

Part 4. Lead Poisoning in Children.

§ 130A-131.5. Commission to adopt rules.

(a) For the protection of the public health, the Commission shall adopt rules for the prevention and control of lead poisoning in children in accordance with this Part.

(b) Repealed by Session Laws 1998-209, s. 1. (1989, c. 333; c. 751, s. 15; 1991, c. 300, s. 1; 1997-506, s. 45; 1998-209, s. 1.)

§ 130A-131.6. Reserved for future codification purposes.

§ 130A-131.7. Definitions.

The following definitions apply in this Part:

- (1) "Abatement" means undertaking any of the following measures to eliminate a lead-based paint hazard:
 - a. Removing lead-based paint from a surface and repainting the surface.
 - b. Removing a component, such as a windowsill, painted with lead-based paint and replacing the component.
 - c. Enclosing a surface painted with lead-based paint with paneling, vinyl siding, or another approved material.
 - d. Encapsulating a surface painted with lead-based paint with a sealant.
 - e. Any other measure approved by the Commission.
- (2) "Child-occupied facility" means a building, or portion of a building, constructed before 1978, regularly visited by a child who is less than six years of age. Child-occupied facilities may include, but are not limited to, child care facilities, preschools, nurseries, kindergarten classrooms, schools, clinics, or treatment centers including the common areas, the grounds, any outbuildings, or other structures appurtenant to the facility.
- (3) "Confirmed lead poisoning" means a blood lead concentration of 20 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a six-month period.

- (4) "Department" means the Department of Environment and Natural Resources or its authorized agent.
- (5) "Elevated blood lead level" means a blood lead concentration of 10 micrograms per deciliter or greater determined by the lower of two consecutive blood tests within a six-month period.
- (6) "Lead-based paint hazard" means a condition that is likely to result in exposure to lead-based paint or to soil or dust that contains lead at a concentration that constitutes a lead poisoning hazard.
- (7) "Lead poisoning hazard" means any of the following:
 - a. Any lead-based paint or other substance that contains lead in an amount equal to or greater than 1.0 milligrams lead per square centimeter as determined by X-ray fluorescence or five-tenths of a percent (0.5%) lead by weight as determined by chemical analysis: (i) on any readily accessible substance or chewable surface on which there is evidence of teeth marks or mouthing; or (ii) on any other deteriorated or otherwise damaged interior or exterior surface.
 - b. Any substance that contains lead intended for use by children less than six years of age in an amount equal to or greater than 0.06 percent (0.06%) lead by weight as determined by chemical analysis.
 - c. Any concentration of lead dust that is equal to or greater than 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills, vinyl miniblinds, bathtubs, kitchen sinks, or lavatories.
 - d. Any lead-based paint or other substance that contains lead on a friction or impact surface that is subject to abrasion, rubbing, binding, or damage by repeated contact and where the lead dust concentrations on the nearest horizontal surface underneath the friction or impact surface are equal to or greater than 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills.
 - e. Any concentration of lead in bare soil in play areas, gardens, pet sleeping areas, and areas within three feet of a residential housing unit or child-occupied facility equal to or greater than 400 parts per million. Any concentration of lead in bare soil in other locations of the yard equal to or greater than 1,200 parts per million.
 - f. Any ceramic ware generating equal to or greater than three micrograms of lead per milliliter of leaching solution for flatware or 0.5 micrograms of lead per milliliter for cups, mugs, and pitchers as determined by Method 973.32 of the Association of Official Analytical Chemists.
 - g. Any concentration of lead in drinking water equal to or greater than 15 parts per billion.
- (8) "Lead-safe housing" is housing that was built since 1978 or has been tested by a person that has been certified to perform risk assessments and found to have no lead-based paint hazard within the meaning of the Residential Lead-Based Paint Reduction Act of 1992, 42 U.S.C. § 4851b(15).
- (9) "Maintenance standard" means the following:
 - a. Using safe work practices, repairing and repainting areas of deteriorated paint inside a residential housing unit and for single-family and duplex residential dwelling built before 1950,

