. See Int’l Agency for Research on Cancer, World Health Organization, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Vol. 87 Inorganic and Organic Lead Compounds* 378 (2006), available at <https://monographs.iarc.fr/ENG/Monographs/vol87/mono87.pdf>.

⁹ Draft Lead Strategy at 6.

to that goal. We urge EPA to revise the Draft Lead Strategy to more clearly and specifically set forth its plans and its timeline for these necessary actions.¹⁰

3. EPA should commit to specific and swift revisions to existing policies, taking into account cumulative exposures to lead across all routes and pathways. This is imperative because lead is a *cumulative toxicant* that affects multiple body systems and many people are exposed to lead from multiple sources (e.g., water, indoor dust from lead paint, air, food, household products).¹¹
4. EPA will not prevent exposure to lead if it continues to view lead as a problem of a purely “legacy” nature resulting from historical uses of lead in pipes and paint. Many people continue to be exposed to lead that is being newly introduced into the environment via industrial sources, waste treatment, food, aviation gas and gas used in a variety of other motorized vehicles such as farm equipment and racing vehicles, and consumer products.¹² The introduction of “new” lead into the environment, our homes, and our bodies must be prevented.
5. EPA has a major opportunity to transform federal environmental protections from lead exposure as a result of statutory deadlines, court orders, settlement agreements, and voluntary commitments that require it to adopt at least the following rules over the next several years:
 - **Drinking water pathway of exposure:**
 - a. Strengthen the Lead and Copper Rule (“LCR”)
 - **Air pathway of exposure:**
 - a. Strengthen air toxics rules for all lead emitting industrial sources, as necessary to satisfy section 112, including by assuring an ample margin of safety to protect public health from at least the following sources:
 - i. Secondary lead smelters;
 - ii. Lead acid batteries;
 - iii. Primary copper smelters;

¹⁰ We recognize that the Draft Lead Strategy indicates that “target dates and measures of progress for action milestones and completion” will be part of the final Lead Strategy. Draft Lead Strategy at 22. However, it is concerning and disappointing that EPA is not seeking public input on these essential components of its Strategy.

¹¹ Fact Sheet, World Health Organization, Lead Poisoning and Health (updated Oct. 11, 2021), <http://www.who.int/mediacentre/factsheets/fs379/en/>.

¹² We note that lead in shot used to hunt wildlife is also a major source of lead in the environment and food in some regions. We encourage EPA to consider what authorities it can use to limit or prohibit this source of lead. In addition, EPA should work with OSHA to protect workers in indoor firing ranges from lead exposure. *See* Protecting Workers from Lead Hazards at Indoor Firing Ranges, <https://www.osha.gov/sites/default/files/publications/OSHA3772.pdf>

- iv. Coal and other power plants (“MATS”);
 - v. Steel manufacturers;
 - vi. Municipal waste and other incinerators.
 - vii. Aviation gas and gas used in other motorized vehicles
 - viii. Evaluate all other lead-emitting sources and create a plan to eliminate or reduce lead emissions from all such sources.
- b. Strengthen new emission and ambient standards for lead (NAAQS);
 - c. Finalize endangerment finding for leaded aviation gas, followed by regulatory phase-out;
- **Lead paint-related pathway of exposure:**
 - a. Update lead hazard standards for dust-lead so they are based exclusively on health effects;
 - b. Update lead hazard standards for soil-lead so they are based exclusively on health effects;
 - c. Update clearance standards for dust-lead to the lowest feasible levels;
 - d. Revise definition of lead-based paint to the lowest levels of detection;
 - e. Extend the Renovation, Repair, and Painting (RRP) rule to public and commercial buildings.
6. EPA is required by the Toxic Substances Control Act (“TSCA”) to designate lead and lead compounds as a “high-priority” substance that will undergo risk evaluation, and then it will have to adopt a risk management rule if it determines that lead presents unreasonable risk taking into account its full life cycle, with a focus on populations at greater risk, including children, pregnant people, and workers.¹³ EPA should begin planning for this risk evaluation, including gathering necessary data, without delay.
 7. EPA should take its “whole of government” approach seriously and engage in meaningful collaborations with other federal agencies – especially the U.S. Housing and Urban Development Agency (“HUD”) and the Food and Drug Administration (“FDA”) – to reduce lead exposure in HUD-assisted housing and from food.
 8. If EPA believes that shortages of staffing and/or other resources are an obstacle to its adopting the health protective rules and conducting the required evaluation identified above, or taking other steps necessary to meet its goal of protecting humans from lead exposure, it should provide the public with estimates of (1) the number of full time employees required to complete each rulemaking; (2) the cost of completing each rulemaking; and (3) the time required to complete each rulemaking.

In addition to our comments immediately below, we have attached an Appendix that contains a detailed discussion of national rules, standards, policies, and guidance documents that we believe

¹³ 15 U.S.C. § 2605(b).

are necessary to create the legal framework needed to meet the goal of reducing exposures and eliminating racial and socioeconomic disparities in blood lead levels.

DISCUSSION

I. THE BIDEN/HARRIS ADMINISTRATION SHOULD ADOPT – AND THEN IMPLEMENT AND ENFORCE – A TRULY COMPREHENSIVE LEAD STRATEGY THAT COMMITS TO ADOPTING TRANSFORMATIONAL RULES AND POLICIES BY JANUARY 2025

We strongly support the Strategy’s primary goal of “reducing lead exposure in communities as a means to reduce persistent disparities in children’s blood lead levels and promote environmental justice.”¹⁴ We also appreciate EPA’s recognition that in order to protect communities from lead, the federal government must address multi-media exposure pathways addressing lead exposures from paint, dust, soil, drinking water, air (ambient and in the workplace), food, and consumer products.

Despite identifying important goals and approaches for meeting them, the Draft Lead Strategy falls short of the transformational change in federal lead policy that is desperately needed. One of the most striking omissions is that EPA does not actually commit to making many of the essential regulatory and policy changes that are necessary to truly reduce communities’ exposures to lead, many of which are in fact required by court orders, statutory deadlines, and EPA’s commitments. Indeed, the Draft Strategy’s discussion of the need to adopt protective standards is characterized primarily by tentativeness, not resolve. For example, in connection with lead-based paint hazards, EPA states only that it will “reconsider”¹⁵ its dust-lead hazard standards in renovation protocol, it will “revisit ... and, as appropriate, revise”¹⁶ the definition of lead-based paint, and it will “continue ... to evaluate risk from”¹⁷ renovations of public and commercial buildings. In connection with lead in ambient air, EPA states only that it will consider “whether to retain or revise the current NAAQS for lead. Similarly, despite the complete ineffectiveness of the LCR of the Safe Drinking Water Act, the Draft Lead Strategy simply says that EPA is “reviewing” the rule and the revisions it just allowed to go into effect.¹⁸ And despite acknowledging elsewhere that “there are significant opportunities to further improve upon [the revisions to the LCR] to achieve increased protection of communities from lead exposure through drinking water,” EPA has only listed areas upon which it will “*focus*’ and

¹⁴ Draft Lead Strategy at 6

¹⁵ Draft Lead Strategy at 8

¹⁶ *Id.*, at 9.

¹⁷ *Id.*

¹⁸ *Id.* at 12.

“*consider.*”¹⁹ In sum, EPA is committing only to *considering* making changes to standards that plainly need to be strengthened.

The time has long passed for tentative half steps that delay action while children are poisoned. EPA must commit to revising its standards to align them with the current science; it cannot spend years reconsidering, evaluating, and studying. Then, once revised, health-based standards are in place, EPA must undertake cleanups and enforcement measures. We urge EPA to take heed of the recent Ninth Circuit Court of Appeals’ decision that calls out EPA for its delay tactic of claiming to lack the information it needs to adopt health-protective lead standards, ruling that “EPA’s continued reliance on inadequate information for approximately two decades” as an excuse for not updating its lead hazard standards is “arbitrary and capricious and in violation of its statutory obligation of scientific currency.”¹⁹ **The message is clear: delay in protecting children from lead is arbitrary, capricious, and illegal.**

A. EPA Must Adopt New Rules and Policies to Protect People from Lead in Drinking Water, Residences and other Child-Occupied Facilities, Air, and Soil.

