

Safe Home Illinois

A Newsletter On Childhood Lead Poisoning and Prevention

Summer 2004

A quarterly publication of the Illinois Lead Safe Housing Task Force and Loyola University ChildLaw Center

Table of Contents

In the News

Chicago's Lead Elimination Plan.....	1
Illinois Strategy to Eliminate Lead to be Finalized....	2
Illinois Legislature Adds Paint and Coating Industry to Advisory Council.....	2
Chicago Department of Public Health Responds to Lead Found in Toy Jewelry.....	2
CDC Advisory Committee Adds Parent Representative.....	2
Maryland Passes "Clean Hands Bill".....	3
City of Cleveland Ordinance Offers Landowners Lead Control Services.....	3
NYC Council Passes Stricter Lead Laws.....	3
NJ Law Provides Lead Prevention Funding	4

Litigation Digest

Chicago's Lawsuit Dismissed, Appeal Pending.....	4
Rhode Island Suit Against Paint Manufacturers Scheduled for Second Trial.....	5
City of St. Louis Action for Abatement Costs Proceeds to Trial.....	5
Appeal Pending in NJ Litigation.....	5
NYS Court of Appeals: Municipality Not Liable for Lead Injuries.....	6

New Resources Available

New Website for Chicago on Lead Safe Homes.....	6
Lead-Safe Work Practices Training Course Now Available in Spanish.....	6
Evaluation of HUD Grant Program Released.....	7

FYI

HUD's July 28 Training to Include Showing of "Jimmy's Getting Better".....	7
September Conference on Children's Health and Environment.....	7
Lead Included in CDC's Third National Report on Human Exposure to Environmental Chemicals.....	8
Lead Safe Housing Initiative Organizes Parents' Group.....	8

EPA Clarifies Rule on Non-Expert Use of Lead

Test Kits.....8

In the News

Chicago's Lead Elimination Plan Underway

Lead Safe Chicago: A Plan to Eliminate Childhood Lead Poisoning in Chicago by 2010 is underway. The City's strategic plan to eliminate lead poisoning, developed over the course of the year, is now available on the web at www.luc.edu/childlaw (click on special programs and scroll down). Development of the City's strategic plan to eliminate childhood lead poisoning was begun at a Citywide summit convened in March 2003 by the Chicago Department of Public Health (CDPH) and Loyola University Chicago's ChildLaw Center, in partnership with the U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, and the Centers for Disease Control and Prevention. More than 150 individuals participated in the Summit, representing local, State, and Federal government agencies, realtors and property owners, public health experts, advocates, and community organizations. Facilitated afternoon breakout sessions during the Summit tackled policy and program issues in four areas: Leveraging Dollars for Making Housing Lead Safe; Fostering Compliance with Lead-Safe Housing Practices; Increasing Identification of Children with Elevated Blood Lead Levels; and Putting Childhood Lead Poisoning on Decisionmaker's Radar Screen. Ongoing working groups met to finalize the Plan, and are involved in implementation efforts.

For more information about Lead Safe Chicago, contact Loyola University ChildLaw Center's Lead Safe Housing Initiatives at 312-915-6481.

Illinois Strategy to Eliminate Lead Being Finalized

Illinois' Strategic Plan for the Elimination of Childhood Lead Poisoning is in the process of being finalized. The Plan, developed by the Illinois Department of Public Health (IDPH), in consultation with an Advisory Board including health and environmental professionals and child advocates, is expected to be available in August. IDPH plans to initially target five communities considered high risk for childhood lead poisoning. These include Rockford, Peoria, East St. Louis, and Springfield; IDPH is in the process of identifying a fifth community. For a copy of the Strategic Plan, contact the Illinois Childhood Lead Poisoning Prevention Program, in August, at 217-782-0403 or 800-545-2200.

Illinois Adds Paint and Coating Industry to Lead Safe Housing Advisory Council

On July 22, Governor Rod Blagojevich signed House Bill 4481, an amendment to the Illinois Lead Poisoning Prevention Act. The amendment, sponsored by Representative Art Turner (D- 9th Dist), adds one representative from the Illinois paint and coating industry to the Illinois Lead Safe Housing Advisory Council. The Advisory Council, established by law in 2003, is charged with developing and making recommendations to the governor regarding steps to eliminate childhood lead paint poisoning in Illinois. The Governor's office is in the process of naming appointees to the Advisory Council.