- repairing and repainting areas of deteriorated paint on interior and exterior surfaces;
 - b. Cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard;
 - c. Adjusting doors and windows to minimize friction or impact on surfaces;
 - d. Subject to the occupant's approval, appropriately cleaning any carpets;
 - e. Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and
 - f. Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.
- (10) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.
- (11), (12) Repealed by Session Laws 2003-150, s. 1, effective July 1, 2003.
- (13) "Readily accessible substance" means any substance that can be ingested or inhaled by a child less than six years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include soil, water, toys, vinyl miniblinds, bathtubs, lavatories, doors, door jambs, stairs, stair rails, windows, interior windowsills, baseboards, and paint that is chalking.
- (14) "Regularly visits" means the presence at a residential housing unit or child-occupied facility on at least two different days within any week, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours.
- (15) "Remediation" means the elimination or control of lead poisoning hazards by methods approved by the Department.
- (16) "Residential housing unit" means a dwelling, dwelling unit, or other structure, all or part of which is designed or used for human habitation, including the common areas, the grounds, any outbuildings, or other structures appurtenant to the residential housing unit.
- (17) "Supplemental address" means a residential housing unit or child-occupied facility where a child with confirmed lead poisoning regularly visits or attends. Supplemental address also means a residential housing unit or child-occupied facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of confirmed lead poisoning. (1997-443, ss. 11A.123, 15.30(b); 1998-209, s. 2; 2003-150, s. 1.)

§ 130A-131.8. Laboratory reports.

- (a) All laboratories doing business in this State shall report to the Department all environmental lead test results and blood lead test results for children less than six years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made by electronic submission within five working days after test completion.
- (b) Reports of blood lead test results shall contain all of the following:
 - (1) The child's full name, date of birth, sex, race, ethnicity, address, and Medicaid number, if any.

- (2) The name, address, and telephone number of the requesting health care provider.
 - (3) The name, address, and telephone number of the testing laboratory.
 - (4) The laboratory results, whether the specimen type is venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed.
- (c) Reports of environmental lead test results shall contain all of the following:
- (1) The address where the samples were collected.
 - (2) Sample type, such as dust, paint, soil, or water.
 - (3) Surface type, such as floor, window sill, or window trough.
 - (4) Collection location.
 - (5) The name, address, and telephone number of the testing laboratory.
 - (6) The laboratory results, unit of measurement, the laboratory sample number, and the dates the sample was collected and analyzed. (1997-443, s. 15.30(b); 2003-150, s. 2; 2009-484, s. 1.)

§ 130A-131.9. Examination and testing.

When the Department has a reasonable suspicion that a child less than six years of age has an elevated blood lead level or a confirmed lead poisoning, the Department may require that child to be examined and tested within 30 days. The Department shall require from the owner, managing agent, or tenant of the residential housing unit or child-occupied facility information on each child who resides in, regularly visits, or attends, or, who has within the past six months, resided in, regularly visited, or attended the unit or facility. The information required shall include each child's name and date of birth, the names and addresses of each child's parents, legal guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the required information within 10 days of receipt of the request from the Department. (1997-443, s. 15.30(b); 2003-150, s. 3.)

§ 130A-131.9A. Investigation to identify lead poisoning hazards.

(a) When the Department learns of confirmed lead poisoning, the Department shall conduct an investigation to identify the lead poisoning hazards to children. The Department shall investigate the residential housing unit where the child with confirmed lead poisoning resides. The Department shall also investigate the supplemental addresses of the child who has confirmed lead poisoning.

(a1) When the Department learns of an elevated blood lead level, the Department shall, upon informed consent, investigate the residential housing unit where the child with the elevated blood level resides. When consent to investigate is denied, the child with the elevated blood lead level cannot be located, or the child's parent or guardian fails to respond, the Department shall document the denial of consent, inability to locate, or failure to respond.

(b) The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children exists in a residential housing unit or child-occupied facility occupied, regularly visited, or attended by a child less than six years of age.

(c) In conducting an investigation, the Department may take samples of surface materials, or other materials suspected of containing lead, for analysis and testing. If samples are taken, chemical determination of the lead content of the samples shall be by atomic absorption spectroscopy or equivalent methods approved by the Department. (1997-443, s. 15.30(b); 2003-150, s. 4.)