1. EPA Must Promptly Revise the Lead and Copper Rule So People Are Not Exposed to Lead from Drinking Water.

EPA is long on admirable goals for reducing lead in drinking water in the Draft Lead Strategy and elsewhere, but short on specifics or a timeline for transforming the utterly ineffective LCR. While the Draft Lead Strategy highlights the importance of replacing lead-based service lines and fixtures, soon after it was released, EPA inexplicably permitted revisions to the LCR to go into effect that took significant steps *backwards* with respect to such remediation. The revisions narrowed the rule’s definition of “lead service line” to exclude lead joints and connectors that can be up to several feet long, and that contribute to lead contamination in water.²⁰ This change will mislead some people into thinking they have no lead exposure when they do, and will allow lead-leaching connectors to transport drinking water indefinitely. The revisions also slowed down the rate at which water systems must replace lead service lines once they are required to under the rule,²¹ and permitted over 90 percent of all water systems to avoid lead service line replacement altogether, regardless how high lead levels are.²² Such provisions are in direct

¹⁹ *A Cmty. Voice v. EPA*, 997 F.3d 983, 988 (9th Cir. 2021).

²⁰ 86 Fed. Reg. 4198, 4218.

²¹ [fn missing check initial draft]

²² See 86 Fed. Reg. at 4221-22; 86 Fed. Reg. at 4221 (allowing compliance alternatives for small community water systems); Cong. Rsch. Serv., RL31243, Safe Drinking Water Act (SDWA): A Summary of the Act and Its Major Requirements 4 (2021), available at <https://sgp.fas.org/crs/misc/RL31243.pdf> (“Roughly 91% of [community water systems] serve populations of 10,000 or fewer . . .”).

conflict with President Biden’s goal of removing 100% of lead service lines and the Draft Lead Strategy’s assertion that rapid progress will be made to achieve that goal.²³

In addition to the regressive provisions, the LCR revisions also merely tweaked the fundamentally broken LCR and failed to address its main weaknesses—starting with the fact that it is not intended to, and thus not designed to, individually protect people from lead by adopting a Maximum Contaminant Level as required by the Safe Drinking Water Act. The rule is premised on one-time water sampling at a miniscule number of homes and often only once every few years, even though lead levels are highly variable—levels in samples collected from the same tap may vary exponentially from one day to the next. The rule also requires no remediation until the lead levels in at least 10 percent of sampled homes average greater than 15 parts per billion (“ppb”), a very high and non-health-protective level. That construct knowingly sacrifices 9 percent of homes—which in New York City, for example, equates to almost 800,000 homes—regardless of how high the lead levels in their drinking water are. The LCR also serves children no better than it does the general public. Schools and childcare centers present a unique set of circumstances that may increase lead exposure from drinking water. Nevertheless, the LCR revisions set up a weak and voluntary testing program after the first year, missing an opportunity to use strong incentives to protect children in the places they go for numerous hours each day to learn and play. The Draft Lead Strategy does not commit to strengthening those provisions.

The LCR and EPA have also failed the public in terms of education, allowing public water systems to hide behind statements of “compliance” with the complex and non-health protective LCR, misleading people into believing their water presents no harmful exposure to lead. The Draft Lead Strategy does not commit EPA to affirmatively educating the public about the widespread nature of lead in drinking water, the shortcomings of the LCR/LCR compliance, and steps people can take to decrease exposure to lead.

Further, the Draft Lead Strategy does not adequately connect exposures through lead service lines to the Administration’s environmental justice goals. EPA acknowledges that many lead service lines are in low-wealth neighborhoods and communities of color, and that exposure to lead in drinking water disproportionately affects those neighborhoods and communities.²⁴ Yet the Draft Strategy Plan fails to commit to rectifying the fact that consumers are often required to pay thousands of dollars for lead service line replacement, all but ensuring that such disparities continue.

It is no accident that the lead crises in Washington DC, Flint, MI, Newark, NJ, and Clarksburg, WV all occurred while the water systems were supposedly in compliance with the LCR: the LCR itself is not anchored in science, is fundamentally broken, and is not properly enforced. EPA has acknowledged that there are “significant opportunities to further improve upon” the LCR and the recent revisions to it. Yet despite almost a year of further study and stakeholder feedback, neither EPA’s Federal Register notice permitting the LCR revisions to go into effect nor the Draft Lead Strategy provide any specifics on *how* EPA will improve its abysmal control of lead in drinking water and its non-existent enforcement of its rules, and when such improvements will occur.

²³ Draft Lead Strategy at 10-11.

²⁴ Draft Lead Strategy at 10.

EPA, advocates, and elected officials worked together to procure a stunning and unprecedented \$15 billion dollar investment in lead service line replacement, provided by the Infrastructure Investment and Jobs Act. EPA’s Office of Water has taken admirable steps to engage community members on implementation of those funds, to help ensure that they reach communities that need lead service line removal the most. In the Draft Lead Strategy, EPA outlines helpful non-regulatory steps related to technical assistance, data collection, and oversight to complement the influx of funding. We applaud all of those important steps. However, this combination of funding and non-regulatory policy in no way replaces the need for meaningful changes to the LCR. Instead of modifying a broken rule, EPA’s next iteration of a Lead and Copper Rule, and the associated approaches set forth in a final Lead Strategy Plan, should outline concrete steps to ensure that improvements to the LCR are transformative and expeditiously proposed and finalized. EPA should shift to a proactive model consisting of the provision of filters or safe alternative water to residents currently serviced by lead lines, until such lines can be removed; accelerated full removal of all lead service lines at no expense to the consumer within 10 years for all systems of all sizes; and robust public education so that everyone can take steps to protect themselves, their families, and their communities.²⁵ Such a transformed LCR, together with the funding and non-regulatory initiatives for lead service line removal, would create a holistic and science-based framework for protecting the public from the harms associated with lead in drinking water.

2. EPA Must Adopt Health-Based Lead Hazard Standards, Enforce the Renovation, Repair, and Painting (RRP) Rule, and Adopt Policies that Prioritize Testing and Remediation of Housing Before People Are Poisoned.

The Draft Lead Strategy correctly acknowledges that one of the core problems the government must address is that “[m]illions of people, especially those living in communities with environmental justice concerns, continue to be exposed to lead at home and in other buildings where lead-based paints are found in deteriorating condition.”²⁶ However, EPA’s plan falls far short of the concrete action that is needed to address lead-based paint hazards – meaning lead exposures from lead in dust, soil and paint.

The first step the federal government must take to protect people from lead-based paint hazards is to correctly identify where they are occurring by adopting health-based lead hazard standards for dust, soil, and paint, and by revising its definition of “lead-based paint” so it captures all paint containing detectable levels of lead. In May 2021, the Ninth Circuit Court of Appeals directed EPA to update its lead hazard standards because the current standards “do not identify all levels of lead that lead to adverse human health effects,” noting that EPA’s failures to update its

²⁵ More detail about suggested regulatory measures that are central to a new and improved, equitable, and protective Lead and Copper Rule can be found in the comments submitted by Earthjustice et al., Docket ID No. EPA-HQ-OW-2021-0255-0070 (July 30, 2021), <https://www.regulations.gov/comment/EPA-HQ-OW-2021-0255-0070> .

²⁶ Draft Lead Strategy at 7.

standards to account for new information about the dangers of lead violates TSCA.²⁷ Despite this court ruling, EPA’s Draft Lead Strategy does not commit to actually revising its lead hazard standards, other than the soil-lead hazard standard. Instead, with respect to the dust-lead hazard standards and definition of lead-based paint, EPA commits only to “revisit[ing]” them without any commitment to modifying them, despite the fact that they are not set at health-protective levels.²⁸ This is unacceptable.

