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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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February 22, 2007

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The Honorable Nancy A. Nord
Acting Chairman
Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

The Honorable Andrew C. von Eschenbach, M.D.
Commissioner
U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857

Dear Chairman Nord and Commissioner von Eschenbach:

We write in response to the February 18, 2007, Associated Press (AP) story (attached), "Tempest in a lunch box: How the government decided lead levels were OK," which raises serious questions about the test methods and findings of the Consumer Product Safety Commission (CPSC) regarding lead levels in children's lunchboxes. If the implications are true, we are appalled.

The Subcommittee on Commerce, Trade, and Consumer Protection is seriously considering holding a hearing and writing legislation to address this important child-safety matter. To assist us in reviewing the facts, we request that you provide answers to the following questions by the close of business on Friday, March 2, 2007:

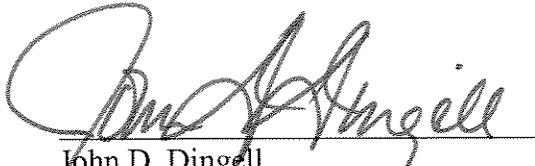
1. The AP article reports: "The results of the first type of test, looking for the actual lead content of the vinyl, showed that 20 percent of the bags had more than 600 parts per million of lead – the federal safe level for paint and other products. The highest level was 9,600 ppm, more than 16 times the federal standard." Why should children's lunchboxes be permitted to have any lead in them in excess of the Federal safe standard?

2. The AP article further reports: “In July 2006, after receiving the test results, the FDA sent a letter to lunchbox manufacturers warning them that their lead levels might be dangerously high and advising them that the FDA might take action against them because the lead would be considered a food additive if it rubbed off onto children’s lunches.” This suggests that the Food and Drug Administration (FDA) has a different view of the appropriateness of this level of lead in children’s lunchboxes. Please explain why and how the FDA reached that conclusion and CPSC did not.
3. The February 20, 2007, CPSC news release (attached), “CPSC Corrects Record on Vinyl Lunch boxes,” states “Under CPSC Federal law, total lead does not dictate action. Instead decisions must consider the real world interaction of child and product and the accessibility of lead from the product.” Please identify this provision of law. Does it need to be changed to better protect our children?
4. The AP article reports: “In Connecticut, where the safe threshold is 100 parts per million, Attorney General Richard Blumenthal has demanded that lunchboxes must be lead-free. ‘Lead, lunch and children are a perilous mix,’ Blumenthal said. ‘The discovery of lead in children’s lunch boxes is appalling. Our law is clear: Lead-laden lunchboxes are illegal.’ ” Why shouldn’t all school lunchboxes be lead free?
5. The AP article further notes: “Other states, including California, New York and Illinois, have forced specific manufacturers to pull their products from store shelves after individual boxes were found to have levels above 600 ppm.” Why are the children in states not as enlightened as California, Illinois, and New York not deserving of at least this level of protection? Does the CPSC believe those state laws should be repealed?
6. Finally, the AP article states: “Lead is a stabilizing agent in vinyl, but there are other chemicals that can be used instead of lead. Almost every lunch box found with lead in the vinyl lining was made in China.” If other chemicals can be substituted, why is CPSC not requiring that? Why is CPSC protecting the right of Chinese manufacturers to produce and export lead-lined lunch boxes that pose a threat to our children?

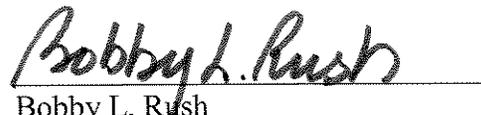
Thank you for your cooperation and attention to our request. We look forward to reviewing your responses. Should you wish to discuss this matter further, please do not hesitate to contact us, or have your staff contact Consuela Washington, Chief Counsel/Commerce, Trade, and Consumer Protection to the Committee on Energy and Commerce at (202) 225-2927.