§ 130A-131.9B. Notification.

Upon determination that a lead poisoning hazard exists, the Department shall give written notice of the lead poisoning hazard to the owner or managing agent of the residential housing

unit or child-occupied facility and to all persons residing in, attending, or regularly visiting the unit or facility. The written notice to the owner or managing agent shall include a list of possible methods of remediation. (1997-443, s. 15.30(b); 2003-150, s. 5.)

§ 130A-131.9C. Remediation.

(a) Upon determination that a child less than six years of age has a confirmed lead poisoning of 20 micrograms per deciliter or greater and that child resides in a residential housing unit containing lead poisoning hazards, the Department shall require remediation of the lead poisoning hazards. The Department shall also require remediation of the lead poisoning hazards identified at the supplemental addresses of a child less than six years of age with a confirmed lead poisoning of 20 micrograms per deciliter or greater.

(b) When remediation of lead poisoning hazards is required under subsection (a) of this section, the owner or managing agent shall submit a written remediation plan to the Department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan before initiating remediation activities. The remediation plan shall comply with subsections (g), (h), and (i) of this section.

(c) If the remediation plan submitted fails to meet the requirements of this section, the Department shall issue an order requiring submission of a modified plan. The order shall indicate the modifications that shall be made to the remediation plan and the date that the plan as modified shall be submitted to the Department.

(d) If the owner or managing agent does not submit a remediation plan within 14 days, the Department shall issue an order requiring submission of a remediation plan within five days of receipt of the order.

(e) The owner or managing agent shall notify the Department and the occupants of the dates of remediation activities at least three days before commencement of the activities.

(f) Remediation of the lead poisoning hazards shall be completed within 60 days of the Department's approval of the remediation plan. If the remediation activities are not completed within 60 days, the Department shall issue an order requiring completion of the activities. An owner or managing agent may apply to the Department for an extension of the deadline. The Department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(g) All of the following methods of remediation of lead-based paint hazards are prohibited:

- (1) Stripping paint on-site with methylene chloride-based solutions.
- (2) Torch or flame burning.
- (3) Heating paint with a heat gun above 1,100 degrees Fahrenheit.
- (4) Covering with new paint or wallpaper unless all readily accessible lead-based paint has been removed.
- (5) Uncontrolled abrasive blasting, machine sanding, or grinding, except when used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at ninety-nine and seven-tenths percent (99.7%) or greater efficiency.
- (6) Uncontrolled waterblasting.
- (7) Dry scraping, unless used in conjunction with heat guns, or around electrical outlets, or when treating no more than two square feet on interior surfaces, or no more than 20 square feet on exterior surfaces.

(h) All lead-containing waste and residue shall be removed and disposed of in accordance with applicable federal, State, and local laws and rules. Other substances containing lead that are intended for use by children less than six years of age and vinyl miniblinds that constitute a lead poisoning hazard shall be removed and disposed of in accordance with applicable federal, State, and local laws and rules.

(i) All remediation plans shall require that the lead poisoning hazards be reduced to the following levels:

- (1) Fewer than 40 micrograms per square foot for lead dust on floors.
- (2) Fewer than 250 micrograms per square foot for lead dust on interior windowsills, bathtubs, kitchen sinks, and lavatories.
- (3) Fewer than 400 micrograms per square foot for lead dust on window troughs.
- (4) Fewer than 400 parts per million for lead in bare soil in play areas, gardens, pet sleeping areas, and areas within three feet of the residential housing unit or child-occupied facility. Lead in bare soil in other locations of the yard shall be reduced to less than 1,200 parts per million.
- (5) Fewer than 15 parts per billion for lead in drinking water.

(j) The Department shall verify by visual inspection that the approved remediation plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.

(j1) Compliance with the maintenance standard satisfies the remediation requirements for confirmed lead poisoning cases identified on or after 1 October 1990 as long as all lead poisoning hazards identified on interior and exterior surfaces are addressed by remediation. Except for owner-occupied residential housing units, continued compliance shall be verified by means of an annual monitoring inspection conducted by the Department. For owner-occupied residential housing units, continued compliance shall be verified (i) by means of an annual monitoring inspection, (ii) by documentation that no child less than six years of age has resided in or regularly visited the residential housing unit within the past year, or (iii) by documentation that no child less than six years of age residing in or regularly visiting the unit has an elevated blood lead level.