In its Final Lead Strategy, EPA should commit to adopting dust-lead hazard standards of zero (0) $\mu\text{g}/\text{ft}^2$ for all surfaces – floors, window sills, window troughs, and porches – because *any amount of lead* in dust in and around a residence or child-occupied facility is a “condition” that would result in adverse human health effects, which is how TSCA defines a lead hazard.²⁹ In addition, it should commit to adopting a soil-lead hazard standard of zero (0) parts per million, and a definition of lead-based paint based on the lowest possible detection level. EPA must also set clearance levels for dust-lead. These clearance levels may, per the Ninth Circuit’s ruling, take into account what concentration of lead in dust would be feasible for labs to test for and for contractors to meet. We urge EPA to set the clearance levels no higher than $< 5 \mu\text{g}/\text{ft}^2$ on the floor and $< 40 \mu\text{g}/\text{ft}^2$ on windowsills and troughs, as HUD has determined that these levels are currently being achieved in the vast majority of cases.³⁰ The Final Lead Strategy should set a date by which these rules will be completed of no later than May 2023—two years after the Ninth Circuit directed EPA to undertake these rulemakings.³¹

We applaud EPA for its recent aggressive actions to enforce the Lead Renovation, Repair and Painting rule (RRP),³² to penalize routine violators – such as Home Depot – and to clarify that property management companies must comply with the RRP rule.³³ However, the Draft Lead Strategy falls short when it comes to protecting people from lead during building renovations, which is a major cause of lead poisoning. First, EPA indicates that its focus will be on 11 communities disproportionately affected by lead exposure where it will increase the number of RRP-certified firms and expand consumer demand for lead-safe work practices. While this is

²⁷ *A Cmty. Voice v. EPA*, 997 F.3d 983, 986 (9th Cir. 2021).

²⁸ Draft Lead Strategy at 8-9.

²⁹ 15 U.S.C. § 2681(10).

³⁰ HUD, Lead Hazard Control Clearance Survey, https://www.hud.gov/sites/documents/CLEARANCESURVEY_24OCT15.PDF

³¹ This two-year timeframe is in accord with the timeframe in which EPA revised the dust-lead hazard standard pursuant to the Ninth Circuit’s mandamus ruling in *In re A Community Voice v. EPA*, 878 F.3d 779, 788 (9th Cir. 2017) (ordering EPA to propose and finalize a “well-conceived rule” within a year and a half of the court’s order).

³² Home Depot Settlement Information Sheet, <https://www.epa.gov/enforcement/home-depot-settlement-information-sheet>

³³ EPA, Withdrawal of Two Answers to Frequent Questions About Property Management Companies and the Toxic Substances Control Act Lead-Based Paint Renovation, Repair, and Painting Rule, 86 Fed. Reg. 60,812 (Nov. 4, 2021).

laudable, this alone will not achieve the goal of protecting people from lead exposures resulting from renovation, repair, and painting.³⁴ EPA must also commit to ramping up inspections and enforcement in the 36 states where EPA is tasked with enforcing the RRP rule, and it must finally commit to applying RRP requirements to public and commercial buildings to protect workers and surrounding communities.³⁵

While adopting truly health-based lead hazard standards is a critical predicate for protecting people from lead in their residences and in child-occupied facilities (such as nursery schools and child care centers), these standards will not be effective if residences and other child-occupied facilities are not assessed for lead hazards and then remediated as needed, or if they are not assessed until *after* a child has been diagnosed with elevated blood lead levels putting them at risk of life-long harm. It is imperative that the federal government protect people from lead *before they are exposed* by requiring testing for the presence of lead in residences and child-occupied facilities followed by remediation or abatement where lead hazards are identified; we must stop using children’s bodies as “canaries in the coalmine” for identifying lead hazards. The fact that federal law does not currently require, or even incentivize, lead testing in private housing – even for homes built before 1978 (when residential lead paint stopped being sold) and even in communities where many children have elevated blood lead levels – is a major gap that should be filled. We urge EPA to work with Congress to adopt legislation that would require housing that is at risk of harboring lead hazards to be assessed and if hazards are found, to be remediated or abated.

We acknowledge that this will be expensive, but the economic costs of lead poisoning are also very substantial; the estimated annual cost of childhood lead exposure in the United States is \$50 billion.³⁶ Experts have calculated that for every \$1 spent to reduce lead hazards in housing alone would yield \$17-\$221 in economic benefit.³⁷ Moreover, the federal government has a moral and

³⁴ Draft Lead Strategy at 8.

³⁵ In August 2009, EPA entered into a settlement agreement under which it agreed to propose lead-protective work practice standards for renovations to exterior and interior work in public buildings built before 1978 and commercial buildings by March 31, 2017 – unless it determined that such renovations do not create a lead-based paint hazard. *New York Coalition to End Lead Poisoning vs. U.S. Environmental Protection Agency*, No 08-1235 (D.C. Cir.). EPA has missed this deadline by nearly five years. It is imperative that EPA propose a rule that will ensure lead-safe practices are used when public and commercial buildings undergo renovation.

³⁶ Trasande L, Liu Y. Reducing the staggering costs of environmental disease in children, estimated at \$76.6 billion in 2008. *Health Aff (Millwood)*. 2011;30(5):863-870.

³⁷ Gould E. Childhood lead poisoning: conservative estimates of the social and economic benefits of lead hazard control. *Environ Health Perspect*. 2009; 117(7):1162-1167; see generally David C. Bellinger et al., Establishing and Achieving National Goals for Preventing Lead Toxicity and Exposure in Children, *JAMA Pediatr*. (May 2017), <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2627572>.

ethical responsibility to stop tolerating lead poisoning that disproportionately impacts Black children, other children of color, and children of low-wealth – regardless of the price tag.

3. EPA Must Protect Local Communities from Industrial Sources of New and Ongoing Lead Pollution in the Air.

Various industrial sources currently emit new lead pollution into the air, which fall on homes, schools, playgrounds, and day care centers. Children’s exposure to lead from air pollution has not received the attention it deserves.³⁸ Many industrial sources have operated for decades releasing lead into the air, and this has deposited or landed in soil, dust, and waterways. EPA also has failed for more than a decade to issue required federal plans implementing the emission guidelines for commercial and industrial incinerators, which emit lead. These regulatory gaps have caused serious longstanding contamination in many communities, while new lead continues to pollute the air and local environment. According to EPA’s Toxics Release Inventory, between 2018 and 2020, the **reported industrial releases of lead and lead compounds into the environment totaled over 1.9 billion pounds** (about 967,368 tons). This adds dramatically to the widespread contamination remaining from past use and releases. EPA’s Lead Strategy must do much more to account for the full range of ongoing releases of lead into the environment.

EPA has not done anything to address this problem for at least a decade – even while science on lead and its harm to children, and to communities of color and low-income communities, has evolved dramatically during this time. EPA should commit to make substantial progress on the problem of lead pollution in the air by implementing a plan to achieve three primary objectives.

First, EPA must work with and help communities to phase out lead pollution and shut down individual industrial facilities that are releasing new lead into the air wherever possible. Second, EPA must follow and apply the science and its full statutory authority to ensure strong new lead emission and ambient standards before 2024 to ensure the most robust restrictions achievable apply to the largest and most harmful industrial source categories. Finally, EPA must not allow another generation of children to grow up facing lead in air along with other pathways of exposure when it is well known that this pollutant causes preventable but irreversible harm. Therefore, we ask that EPA commit to creating a plan and longer-term strategy that recognizes lead *should be eliminated from the air* to the maximum extent possible within the next decade, and to begin implementing that by 2024.

We strongly urge EPA to commit in its final lead strategy to taking action on at least the following sources of lead pollution in the air:

³⁸ We could consider mentioning CAA 129 emission standards for large incinerators here. That provision requires EPA to set emission limits for lead and other pollutants, and 15 years ago EPA admitted that these limits were too high and did not comply with the CAA, but it hasn’t done anything since to change them. We sued EPA about this in December. Are there standards for other types of incinerators that should also be strengthened.

