

CHAPTER 19: ENVIRONMENTAL ISSUES

SECTION 1: LEAD-BASED PAINT

19-1. INTRODUCTION. Since the early 1970s the medical community continues to uncover the dangerous effects the lead in many of our commonly used substances has on the population, especially children. As a result measures have been taken to remove the source of contamination from our society through laws and regulations. With the introduction of the Lead-Based Paint Poisoning Prevention Act in the early 1970s and its subsequent amendments throughout the 1980s, regulations were developed which required HUD to "establish procedures to eliminate as far as practicable the hazards of lead based paint poisoning."

As a consequence of this Act, lead sources such as leaded gasoline and paint were gradually removed from use in the United States. However, the problem of lead-based paint in existing housing built prior to 1978 still remains. Lead dust and lead paint chips consumed by children in these units can lead to illness, permanent retardation and in extreme cases, even death. Thus measures are being taken to remove these sources in HUD-subsidized housing built prior to 1978. Through the guidance provided in this chapter, owners and managers will be introduced to the testing and abatement requirements established by the Lead-Based Paint Poisoning Prevention Act ("the Act") of 1970, as amended (42 U.S.C. 4822) and the final regulations published on January 15, 1987. Nothing in this section is intended to relieve the owner from compliance with State and local laws, codes, ordinances or regulations.

NOTE: Certain matters set forth in the text below including references to defective paint and chewable surfaces have been amended by statute, but not as yet by regulation. As regulations are amended, handbook language will be modified to reflect the change in regulation. In addition, references to an elevated blood level (EBL) which currently stands at 25 ug/dl will be supplanted in the future by the lower standard of between 10 and 25 ug/dl established by the Center for Disease Control. It is important that owners keep these aspects in mind when planning for long term environmental activities. This Handbook will be modified as changes concerning the aforementioned matters evolve.

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- 19-2. APPLICABILITY.
- A. These requirements will apply to projects receiving Section 8 Housing Assistance Payments under the following programs. Exemptions from these requirements are listed in 19-2(B):
1. Substantial Rehabilitation (24 CFR Part 881)
 2. State Agency Substantial Rehabilitation (24 CFR Part 883)
 3. Loan Management Set Aside (24 CFR Part 886)
- B. The following units in the aforementioned programs are exempt from compliance with the Act:
1. 0-bedroom units;
 2. elderly or handicapped units (except for units housing children under seven years of age); and
 3. units constructed after 1978.
- 19-3. PROGRAM REQUIREMENTS. Different sets of requirements apply to each specific program area. What is required of each unit is based on the type of Section 8 assistance. If an owner chooses, he may forego the required inspection and testing of units outlined below and abate all applicable surfaces in accordance with the methods set forth in Section 19-6.
- A. Substantial Rehabilitation (Parts 881 and 883).
1. Units Proposed for Assistance under a HAP Contract. For units proposed for assistance under a HAP contract, the owner is required to certify all units proposed for assistance have been inspected for defective paint and abated in accordance with the guidelines outlined in 19-6 for defective paint surfaces, prior to the execution of the HAP contract. Defective paint surfaces are those which have cracking, scaling, chipping, peeling or loose paint.

2. Units Currently Covered by a HAP Contract. As a part of the ongoing maintenance practice of a property which is the subject of a HAP contract, the owner should assure that units are inspected for defective paint. If defective paint is present the owner will be required to abate the defective surface in accordance with guidelines established in 19-6.
- B. Loan Management Set Aside (LMSA) (Part 886, Subpart A).
1. For Units Currently Covered by a HAP Contract. As a part of the ongoing maintenance practice of a property which is the subject of a HAP contract, the owner should assure that units are inspected for defective paint. If defective paint is present the owner will be required to abate the defective surface in accordance with guidelines established in 19-6.
 2. Units Proposed for Assistance under a HAP Contract. The owner is required to certify all units, which were constructed prior to 1978 and are proposed for assistance under the LMSA program, have been inspected for defective paint surfaces and abated according to the guidelines established for defective paint surfaces in 19-6. These are surfaces on units which have cracking, scaling, chipping, peeling or loose paint.

For new HAP contracts the following requirements also apply:

- a. A random sample of all dwelling units shall be tested for lead-based paint in chewable surfaces in accordance with the guidelines established in 19-5. Chewable surfaces are defined as protruding painted surfaces up to five feet from the floor or ground which are readily accessible to children under seven years of age. These surfaces include, but are not limited to, protruding corners, window sills and frames, doors and other protruding woodwork.

- i. For projects with twenty or more units, ten units shall be tested.
- ii. For projects with fewer than twenty units, six units shall be tested.
- iii. A sampling of common areas and exterior surfaces frequently used by children under 7 years of age, such as play grounds and day care centers, shall also be tested.