Chicago Department of Public Health Responds to Lead Found in Toy Jewelry

In response to concerns of lead in toy jewelry, in June the Chicago Department of Public Health (CDPH) conducted a sweep of stores in the Chicago area for the contaminated toys. The department collected and tested 42 capsules with metallic jewelry from toy vending machines. After testing the items, CDPH found 18 pieces with higher lead percentages than the City's standards, some as high as 68% lead. Lead levels exceeded 18% in sixteen of the eighteen items tested. In response to its findings, CDPH issued a letter to the nine violating stores informing them of the test results and that the sale of the items was in violation of a city ordinance. All nine stores either took the machines off the floor or put "Out of Order" signs on the machines. Chicago area distributors whose products were identified pulled all of the toys posing a threat from all locations.

In addition to Citywide efforts, on July 8, 2004, CNN news reported that four import companies voluntarily recalled 150 million pieces of vending machine jewelry after the Consumer Product Safety Commission found the products contained lead. The recall is one of the largest in U.S. history.

CDC Advisory Committee Adds Parent Representative

In early June, 2004, Tommy Thompson, Secretary of the U.S. Department of Health and Human Services approved a new position for a parent of a lead poisoned child on the Center for Disease Control's Advisory Committee on Childhood Lead Poisoning (CDC Advisory Committee). After working for over a year to create the position, the parent group, Voices Opposed to Children Affected by Lead (VOCAL), succeeded

in having the charter of the CDC Advisory Committee expanded to allow for 13 voting members. The new parent representative appointee, Valerie Johnson Bentley of Urban Parent to Parent in Rochester N.Y., was nominated by VOCAL.

Appointment of a parent representative followed the Bush administration's controversial set of appointments to the CDC Advisory Committee in late 2003.

The Advisory Committee recently completed a review of the scientific evidence available on lead's health effects in children who have low blood lead levels. A committee workgroup reported that while available evidence indicates a link between cognitive function and lead exposure at blood lead levels below 10ug/dL in children, these negative effects have not yet been determined to be solely attributable to lead. Based on that review the Advisory Committee concluded that research findings were inconclusive to alter the current threshold level of 10 µg/dL for identifying children as lead poisoned. CDC staff reported that the CDC would not take steps to lower its current clinical threshold of 10 ug/dL, but reaffirmed the importance of primary prevention measures. The Committee's report is expected shortly.

Maryland Passes "Clean Hands Bill"

The Maryland General Assembly recently passed HB 1245, the "Clean Hands Bill," that is expected to increase rental property owners' compliance with lead hazard controls. The law requires property owners to be in compliance with all of Maryland's lead laws in order to access the state's Rent Court process. Any landlord or leasing company that wishes to use Rent Court to collect rent or evict a tenant will first have to have controlled any lead hazards on its properties. Both houses of the General Assembly voted unanimously to pass the bill,

and Maryland Governor Robert Ehrlich signed the bill into law on May 26, 2004. The Coalition to End Childhood Lead Poisoning led the effort to enact the legislation. For more information about the law, see [MACROBUTTON HtmlResAnchor www.lead-safe.org/Links/HB1245SUM.htm](#) or contact the Coalition's Executive Director, Ruth Ann Norton, at (410) 534-6447 ext. 11 or ranorton@lead-safe.org

City of Cleveland Ordinance Offers Landowners Lead Control Services

A new ordinance passed by the City of Cleveland in June 2004, authorizes the Director of Public Health to enter into agreements with homeowners in which the City Department of Public Health will perform lead hazard control services and bill the owner for the costs of the services. The ordinance allows the City and homeowner to include a provision that if lead-safe work practices have been followed and an inspection shows that the property is maintained lead safe, the homeowner will not be required to repay the loan and instead it will be treated as a grant.

Under the ordinance, if the costs are not repaid within thirty days of receipt of the statement of charges and costs, the Director may certify the amount to be collected as a lien on the property and the city auditor will collect the money as taxes.

NYC Passes Stricter Lead Law

New York City's new lead legislation, which requires peeling paint and dust be safely removed in pre-1960 apartments with children under age seven, goes into effect in August. The law, which the New York City Council enacted after overriding New York City Mayor Michael Bloomberg's veto, requires cited violations be fixed within 45 days, and that the City inspect

landlords' repairs within 14 days. Mayor Bloomberg was concerned that the new law would expose the City and landlords to increased litigation.