Lead Smelters: It is positive to see EPA’s commitment to addressing emissions from primary copper smelters (major and area sources), lead acid battery manufacturing (area sources), and secondary lead smelters.³⁹ Yet these rulemakings and actions are long overdue and in prior rules EPA has failed to recognize the need to account for the harm and health risks that lead emissions cause fence-line communities. For example, in the secondary lead smelters rule and others, EPA has tried to use the outdated 2008 Lead NAAQS and the different legal test for NAAQS as a shield from the requirement to provide an “ample margin of safety to protect public health” from lead under section 112(f)(2), the air toxics provision.⁴⁰ That issue is currently under reconsideration – and has been awaiting EPA’s action since 2012.⁴¹ EPA is also on a court-ordered deadline to review and determine whether to update the new source performance standards pursuant to section 111(b)(1)(b) for these lead smelters by November 2022. And EPA is overdue in performing a section 112(d)(6) review to revise the national emission standards as “necessary,” including through restricting uncontrolled HAP emissions, removing the illegal loophole they contain for malfunction emissions, accounting for pollution control, monitoring, and practice developments, and all other updates needed to assure compliance with the Clean Air Act. These statutory authorities provide a strong basis, and the requisite authority, for EPA to

³⁹ Draft Lead Strategy at 17.

⁴⁰ See [cite the prior comments that give more detail on some of these rules including secondary lead].

⁴¹ See *Sierra Club et al.*, Petition for Reconsideration of National Emissions Standards for Hazardous Air Pollutant Emissions from Secondary Lead Smelting and Supplements to this Petition, 77 Fed. Reg. 556 (Jan. 5, 2012), Dkt. ID Nos. EPA-HQ-OAR-2011-0344-0211 (Mar. 5, 2012), EPA-HQ-OAR-2011-0344-0189 (June 21, 2012) and Supplement to Granted Petition for Reconsideration of National Emissions Standards for Hazardous Air Pollutants From Secondary Lead Smelting (filed Jan. 31, 2014); see also EPA, Ofc. of Air Qual. Planning & Standards, Ofc. of Air & Radiation, Residual Risk Assessment for Secondary Lead Smelting Source Category (Dec. 2011), Dkt. ID No. EPA-HQ-OAR-2011-0344-0160. As an example of why EPA must strengthen protection further, in this and other risk assessments for lead under its air toxics authority, the Administration is using only the 2008 Lead NAAQS instead of performing a robust risk assessment as required (as described in the above-cited 2012 reconsideration petition). EPA should not rely solely on the Lead NAAQS, but should do an actual inhalation and multipathway cumulative risk assessment for lead-emitting sources under section 112 of the Clean Air Act. See 42 U.S.C. § 7412(f)(2) (health risk assessment, required for all major industrial sources of lead and other hazardous air pollutants, including those listed at <http://www3.epa.gov/ttn/atw/mactfnlalph.html>). Because, as described, the 2008 Lead NAAQS still allows an unacceptable amount of exposure and resulting neurodevelopmental harm to occur to children, EPA must recognize the need to do more to evaluate the full risks and impacts to children who are the most exposed to specific stationary sources of pollution under section 112 of the Act. Ensuring a full assessment, rather than relying solely on the NAAQS as if that were protective enough, should be part of the Taskforce’s new plan. See, e.g., *Sierra Club et al.*, Petition for Reconsideration of National Emissions Standards for Hazardous Air Pollutant Emissions from Secondary Lead Smelting, 77 Fed. Reg. 556 (Jan. 5, 2012), Dkt. ID No. EPA-HQ-OAR-2011-0344-0211 at 4-16 (filed Mar. 5, 2012; granted Dec. 5, 2012).

eliminate lead pollution at the most dangerous sources and dramatically strengthen controls and restrictions on lead.

Lead Aviation Fuel Standards: EPA must move swiftly to phase out leaded aviation fuel under CAA Section 231. While the Draft Lead Strategy conspicuously lacks a commitment for EPA to use its Clean Air Act authority to prohibit piston-engine aircraft from using leaded aviation fuel, it is encouraging that EPA subsequently responded to a rulemaking petition of [some of the undersigned groups]⁴² and formally committed to proposing an endangerment finding for these lead emissions in 2022 and finalizing that finding in 2023.⁴³ However, this is the third such rulemaking petition for an endangerment finding before EPA – with the first petition before EPA over 15 years ago – and EPA has already missed the deadlines for an endangerment finding that EPA committed to in response to the previous petitions. EPA’s delay in addressing lead emissions from aircraft is particularly egregious given that EPA’s own data shows that this is the single largest source of lead to the air, contributing about 70 percent of the National Emission Inventory in 2017.⁴⁴ Multiple studies have demonstrated that children living in close proximity to airports where leaded avgas is used have higher blood lead levels than children who do not.⁴⁵

⁴² Petition: <https://www.epa.gov/system/files/documents/2022-01/aviation-leaded-avgas-petition-exhibits-final-2021-10-12.pdf>

⁴³ EPA response: <https://www.epa.gov/system/files/documents/2022-01/ltr-response-aircraft-lead-petitions-aug-oct-2022-01-12.pdf>

⁴⁴ Transp. Rsch. Bd. et al., *Options for Reducing Lead Emissions from Piston-Engine Aircraft 35* (2021), <https://www.nap.edu/read/26050/chapter/5> (noting that, in EPA’s 2017 National Emissions Inventory, piston-engine general aviation aircraft accounted for “roughly 70 percent of total lead emissions to air in the United States”).

⁴⁵ See Marie Lynn Miranda et al., *A Geospatial Analysis of the Effects of Aviation Gasoline on Childhood Blood Lead Levels*, 119 *Env’t Health Persps.* 1513 (2011) (examining the relationship between proximity to airports in North Carolina where leaded aviation gas is used and blood lead levels in children and finding that “children living within 500 m, 1,000 m, or 1,500 m of an airport had average blood lead levels that were 4.4, 3.8, or 2.1% higher, respectively, than other children”); Sammy Zahran et al., *The Effect of Leaded Aviation Gasoline on Blood Lead in Children*, 4 *J. Ass’n Env’t & Res. Economists* 575–610 (2017) (examining the blood lead levels of children living within 2 kilometers of airports in Michigan and finding that “the odds that a child’s [blood lead levels] will eclipse CDC thresholds for concern increases dose-responsively in proximity to airports, declines measurably in neighborhoods proximate to airports in the months following 9/11” when there was less air traffic, and “increases dose-responsively in the flow of [piston-engine aircraft] traffic”); Mountain Data Group, *Leaded Aviation Gasoline Exposure Risk at Reid-Hillview Airport in Santa Clara County, California* 37–45 (2021), <https://www.sccgov.org/sites/opa/newsroom/Documents/RHV-Airborne-Lead-Study-Report.pdf> (explaining that “children proximate to [the general aviation airport] Reid-Hillview Airport present with systematically higher [blood lead levels], net of other measured sources of lead exposure risk, child demographic characteristics, and observed and unobserved neighborhood conditions,” that children who live downwind of the airport had higher blood lead levels than

Increases in childhood blood lead levels from living downwind of an airport have been found comparable to, or even greater than, blood lead level increases from the Flint water crisis.⁴⁶ And an MIT study estimates nationwide economic losses of over \$1 billion annually due to the IQ deficits caused by leaded avgas emissions alone.⁴⁷ Phasing lead out of automobile gas in the 1970s was a huge public health advance, and it is long past time for EPA to phase lead out of aviation gas. EPA must uphold its most recent commitment to issue the endangerment finding by 2023, and must subsequently and promptly promulgate regulations that will phase out the use of leaded aviation gasoline on an accelerated timeline.

Other major sources of lead pollution in the air: In addition to the sources the Strategy identifies for action, it is critical for EPA to recognize the need to reduce lead emissions and protect public health from other major sources of this air pollution – including steel manufacturing, and coal and other utilities (MATS). EPA has recognized that these sources emit substantial lead emissions along with other highly hazardous air pollutants.

