

**Understanding Lead Hazard Regulations:  
What a Property Owner Needs to Know**  
by Charles Fuller, REHS

As a property owner, it is important to be informed about the many lead hazard rules and regulations that could impact the sale and lease of your property. These include the Federal Lead-Based Paint Disclosure and Pre-Renovation Rules, sections of the California Health and Safety Code (Title 17), as well as regulations outlined in State Senate Bill 460. This article will present an overview of these lead rules and regulations, as well as practical advice on how to effectively manage and eliminate lead hazards on your property.

**Federal Rules:** There are two main Federal rules concerning lead hazards, the Lead-Based Paint Disclosure Rule and the Pre-Renovation Education Rule.

The Lead-Based Paint Disclosure Rule requires the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. The details of the rule can be found on the HUD web site at: <http://www.hud.gov/offices/lead/disclosure/index.cfm>.

The Pre-Renovation Education Rule requires contractors; painters, maintenance staff and anyone else whose work disturbs paint on pre-1978 dwellings to distribute an EPA approved pamphlet entitled “Protect Your Family from Lead in Your Home” within seven days prior to renovation. Documentation of the pamphlet’s distribution is also required. A contractor’s lack of awareness of this rule is an indication that he is unprepared to provide lead-safe work practices. The details of the regulation requirements can be found at the EPA web site: <http://www.epa.gov/opptintr/lead/pubs/leadrenf.htm>

**State Regulations: California Health and Safety Code (Title 17), Sections 35001 through 36000**

The standards for determining lead hazards are contained in California Health & Safety Code sections 35001 through 36000 referred to as Title 17 Regulations. These regulations include specific standards for lead hazards in paint, dust and soil, but also include “any other nuisance which may result in persistent and quantifiable lead exposure.” Title 17 applies to residential and public buildings.

**State Senate Bill 460 (Health and Safety Code), Section 17920.10**

The other lead hazard regulation that property owners should be aware of is outlined in State Senate Bill 460. SB 460 establishes that lead hazards as defined in Title 17 are **also** violations of State Housing Law. (Health & Safety Code, Section 17920.10) However, small areas that contain lead hazards may not be a violation of State Housing Law. The one exception being, that if a person with elevated blood lead level is present, even small area of lead exposure can be considered violations.

SB 460 also makes it illegal to create a lead hazard or to have a condition that is a lead hazard in residential and public buildings (Health & Safety Code, Sections 105255 and 105256). This regulation requires that lead-safe work practices are used when disturbing

lead-based paint or lead contaminated soil or dust. Compliance is primarily achieved through containment of the work area as defined in Title 17.

Factors to Consider When Assessing a Property's Lead Contamination Risk:

### **Age of the Building**

- Properties built before 1950 the highest risk of having lead-based paint
- Properties built between 1950 to 1979 have a moderate risk of having lead-based paint
- Properties built after 1979 have the least risk of lead based paint

Federal law limited the amount of lead allowed in house paint to .06% in 1978.

Therefore, unless industrial paints or paint not intended for homes was used on property built after 1978, no "lead-based paint" should be present.

While all property built prior to 1978 used some amount of lead based paint, a closer look at the history of lead in paint reveals that property built before 1950 has a much higher risk for lead exposure than property built in the 1950 to 1979 range. Around the turn of the century lead in paint was a well accepted and desired additive. Lead in paint circa 1900-1920 could easily contain 40-50 % lead, while paint used during the 1930s-1940s contained about 15-25%. The amount of leaded paint in Santa Clara County homes built in the 1950s around the .5% level. This lowering of lead content appears to be related to lawsuits against the paint industry and their voluntary reduction of lead in paint that culminated in the 1978 regulation.

If an owner wishes to determine if any lead-based paint is present, a State certified Lead Inspector/Assessor should be hired to test all painted surfaces. A State Certified Inspector is the only person qualified to make a legal determination of the presence or absence of lead-based paint. There are color tests for the presence of lead in paint on the market, but they have no legal standing and may indicate the presence of lead in paint at levels below the .5% level that defines "lead-based" paint.

### **Condition of Paint**

The next important consideration is the condition of the paint. Paint that is intact, i.e. not peeling, cracking or flaking, is generally not a hazard regardless of the lead content. An exception to this could be paint on friction areas such as window or door components that may create lead dust or paint on surfaces that a child may chew on. These conditions may come to light if a child is found to have an elevated blood lead level and the local health agency conducts an assessment of the child's environment to identify lead hazards.

A proactive property owner can hire a certified inspector to conduct a risk assessment to identify such hidden lead hazards. A risk assessment will include testing of deteriorated paint surfaces, along with dust and soil. A lead inspection on the other hand, will only test painted surfaces regardless of condition, but not dust and soil.

The State of California requires that children with elevated blood lead levels meeting case criteria receive a home investigation to determine possible sources of lead exposure including testing of paint dust and soil. If this risk assessment determines a possible exposure risk due to any of these sources, the property owner may be notified and required to make corrective actions to abate the source(s) of lead exposure. A property owner receiving such a notice is well advised to follow all directions and respond in a

timely manner. Once the owner corrects the lead hazards, the environmental health specialist will present the owner with a “Clearance” document. This document will provide legal evidence that the identified lead hazards have been corrected. While quick response to abatement orders and achieving clearance of lead hazards provides significant buffering against liability, property owners are vulnerable to civil suits from the presence of lead hazards whether known or not. Therefore, a proactive course of action is well advised, especially for older properties.

### **Hazards Created by Contractors and Maintenance Workers**

Beyond the issues of whether a property has lead hazards in paint, dust or soil is the possibility of lead hazards created by maintenance workers or contractors. A property may exist for years in a well maintained condition and present no lead hazard, until a renovator or painter begins to disturb the paint, creating dust or chips that contaminate the residents and or neighbors’ surrounding environments. Therefore it is important to only hire workers who are knowledgeable about lead safe paint removal and renovation practices.

### **Summary**

Hopefully this discussion has served to clarify for property owners how the many overlapping regulations concerning lead may apply to their own property. Overall, owners, especially of pre-1950 buildings should be strongly advised to closely examine this issue and not wait for a child to be identified with lead poisoning to peak their awareness. Most lead hazards and liabilities can be avoided by good maintenance scheduling, well trained staff and qualified contractors.

*Charles Fuller is with the Childhood Lead Poisoning Prevention Program, Santa Clara County, Public Health Department.*