The Honorable Nancy A. Nord
The Honorable Andrew C. von Eschenbach, M.D.
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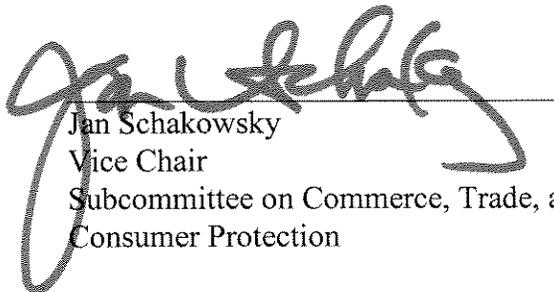
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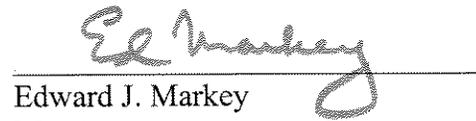
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Attachments

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Cliff Stearns, Ranking Member
Subcommittee on Commerce, Trade, and Consumer Protection

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  **Tempest in a lunch box: How the gover...**

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The Associated Press

February 18, 2007 Sunday 5:15 PM GMT

Tempest in a **lunch box**: How the government decided lead levels were OK

BYLINE: By MARTHA MENDOZA, AP National Writer**SECTION:** DOMESTIC NEWS**LENGTH:** 1264 words

In 2005, when government scientists tested 60 soft, vinyl **lunch boxes**, they found that one in five contained amounts of lead that medical experts consider unsafe and several had more than 10 times hazardous levels.

But that's not what they told the public.

Instead, the Consumer Product Safety Commission released a statement that they found "no instances of hazardous levels." And they refused to release their actual test results, citing regulations that protect manufacturers from having their information released to the public.

That data was not made public until The Associated Press received a box of about 1,500 pages of lab reports, in-house e-mails and other records in response to a Freedom of Information Act request filed a year ago.

The documents describe two types of tests. One involves cutting a chunk of vinyl off the bag, dissolving it and then analyzing how much lead is in the solution; the second test involves swiping the surface of a bag and then determining how much lead has rubbed off.

The results of the first type of test, looking for the actual lead content of the vinyl, showed that 20 percent of the bags had more than 600 parts per million of lead the federal safe level for paint and other products. The highest level was 9,600 ppm, more than 16 times the federal standard.

But the CPSC did not use those results.

"When it comes to a **lunch box**, it's carried. The food that you put in the **lunch box** may have an outer wrapping, a baggie, so there isn't direct exposure. The direct exposure would be if kids were putting their **lunch boxes** in their mouth, which isn't a common way for children to interact with their **lunch box**," said CPSC spokeswoman Julie Vallese.

Thus the CPSC focused exclusively on how much lead came off the surface of a **lunch box** when lab workers swiped them.

For the swipe tests, the results were lower, especially after the researchers changed their testing protocol. After a handful of tests, they increased the number of times they swiped each bag, again and again on the same spot,

resulting in lower average results.

An in-house e-mail from the director of the CPSC's chemistry division explained that they had been retesting with the new protocol "which gave a lower average result than the prior report ... ," he wrote. "This shows ... that the overall risk is lower than our original testing would have showed, as the amount of lead dislodgeable is mostly taken out with the first wipe and goes down with subsequent wipes."

Vallese explained it this way: "The more you wipe, the less lead you actually find. With fewer wipes we got a higher detection of lead presence. We thought more wipes was closer to reflecting how you would interact with your **lunch box**. It was more realistic."

The test results also show that many **lunch boxes** were tested only on the outside, which is unlikely to be in contact with food. Vallese said this was because children handle their **lunch boxes** from the outside.

As a result of their tests, the CPSC issued a public statement last year reassuring consumers they had nothing to worry about: "Based on the extremely low levels of lead found in our tests, in most cases, children would have to rub their **lunch box** and then lick their hands more than 600 times every day, for about 15-30 days, in order for the **lunch box** to present a health hazard."

Vallese said the commission stands by those statements.

But the results were disconcerting to experts who reviewed them for the AP.

"They found levels that we consider very high," said Alexa Engelman, a researcher at the Oakland, Calif.-based Center for Environmental Health, which has filed a series of legal complaints about lead in lunchboxes.

"They knew this all along and they didn't take action on it. It's upsetting to me. Why are we, as a country, protecting the companies? We should be protecting the kids. I don't think in this instance they did their job."

Said Rep. Henry A. Waxman, D-Calif.: "I am concerned that the CPSC has failed to protect children from an unnecessary hazard they have known about for some time. We should protect our children by banning lead in all children's products."

Although these test results are only now being aired publicly, the CPSC did provide them to the Food and Drug Administration last summer. The FDA's reaction was completely different from the CPSC's. In July, 2006, after receiving the test results, the FDA sent a letter to **lunch box** manufacturers warning them that their lead levels might be dangerously high and advising them that the FDA might take action against them because the lead would be considered a food additive if it rubbed off onto kids' lunches.

"The **lunch boxes** containing the lead compounds may be subject to enforcement action," said the letter.