If all of the units tested in the sample are found to be lead free, then the project may also be considered lead free and no further testing or abatement will be necessary. If lead is found in any of the tested units, all units proposed for assistance in the project must be tested. If lead is found to be present in any of the common areas, then all common areas must be tested.

3. Requirement to abate. If lead based paint is discovered in any assisted units or units proposed for assistance, abatement will be required under the following conditions:
 - a. For new applications. For the approval of new units under LMSA, the owner is required to:
 - i. inspect for and abate defective surfaces (see 19-6 for required abatement procedures);
 - ii. conduct the random sampling test (described above), in accordance with the testing requirements of 19-5; and
 - iii. abate the entire interior and/or exterior chewable surfaces of all units proposed for assistance (if random sampling test results indicate the presence of lead-based paint in the unit).

The owner and testing entity must certify that a unit is free of lead-based paint, as a condition prior to the execution of a HAP contract.

- b. In the case of an EBL child. If an owner is presented with test results that a child living in an assisted unit has an EBL as defined in 19-4, and the unit is tested positive for lead-based paint then the owner must abate the unit according to procedures set forth in 19-6 or relocate the family to a unit free of lead-based paint.

19-4. Elevated Blood Level (EBL) Child. If an owner is presented with test results that indicate a child seven years or younger living in a unit has an elevated blood level (25 micrograms per deciliter of blood or greater unless otherwise specified by HUD) then the owner is required to test the unit and if the test is positive for lead based paint, abate the unit following the guidelines listed in 19-6, or the owner may forego testing and abate all unit surfaces.

19-5. TESTING FOR LEAD-BASED PAINT. The owner will be responsible for obtaining testing services. Testing must be performed by a State or local health or housing agency; or an inspector certified or regulated by the State or local health or housing agency; or an organization recognized by HUD. The owner is permitted to forego all testing requirements and abate all units without testing if they so choose.

- A. Acceptable methods of testing. Testing may be performed using an X-ray Fluorescence Analyzer (XRF) or other method approved by HUD. Any reading above 1 mg/cm² will be considered a positive test for lead paint. If a positive reading for lead-based paint is questionable, it must be confirmed by laboratory testing.
 - B. Testing Certification. The testing entity shall certify the results of the test and a copy will be available for review by the HUD Field Office. In certifying that the unit is free of lead-based paint for the purpose of Housing Quality Standards (HQS), a copy of the testing entity's certification should be attached to the owner's certification as proof of testing. Loan
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Management Staff should maintain certifications and document all actions taken concerning environmental issues in the project file for the term of the mortgage or if not HUD-insured or HUD-held, for the term of the HAP contract.

- 19-6. ABATEMENT OF LEAD-BASED PAINT. If the owner is required or chooses to abate lead-based paint the following guidelines (which are set forth in 24 CFR 35) must be followed. Lead-based paint is classified as a toxic waste by the Environmental Protection Agency (EPA) and thus can be more dangerous during and after removal if the proper procedures are not followed. At a minimum, abatement will consist of abating chewable surfaces, unless otherwise specified by law. Chewable surfaces are defined as protruding painted surfaces up to five feet from the floor or ground which are readily accessible to children under seven years of age.
- A. Allowable methods of Abatement. The following methods of abatement are permitted by HUD:
1. Covering the existing surface. Covering the existing surface is allowed because it reduces lead dust often generated in the removal of lead-based paint. Covering shall be a sturdy permanent binding that cannot be removed or damaged by children. The following methods are permitted:
 - a. Adding a layer of wallboard to the wall surface.
 - b. Wallcoverings which are permanently attached.
 - c. Covering or replacing trim surfaces.
 2. Removal of Lead-based Paint. Removal is recommended as a more permanent solution to the problem.
 - a. The following methods of removal are permitted:
 - i. Scraping
 - ii. Heat Treatment (infra red or coil type heat guns)
 - iii. Chemical Removal

- b. The following methods of removal are prohibited:
 - i. Machine Sanding
 - ii. Use of propane or gasoline torches
 - iii. Washing and repainting the surface without thorough removal or covering.
- 3. Defective Paint Surfaces. In the case of defective paint surfaces, scraping and repainting the defective paint area will be considered adequate treatment.
- B. Worker Protection during abatement. It is recommended the owner consider requiring contractors to adhere to the Occupational Safety and Health Administration (OSHA) guidelines established for the lead industry. These requirements are detailed in 29 CFR 1910.1025 and will need to be modified for the abatement industry. For additional guidance in this matter it will be helpful to review Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing and to contact your local OSHA office. Major provisions of 29 CFR 1910.1025 include:
 - 1. Engineering controls and good work practices;
 - 2. Medical surveillance and provisions for medical removal;
 - 3. Protective clothing and equipment;
 - 4. Respiratory protection program;
 - 5. Exposure monitoring;
 - 6. Record keeping;
 - 7. Hygiene facilities and practices; and
 - 8. Training.
- C. Tenant protection during abatement. It is important that the following minimum steps be taken to assure tenant safety as well as the protection of management during this process.
 - 1. All tenants in the project should be notified of the fact that abatement is taking place, where the abatement is occurring and the dangers of entering the worksite area or allowing children to play near the area.

