July 24, 2023

Via U.S. Mail and Email (oshsb@dir.ca.gov)

Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

15-Day Notice of Proposed Modifications – Section 1532.1 of the Construction Safety Orders; and Sections 5155 and 5198 of the General Industry Safety Orders

To Whom It May Concern:

The undersigned organizations appreciate the opportunity to work with the Occupational Safety and Health Standards Board (Standards Board) as it continues to review and revise occupational standards for

lead exposure (revised lead standards). We also appreciate the California Department of Industrial Relations, Division Occupational Safety and Health's (Division) consideration of our prior April 20, 2023 comments on the revised lead standards, and provide the following additional comments in response to the revised Section 5198 language included in the Standards Board's July 7, 2023 15-Day Notice of Proposed Modifications:

- We support the Division's decision to change the defined term "presumed hazardous lead work" to "presumed significant lead work."

- We appreciate the Division's proposal to provide a one-year compliance period for the change room, shower, and lunchroom requirements triggered by exposures above the proposed permissible exposure level (PEL), but believe that one year is insufficient due to the construction, and associated budgeting, planning, and permitting, that may be required. These limited compliance periods also do not apply to engineering controls that many employers will need to implement to achieve a 10 $\mu g/m^3$ PEL, especially in enclosed work areas. We believe a three-year compliance period will be necessary in many cases for employers to comply with PEL-related requirements.

- We reiterate our prior comments that a reasonable compliance schedule is necessary to comply with other requirements, such as requirements triggered by exposures above the proposed action level (AL) and the balance of the requirements triggered by exposures above the proposed PEL. The Division must include a mechanism that protects employers who are diligently working toward compliance from notices of violation, enforcement actions, and penalties for delays they cannot control. We continue to recommend that the Division incorporate the compliance schedule recommendations in our November 14, 2022 letter. As we also articulated in our more recent April 20, 2023 letter, we remain concerned about whether the Division has sufficiently demonstrated adequate laboratory capacity for the proposed required blood lead testing, and a reasonable compliance schedule would allow for a more gradual increase in laboratory capacity in a manner that allows for, rather than impedes, employer compliance.

- We maintain that medical removal benefits should be limited to occupational exposures. Elevated blood lead levels can result from a wide range of exposures, and non-occupational and recreational exposures can lead to blood-lead levels that exceed the Division's proposed medical removal levels. We request that the Division reconsider our prior recommendation to include additional language clarifying that medical removal benefits are required only when: (1) workplace exposures are determined to exceed relevant action levels; and (2) a medical examination by a qualified physician concludes that those workplace exposures are the primary cause of the employee's elevated blood lead level.

- We appreciate the Division's inclusion of an exception from the general hygiene requirements to allow employers to provide employees with access to potable drinking water. This exception not

only allows employers to better protect their employees by providing access to drinking water to prevent heat illness-related injuries, but also allows employers to comply with other relevant laws, regulations, and orders related to heat illness prevention. We request, however, that the Division provide additional clarification regarding the requirement to provide "training on and ensure compliance with written safe hydration procedures." This requirement is not defined and is critical to both employee protection and employer compliance with the revised lead standards. We also request deletion of the last sentence of the exception requiring an employer to demonstrate that employees following these procedures are not exposed to lead above the PEL given that this exception expressly applies in areas with air-lead levels above the PEL.

- Finally, we reiterate our prior comment that the Division should reconsider the extent of the proposed reductions in airborne lead exposure limits, which would create more hazardous conditions for employees working in enclosed and confined spaces. Where the proposed limits are not possible to achieve, employees would need to wear Tyvek suits and respirators and would be at much greater risk of heat illness, especially during summer months. This type of work has been performed for decades under the previous regulation, with little evidence of worker blood lead levels exceeding the proposed blood-lead targets. Historically, this success has been achieved through hygiene measures, not through lower airborne exposure levels. In particular, the minimal gains in employee health protection that can be expected from the proposed five-fold reduction in the PEL are not justified when weighed against the greater potential for employee harm from increased heat exposure.

We would like to thank you again for your consideration of our additional comments.

Sincerely,

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