

EXAMPLES OF SUCCESSFUL LOCAL ENFORCEMENT PROGRAMS AND SUMMARIES OF GOOD PRACTICES AND LESSONS LEARNED

PRIMARY PREVENTION STRATEGIES WORKSHOP

Members of the enforcement working group identified several good practices and lessons learned through successful local enforcement programs. This document, intended to be updated as OHHLHC learns about more local enforcement practices and programs, highlights a few of these successful models.

Baltimore, Maryland

The Coalition to End Childhood Lead Poisoning, a non-profit advocacy group, works closely with Baltimore City and the state of Maryland to develop tough lead laws and enhance local enforcement. The Coalition compiled a set of materials that are important elements in the development of an effective enforcement system for repair of lead hazards and the satisfaction of lead violations, which are included in the binder.

1. Publicity of Enforcement Actions

While the elements of an enforcement system were being developed before the main series of articles broke on landlords George Dangerfield and James Stein in the Baltimore Sun in December, 1999, media attention and support (via the Sun's Editorial Board) of enforcement initiatives were important to catalyze progress. The Coalition and the Baltimore City State's Attorney's Office had already worked on a Task Force that had developed a plan to commence enforcement of Health Department Lead Violations, but the media focus was the tipping incident that galvanized public support for enforcement, accelerated its implementation, broadened its scope, and produced the financial resources necessary to produce credible enforcement programs.

Enforcement actions that are well publicized through press releases and various media can also have deterrent effects or cause changes in the behaviors of non-compliant owners. The last page of the enclosed materials, for example, contains a sample "Top Ten List of Problem Landlords" which was used by the Baltimore City Housing Code Enforcement Division to publicly identify known slumlords in an effort to force them to take corrective action to repair their properties.

2. Funding Resources for Enforcement Programs

Funding resources and/or outlets used to support your local enforcement initiatives are another key component of successful enforcement. As part of the Coalition's comprehensive Windows of Opportunity Strategic Plan, the Coalition pushed the Governor of Maryland and the Mayor of Baltimore in 2000 to commit significant financial resources towards enforcement. As part of a \$50 million overall initiative, that effort resulted in a three year sustained commitment to undertake State and City enforcement of lead laws, and to provide the financial resources necessary to hire additional inspectors and attorneys.

3. Local Forums and Mechanisms for Anonymous Reporting

Local forums/mechanisms for anonymous reporting by residents of units with lead based paint hazards can be achieved through established complaint programs. The Maryland Department of the Environment (MDE) and the Baltimore City Health Department do not have anonymous reporting systems that are effective for residents who reside in or are adjacent to lead hazardous properties. MDE and the Baltimore City Health Department have systems whereby tenants can check on the compliance status of a property, however, by calling or faxing in a form (Registration/Compliance Request Form). To trigger enforcement action, the tenant must be willing in the case of MDE to submit to a Written Interview or in the case of the Baltimore City Health Department to have a lead poisoned child in the property that results in a lead inspection. Neither enforcement system is set up well to pursue anonymous reporting of lead hazardous conditions. The City's Housing Code Enforcement Division does accept and pursue anonymous reports of housing code violations.

4. Local and State Enforcement

Examples of aggressive enforcement actions with respect to lead based paint laws or housing enforcement codes, which resulted in abatement and/or penalties that were the coordinated efforts of local and/or federal agencies include:

a. Local enforcement efforts

Since 2000, the Baltimore City Health Department has filed 514 new cases against rental property owners for the prosecution of outstanding Lead Violations that have resulted in 144 abatements of properties.

b. State enforcement efforts

In 1993, the Maryland Department of the Environment initiated 402 enforcement actions against rental property owners who were out of compliance with the Maryland Reduction of Lead Risk in Housing Law. MDE enforcement actions produced 1,367 lead certified units in 2003 and generated \$294,969.16 in penalties that were collected in 2003. The Governor's three initiative also spurred increased cooperation and coordination between City and State enforcement programs.

