



BUILDING A FRAMEWORK FOR HEALTHY HOUSING

Childhood Lead Poisoning Prevention: Baltimore's Approach to Enforcement

Madeleine A. Shea, PhD

Assistant Commissioner,

Baltimore City Health Department, Healthy Homes Division

2008 National Healthy Homes Conference ❖ September 15-17, 2008 in Baltimore, MD



Baltimore's Housing

- 50 yrs old on average (US is 30 yrs)
- 75% of rental units estimated to have lead
- Studies of low income housing also show:
 - 24% leaking roofs
 - 53% peeling paint



Reported Lead Exposed Children in Baltimore 1998-2007

1998: 3,949 children were reported to be exposed to lead at $\geq 10\mu\text{g}/\text{dl}$.

2007: 624 children were reported to be exposed to lead at $\geq 10\mu\text{g}/\text{dl}$.

An 82% decrease!



Mandated Blood Lead Testing

- Blood lead tests required at 12 and 24 months of age.
- Screening for risk factors for lead exposure required from 6 months to 6 yrs of age to be in compliance with EPSDT.
- All children with risk factors should have blood lead level measured.



Baltimore's Legal Goal

TAKE EVERY OUTSTANDING VIOLATION NOTICE TO COURT Results

- ✓ Legal docket has been cut in half over 5 years
- ✓ For properties in litigation, property is abated in 1/3 of the time now than in 2000



BCHD Lead Hazard Abatement Regulations (2008)

EBLs $\geq 10 \mu\text{g}/\text{dl}$

→ Notice of EBL

→ Lead hazard inspection of child's current residence + secondary residence(s) for past 30 days. Lead hazards verified by:

- XRF lead content $> 0.7\text{mg}/\text{cm}^2$
- Paint sample with $> 0.5\%$ lead content
- Dust samples indicating lead levels $>$ federally established limits



BCHD Lead Hazard Abatement Regulations (2008)

“Violation Notice (VN) and Order to Abate Lead Hazards” issued to responsible party

- VN gives 30 days to abate property
- Referrals to lead abatement funds for low income owner occupants
- Standardized work plans; field conferences
- VNs posted on property, hand-delivered, or sent via certified or registered mail



BCHD Lead Hazard Abatement Regulations (2008)

- Persons and pets may not enter work area until abatement is satisfactory. Exceptions – inspectors, government officials, contractors, hired employees
- In rentals, owners assist tenants with temporary relocation during abatement
- Owners may not evict, lock out tenants in response to Violation Notice, EBL Notice, or Notice of Defect



BCHD Lead Hazard Abatement Regulations (2008)

- Workers must follow all federal, state, local laws/regulations related to workplace safety
- BCHD may inspect property for compliance at any time during abatement
- Clearance inspection
 - XRF; lead dust test; and/or paint sample analysis
 - For rentals, requires evidence of registration with MDE



BCHD Lead Hazard Abatement Regulations (2008)

Extensions: Requests must be submitted prior to end of 30 day abatement requirement and demonstrate that compliance within the time frame is not practical and delay will not cause undue harm.



Consequences of Violating Lead Hazard Abatement Regulations

BCHD Legal Department files in the Baltimore City District Court for injunctive relief

Consent Orders – Owners consent to abate properties and to status hearings as alternatives to trial

- **City encourages cooperation of plaintiffs**

Other possible outcomes

- **Trials**
- **Fines**
- **Incarceration**



Barriers to Lead Hazard Risk Reduction in Baltimore

- No entry
- Family refuses to move
- Relocation options don't meet needs of family
- Communications with property owners
- Availability and affordability of contractors
- Conveyances
- Funding for owner occupants
- Legal difficulties for tenants (name on lease, rent payments late, eviction fear, etc.)
- Old VNs – Vacant and Boarded



Coordination of Legal Services

- Quarterly Lead Litigators meetings
- Referrals to Coalition to End Childhood Lead Poisoning for relocation assistance and for advocacy needs/rent escrow accounts
- Referrals to MDE for risk reduction certificate enforcement (PPI and EBL f/u)



Coordination of Legal Services

- BCHD brokers and coordinates referrals from Baltimore Dept of Housing and Community Development for CPF paint violations to MDE
 - Violations Referred (2005 - Aug 2007): 2074
 - Case opened: 597
 - Notices of Violation: 154



Baltimore City Lead Hazard Enforcement Outcomes

10/31/05-10/30/07: 284 cases filed

- 21% (60) OO
- 79% (224) Rentals



Baltimore City Lead Hazard Enforcement Outcomes

Year	Cases Filed	Cases Abated
2001	161	38
2002	150	33
2003	85	51
2004	107	54
2005	156	72
2006	144	112
Jan - Oct 2007	107	124



Primary Prevention Initiative - 2007

- Goal – Prevent EBLs in high risk homes with pregnant women and very young children
- Strategy - Train home visiting programs to make healthy homes referrals. Provide education, supplies and enforcement referrals.
- Outcomes
 - 93 referrals to MDE for enforcement
 - 26 home visits
 - 12 NODs filed
 - 4 referrals to Housing for Enforcement



Other Initiatives

Launched a new web-based resource to help Baltimore citizens find out if an apartment or house has a lead violation which hasn't been fixed as of October 1, 2007 <http://www.baltimorehealth.org/lead>



For More Information:

Madeleine Shea, Ph.D.