In response to the FDA warning, Wal-Mart stopped selling soft lunchboxes with vinyl liners, and offered refunds to customers who wanted to return the ones they already had.

"The safety of our customers is always a top priority for Wal-Mart," said store officials in a written statement last summer.

Other manufacturers have recently revamped their manufacturing processes to eliminate lead, or stopped making the **lunch boxes** altogether. Those changes have been prompted in large part by pressure from the Center for Environmental Health and several other nonprofit advocacy groups in New York and Washington State that have been testing **lunch boxes** and publicly airing the results for several years.

In Connecticut, where the safe threshold is 100 parts per million, Attorney General Richard Blumenthal has demanded that **lunch boxes** must be lead-free.

"Lead, lunch and children are a perilous mix," Blumenthal said. "The discovery of lead in children's **lunch boxes** is appalling. Our law is clear: Lead-laden **lunch boxes** are illegal."

Other states, including California, New York and Illinois, have forced specific manufacturers to pull their products from store shelves after individual boxes were found to have levels above 600 ppm.

Lead is a stabilizing agent in vinyl, but there are other chemicals that can be used instead of lead. Almost every **lunch box** found with lead in the vinyl lining was made in China.

But they are distributed worldwide. Other information in the documents include an e-mail from Canadian health officials, who found more than 600 parts per million of lead in seven of the 11 **lunch boxes** they tested.

Allen Blakey, a spokesman for the Vinyl Institute, a trade association representing the leading manufacturers of vinyl, said his organization defers to the regulatory agencies.

"The CPSC was pretty clear that they did not see a danger in these **lunch boxes**. The FDA had a slightly different take on it. But basically, we have not seen any indication of actual harm from the **lunch boxes**," he said.

Public health experts consider elevated levels of lead in blood a significant health hazard for U.S. children. Studies have repeatedly shown that childhood exposure to lead can lead to learning problems, reduced intelligence, hyperactivity and attention deficit disorder. There is no lead level that is considered safe in blood, and recent studies have shown adverse health effects even at very low levels.

"I don't think the Consumer Product Safety Commission has lived up to its role to protect kids from lead," said Dr. Bruce Lamphear, a lead poisoning specialist at the Children's Hospital Medical Center in Cincinnati, Ohio. "As a public agency, their work should be transparent. And if one is to err on the side of protecting children rather than protecting **lunch box** makers, then certainly you would want to lower the levels."

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News from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs

Washington, D.C. 20207

For Immediate Release
February 20, 2007
Release #07-107

CPSC Media Contact: (301) 504-7908

CPSC Corrects Record on Vinyl Lunchboxes

Inaccuracies Needlessly Unnerve Parents

WASHINGTON, D.C. – Recent news reports and postings on special interest group Web sites have provided information that incorrectly interprets the findings of the U.S. Consumer Product Safety Commission (CPSC) in testing vinyl lunchboxes. The agency has a longstanding commitment to protecting children from the dangers of lead. CPSC has made a major contribution to the reduced blood lead levels found in children nationwide by carrying out a ban on lead in paint, recalling a record number of pieces of metal jewelry with accessible lead and recalling tens of millions of vinyl mini-blinds that contained lead dust. More recently, the CPSC began rulemaking to consider banning lead from children’s metal jewelry.

Career Staff Scientists Set Testing Procedure

Critics of the agency built a story about dangerous lunchboxes around the notion that the political leadership intervened in this matter. Critics equated the initials “HS” in a staff email with then Chairman Hal Stratton. The abbreviation HS is in fact short for CPSC’s Directorate for Health Sciences.

In 2005, CPSC staff scientists tested 60 soft, vinyl lunchboxes. The staff tested the inside and outside surfaces of lunchboxes and found no instances of hazardous levels. If CPSC had found a vinyl lunchbox that had a dangerous amount of lead that was accessible to children and could put them in harm’s way, we would have taken swift action.

The staff risk assessment takes into account children’s behaviors, such as hand to mouth activity, and the accessibility of lead. Under CPSC Federal law, total lead does not dictate action. Instead decisions must consider the real world interaction of child and product and the accessibility of lead from the product.

Conclusion

No matter how the data are analyzed, the staff risk assessment would still conclude that the lead exposure from vinyl lunchboxes does not present a risk to health for action under CPSC's law.

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$700 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard. The CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed significantly to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270 or visit CPSC's Web site at www.cpsc.gov/talk.html. Consumers can obtain this release and recall information at CPSC's Web site at www.cpsc.gov.