The legislation was enacted after New York's highest court struck down a 1999 law that weakened lead dust hazard controls.

According to *The New York Times*, in response to the passage of the law, some developers and non-profit organizations have delayed plans to redevelop low and middle-income housing. The developers cite the cost of adequate insurance and costs of relocating tenants for their decision to postpone work. However, advocates of the legislation point out that landlords will not be held liable under the new law if they can persuade a fact-finder that they made "diligent and reasonable" efforts to eliminate the lead-paint hazards.

In early April, property owners in New York City filed two separate lawsuits in State Supreme Court of New York to challenge the law. The lawsuit alleges that the City Council did not conduct the required environmental reviews prior to passing the law. The suit was filed by the Rent Stabilization Association, which represents 25,000 owners of more than 1.1 million rent-stabilized apartments in the city.

For more information, contact Matthew Chachere, Northern Manhattan Improvement Corporation, chachere@igc.org.

NJ Law Provides New Lead Prevention Funding

Earlier this year, New Jersey Governor Jim McGreevey signed into law legislation that imposes a fee on the inspection of lead hazards for multi-unit rental properties constructed prior to 1978. The fees will go toward evaluating lead-paint hazards and providing low-interest loans and grants for low-income families to do lead abatement projects. In addition, a portion

of the sales tax collected from paint sales goes toward the fund. The law also creates a registry of lead safe housing in New Jersey, and the Emergency Lead Poisoning Relocation Fund with \$2 million from the Catastrophic Illness in Children Relief Fund.

Advocates for the bill included the New Jersey Action Council, New Jersey Tenants Organization, the Patterson Task, and the New Jersey Environmental Federation. The bill can be viewed online at www.njleg.state.nj.us/2002/Bills/S1500/1348_R3.HTM.

Litigation Digest

Chicago's Lawsuit Dismissed, Appeal Pending

Appellate arguments are expected to be scheduled shortly in the City of Chicago's lawsuit against several former paint manufacturers and their successors. Appellate briefs were submitted to the court in mid-May 2004 after Cook County Circuit Court Judge Nancy J. Arnold dismissed the City of Chicago's lawsuit which alleged a public nuisance violation by defendants.

In her decision, Judge Arnold found that many of the defense's grounds for the Motion to Dismiss had merit. She specifically held that Illinois courts required the City to show the defendant's caused the condition creating a nuisance and that the City's complaint lacked this legal requirement.

The Alliance of American Public Health Associations, Day Care Action Council of Illinois, Health & Disability Advocates, Illinois Chapter of the American Academy of Pediatrics, Infant Welfare Society of Chicago, Illinois Public Health Association, Metropolitan Tenants Organization,

Lawyers' Committee for Better Housing, Uptown People's Law Center, and Voices for Illinois Children filed amici curiae briefs in support of the appeal.

Rhode Island Suit Against Paint Manufacturers Scheduled for Second Trial

The retrial of *State of Rhode Island v. Lead Industries Association* is scheduled for April 6, 2005. In the suit, originally filed in October 1999, the State of Rhode Island seeks damages from former lead pigment manufacturers and their successors for cost of lead paint abatement, and health care costs. The state complaint includes allegations that the defendants misrepresented their products as safe after they knew that their products were hazardous and attempted to avoid labeling requirements. A previous trial of the case, ended in a 4-2 hung jury in October 2002, when the jurors were unable to decide if the presence of lead-based paint in public and private buildings constitutes a public nuisance.

City of St. Louis Action for Abatement Costs Proceeds to Trial

The City of St. Louis' litigation against the Lead Industries Association, Inc. et. al., is scheduled to go to trial July 2005. This spring the St. Louis City Circuit Court denied the defendants' motion for summary judgment. The City filed the case in 2000 claiming that the defendants manufactured and marketed lead pigments despite knowledge of its hazards. The City accused the defendants of failing to adequately test their products or warn of their dangers. In its suit, the City seeks damages to pay for lead paint abatement in homes and buildings in the City and for medical costs associated with screening and treatment.

The defendant sought summary judgment alleging the City had exceeded its statute of limitations. The court ruled that the statute had not run because the nuisance was temporary and could be abated. The court also refused the defendants' request to join property owners as essential parties.