Assistant Commissioner, Healthy Homes

Baltimore City Health Department

1800 N. Charles St.

Baltimore, MD 21201

madeleine.shea@baltimorecity.gov





MARYLAND'S LEAD PAINT LAWS

Andrea S. Baker
Deputy Counsel

Office of the Attorney General
Maryland Department of the Environment



WHO MUST COMPLY

- Mandatory for all pre-1950 rental units.
- Required for 1950-1978 units if owner wants liability relief.



Reduction of Lead Risk in Housing Act

- Registration
- Educational Materials
- Lead Risk Reduction



Title 6, Subtitle 8 of the Environment Article

TRIGGERS FOR RISK REDUCTION

- Change in Occupancy since 1996
- 50 % by February 24, 2001
- 100% by February 24, 2006
- Notice of Elevated Blood Lead Level
- Notice of Defect



§ § 6-815, 6-816, 6-817, 6-819



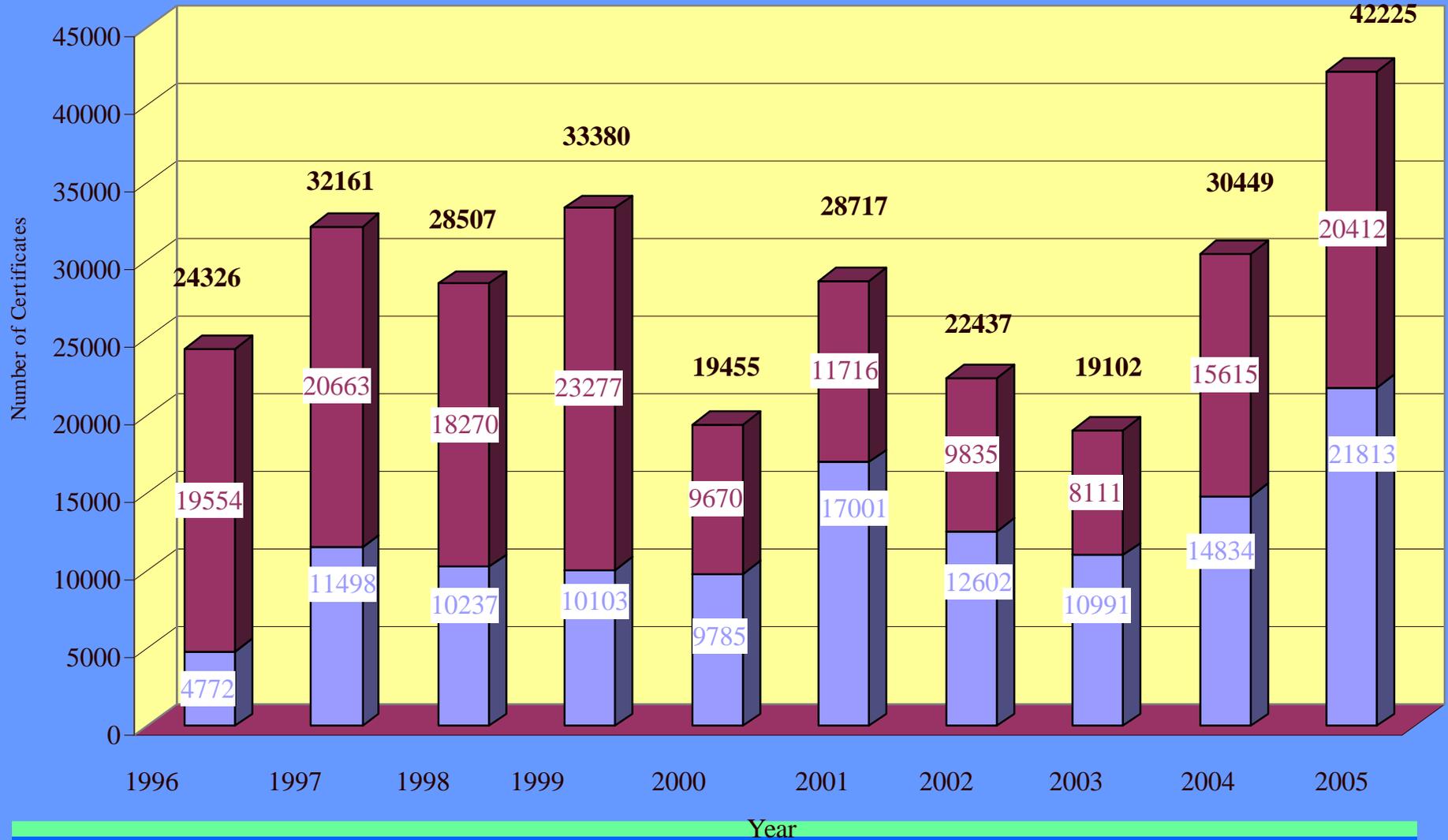
RISK REDUCTION

- Full removal is NOT required
 - Cost of full removal can exceed value of property, resulting in no work completed
 - All paint must be intact
 - Dust test or treatments
 - Independent inspection & certification
-
-