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2. Tenants and furniture should be removed from the abatement area prior to the abatement by the removal of LBP. This precaution is necessary due to lead dust that may be present and effects that this dust can have now and in the future on the health and safety of the tenants.
3. If the covering of LBP is used as the method of abatement, then the owner should take into consideration the health and safety of the tenants and the future consequences when deciding whether or not to remove the tenant and their possessions from the abatement area.

D. State and Local Laws. Owners and managers are responsible for adhering to all State and local laws regarding the testing, abatement and disposal process.

19-7. DEVELOPING AN ABATEMENT STRATEGY. While the development of an abatement strategy prior to proceeding with the testing and abatement process is not required by HUD, it is highly recommended due to the expense and complexity of the process. Below is a listing of several points that are important to consider in developing an abatement plan:

- A. Outline the Roles and Responsibilities of all parties involved.
- B. Set forth timetables for testing and abatement to occur.
- C. Establish unit priorities for abatement. For example:
 1. Units with EBL children
 2. Units with children under the age of 7
 3. Units which are designated for families
 4. Units which house the elderly or the handicapped with no children, but which become vacant, and a family with children under the age of seven are in need of such a unit.

D. Discuss funding sources.

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- 19-8. FUNDING TESTING AND ABATEMENT PROCESSES. While testing for LBP is an allowable project expense, abatement funding is not an allowable project expense and is ineligible for funding with Reserve For Replacement funds, the Residual Receipts fund is an allowable source of funding for abatement as well as testing. With the permission of HUD, the owner may utilize Residual Receipts for funding testing and abatement activities. Grants and loans from state and local governments should be considered as possible funding sources for testing and abatement. Loans may be repayable with project income if HUD believes the project is able to support the debt service and permission is obtained from the first mortgagee.
- 19-9. FLEXIBLE SUBSIDY REQUIREMENTS. When an owner chooses to apply for funding for the purpose of abating LBP under the Capital Improvement Loan Program, they are required to test and certify to testing as outlined in paragraph 19-5. Testing may be paid for out of project income, Residual Receipts or owner funds and the owner must certify, for each unit where abatement funds are requested, that the test results indicate a positive test for LBP as defined in paragraph 19-5.
- 19-10. LEGAL EXPENSES - This cost is considered a project expense only after the owner has fully complied with HUD's requirements and has been successful in their defense against the action.
- 19-11. OTHER INFORMATIONAL RESOURCES. While private owners of HUD assisted properties are not required to adhere to the HUD guidelines developed for Public and Indian Housing Authorities, they are a good resource to review prior to the initiation of testing and abatement. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing is available by request from your local HUD Field Office.

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SECTION 2: ASBESTOS

- 19-10. Owners of HUD Insured and Assisted properties are required to comply with EPA and OSHA requirements concerning the management/abatement (e.g. maintenance, removal, disposal and encapsulation) of asbestos when an owner takes an action, such as renovation or demolition, which involves the disturbance of asbestos or presence of damaged friable asbestos. This requirement applies whether the work requires HUD approval or not. This can include capital improvements, repairs to asbestos enclosed areas, substantial or moderate rehabilitation (if the asbestos is located in the area being rehabilitated). It is also important that State and local laws be complied with at all times, and in case of conflict, the more stringent law shall prevail. Any abatement that is undertaken should only be done with EPA trained and accredited contractors who are experienced in working with asbestos and knowledgeable of federal, state and local requirements.

SECTION 3: POLYCHLORINATED BIPHENYLS (PCBs)

- 19-13. HUD Insured and Assisted properties are required to comply with the EPA's regulation regarding PCBs. This is a toxic substance formerly used in electrical equipment which is currently prohibited by EPA for installation in apartment buildings. The law requires owners to have transformers inspected and replaced. An employee of the utility company can inspect the transformers at the owners request and inform the owner/manager of any evidence of PCBs in the electrical system. Under the Toxic Substances Control Act and implementing EPA regulations, PCBs are required to be removed and replaced.

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SECTION 4: UNDERGROUND STORAGE TANKS (USTs)

- 19-14. HUD does not have any specific requirements regulating USTs in existing properties. Project owners should be aware that they are subject to the EPA regulations for reporting, testing, replacement, etc. outlined in 40 CFR Part 280 and 281 or if State requirements are more stringent, owners will be subject to those. Typically,

EPA and State regulations were intended to address environmental problems relating primarily to old and new service station sites and industrial chemical storage sites. Tanks used for storing heating oil for consumptive use on the premises are normally exempt under the regulations. For additional guidance the owner should contact the Field Office Loan Management Branch.