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State of Wisconsin

Department of Health and Family Services

November 16, 2001

Ms. Ada Duffey, President
Milwaukee Lead/Asbestos Information Center, Inc.
2223 Kinnickinnic Avenue
Milwaukee, WI 53207

Dear Ms. Duffey:

Thank you for your letter of October 29, 2001 in which you request clarification of certain department actions with regard to the HUD one-day training courses being offered in Wisconsin by Quantech, the HUD federal contract trainer. Decisions made regarding this matter were based on existing regulation and the best available information at the time of the decisions. Given that proposed administrative rule HFS 163 is not yet final and is still subject to change, we can not specifically predict the impact the final permanent rule will have on any non-abatement training courses, such as the HUD-sponsored one-day courses. The primary objective of the department in this matter however was to afford any student participating in a one-day HUD-sponsored non-abatement course the maximum opportunity to use that training as a first step in completing future training leading to certification in an abatement discipline. I will now respond to your specific questions.

1. How was the Department able to provide accreditation to a Lead Safe Maintenance Course or a Renovation and Remodeling course and provide a Certificate of Approval for the "Lead Safe Work Practices Course" when no such discipline exists? Please explain how and why this approval was granted after the Emergency Rules expired.

The Department receives its authority for accreditation from state statutes. Chapter HFS 163 of the Wis. Administrative Code defines the process. Section 254.178(1) requires that any course leading to certification under Section 254.176, Stats., must be accredited by the Department. Therefore, because this course could lead to future certification, in an effort to meet the objective stated in the paragraph above, HUD was asked to accredit their one-day courses with the Department, which they agreed to do.

2. What exactly is "special accreditation"? Where is there a provision for this type of accreditation found in current State rule?

HUD does not intend to become a regular accredited trainer in the state, but only desires to offer a limited number of one-day courses during a limited time frame. Therefore, under the authority of Section 254.178, Stats., the Department established a policy for issuing special accreditation. The accreditation granted to HUD's two non-abatement one-day courses was based on this policy and was granted for a specific limited period of time. Also, additional components specifically referencing Wisconsin regulations were added to maximize clarity and minimize conflict between HUD expectations in federally-assisted properties and Wisconsin requirements regarding abatement.

3. What specific certification are these letters referring to? Per these letters, what certification will a student who completes these courses be able to get? For example, if an individual completed one of the 1-day courses, what certification would they get at this time?

At this time there would be no Wisconsin certification available to a student successfully completing an accredited one-day HUD course, only a course completion certificate. Wisconsin certification would be granted only after a student successfully completes additional (supplemental) training leading to a lead abatement worker or lead abatement supervisor discipline. Once the lead registry rules are finalized, there may be a provision allowing for a lesser non-abatement level of certification in registry properties where the HUD training could be applied.

4. Please explain exactly how this will be used as a "building block". A "building block" towards what type of certification (i.e.: lead worker, lead supervisor)?

Under the modular training plan the one-day non-abatement course would provide credit toward meeting training requirements for certification in an abatement discipline course. In other words, you could continue training leading to abatement certification without having to repeat course elements that were covered in the one-day HUD course.

5. It is my understanding that under proposed rule, any other 1 day lead safe maintenance training course would require an additional 4 hours of "hands-on" training to be conducted by an accredited training provider in order to be used as a "building block" towards any type of certification. It is also my understanding per Quantech and per the letter drafted by Shelley Bruce, that these course agendas have only been modified by 1 hour to include this "Wisconsin component" and "hands-on". Can you please explain why this special consideration has been give to these courses?

Any additional training requirements beyond the one-day non-abatement course needed to become certified in an abatement discipline can only be determined once the final HFS 163 is published. The extra training added to the original HUD course was considered the maximum additional training possible without causing the HUD-sponsored course to exceed one-day. This will be a factor in determining how many additional hours of training will be necessary to upgrade the completed HUD training to that equivalent to an abatement discipline. Also, an additional component specifically referencing Wisconsin regulations was added to clarify and reduce any conflict between HUD expectations in federally-assisted properties and Wisconsin requirements regarding abatement. These HUD non-abatement one-day courses are accredited to provide future flexibility for students per the requirement of Section 254.178(1), Stats.

6. It is my understanding that DHFS staff will be assisting in the instruction of these courses. Please explain why staff has been made available for these courses and not for any other training provider, and please describe in what capacity the staff will be instructing (i.e.: Guest instructor or Principle instructor).

HUD agreed to "upgrade" their national training content and add the Wisconsin specific regulatory components to their one-day courses offered in Wisconsin only if we provided the additional resources, both staff and materials, to conduct this new state-specific information. Because this is HUD-sponsored training, our participation as guest instructors was viewed as support to a federal government training initiative within Wisconsin.

7. It is my understanding that upon completion of this course, attendees will only be able to perform non-abatement work. Please describe what specific activities attendees who complete these course will be able to perform.