5. Other Tools

There are numerous other tools which have proven effective in enforcement of local lead based paint laws or housing enforcement codes, including:

a. Collective Actions against non-compliant landlords – In pursuing enforcement actions against owners of older rental properties, MDE has generated broader impact from its enforcement efforts by including all affected rental properties that are contained in a particular owner's portfolio as part of an enforcement action. This approach has resulted in large consent decrees that can encompass the repair of hundreds of an owner's housing stock rather than just the one targeted property that has received a violation.

b. Department of Assessment and Taxation (DAT) Database Information – The availability in Maryland of a publicly accessible, computerized database of all

properties has allowed tenants and public agencies to access mailing addresses and ownership information for each property in Maryland. The computerized DAT property database has reduced the mystery of property ownership, and permitted tenants and prosecutors to obtain service and/or certified mail return receipt on owners who formerly evaded service in many cases.

c. HUD funded on-line information regarding lead hazards in specific properties/Web tools – Other web based information, such as the much anticipated on-line Lead Safe Housing Registry that is being produced with HUD funding, will close the information gap that prospective tenants face today in knowing the condition of the prospective rental property and who the actual owner is of the property. Internet name and address searches, along with telephone number reverse look-up capabilities have also allowed greater service of process and delivery of Lead Violations and written Notices of Defect to owners.

d. Private enforcement model – The Coalition's full-time Family Advocate Attorney is enforcing the Maryland Reduction of Lead Risk in Housing Law via Rent Court Rent Escrow proceedings throughout Maryland. Utilizing written Notice of Defect forms and a strong statutory scheme, the Family Advocate Attorney pursues rent escrow actions on behalf of tenants to force rental property owners to comply with the Maryland law by performing lead Risk Reduction Treatments in their rental properties. To spur recalcitrant owners into action, the Family Advocate Attorney requests that Courts establish rent escrow accounts in which tenants deposit their rent monthly until lead treatments are completed and the property is properly inspected. The Coalition has placed an emphasis on representing tenants in every jurisdiction in Maryland in an effort to create broad access for tenants for the repair of lead hazards in court venues throughout the State.

e. Judicial trainings – The Coalition has initiated judicial trainings at the Judicial Training Institute in Maryland to prepare judges for: public and private enforcement actions, the new laws behind the legal filings, and the specific nature of the relief being sought. Judicial training has been especially important in getting judges to order the appropriate lead hazard reduction treatments, the use of certified contractors, and appropriate temporary relocation for the occupants.

f. Housing Code Enforcement – Baltimore City has a formalized Housing Code Inspection, Housing Code Enforcement, and Housing Court structure. Consistent and aggressive housing code enforcement can produce significant reductions in lead hazards through the repair of structural defects and chipping, peeling paint. As with lead specific enforcement, governments must have the political will to resist property owner opposition to tangible housing code enforcement and the power of purpose not to succumb to fear mongering that proffers that any aggressive code enforcement will lead to widespread abandonment of properties.

Manchester, Connecticut

The Lead Action Program is a HUD Lead Hazard Control grantee that has initiated several enforcement mechanisms within their grant to ensure that owners comply with the local laws, the Property Maintenance Code, and the terms of their grant contract.

1. Publicity of Enforcement Actions

Typically, Manchester reviews their grant requirements and results in the frequent local news coverage. The city often highlights the one paragraph lien on the land record incorporated into all lead hazard control funding agreements, which has enabled the program to take back about \$100,000 in funds to transfer to ineligible owners in a sale. Recapture of these funds can result when there is a pre-mature sale, non-compliance with required conditions and/or unwillingness by the owner to complete required measures in the construction scope of service.

2. Local Forums and Mechanisms for Anonymous Reporting

The Lead Action Program receives many calls from the public, as does the Health Department, Town Customer Service, and the State Health Dept the State licensing division.

3. Local Enforcement Programs

The Lead Action Program works closely with the Manchester Code Department to exact code compliance to ensure that properties receiving lead hazard control funds are in compliance with the city Property Maintenance Code.

Milwaukee, Wisconsin

The Milwaukee Health Department believes that collectively, Federal, state, and local agencies will never meet the 2010 eradication goal if every high risk property (a housing unit with lead based paint hazards occupied by a child under six) requires lead abatement subsidies to correct deficiencies. Strong enforcement, with a legislative infrastructure that works, combined with strategically utilized incentives are needed to reach this goal. Components of the City's lead program and lead hazard control grant program include:

1. Involvement of Federal Government

Federal Agencies involved in lead - CDC, HUD, EPA – working together, the three federal agencies engaged in preventing lead poisoning could assure that the 17 of the 35 states and municipalities currently funded by CDC have enforcement authority for lead hazard control - especially in properties where children are identified with elevated blood lead levels. Federal funding for these areas provides authority to assure that this happens.