EPA must also revise and strengthen its emission standards for lead and other pollutants from municipal solid waste incinerators [under Clean Air Act Section 129], which are allowed to pollute at rates that EPA admitted over a decade ago are inconsistent with D.C. Circuit precedent.⁴⁸ The Strategy must be updated to acknowledge the danger to public health caused by these sources and commit to assure an ample margin of safety to protect public health from lead pollution from these other types of industrial air pollution sources as well.

In parallel with the national rulemakings, EPA should listen to communities who have called to end all new lead air pollution from highly hazardous sources that are located in close proximity to neighborhoods who have already faced longstanding air pollution and lead deposition in soil

those who did not, and that the blood lead levels “of sampled children increase with exposure to piston-engine aircraft operations at [the airport], net of all other factors” and ultimately “suggesting that child [blood lead levels] increase dose-responsively with [piston-engine aircraft traffic]”; cf. Won-Ju Park et al., *Blood Lead Level and Types of Aviation Fuel in Aircraft Maintenance Crew*, 84 *Aviation, Space, & Env’t Med.* 1087 (2013) (analyzing the blood lead levels of aircraft-maintenance workers in the Republic of Korea, finding higher blood lead levels among maintenance workers that are based in airports that service propeller-driven aircraft and use leaded aviation gas relative to maintenance workers that are based in airports that service jets, which do not use leaded avgas, and concluding that leaded avgas emissions “could increase the [blood lead levels] of aircraft maintenance crews”).

⁴⁶ Mountain Data Group, *Leaded Aviation Gasoline Exposure Risk at Reid-Hillview Airport in Santa Clara County, California* at xv, xvi (2021) (*supra*).

⁴⁷ [add cites]

⁴⁸ EPA Mot. for Voluntary Remand, *Sierra Club v. EPA*, No. 06-1250 (D.C. Cir., Nov. 9, 2007); EPA’s Reply In further Support of Its Mot. for Voluntary Remand, *Sierra Club v. EPA*, No. 06-1250 (D.C. Cir., Dec. 6, 2007).

and other media.⁴⁹ In the rulemakings under section 112 and in direct communication with these communities, EPA should work to prevent expansions of existing lead emitters and to ensure a prompt and orderly shutdown of such smelters to finally end and prevent further irreparable harm to these communities.

Lead NAAQS: Finally, the draft Strategy references the Agency’s work to review the Lead National Ambient Air Quality Standards (“Lead NAAQS”),⁵⁰ but fails to acknowledge that the agency has an overdue deadline for review and revision of the Lead NAAQS of October 18, 2021. EPA has not strengthened the national ambient air quality standards for lead since the end of the Bush Administration in November 2008 – nearly 14 years ago – and has not reviewed these standards since 2016.⁵¹ Meanwhile, for years the Children’s Health Protection Advisory Committee (CHPAC) has called for a stronger Lead NAAQS to protect children’s health.⁵² The existing NAAQS has allowed and continues to allow a shocking amount of neurological harm to occur by using a population-level approach that failed to protect or prioritize the health and well-being of the most vulnerable and most exposed communities near the largest ongoing sources of lead pollution. On top of this, exceedances of the NAAQS continue to occur without consequences or corrective action by EPA.⁵³ It is important for EPA to follow through with the Integrated Science Assessment as the draft Strategy discusses, and to commit to ensuring a strong update to this rule based on the best available, most current science. It is also important that this update be made expeditiously, no later than fall of 2024.

4. EPA Must Prioritize Cleanup of Lead-Contaminated Superfund Sites

We commend EPA’s commitment to reducing exposure to lead in soil by prioritizing the remediation of lead contaminated sites in communities with disproportionate exposure to lead; strengthening protective standards; and working across EPA and with other federal and state agencies to address multiple sources of lead (dust, drinking water, soil) when conducting cleanups. As EPA moves forward to advance these three approaches, it should (1) require the evaluation of all potential sources of lead as part of the remedial investigation and site characterization for all residential lead-contaminated, Superfund sites and commit to addressing all sources of lead at these sites; (2) apply the most protective soil lead hazard and lead dust hazard standards and clearance levels across all EPA and HUD and other agency’s lead programs; (3) confirm that its assessments of risk reflect accurate blood lead level data and apply updated blood lead level benchmarks; and (4) improve its transparency, risk communication, community engagement, and interagency coordination at contaminated sites.

⁴⁹ [See, e.g., if a community wants an example highlighted – TBD after circulation].

⁵⁰ Draft Lead Strategy at 17.

⁵¹ <https://www.epa.gov/lead-air-pollution/national-ambient-air-quality-standards-naaqs-lead-pb>

⁵² [add cites]

⁵³ [add cites]

- EPA’s *Revised Soil Lead Policy for Contaminated Sites* should account for lead from all potential sources

As EPA revises its soil lead policy for contaminated sites,⁵⁴ it should pay particular attention to the Superfund Lead-Contaminated Residential Sites Handbook’s expectation that EPA evaluate multiple exposure pathways when developing site-specific standards and identify ways to address all sources of lead:

Lead in the environment can originate from many sources. In addition to soil, the main sources to consider when performing clean-up activities are interior and exterior LBP, lead-contaminated interior dust, drinking water, and occupational exposure resulting in subsequent contamination of homes.⁵⁵

While the Handbook states that EPA may not have the authority to include all of these lead exposures in the Superfund cleanup plan, it emphasizes that, “[u]ltimately, the project managers should strive to address any unacceptable lead-exposure risks at the residence.”⁵⁶ The Handbook goes further to say that “[l]ead-contaminated interior residential dust presents a significant exposure pathway that can readily be addressed. Consequently, significant health benefit is gained by removal of contaminated interior dust as early in clean-up activities as possible.”

Despite the fact that the Handbook makes clear the imperative to address the interior lead dust, and EPA regularly commits to follow this guidance in its work plans and consent decrees for Superfund sites, EPA rarely evaluates or remediates interior lead dust. In a 2020 review of lead-contaminated Superfund sites, we could only find four sites where EPA initiated indoor lead dust sampling. The Handbook should be updated and EPA should require that all sources of lead are addressed at Superfund sites, regardless of the potentially responsible party’s liability. To address all sources of lead at Superfund sites, OLEM will need to work with other teams at EPA to investigate and fund efforts not already covered by the Superfund program.

- EPA should base its risk assessments on health-protective blood lead level benchmarks and hazard standards

The Draft Lead Strategy Plan states that it will “set new recommendations for screening sites and strengthen preliminary remediation goals to reduce lead exposure in communities and protect human health and the environment in accordance with the latest science.” EPA currently relies on the flawed Integrated Exposure Biokinetic Uptake (“IEUBK”) model, a method of estimating the impact of exposure to lead on blood lead levels, to determine the appropriate remedial action level for a specific site. The IEUBK model is problematic for multiple reasons. Most importantly, EPA continues to rely on the 10 micrograms per deciliter as the target that cleanup should be designed to achieve for 95% of children impacted by a Superfund site. As a result of the use of the inappropriate blood lead level benchmark goal, the soil remediation action level at

⁵⁴ Draft Lead Strategy at 14.

⁵⁵ Superfund Lead-Contaminated Residential Sites Handbook, 49 (2003), <https://semspub.epa.gov/work/HQ/175343.pdf>

⁵⁶ *Id.* at 51.

many Superfund sites was set inappropriately high at 400 ppm. We urge EPA to move away from a system that tolerates 5% of children being exposed to any level of lead—never mind 10 micrograms per deciliter.

In the few cases where EPA has addressed interior lead dust at Superfund sites, it has developed the interior dust remedial action level standard by using the IEUBK model alone. One of the many problematic aspects of the IEUBK model is its reliance on dust-lead concentration values rather than loading levels as an input, even though the scientific community prefers dust-lead loading because dust-lead loading more accurately correlates to blood lead level increases.⁵⁷ Another concern with this EPA approach is that the regular use of a dust concentration value at Superfund sites precludes a comparison between EPA’s standards for the Superfund sites to EPA’s indoor-dust standards and standards set by HUD, which are both measured as dust loading values.

