



BUILDING A FRAMEWORK FOR HEALTHY HOUSING

Bench Books: Tools to Promote Enforcement

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Goal: Eliminate LBP Hazards

By 2010, “eliminate lead paint hazards in housing where children under six live,” through “enforcement of lead safety laws and regulations” and other means.



Two New Publications

- ***The Federal Lead-Based Paint Enforcement Bench Book***
- ***Guidebook for Developing State and Local Lead-Based Paint Enforcement Bench Books***



Goal: Enforcement at Every Level

- ***Federal Bench Book*** - legal reference on federal law.
- ***Guidebook*** - how-to guide for creating legal reference on state and local laws in your jurisdiction.



Bench Books Promote Enforcement

- **The Problem** - lead poisoning, LBP hazards, enforcement.
- **The Laws** to address LBP and LBP hazards.



Bench Book - Guidebook

Federal Bench Book

Guidebook

Explains:

- Problem.
- Federal law.
- Federal enforcement.

Explains How to Find:

- Problem Statement.
- State and local laws.



Federal Bench Book

- Disclosure Rule.
- Lead Safe Housing Rule.
- Lead Hazard Standard.
- Pre-renovation Education Rule (PRE Rule).
- Renovation, Repair, and Painting Rule (RRP Rule).
- LBP Activities, Certification & Training Rule.
- State and Indian Tribal Programs Rule.
- Resource Conservation & Recovery Act § 7003.



Federal Bench Book

- “Referrals” for federal enforcement.
- “Partnering” on enforcement.
- Enforcement of state laws for authorized TSCA LBP programs.
- Enforcement of state/local laws that “incorporate” federal rules.



Goal: Enforcement at Every Level

Federal Laws	State & Local Laws / Codes
Disclosure Rule	
Lead Safe Housing Rule	
PRE	
RRP	
LBP Activities	
Lead Hazard Standard	
State/Tribal Programs Rule	
RCRA 7003	



Guidebook **for State and Local Bench Books**

- How-to guide for creating state/local enforcement bench books.
- Primarily for non-lawyers (tips, resource information, action items).



Guidebook **for State and Local Bench Books**

- National Problem Statement.
- State/local Problem Statement.
- State/local LBP and other laws.
- Promote enforcement.



Guidebook **for State and Local Bench Books**

State and local laws:

- Address LBP, LBP hazards, deteriorated paint, hazardous housing conditions.
- May demand risk reduction work.
- Vary widely.



Guidebook **for State and Local Bench Books**

- **LBP**
- **Disclosure**
- **Housing / Property Maintenance**
- **Health / Sanitary**
- **Nuisance**
- **Building**
- **“Hazardous” conditions, “unsafe,” “unfit,” *etc.***
- **Rental Property / Certificate of Occupancy**
- **Multiple Dwelling**
- **Landlord – Tenant / URLTA**



Goal: Enforcement at Every Level

Federal Laws	State & Local Laws / Codes	
	<p>LBP / Disclosure Housing Property Maintenance Health / Sanitary Nuisance Building Rental Property Multiple Dwelling Hazardous conditions, unsafe, unfit, <i>etc.</i></p>	<p>May require risk reduction measures.</p>



Goal: Enforcement at Every Level

Federal Laws	State & Local Laws / Codes
Disclosure Rule	LBP / Disclosure
Lead Safe Housing Rule	Housing
PRE Rule	Property Maintenance
RRP Rule	Health / Sanitary
LBP Activities Rule	Nuisance
Lead Hazard Standard Rule	Building
State/Tribal Programs Rule	Rental Property
RCRA Section 7003	Multiple Dwelling
	Hazardous conditions, unsafe, unfit, <i>etc.</i>



Comments Welcomed

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BUILDING A FRAMEWORK FOR HEALTHY HOUSING

Leveraging Action Under Existing Laws and Codes

Michigan Department of Community Health
Healthy Homes Section
Wesley F. Priem

What We All Desire ...

- Sustainable Funding to Operate our Programs
- Support and Respect from the Regulated Community
- Innovative Solutions to Reduce Lead Paint Hazards and Poisonings



What We All Desire

Enforcement of both National and Local Laws and Rules is a viable Solution to these needs.



Who Can Benefit?



State, Local, and Non-Profit Lead Programs receive benefits from the enforcement of state and federal laws governing lead.



What Federal Laws Apply?

- EPA/HUD 1018 Seller Disclosure
- EPA 402/404 Training/Certification
- EPA 406(b) Pre-Renovation Notification
- HUD Part 35
- EPA Renovation Remodeling and Painting Program Rule



EPA/HUD 1018 Rental Property Disclosure

1. Give renters the EPA pamphlet “**Protect Your Family From Lead in Your Home.**”
2. Disclose all known lead-based paint / hazards and any available reports.
3. Leasing agreement must include certain notification and disclosure language.
4. Retain signed acknowledgments for 3 years as proof of compliance.