2. Legislative Authority

Milwaukee has learned that legislative authority should be flexible and provide the ability to enforce in situations of secondary (an identified EBL) and primary (high-risk housing) situations. The Milwaukee ordinance as referenced below, includes this language.

"Lead Based Nuisance means any lead based substance, surface or object which may reasonably contribute to an elevated blood lead level due to lead content, condition or location and which is accessible to children and is declared a public health nuisance"

Basically, if a lead hazard is accessible to a child - with or without an identified blood-lead elevation – the Milwaukee Health Department has the authority to issue a legally binding lead abatement work order to correct the hazard.

3. Local Enforcement

Milwaukee recognizes that Section 1018 Lead Disclosure Rule federal enforcement is a tool, but it takes a long time to bring to fruition. As a result, local enforcement authority is required. Authority itself is not enough- programs need to assure timely services and be committed to strong enforcement as they utilize the law.

An example: By providing an incentive for timely compliance (funding of a second housing unit if the property owner complies with the work order within the 30 day compliance period), Milwaukee has reduced the time frame for compliance (date of inspection/risk assessment to abatement completion) from a 180 day average 4 years ago to a 50 average compliance time frame currently. 44% of Milwaukee orders are complied with within 30 days.

4. Secondary Interventions verses Primary Prevention

The health department does not fund secondary interventions, or lead abatement work when a child has been identified with an EBL. This is akin to rewarding deferred maintenance and does not provide the incentive (the carrot) to conduct primary prevention work.

When an owner owns a property where hazards exist and a child has been identified with an EBL, it is too late to expect a subsidy for the work to be completed. When an owner receives an order for abatement in Milwaukee, he must pay for the whole thing himself and all of the work (including interim controls) must be conducted by a certified lead abatement contractor. If he does not comply, he faces fines from municipal court and may be subject to Direct Administration of Abatement. Direct Administration gives Milwaukee the authority to enter the unit, conduct the abatement and bill the owner. If the landlord does not reimburse the City's lead hazard control program, the cost is assessed to his tax bill. If the landlord does not pay back the cost, he is also not eligible for primary prevention funding.

This works because at the time the property owner receives the lead order, he is told that if he complies within the 30-day time frame the City will fund window abatement in an associated housing unit, which equals a grant of \$1,740. This is usually the second unit of a duplex where the EBL resides, but can also be another rental housing unit that the property owner manages within the City's target area.

The City also asks if he owns other rental housing units in the target area. If he does, we offer primary prevention funding to these other units.

5. Funding Resources for Enforcement Programs

The City partially subsidizes lead hazard reduction in hazardous units within Milwaukee's Lead Program Target Area, if the owner comes into the City's grant program proactively-before a child is identified as poisoned. The benefits to the property owner include (1) reduction in liability for being sued by the parent, (2) partial grant funding and (3) the ability to conduct the interim controls (lead safe housing rehabilitation) themselves.

There are multiple eligibility requirements for primary prevention including being up-to-date on city taxes, no outstanding building code or health orders on the properties, etc. The owner conducts and/or pays for lead safe maintenance on deteriorated painted surfaces identified by Milwaukee Risk Assessors at an average cost per unit of \$500 per property. When this is completed in a lead-safe manner, Milwaukee pays for and sends in an abatement contractor to conduct window abatement. Milwaukee funds this through HUD OHHLHC funds and CDBG funds at an average cost of \$1,740 per housing unit.

The City believes that if you fund enforcement when an EBL is identified, there is little or no incentive to correct the work proactively. This is primary prevention.

HELP US HELP YOU!

OHHLHC plans to continue collecting information about state and local lead enforcement programs and highlight these models in future conferences and on our website. These programs do not need to be those funded by a HUD, CDC, or EPA grant. The office plans to continue to engage local programs and community based organizations in enforcement partnerships to build national and local capacity.

Much of the March 2004 primary prevention strategies workshop focused on lead-based paint programs in health departments, and there were few representatives from local housing and code enforcement agencies. OHHLHC would especially like to collect more summaries of good practices and lessons learned in housing and code enforcement to enhance these materials.

Please send press releases, compliance monitoring tools, or a summary of your program. Thank you for your assistance.

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