When EPA revises the 2001 soil-lead hazard standards, in compliance with the Ninth Circuit’s May 2021 ruling in *A Community Voice v. U.S. EPA*,⁵⁸ it should consider developing standards that would serve as the floor for protection across all programs. That is, at Superfund sites and in Resource Conservation and Recovery Act (RCRA) corrective actions, EPA should use a standard that is at least as protective as the new soil-lead hazard standards; in some instances, based on the many different lead exposures, EPA may decide that it is appropriate to employ an even more protective standard. Similarly, the most protective dust lead hazard standards and clearance levels should apply broadly to all federal and state programs that involve indoor lead dust, including Superfund cleanups and RCRA corrective actions.

- EPA should base its risk assessments on accurate blood lead level data

As part of EPA’s evaluation of risk posed at a Superfund site, the Agency for Toxic Substances and Disease Registry (“ATSDR”) prepares a public health assessment, which includes an evaluation of blood lead level data for the impacted community. ATSDR often relies on state public health data for its analysis, but most states are deficient in performing the requisite blood lead level testing which can lead to an incorrect assessment of the risk at a site. Indeed, at the USS Lead Site in East Chicago, ATSDR’s flawed public health assessment, which relied on inaccurate blood lead data, led to a tragic result: Based at least in part on ATSDR’s incorrectly assessment of risk at the USS Lead Site, EPA provided inappropriate assurances to impacted residents for several years—all while residents and their children were being continually exposed to extremely high levels of lead in the soil and in the interior dust in their homes. It is critical that as part of EPA’s efforts to protect communities, it must ensure that ATSDR obtains accurate

⁵⁷ Indeed, if there are 10 balls and 5 balls are lead and 5 are not lead, the concentration is 50%, and if there are 10,000 balls, and 5,000 are lead, the concentration remains 50%; dust-lead loading, in contrast, considers how likely it is that a child will come into contact with the lead, which means that the dust-lead loading varies based on total quantity. See, e.g., Lanphear, et al., “A Side-by-Side Comparison of Dust Collection Methods for Sampling Lead-Contaminated House Dust,” 68 ENVTL. RESEARCH, 114-123 (Feb. 1995), <https://www.ncbi.nlm.nih.gov/pubmed/7601072>.

⁵⁸ See section , supra.

blood lead level data. ATSDR should collect its own blood lead data in communities that have been impacted by living on or near Superfund sites; the costs of these studies constitute recoverable costs under the Superfund program.

- EPA must improve its risk communication, transparency, interagency coordination, and community engagement at contaminated sites

Communication

An EPA’s Office of Inspector General Report, released on September 9, 2021, concluded that “EPA did not consistently communicate human health risks . . . in a manner that allowed impacted communities to decide how to manage their risks of exposure to harmful contaminants.” The report notes that sampling results were not communicated in a timely manner to impacted individuals. Considering the importance of avoiding exposure to lead in soil, it is critical that when sampling results show an impact to public health, EPA should notify the impacted the impacted residents within 24 hours of receipt of the sampling results. Notification should not be limited to homeowners but should also extend to tenants. It should also extend to notice of environmental contamination to other federal agencies including HUD, IRS, and USDA, which all provide federally-assisted housing; these agencies must ensure that notice is given to housing providers and, in turn, to tenants. The OIG report also noted the importance of an effective community involvement plan and presence of a community involvement coordinator for risk communication and community engagement; this community engagement should begin as soon as a site investigation is launched and it should incorporate best practices for language access and should account for literacy levels in the community.

Inter-agency coordination and transparency

In response to the public attention brought to the high levels of contamination found in public housing at the East Chicago site, HUD and the EPA entered into a Memorandum of Understanding (MOU) in 2017 to improve data sharing and interagency communication about environmental contamination. The 2017 MOU encourages data sharing between EPA and HUD, but it does not (1) create binding or enforceable obligations; (2) include all federal agencies necessary to effect change; (3) include any involvement of state or local agencies; or (4) include directly impacted communities. The 2017 MOU should be expanded to include all federal agencies potentially involved in or impacted by decisions at Superfund sites and be regularly updated to identify highly contaminated areas on the EPA’s radar that encompass federally assisted housing. The MOU should also outline significant public health issues known to HHS and any disaster management issues governed by FEMA. Further, the MOU should mandate that these federal agencies share existing data in order to better identify health hazards and environmental contamination and to better inform impacted residents.

As part of the EPA-HUD collaboration emerging from the 2017 MOU, EPA identified 18,158 federally assisted properties located within one mile of a lead-contaminated Superfund Site and another 12,070 properties near non-Superfund sites with potential lead contamination. Of the 18,158 properties, EPA identified 7,676 as the highest priority. To our knowledge, EPA has made little progress in addressing the lead contamination at these sites. The HUD OIG report indicates that EPA and HUD were prioritizing remediation of seven sites but it is not clear how

EPA or HUD selected those sites as priority sites or whether residents at these sites have been notified and given the opportunity to relocate as appropriate. Transparency and communication must be central to the collective efforts to address lead contamination in close proximity to housing.

- EPA must acknowledge past harm to move forward more effectively

To advance environmental justice, EPA must fully confront its failures of the past. The use of the USS Lead Superfund Site as an example of expedited cleanup is quite concerning. The site was known to be a highly contaminated site by 1985, and by 1998, it was known that many children living in the West Calumet Housing Complex had extremely high blood lead levels. There was nothing expedited about the USS Lead cleanup. As we have previously explained in a letter to HUD and EPA,

It took nearly 40 years for residents to learn what government officials and polluters knew all along: The West Calumet Housing Complex, home to majority Black and Latinx residents, was intentionally built on the footprint of a lead smelter with extremely high levels of lead and arsenic in the soil. Generation after generation of residents suffered dangerously elevated lead levels and horrific health impacts, yet the residents were the last to know the cause.

Indeed, the HUD Office of Inspector General’s February 14, 2021 report identified many moments over more than thirty years when federal agencies should have informed residents about the contamination and provided comprehensive resources to residents living in housing on a toxic site. Indeed, housing choice voucher holders living on the contaminated site still have not received notification as of the date of these comments. Some of the residents who were relocated from the public housing complex on the contaminated site were moved to other fence-line communities with lead contamination.

The “expedited” cleanup activity that was undertaken beginning in 2017 directly resulted from community pressure through activism and legal action. Even today, the cleanup is not complete—with contaminated groundwater remaining at the site and a remediation plan for the groundwater still outstanding.

5. EPA Must Begin to Prepare for Evaluating and Managing the Risks Presented by Lead Under TSCA

EPA is required by TSCA to designate lead as a “high priority” substance, within the next several rounds of high-priority chemical designations because it is listed on the *TSCA Work Plan for Chemical Assessments 2014 Update* (“TSCA Work Plan”) with a high score for persistence and bioaccumulation.⁵⁹ The risk evaluation mandated by TSCA will require EPA to consider

⁵⁹ 15 U.S.C. § 2605(b)(2)(B)(50% of chemicals undergoing risk evaluation must be drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments); *id.*, § 2605(b)(2)(D)(1) (in designating high-priority chemicals from the 2014 Work Plan, EPA should give preference to substances with a persistence and bioaccumulation score of 3); EPA, *TSCA Work Plan for*

risks posed by EPA (based entirely on health without consideration of costs or other non-risk factors) across the life-cycle of lead – including manufacture, processing, distribution, use and disposal – with particular attention to subpopulations at greater risk due to either greater exposure or greater susceptibility, or both. This evaluation will need to consider whether lead is continuing to present unreasonable risk due to its combined presence in water, air, homes, consumer products, and workplaces – despite the fact that other federal laws and federal agencies already regulate lead in some environments or media – even if the unreasonable risk results from a “legacy” use of lead, such as in pipes or paint, or from a legacy disposal that is resulting in ongoing exposure and risk.⁶⁰ Thus, for example, EPA will need to consider whether workers – and their families -- face unreasonable risks from lead although the Occupational Safety and Health Administration (“OSHA”) is charged with worker safety. We urge EPA to begin the process of collecting exposure and release data related to lead in all media and from all products, including in the workplace (taking into account take home exposures), so that once it commences this risk evaluation, it has the information it needs to proceed expeditiously based on all reasonably available information, including information it can generate.⁶¹

As soon as its risk evaluation is complete, EPA should move expeditiously to adopt TSCA risk management rules that eliminate unreasonable risk from lead, including from legacy uses and legacy disposal if they are resulting in ongoing exposure and risk.