EPA/HUD 1018 - Seller Requirements

1. Disclose known lead-based paint / lead hazards and any available reports.
2. Give buyers the EPA pamphlet **“Protect Your Family from Lead in Your Home.”**
3. Sales contracts must include certain notification and disclosure language.
4. Retain signed acknowledgment for 3 years as proof of compliance.
5. Give buyers a 10-day opportunity to test the housing for lead.



EPA/HUD 1018 - Enforcement Actions

EPA Settlement Objectives of Rental Property Owners seek penalties and violations through Administrative Settlements and Judicial Consent Decrees. EPA is eager to demonstrate:

- Compliance with Section 1018**
- Payment of reduced penalty**

EPA will pursue abatement and hazard reduction through Consent Decrees and Final Orders or EPA administrative settlements with Supplemental Environmental Projects (SEPs).



EPA/HUD 1018 - Enforcement

Generally, SEP's have provided to our community's rental units: testing/risk assessments of, window replacement, removal and replacement exterior porches, and addressing other lead-based paint hazards.

This is employment opportunities for our lead professionals and Innovative Solutions to our Lead Hazard Rental Properties!



EPA/HUD 1018 - Enforcement Actions

- **FY' 07 Lead Mitigating Activities in Civil and Judicial Resolutions:**
 - **72% of resolutions in 1018 Administrative Actions had SEPs**
 - **About 449 Units abated in both Administrative Actions and Judicial Actions**
 - **This also includes lead abatement in settlements from one Emergency Planning and Community Right to Know Act (EPCRA 313) settlement and one Clean Air Act (CAA) settlement.**
 - **Total monies spent to conduct LBP abatement and LBP activities in Administrative and Judicial Actions - \$1,597,181**



Michigan Specifics for 1018

- Michigan recently received approximately \$ 32,400 from a SEP
- These funds were provided to Clear Corps Detroit (a non profit) for the abatement of 5 units.
- Now that this relationship has been established future awards are very likely to occur.



EPA 402/404 Training/ Certification Lead Professionals

- Michigan - EPA state authorized program
- All citation fees revert back to the program to pay for enforcement staff and expenses
- Approximately 36 cases per year (limited only by # of enforcement staff)
- Average penalty received per case is under \$1,000 There we receive about \$36,000 per year. These fee are increasing with repeat offenders



HUD Part 35

- Last revised June 21, 2004
 - Rule Interpretive Guidance (June 21, 2004)
- 13 Subparts (A- R) covering LBP requirements over several areas
- Defines conditions that apply to all programs where federal money is spent on residential housing
- Federal CDBG and HOME Dollars in Michigan can amount to over \$174,000,000 per year to entitlement and non-entitlement communities of which 25-30% of CDBG is typically allocated to housing and lead abatement.



HUD Part 35 - Enforcement

- Enforcement on this act has been initiated by lead abatement contractors and informed homeowners.
- A recent case in Monroe, Michigan. City officials failed to have a risk assessment performed and failed to use a certified lead abatement firm. Public was notified through local television station.



HUD Part 35 - Enforcement

Developing a partnership with your federal, state and local housing officials is the best way to ensure compliance with this rule and to foster greater respect for your programs.



HUD Part 35 - Enforcement

- When HUD Part 35 is enforced by local HUD and State/City Officials it provides:
 - Additional legitimacy to federal, state, & city programs
 - Additional lead professionals are needed and therefore certification \$'s increase
 - Greater protection of families



EPA 406(b) Pre-Renovation Notification Rule

Effective since June 1, 1999 this rule has seen limited enforcement by EPA. Change is coming! One of the first national cases in proceeding in Michigan in cooperation with EPA Region 5 and the Michigan Dept. of Community Health - Healthy Homes Section.



EPA 406(b) Pre-Renovation Notification Rule

- Primarily a record keeping rule the requirements to comply are relatively straightforward:
 - Distribute a lead pamphlet owner and occupants prior to work
 - Obtain confirmation statements
 - Distribute notices for common areas
 - Retain records for 3 years



Michigan's 406(b) Case



Settlement is soon to be signed!
Therefore, No Specific Details can be discussed....



EPA 406(b) Pre-Renovation Notification Rule

- Michigan/EPA's Case will be in the form of a SEP.
- Negotiations have taken about 2 years, future cases should take less time
- SEP requires fines, contribution of products for lead abatement of residential units, and work practices.



EPA 406(b) Pre-Renovation Notification Rule

Example of a closed case:

Residential apartment complex hired staff to renovate bathrooms in 40 unit pre 1978 complex. Disgruntled employee notified program. Penalty reduced from \$900 to \$600.