Maryland Department of the Environment Certificates Issued 1996-2005

Modified & Full Risk Lead Free

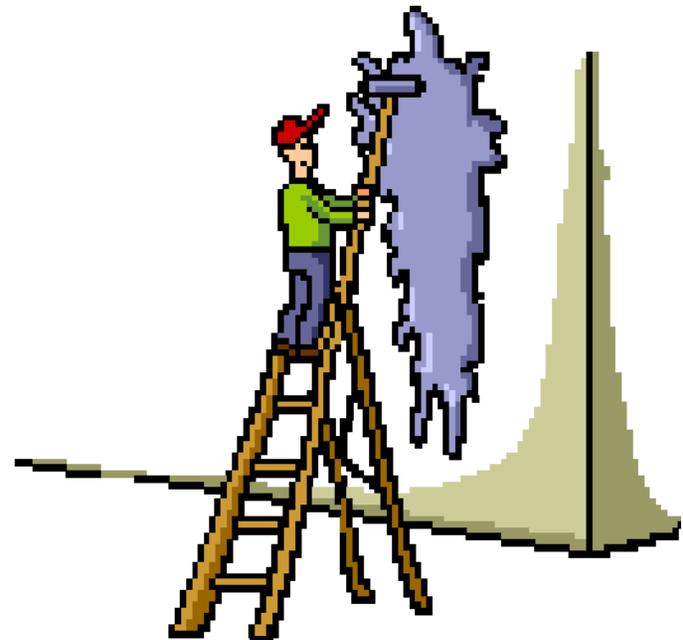


ACCREDITATION

- Contractors, Supervisors, Inspectors, Risk Assessors and Trainers must be accredited
- Workers must be trained
- Must use safe work practices, which are similar to federal standards

§ 6-1002

COMAR 26.16.01



Typical Violations

- **Individuals & companies working without accreditation or training**
- **Supervisors or workers performing abatement activities in an unsafe manner**
- **Violation to hire unaccredited persons or related inspectors**

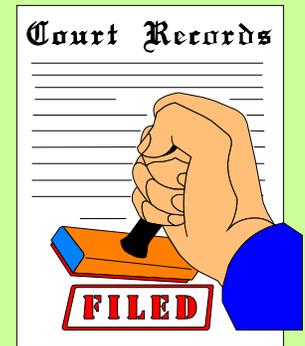


PENALTIES

- Up to \$20 per day for failure to register
- Up to \$500 per day, per violation for failure to perform risk reduction
- Up to \$25,000 per violation for failure to be accredited or follow safe work practices
- Maximum Penalty of \$100,000 per action

§ § 6-849, 6-850, & 7-266

Enforcement Strategies



- Administrative subpoenas
- Global actions with penalties and orders
- Streamlined settlement process
- Supplemental environmental projects (SEP)
- Civil contempt
- Emergency injunctions for high EBLs



LEAD ENFORCEMENT ACCOMPLISHMENTS

FY 2000-2008

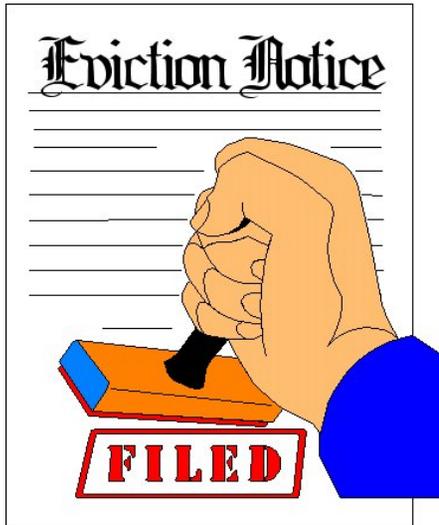
- Notices of Violation Issued: 2,533
 - Settlement Agreements Executed: 1,018
 - Complaints Issued: 679
 - Properties Certified: 16,378
 - Penalties Collected: \$2,757,036
-
-

LOCAL GOVERNMENTS

- **Required to report non-compliant property owners to Maryland Department of the Environment (2003)**

Environment Article § 6-848.2

- **Prohibited from licensing rental property without establishing compliance with State lead laws (2004)**
Code of Maryland, Article 24, § 19-101 et. sq.