B. EPA Should Develop Concrete Plans for Collaborating with Other Federal Agencies to Protect People from Lead

The Draft Lead Strategy outlines “three new approaches” that will guide its actions, including reducing exposure with a “whole of government” approach.⁶² Yet despite the important role of other federal agencies, the strategy is woefully short of specifics on what EPA is going to do to

Chemical Assessments 2014 Update (lead & lead compounds are listed on the Work Plan with a persistence and bioaccumulation score of 3), https://www.epa.gov/sites/default/files/2015-01/documents/tsca_work_plan_chemicals_2014_update-final.pdf.

EPA notes in the TSCA Work Plan that lead and lead compounds are “widely used in consumer products,” “present in biomonitoring, drinking water, indoor environments, surface water, ambient air, soil,” and have “high reported releases to the environment.” EPA, *TSCA Work Plan* at 17, https://www.epa.gov/sites/default/files/2015-01/documents/tsca_work_plan_chemicals_2014_update-final.pdf.

⁶⁰ *Safer Chems, Healthy Families v. EPA*, 943 F.3d 397, 425, 426 (9th Cir. 2019) (finding that “conditions of use” under TSCA includes “uses and future disposals of chemicals even if those chemicals were only historically manufactured for those uses” – such as lead pipes and lead paint – and finding that if past disposal remains ongoing due to spills, leaks or other uncontrolled discharges, it also constitutes a TSCA “condition of use”).

⁶¹ 15 U.S.C. § 2625(k) (requiring EPA to base risk evaluations on all reasonably available information); 40 C.F.R. § 702.33 (defining reasonably available information to include information EPA can generate).

⁶² Draft Lead Strategy at ___.

collaborate with – and press – other agencies to take needed actions to stop lead exposures. The final strategy document should include more specifics, including timeframes for each action or activity EPA will undertake to assist other federal agencies to protect people from lead.

1. Federal Agencies – FDA, CPSC, and EPA – Must Adopt Rules that Prioritize Getting Lead out of Food and Other Consumer Products

The Draft Lead Strategy gives short shrift to lead exposures from food and other consumer products, with few details about EPA’s role other than that it will “collaborate” with FDA and CPSC to address exposure from these sources.⁶³ We urge EPA to reach out to these sister agencies immediately and offer technical assistance in helping them to fulfill their mandates to protect consumers from lead.

○ Lead in Food

Food is the predominant source of lead for many children (especially those not exposed to lead-based paint or drinking water hazards)⁶⁴; yet FDA has not updated enforceable standards for how much lead is permitted in food, including baby food, in decades. A recent Staff Report from the U.S. House of Representatives’ Subcommittee on Economic and Consumer Policy reported that “commercial baby foods are tainted with significant levels of toxic heavy metals,” including lead.⁶⁵ And in late 2021, it announced its *Closer to Zero plan* for reducing the levels of lead and other heavy metals in baby food.⁶⁶ However, FDA has not updated its regulatory limits for lead in baby food. Baby food is not the only food that contains lead, and children eat food that is not sold as “baby food.” In 2020, FDA announced that it had lowered its *target* minimum daily intake levels for lead in food,⁶⁷ acknowledging that its prior target (which had been in effect for decades) was too high. However, FDA has not updated its regulatory limits for lead in candy, juice, dried fruits, spices, and other common food ingredients to bring it into line with its new targets.

⁶³ Draft Lead Strategy at 9.

⁶⁴ Neltner T, *Children’s lead exposure: Relative contributions of various sources* (Dec. 15, 2017) (explaining that for the average child 1 to 6 years old, food is the largest source of lead exposure), <https://blogs.edf.org/health/2017/12/15/childrens-lead-exposure/>.

⁶⁵ U.S. House of Representatives, *Baby Foods Are Tainted With Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury* (Feb. 4, 2021), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-02-04%20ECP%20Baby%20Food%20Staff%20Report.pdf> ; see also Consumer Reports, *Heavy Metals in Baby Food: What You Need to Know*, <https://www.consumerreports.org/food-safety/heavy-metals-in-baby-food-a6772370847/>

⁶⁶ FDA, *Closer to Zero: Action Plan for Baby Foods* (released Nov. 18, 2021), <https://www.fda.gov/food/metals-and-your-food/closer-zero-action-plan-baby-foods>

⁶⁷ The new targets are 3 micrograms of lead per day for children and 12.5 for adults. Flannery BM et al., *U.S. Food and Drug Administration's interim reference levels for dietary lead exposure in children and women of childbearing age*. 2020. *Regulatory Toxicology and Pharmacology* 110:104516, <https://doi.org/10.1016/j.yrtph.2019.104516>.

Moreover, FDA still allows lead to be added to food contact articles such as metal cans and to brass and bronze components of equipment used to dispense water and brew tea and coffee despite the fact that these uses are contrary to the Federal Food Drug and Cosmetic Act.

In addition, the FDA has not updated its 1994 limit of five parts per billion (ppb) of lead in bottled water. At these levels, a child drinking two bottles of water (24 ounces) would exceed the agency’s new interim limit for daily lead in the diet.⁶⁸

FDA needs to move forward as expeditiously as possible to set enforceable, health-protective regulatory limits for lead in baby food, food, food contact articles, and bottled water. In December 2020, FDA received a citizens’ petition asking it to take these steps,⁶⁹ but FDA’s only formal response so far has been to say that it has not been able to reach a decision on the petition “because of other agency priorities and the limited availability of resources.”⁷⁰ As part of its whole of government approach to reducing lead exposure, we urge EPA to provide assistance to FDA in setting health-protective standards for lead in food, bottled water and articles that come in contact with food.⁷¹

FDA should also issue an advisory on lead in bullets used for hunting, which can contaminate game and expose people who rely on subsistence hunting.⁷² Lead in hunting shot may disproportionately affect Indigenous populations who rely on traditional diets. Many hunters may not even be aware of this health hazard – FDA should issue an advisory and provide the necessary information for hunters to protect themselves and their families.

- Lead in Other Consumer Products

Although federal law administered by the Consumer Product Safety Commission (“CPSC”) bans lead in excess of 90 ppm in “children’s products,” lead is still used in other common household products, including ones used by children but which do not fall within the definition of

⁶⁸ Citizen Petition from Environmental Defense Fund, et al. (Dec. 10, 2020), <https://www.regulations.gov/document/FDA-2020-P-2276-0011>.

⁶⁹ *Id.*

⁷⁰ Letter from Mark A. Moorman, Ph.D., Director, Office of Food Safety, FDA to Tom Neltner, J.D., Environmental Defense Fund (June 3, 2021), <https://www.regulations.gov/document/FDA-2020-P-2276-0011>.

⁷¹ We applaud FDA’s decision in late 2021 to withdraw its approval for use of lead acetate in hair conditioning and hair dye products. This decision was long overdue, but nonetheless critically important. *FDA to Repeal Color Additive Approval for the Use of Lead Acetate in Hair Dyes* (Oct. 7, 2021), <https://www.fda.gov/food/cfsan-constituent-updates/fda-repeal-color-additive-approval-use-lead-acetate-hair-dyes>

⁷² The Alaska State Division of Epidemiology noted that: "Reasons for the higher prevalence of elevated BLL among children aged <18 years in the Southwest region are unknown, but might include higher routine screening rates and/or more frequent use of bullets containing lead shot for hunting game." https://dhss.alaska.gov/dph/epi/eph/documents/bulletins/docs/b2014_04.pdf

“children’s products,” such as novelty jewelry. In addition, any product that is made with lead and is used by a pregnant or nursing person also presents an exposure hazard to fetuses and infants. Many products made with lead are sold in dollar stores, which are disproportionately frequented by low-income communities and communities of color.⁷³

EPA and CPSC both have authority to prohibit the sale of consumer products containing lead with EPA having broader authority that encompasses, inter alia, lead in wheel weights.⁷⁴ We urge EPA to work with CPSC to protect children by banning lead in *all* household products and especially in jewelry. In addition, we urge EPA to work with CPSC to use its recall authority under the Federal Hazardous Substances Act to protect children from lead in products that remain in many homes, even if they are no longer sold in this country, such as vinyl mini-blinds and other kinds of plastic that contain lead, which release lead-contaminated dust as the plastic breaks down.