Iowa and Kansas state programs have considerable experience with this program.



EPA Renovation Remodeling and Painting Program Rule

- Rule applies to an estimated 37.8 million pre-1978 facilities.
- Of these 37.7 are housing, and approximately 100,000 are child-occupied facilities.
- Projected to cover an average 4.4 million events each year, affecting 1.4 million children, and 5.4 million adults, by minimizing their exposure to lead dust.



EPA Renovation Remodeling and Painting Program Rule

- Main purpose is to prevent additional exposure to occupants of target housing and child occupied facilities from the disturbance of lead painted surfaces during renovation, repair and painting activities through certification of firms, training of supervisors and workers, regulated work practices, visual clearance, and record keeping requirements.



EPA Renovation Remodeling and Painting Program Rule



- As state's plan to adopt this rule –
 - Certification fee's can support growing infrastructure of existing lead programs
 - Enforcement fee's could support ed/outreach, abatement, local activities in each state



EPA Renovation Remodeling and Painting Program Rule

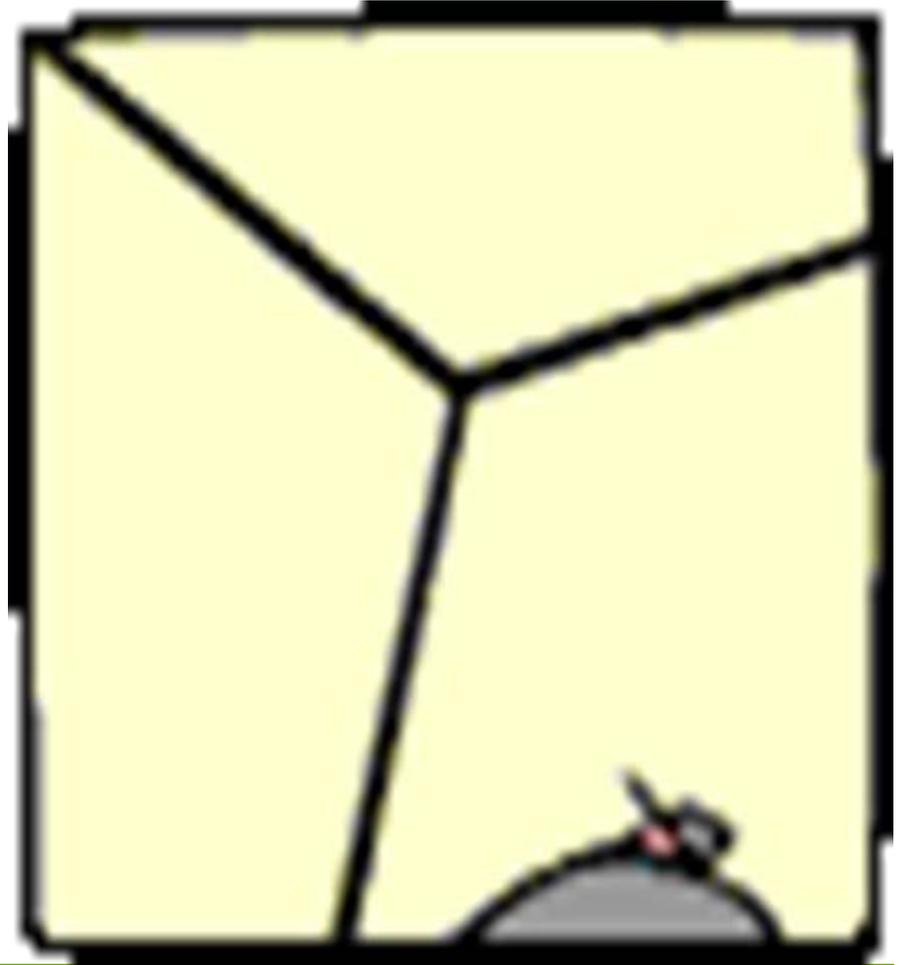
Things to consider:

- Could EPA settlements come back into the state jurisdictions like 1018 SEP's
- If your state does not adopt this program then cert. fees and enforcement fees will be leaving your state!



EPA Renovation Remodeling and Painting Program Rule

- Larger settlements against large firms could be leveraged into SEP's:
 - Large painting firms to provide paint or encapsulates, window installers to provide windows etc.



Leveraging Action Under Existing Laws and Codes

Concluding Remarks



Shattered Lead Painted Windows
Represent Shattered Lives.....

Enforcement at all levels of
government; federal, state, city,
and county is the key to ensuring
the pieces are put back together
and that dreams are once again
possible.

*To accomplish great things we
must not only act but also dream
not only plan, but also believe.
~Anatole France*

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