RENT COURT

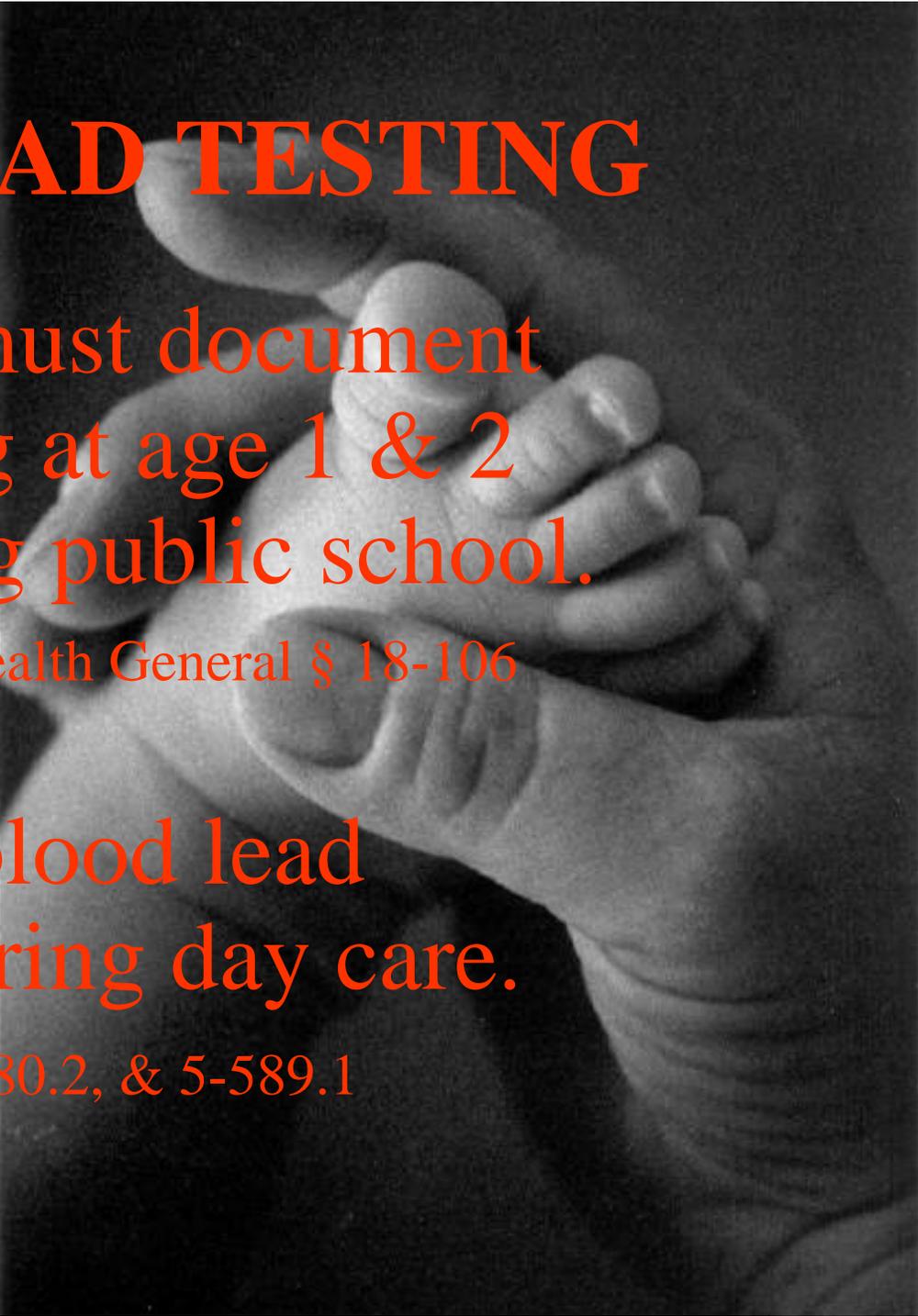
“Clean Hands Bill”

A landlord must establish compliance with the Maryland lead laws to file an action to repossess any premises. (2004)

Real Property § 8-401



BLOOD LEAD TESTING

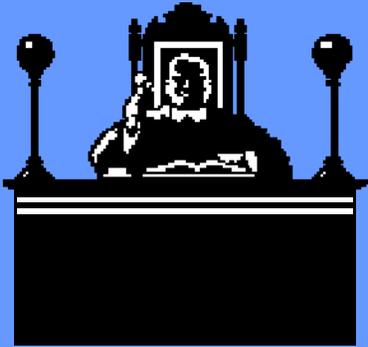


- In at risk areas, must document blood lead testing at age 1 & 2 and upon entering public school.

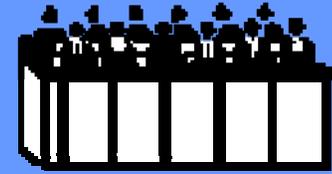
Education § 7-403 & Health General § 18-106

- Must document blood lead testing upon entering day care.

Family § § 5-556.1, 5-580.2, & 5-589.1



Criminal Statute



- Misdemeanor to falsify or alter any permit, license or certificate issued or required to demonstrate compliance.
- Fine of up to \$50,000 and/or imprisonment not exceeding 2 years.