2. EPA Must Work With HUD To Ensure Residents of HUD-supported Housing Are Not Exposed to Lead Hazards

HUD has an important and distinct role to play in ensuring that residents of HUD-supported housing – predominantly very low-wealth households, consisting largely of elderly individuals and families with children under the age of eighteen – are not exposed to lead hazards. People in these demographic groups are more susceptible than the general population to harm from lead exposure. As part of its “whole of government” approach, EPA must work with HUD in a truly collaborative way to ensure residents of HUD-supported housing are not exposed to lead hazards in dust, paint, soil or water.

We are pleased that EPA’s plan commits to collaborating with HUD to “revisit” the definition of “lead-based paint” and revise it “as appropriate”⁷⁵ -- though we believe it is clear the definition must be revised since, as the Ninth Circuit Court of Appeals noted, under the current definition “lead paint is not hazardous until it is over fifty-five times higher [in lead content] than the

⁷³ For example, a 2015 report on toxic substances in items sold in dollar stores identified earrings sold at Family Dollar containing 6,500 ppm of lead. Ecology Ctr., *2015 Dollar Store Report* (Feb. 4, 2015), <http://www.ecocenter.org/healthy-stuff/reports/dollar-store-report>.

⁷⁴ In a 2006 report, the U.S. Geological Survey estimated that 2,000 tons of lead in wheel weights were lost on the Nation’s roads each year, where they may become abraded and then dissipate into the environment due to weather. USGS, *Stocks and Flows of Lead-Based Wheel Weights in the United States*, Open File Report 2006-1111, at 4, <https://pubs.usgs.gov/of/2006/1111/2006-1111.pdf>. While the amount of lead that enters the environment from wheel weights is likely lower now than in 2006 because most domestically manufactured wheel weights are not made with lead, there is no prohibition on lead wheel weights, so there is almost certainly some lead still entering the environment due to ongoing use of lead wheel weights.

⁷⁵ Draft Lead Strategy at 9.

CPSC’s definition.”⁷⁶ However, much more collaboration with HUD is needed to protect residents of HUD-supported housing from lead.

EPA should work with HUD to address the thousands of federally assisted properties located within one mile of a lead-contaminated Superfund Site, which is discussed in detail in **Section** **1.1**, above. In addition, EPA should collaborate with HUD in designing a system under which EPA receives notice whenever renovation, repair or painting occurs in any HUD-assisted housing or housing owned by other public agencies so EPA can coordinate RRP compliance inspection to ensure that residents, workers and people who live and work nearby are not exposed to lead-dust. In addition, EPA should work with HUD to ensure that residents of HUD-supported housing are drinking water that is free of lead. A recent HUD Office of the Inspector General report concluded that agency has failed to protect residents from lead in drinking water “because HUD relied on [EPA] to ensure that public water systems provided water that was safe to drink.”⁷⁷ This is unacceptable. EPA must work with HUD to clarify each agency’s role in exposure prevention going forward.

3. EPA Must Work With Centers for Disease Control and Prevention (CDC) and State Agencies to Ensure More Children Receive Lead Testing

Currently, early childhood lead testing requirements are largely determined by state-level regulations. Millions of children are not being tested due to insufficient testing requirements or because they are falling through the cracks of their states’ existing requirements.⁷⁸ Because of this, CDC is missing crucial data on the breadth of the lead poisoning crisis, and many families are not receiving the information they need to protect their children. It is important for EPA to work in coordination with CDC and with state agencies in order to test as many children as possible, with the goal of eventually testing *all* children in order to eliminate all lead exposures.

C. EPA Must Commit to Creating the Staff Capacity and Resources Necessary to Follow Through on its Commitment to Lead Exposure Prevention

As should be clear from these comments, communities cannot wait any longer for protection from lead, yet on many fronts, the EPA Draft Lead Strategy fails to commit to concrete timelines for a number of vital rulemakings. The agency has articulated that it is financially constrained by the funding levels allotted by the current Continuing Resolution of FY21 funding levels. While the President’s FY22 budget request includes funding for more than 1,000 full time employees across the EPA, in various communications, EPA officials have said that the realities of the

⁷⁶ *A Community Voice*, 997 F.3d at 993.

⁷⁷ Office of Inspector Gen., U.S. Dep’t of Housing & Urban Dev., Audit Rep. No. 2020-CH-004, HUD’s Oversight of Lead in the Water of Housing Choice Voucher and Public Housing Program Units, at 5 (Aug. 21, 2020) (“HUD OIG Report”).

⁷⁸ Reuters, Millions of American children missing early lead tests. June 9, 2016. <https://www.reuters.com/investigates/special-report/lead-poisoning-testing-gaps/>

Continuing Resolution have resulted in an understaffing of many EPA offices key to completing a wide-ranging set of rulemakings that will reduce lead poisoning.

We appreciate that the draft strategy addresses numerous sources of lead poisoning, but would like the agency to commit to concrete, immediate timelines for a number of lead-related rulemakings. To better understand the resources needed by the agency to complete such rulemakings, we ask that, for each of the rulemakings that EPA is committed to undertaking [see section (--), supra], EPA provide the public with estimates of (1) the number of full time employees required to complete each rulemaking; (2) the cost of completing each rulemaking; and (3) the time required to complete each rulemaking.:

D. The Final Lead Strategy Should Clarify Unanswered Implementation Questions in the Draft

The Draft Lead Strategy is lacking in many critical specifics regarding the policy changes it identifies, including (1) aggressive timeframes for action; (2) clarification on how this Draft Lead Strategy intersects with the Biden-Harris Lead Pipe and Paint Action Plan that was released on December 16, 2021⁷⁹; (3) explanation for how EPA is going to move forward with health-protective rulemakings and clean up actions when the Draft Plan indicates that the Agency is still in the early stages of developing national standards, policies, analytical tools and research; (4) how EPA intends to incentivize states to join EPA in the effort to ensure funding goes to communities which need it most, and (5) what steps EPA will take to broadly interpret its existing authority under SDWA and under laws to more equitably distribute funds.

CONCLUSION

For too long, lead poisoning has plagued communities across the country, robbing children of bright futures and causing irreversible health harms for people of all ages. We know that no level of lead in the body is safe and that children and adults alike face cumulative exposures from multiple sources of exposure—particularly those living in low-income communities and communities of color, many of which are also burdened by exposures to other toxic pollutants. Yet administration after administration has failed to take the holistic approach and concrete actions needed to end this disparity and make progress toward eliminating *all* lead exposures.

The EPA’s Final Lead Strategy is an indispensable opportunity for the Biden/Harris Administration to follow through on its commitments to eliminate lead exposure and its devastating health effects. The Draft Lead Strategy is a strong start in many ways—we applaud its attention to measuring success on a community level, with a focus on communities facing disproportionately high exposures. In order to successfully prevent lead exposures, EPA must go a step farther—ensuring its plan fully considers all sources of exposure, moving quickly to adopt science-based and health-protective regulations, working closely with other agencies on concrete

⁷⁹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/16/fact-sheet-the-biden-harris-lead-pipe-and-paint-action-plan/>

and holistic measures, and backing its commitments with the staffing and resources necessary to realize them.

We are grateful to this Administration for prioritizing this work. We respectfully submit these comments in hopes that EPA will take bold and decisive action to finally end this public health crisis.

Signatories

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