When the case began in 2000, the complaint included claims for public nuisance, product liability, negligence, fraudulent misrepresentation, conspiracy, unjust enrichment, and indemnity, and the plaintiff sought compensatory and punitive damages as well as injunctive relief. As the suit has proceeded, the City dropped all theories of recovery except public nuisance, withdrew its claims for medical costs, and dropped claims related to city-owned buildings. In its ruling this spring, the Circuit Court further limited the city's case to the recoupment of city expenditure for abating lead paint in private homes for the 10-year period before the case was filed.

Appeal Pending in NJ Litigation

Twenty-five New Jersey municipalities that filed several lawsuits against former lead-based paint manufactures under a public nuisance theory are seeking an appeal from the Superior Court for Middlesex County's dismissal of the litigation in November 2002. The Superior Court held that the municipalities could not seek compensation for harm done by a product that was not illegal. The Alliance for Healthy Homes, American Public Health Association, New Jersey Citizen Action, the Association for the Children of New Jersey, and the New Jersey Statewide Parent Advocacy Network filed amici curiae briefs in support of the appeal.

NYS Court of Appeals: Municipality Not Liable for Lead Injuries

In late March, the New York State Court of Appeals ruled, in *Pelaez v. Seide*, that municipalities cannot be held liable for injuries and illness suffered by a lead poisoned child when city or county health departments do not respond to violations to the full extent of their authority or ability. In the main case, two children sued the municipality because the county health department was aware that the landlord was using untrained workers to fix a lead hazard violation and did nothing to stop the process. As a result of the improper repairs, one child's blood lead level rose to 70 $\mu\text{g}/\text{dl}$, and the other child's to 50 $\mu\text{g}/\text{dl}$. Both children were hospitalized and will suffer lifelong health and cognitive problems.

The Court of Appeals held that because no special relationship existed between the children and the health department, Putnam County could not be held liable for the illnesses that the children suffered. The court noted, however, that in retrospect, it surely would have been better if the Putnam authorities had been more aggressive and the New York officials more thorough.

New Resources Available

New Website on Lead Safe Homes for Chicago

In June 2004, the National Center for Healthy Housing launched its new website to aid home buyers and renters in identifying homes with lead-based paint hazards in Chicago. The website: www.LeadSafeHomes.info, allows

interested parties to enter an address of a home to see whether that residence has been sited by Chicago Department of Public Health for lead-hazards and if the owner has addressed the hazards. The site, funded with a grant from the U.S. Department of Housing and Urban Development, was designed by the National Center for Healthy Homes for Chicago, Boston and Baltimore, with assistance from the CDPH for information pertinent to Chicago. The site also reports lead statistics for a particular community. In addition, it offers specific information about lead hazard prevention and identification for parents, community groups, landlords and tenants, provides access to Illinois and City of Chicago lead laws and advises citizens on how to take action to prevent childhood lead poisoning. Efforts are underway to find ways to maintain and update the site.

Lead-Safe Work Practices Training Course Now Available in Spanish

Lead Safety for Remodeling and Repair and Painting, the latest course curriculum for EPA-HUD lead-safe training, is now available in Spanish. The course, also known as the RRP Course, is offered for renovators, remodelers, painters, and maintenance personnel to learn about lead-safe work practices and hands-on exercises. It also satisfies training requirements for HUD non-abatement work, and some state and local lead regulations. Both the English and Spanish editions of course materials are posted at www.hud.gov/offices/lead/training/rrp/rrp_course.cfm. For information about MasiMax-coordinated delivery of free lead safety training using this course, and for an online registration form, see <http://leadsafetraining.org>. Health departments, community-based organizations, and others can invite MasiMax to schedule training in their community by contacting John Combs at 571-203-7766 ext. 102 or by e-mailing jcombs@masimax.com.

Evaluation of HUD Grant Program Released

The U.S. Department of Housing and Urban Development's (HUD) Office of Healthy Homes and Lead Hazard Control has released an evaluation of its lead-based hazard control grant program. The three-year study examined over 3,000 privately owned low-income housing units located in over a dozen jurisdictions across the country that had received HUD funding. The study found that the lead hazard control activities as practiced by the participating programs substantially reduced dust lead levels on floors, window sills and troughs and contributed to substantial declines in children's blood lead levels, resulting in a 37% decline in a sample of children across jurisdictions two years after treatment.