§ 1-302

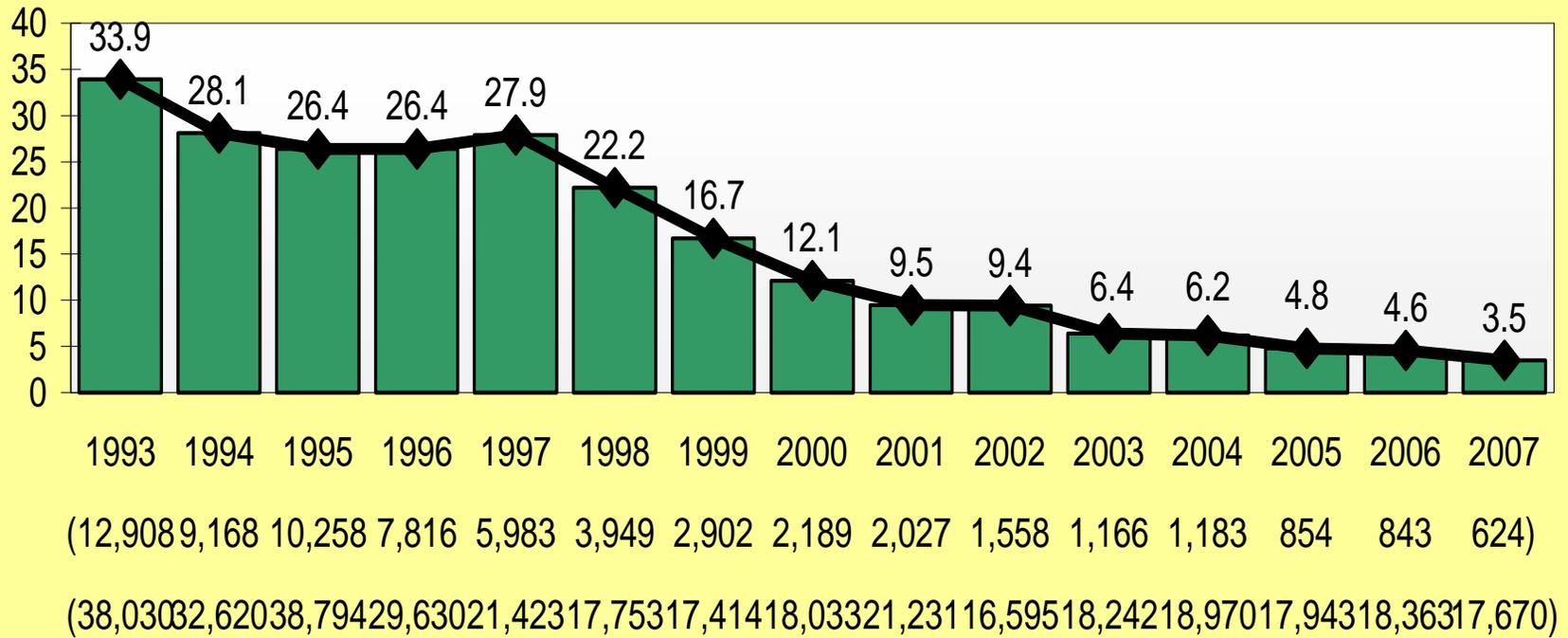
Lead In Children's Products

Title 6, Subtitle 13 of the Environment Article



MARYLAND DEPARTMENT OF THE ENVIRONMENT CHILDHOOD BLOOD LEAD SURVEILLANCE BALTIMORE CITY 1993-2007

% CHILDREN TESTED, BLOOD LEAD
>=10MCG/DL



CALENDAR YEAR

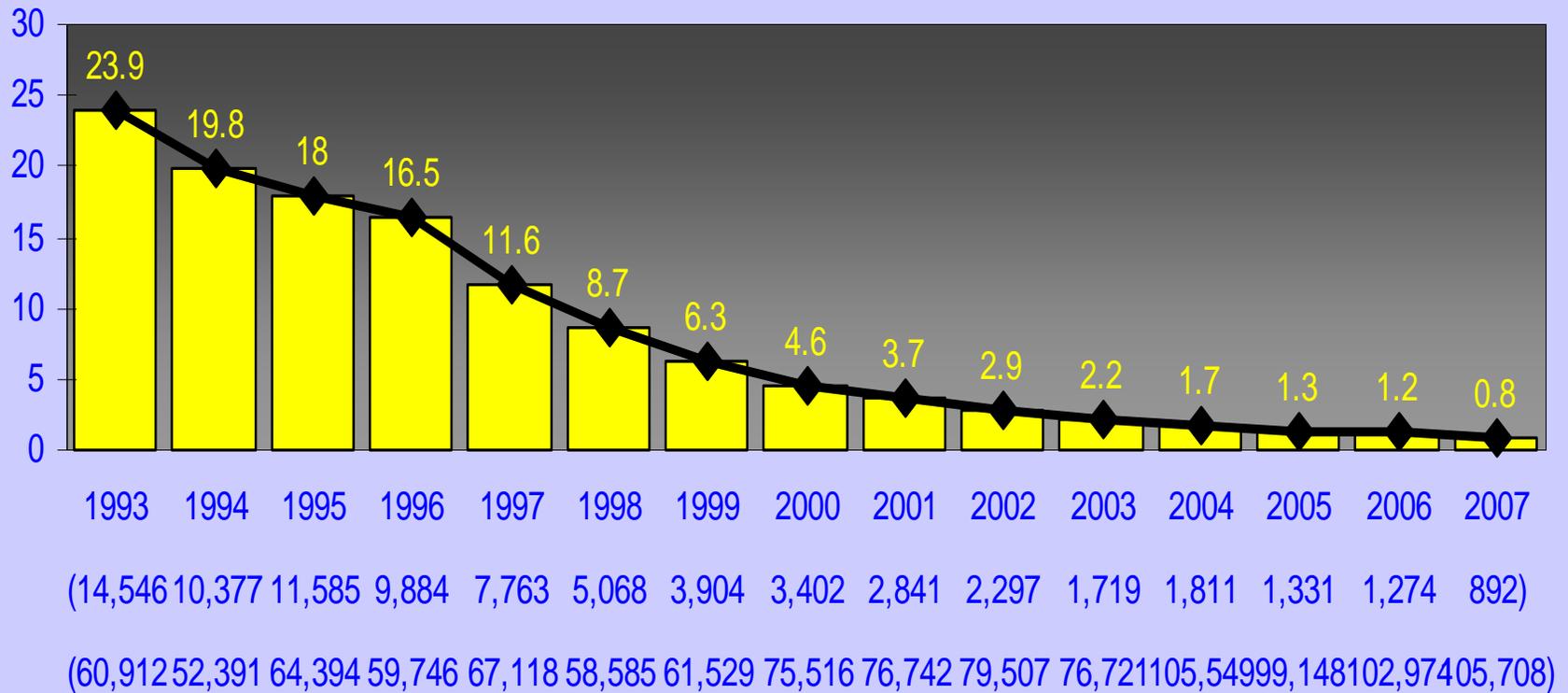
(Number of Children with BLL >=10mcg/dl)