(k) Removal of children from the residential housing unit or child-occupied facility shall not constitute remediation if the property continues to be used for a residential housing unit or child-occupied facility. The remediation requirements imposed in subsection (a) of this section apply so long as the property continues to be used as a residential housing unit or child-occupied facility. (1997-443, s. 15.30(b); 1998-209, s. 3; 2003-150, s. 6.)

§ 130A-131.9D. Effect of compliance with maintenance standard.

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust, shall not be deemed liable (i) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under G.S. 130A-131.7 provided the owner has repeated the steps provided for in the maintenance standard annually for units in which children of less than six years of age have resided or regularly visited within the past year and obtained a certificate of compliance under G.S. 130A-131.9E annually during such occupancy; or (ii) if the owner is able to show by other documentation that compliance with the maintenance standard has been maintained during the period when the injuries were sustained; or (iii) if the owner is able to show that the unit was lead-safe housing containing no lead-based paint hazards during the period when the injuries were sustained. (1997-443, s. 15.30(b); 1998-209, s. 4.)

§ 130A-131.9E. Certificate of evidence of compliance.

An owner of a unit who has complied with the maintenance standard may apply annually to the Department for a certificate of compliance. Upon presentation of acceptable proof of compliance, the Department shall provide to the owner a certificate evidencing compliance. The Department may issue a certificate based solely on information provided by the owner and may revoke the certificate upon showing that any of the information is erroneous or inadequate,

or upon finding that the unit is no longer in compliance with the maintenance standard. (1997-443, s. 15.30(b).)

§ 130A-131.9F. Discrimination in financing.

(a) No bank or financial institution in the business of lending money for the purchase, sale, construction, rehabilitation, improvement, or refinancing of real property of the lending of money secured by an interest in real property may refuse to make such loans merely because of the presence of lead-based paint on the residential real property or in the residential housing unit provided that the owner is in compliance with the maintenance standard and has obtained a certificate of compliance under G.S. 130A-131.9E annually.

(b) Nothing in this section shall (i) require a financial institution to extend a loan or otherwise provide financial assistance if it is clearly evident that health-related issues, other than those related to lead-based paint, made occupancy of the housing accommodation an imminent threat to the health or safety of the occupant, or (ii) be construed to preclude a financial institution from considering the fair market value of the property which will secure the proposed loan.

(c) Failure to meet the maintenance standard shall not be deemed a default under existing mortgages. (1997-443, s. 15.30(b).)

§ 130A-131.9G. Resident responsibilities.

In any residential housing unit occupied by a child less than six years of age who has an elevated blood lead level of 10 micrograms per deciliter or greater, the Department shall advise, in writing, the owner or managing agent and the child's parents or legal guardian of the importance of carrying out routine cleaning activities in the units they occupy, own, or manage. The cleaning activities shall include all of the following:

- (1) Wiping clean all windowsills with a damp cloth or sponge at least weekly.
- (2) Regularly washing all surfaces accessible to children.
- (3) In the case of a leased residential housing unit, identifying any deteriorated paint in the unit and notifying the owner or managing agent of the conditions within 72 hours of discovery.
- (4) Identifying and understanding potential lead poisoning hazards in the environment of each child less than six years of age in the unit (including toys, vinyl miniblinds, playground equipment, drinking water, soil, and painted surfaces), and taking steps to prevent children from ingesting lead such as encouraging children to wash their faces and hands frequently and especially after playing outdoors. (1997-443, s. 15.30(b); 2003-150, s. 7.)

§ 130A-131.9H. Application fees for certificates of compliance.

The Department shall collect an application fee of ten dollars (\$10.00) for each certificate of compliance. Fee receipts shall be used to support the program that is developed to implement this Part. Fee receipts also may be used to provide for relocation and medical expenses incurred by children with confirmed lead poisoning. (1998-209, s. 5.)