The study also measured floor dust levels to assess the success of the measures used. In addition, while assessing the overall impact of each grantee's program, the study also compared current approaches to controlling lead-based paint hazards and their relative effectiveness. Among other findings, the evaluation reported that while window abatement was demonstrated to be the most effective measure to reduce dust lead loadings on windows, this treatment must be performed in conjunction with other treatments (for example, exterior and soil lead hazard control work) that influence predictors of floor dust lead in order to most effectively reduce floor dust lead levels.

The evaluation, released May 1, was conducted by the National Center for Healthy Housing and the University of Cincinnati Department of Environmental Health. For copies of these findings and the complete evaluation visit <http://www.hud.gov/offices/lead/EvaluationFinalReport.pdf>.

FYI

HUD's July 28 Training to Include "Jimmy's Getting Better"

A training by the U.S. Department of Housing and Urban Development on July 28 will focus on HUD's Lead Safe Housing rule. The training will provide instruction on the standard protocols and monitoring compliance methods used to implement the Lead Safe Housing rules in pre-1978 housing that is financially assisted by the federal government or being sold by the government. "Jimmy's Getting Better," a play depicting the impact of lead poisoning on a child's development, will be integrated into the training. The training, open to staff in state and local health departments and at HUD, CDC, and EPA, and to HUD grantees, will be broadcast via satellite and available at local HUD offices. For more information see www.hud.gov/webcasts/schedule/index.cfm.

Sept. Conference on Children's Health and Environment

The Conference on Children's Health and the Environment will be held in Washington, DC on Sept. 11. The conference will provide information on topics including asthma, indoor air quality, lead, mercury, and mold. For more details, contact Nonye Harvey at 202-994-1166 or 1-866-622-2431, or at cohceu@gwumc.edu.

Lead in CDC's Third National Report on Human Exposure to Environmental Chemicals

The Centers for Disease Control announced in May 2004 that lead will again be included in its

Third National Report on Human Exposure to Environmental Chemicals. The Third Report, scheduled for publication in early 2005, will update *The Second Report's* findings that 4.4% of children in the United States had elevated lead blood levels.

The *National Report on Human Exposure to Environmental Chemicals* provides an ongoing assessment of the U.S. population's exposure to environmental chemicals by measuring the chemicals or their metabolites in human specimens such as blood or urine.

The first *National Report on Human Exposure to Environmental Chemicals* was issued in March 2001, and presented exposure data for 27 chemicals. The [*Second Report*](#) expanded data to 116 environmental chemicals (including the 27 in the first *Report*) for the noninstitutionalized, civilian U.S. population over the 2-year period 1999-2000. The *Reports* divide data into age, gender, and race/ethnicity groups.

Lead Safe Housing Initiative Organizes Parents' Group

The Lead Safe Housing Initiative, run by Loyola University's Civitas ChildLaw Center, is seeking grandparents, relatives and concerned citizens to

participate in a parents' lead action group. The group will help to bring parents and relatives of Chicago children who are lead-poisoned together, offer education on lead-safe home practices, and provide a forum for families of children at risk of lead poisoning to find support and organize effective action. For more information please contact Mary Burns or Jenie Van Vlack at the Loyola University Childlaw Center at 312-915-6481.

EPA Clarifies Rule on Non-Expert Use of Lead Test Kits

In a memo released in April 2004, the Environmental Protection Agency clarified that non-certified individuals can use lead test kits as long as they do not represent themselves as lead inspectors. In its Interpretive Guidance Memo on the use of lead test kits, the agency stated that individuals, including lead hazard technicians, may use the kits on painted and other surfaces in compliance with federal law. Provided that individuals who are not certified lead inspectors do not claim to be, or appear to be, lead inspectors, they may use the kits to test for lead. For the full text of the Interpretive Guidance memo, see <http://www.epa.gov/lead/qa15.pdf>.

For more information or referrals on lead poisoning prevention efforts:

Illinois Lead Safe Housing Task Force
Loyola University Chicago ChildLaw Center
Loyola University Chicago School of Law
16 E. Pearson Street, Chicago, IL 60611
(312) 915-6481

www.luc.edu/schools/law/centers/childlaw/special.html.

This newsletter is made possible by a grant from The Chicago Community Trust