(Number of Children Tested)



MARYLAND DEPARTMENT OF THE ENVIRONMENT CHILDHOOD BLOOD LEAD SURVEILLANCE STATEWIDE 1993-2007

% CHILDREN TESTED, BLOOD LEAD
>=10MCG/DL



CALENDAR YEAR

(Number of Children with BLL >=10mcg/dl)

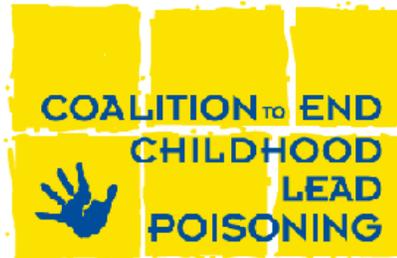
(Number of Children Tested)





BUILDING A FRAMEWORK FOR HEALTHY HOUSING

Developing Enforcement and Regulatory Strategies



Using Private Legal Actions to Promote Compliance and
Enhance Enforcement Efforts
Coalition to End Childhood Lead Poisoning

Coalition Family Advocacy Services

- Tenant Representation in Rent Court for: HB1245 Actions, the repair of lead hazards through the Rent Escrow process, protection from retaliatory eviction, and housing discrimination
- Assistance to tenants with the filing of Notices of Defects and Notices of Elevated Blood Lead Levels
- Housing Relocation Services and Case Management
- Compliance Assistance Program for property owners on local, state, and federal lead poisoning prevention laws
- Enforcement referrals to federal, state and local agencies



Enforcement of Maryland Reduction of Lead Risk in Housing Law

- The Maryland Department of the Environment has primary authority to initiate public enforcement actions against owners who are not in compliance with the Maryland Reduction of Lead Risk in Housing Law
- The City of Baltimore also takes enforcement actions against owners whose properties are not in compliance and who have Health Department Lead Violations issued against their properties



Using Private Legal Actions to Increase Compliance

- While the State and City are the primary sources of enforcement against property owners, there are a series of private legal actions in Maryland that the Coalition assists tenants in taking against property owner which can result in the repair of lead hazards and increased compliance:
 - Notice of Defect
 - Rent Escrow
 - House Bill 1245 (“Clean Hands Bill”)
 - House Bill 589/Senate Bill 557 (“Relocation Bill”)
 - Housing Codes and Municipal Codes (Code of Public Local Laws of Baltimore City)



Notice of Defect

- A tenant can use a Notice of Defect to notify the property owner of the presence of chipping, peeling or flaking paint and any other defects in the property.
- By sending the Notice of Defect certified mail, return receipt requested or by having the property owner sign for receipt of the Notice of Defect, the tenant has proof of notice to the property owner.

Notice of Defect (continued)

- **Reasonable Time For Repair:** The property owner has 30 days after receipt of the Notice of Defect to meet the Modified Risk Reduction Standard in the home – Maryland Annotated Code, Real Property Article, Section 8-211(h).
- **Relocation Expenses:** If the repairs will take more than 24 hours, the property owner must pay for the tenant's temporary relocation expenses – Maryland Annotated Code, Environment Article, Section 6-821(a)(3).
- **Accredited Workers Required:** The work must be done using lead certified workers and lead safe work practices – Maryland Annotated Code, Environment Article, Section 6-821(c).



Rent Escrow

- Rent escrow is a legal process which allows the tenant to pay their rent into the court instead of to the property owner.
- Maryland has two laws which may allow a tenant to bring an affirmative case for rent escrow when their property is out of compliance with the Maryland Reduction of Lead Risk in Housing Law – Maryland Annotated Code, Real Property Article, Section 8-211 and 8-211.1.



Rent Escrow – Real Property, Section 8-211

- If there are threats to life, health and safety in a property, including the presence of chipping, peeling, flaking paint in a pre-50 rental property, the court may order that rent be paid into rent escrow.

Examples: lack of heat, electricity, rodents, and chipping, peeling, flaking paint.



Rent Escrow – Real Property, Section 8-211.1

- If the property owner fails to meet the applicable risk reduction standard (full or modified), the tenant may deposit the tenant's rent in a rent escrow account.



Rent Escrow Remedies

- After a rent escrow hearing, the court may:
 - Order for the abatement of rent in an amount that reflects the existence of the conditions or defects found by the court to exist.
 - Order that the property owner meet applicable risk reduction standards (full or modified).
 - Order that the property owner provide temporary relocation to the family while the repairs are being conducted.
 - Order that rent escrow money be disbursed to owner after work is completed, disbursed to tenant, or equitably disbursed to both parties.



Rent Escrow's Impact on Compliance

- Rent Escrow encourages compliance with applicable state and local housing laws because the owner will need to bring the property into compliance to have rent from the escrow account disbursed to the owner and/or to have the rent escrow account terminated.
- Additionally, at the rent escrow proceeding, the property owner receives a Violation Notice issued by Baltimore Housing that the property owner must comply with regardless of the outcome of the rent escrow proceeding.



“Clean Hands Bill” (House Bill 1245)

- Maryland Annotated Code, Real Property Article, Section 8-401 provides that when a property owner of an “affected property” wishes to use the Rent Court system to repossess a property, the property owner must state on the Failure to Pay Rent Complaint form that:
 - The property is registered; and
 - List the risk reduction inspection certificate number
 - The property owner has a defense for not having a certificate if, after the property owner offered temporary relocation, the tenant refuses access for the owner to do the work



HB 1245's Impact on Compliance

- Failure to provide a lead inspection certificate may result in the Court dismissing the Failure to Pay Rent Complaint.
- HB 1245 creates a strong incentive for a property owner to comply with applicable lead laws because a owner may not take advantage of the State-financed District Court rent collection process without a valid lead inspection certificate.



Relocation Bill (HB589/SB557)

Maryland Lead Poisoning Prevention Act of 2008 contained changes to create new relocation provisions under Maryland Annotated Code, Real Property Article, Section 8-215.

- **Relocation Assistance:** Requires owners of non-compliant properties to provide up to \$2,500 in relocation assistance to assist tenants in moving to from non-compliant properties to lead certified properties;
- **Termination of Lease:** If a property owner has not met full or modified risk reduction, the tenant can request the immediate release from the lease and up to \$2,500 in reasonable relocation expenses.
- **Potential District Court Action:** If the property owner does not provide proof of having met the risk reduction standard and does not allow the tenant release from the lease and relocation expenses, the tenant can bring an action in District Court against the owner.
- **Effective October 1, 2008**

Relocation Bill's Anticipated Impact on Compliance

- The goal of the Relocation Bill is two-fold:
 - Property owners should be motivated to increase compliance to 100% to avoid the risk of having the tenancy terminated or having to pay for relocation costs for tenants.
 - Tenants will be able to relocate into safer properties if the property owner has not met the applicable risk reduction standard.



Baltimore City Public Code

- Several provisions in the Baltimore City Public Code provide tenants with procedures to ensure that their home is free of health hazards.
- **Under Subsection 9 of the Baltimore City Public Code:**
 - Serious threats to life, health and safety includes lack of heat or of hot or cold running water, adequate sewage disposal facilities, an infestation of rodents, the existence of paint containing lead pigment on surfaces within the dwelling, and/or the existence of mold **(Section 9-9(b))**
 - A tenant can assert the existence of a serious threat to life, health and safety in an answer to a failure to pay rent action **OR** in a complaint requesting rent escrow **(Section 9-9(c))**



Retaliatory Eviction – Real Property

8-208.2

- A landlord may not evict or take any other retaliatory action against a tenant *primarily* as a result of the tenant providing information to the landlord under Title 6, Subtitle 8 of the Environment Article.
- By defending tenants whose property owners attempt to take such retaliatory actions, the Coalition protects tenants who are requesting necessary repairs and inspections and reporting non-compliant owners as necessary to protect their families.



Private Enforcement Referrals

- Federal - Title X
- State – Maryland Reduction of Lead Risk in Housing Law, HB1245
Perjury, Local Licensing Offices,
Environmental Crimes,
- Local – Lead Violations, Housing Code, Demolition



Summary – Encouraging Compliance Through Private Action

- Tenant may file a Complaint For Rent Escrow in the local District Court (Rent Court).
- Property Owner may be denied access to Rent Court under HB1245 – Clean Hands Bill.
- Beginning October 1, 2008, tenant may request immediate release from lease and relocation assistance costs up to \$2,500.

The above identified private actions provide tenants with mechanisms that encourage property owners to comply with the Maryland Reduction of Lead Risk in Housing Law and allow tenants to move from unsafe and non-compliant rental units into lead certified rental units.



Producing Progress in Maryland

- 166,478 Risk Reduction certificates issued to property units meeting Risk Reduction Standards in Maryland
- 196,282 property units abated and inspected to achieve lead free certification status in Maryland

(thru 12/14/07)



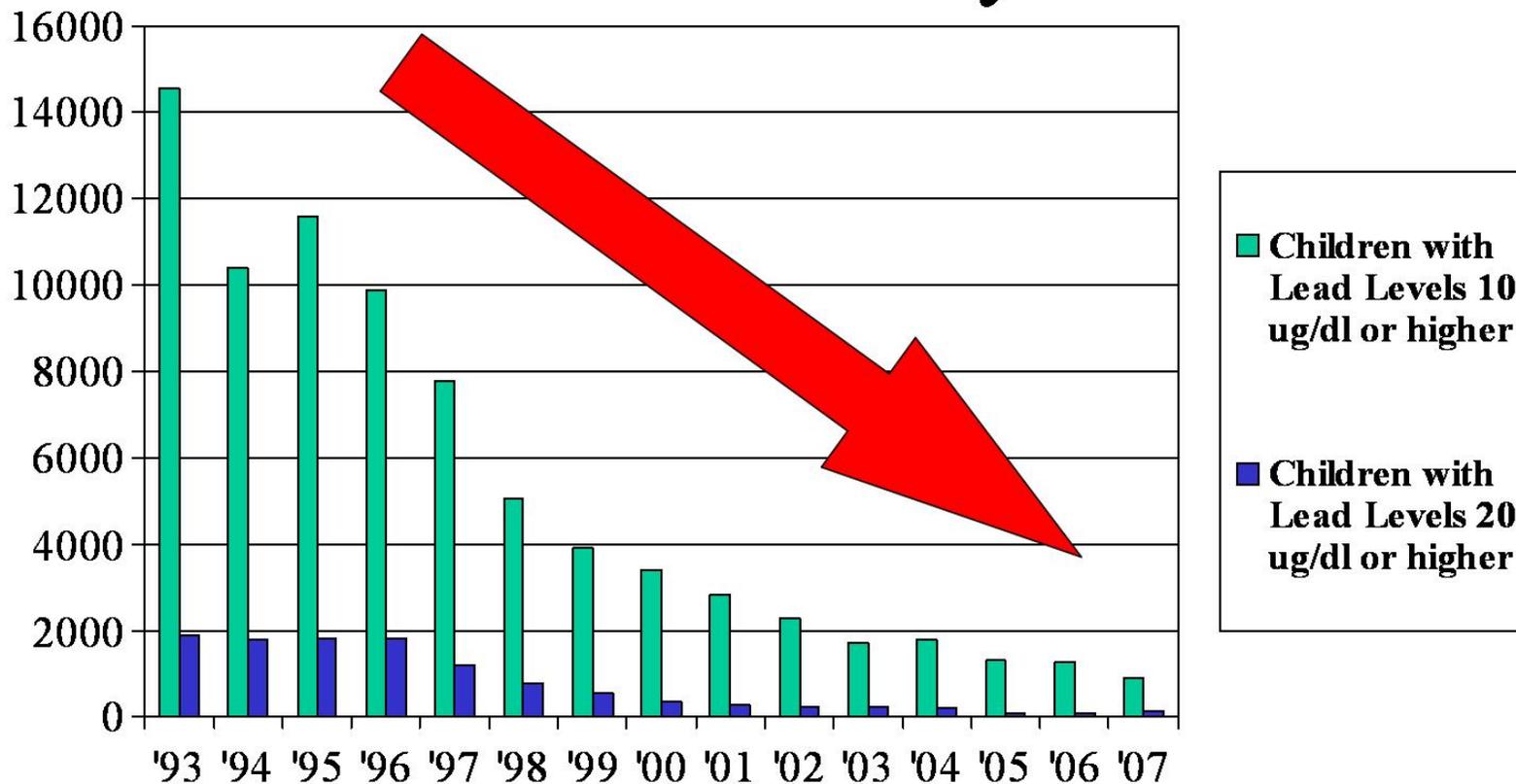
Producing Progress in Maryland

- The number of children with elevated blood lead levels annually in Maryland has decreased **94%** since 1993

	<u>1993</u>	<u>2007</u>
● Children under age 6 lead poisoned	1,904	135
● Children under age 6 with elevated lead levels	14,546	892



Dramatic Decline in Lead Poisoned Children in Maryland



	<u>1993</u>	<u>2007</u>
Children with Lead Levels 10 µg/dl or higher	14,546	892
Children with Lead Levels 20 µg/dl or higher	1,904	135

Source: MDE 2007 Annual Report

Looking to the Future – Healthy Homes Trailblazing

- Using Rent Escrow and Housing Code to facilitate the repair of other hazards in the home using Healthy Homes methods – mold, IPM approach to eliminating rodent infestation, smoke and carbon monoxide alarms, radon, etc.?
- New Legislation



Coalition to End Childhood Lead Poisoning

Our Vision

To end childhood lead poisoning and create Healthy Homes so that all children have the opportunity to reach his or her full potential.



www.lead-safe.org



BUILDING A FRAMEWORK
FOR HEALTHY HOUSING