You are correct; attendees will be able to only perform non-abatement work activities. The current definition of abatement, as found in Wisconsin regulations, outlines the requirements for certification in an abatement discipline when performing activities affecting lead-based paint.

8. Has the EPA been consulted regarding the "agreement" DHFS has made with HUD - that these course may be able to be used towards certification? Please provide any written documentation reflecting EPA support of this "agreement."

EPA is fully aware of our accreditation agreement with HUD regarding these one-day courses, but has provided no written acknowledgement. EPA has not yet made any determination on the level of "credit hours" a person completing the Wisconsin-accredited HUD training will receive toward the training requirements needed to achieve certification in an abatement discipline. The EPA will likely wait until the final HFS 163 rule is available for review to make such a determination.

9. If Quantech is an accredited trainer, why did they not appear on the list of accredited training providers in Wisconsin supplied by the Department on October 18, 2001?

Neither HUD, nor its contract vendor Quantech, has expressed any interest in becoming a regular long-term accredited trainer in the state. Their goal is to offer a limited number of one-day courses within a limited time frame to allow HUD funding recipients to meet critical HUD regulatory requirements. Therefore, the accreditation granted by DHFS did not include publication in our training distribution listing. As with all public lists we publish, only providers who indicate they wish to be on the public listings are actually included in those listings.

10. Per the letter drafted by Shelley Bruce to Kenneth White at Quantech on September 6, 2001, it is my understanding that approval certificates were issued for these courses before revised course agendas for the courses were submitted, and the "Wisconsin component" was still to be discussed in terms of how the course would be conducted, timeframes for this element and who would be instructing it. Please explain why these courses were issued approval certificates before major training components were reviewed.

All required elements of an accreditation review and approval were in place when the letter of accreditation was granted, including required topics and an approved agenda. HUD had provided their course content topics. We only expanded their pre-existing topics to ensure Wisconsin-specific elements were included. The logistics of specific instructor participation is always course delivery-specific and will vary according to time and need.

11. Separate and apart from our recent conversations, and concerns listed above, are there any specific situations where the HUD rules in 24CFR Part 35 does not require the use of certified Lead Workers and Supervisors and the State Department of Health and Family Services does? For example situations including but not limited to, different interpretations of interim control activities vs. abatement, and/or different understandings of how dollar amounts spent on projects affect the need for certified people.

Wisconsin's definition of abatement is consistent with EPA's definition of abatement and does not include any references to project dollar amounts or limits as qualifying a project as non-abatement. In addition, HUD applies a 20-year test to what is considered a permanent measure and thus is called abatement. Neither Wisconsin nor EPA apply such a 20-year test, therefore, for these reasons, both Wisconsin and EPA regulations will classify an activity as abatement before HUD is likely to call the activity abatement.

12. I have a client that is interested in attending the one-day HUD training course. Per a conversation she had with Shelley Bruce (I have attached a copy of the e-mail), she is under the understanding that if contractors who work in her program complete the one day free HUD training, she could then contact a training provider to offer remaining "building blocks" of training should any of the attendees wish to become certified to perform lead abatement. How exactly would this work? My client is extremely insistent that per DHFS, accredited training providers should be able to offer this additional training. What courses should I be offering her and where these courses are referenced under rule?

The Department intends to identify and accredit any supplemental training that will allow a student, who participates in a HUD-sponsored one-day non-abatement training course, to complete and become eligible for certification in an abatement discipline. The details of this process are directly dependent on the final HFS 163 rule and EPA's review and agreement on the content of such supplemental training. Your clients, who believe they may become involved in abatement activities and need to act soon, would be best served at this time by sending their staff to either the full 16-hour lead abatement worker training or 32-hour lead abatement supervisor training leading directly to abatement certification in one of these disciplines.

Sincerely,

Perry J. Manor, Chief
Asbestos/Lead(Pb) Section
Bureau of Occupational Health

Hardinger, Marlin

From: Sykora, Tom
Sent: Wednesday, December 26, 2001 7:54 AM
To: Rep.Sykora
Subject: FW: FYI-New Hampshire Man Pleads Guilty in Lead Paint Poison Case

From: Boushon, Gail
Sent: Wednesday, December 26, 2001 7:42:00 AM
To: abelscc@excite.com; AMURPH@ci.mil.wi.us; anne.statham@uwp.edu; becky@mlic.com; CBlackmore@cityofracine.org; dconrad@wra.org; dotty@uwm.edu; email@murphydesmond.com; family@iosys.net; fjeffe@ci.mil.wi.us; getthelead_out@yahoo.com; horans@terracom.net; jdeschane@wisbuild.org; jfoht@maximusa.com; jhausbeck@ci.madison.wi.us; jjrentals@yahoo.com; jlally@co.sauk.wi.us; jmurray@wra.org; juancarlos@wi-citizenaction.org; jwb135@juno.com; jwendt@ci.mil.wi.us; LeadSafe1@aol.com; luciddavid@aol.com; Mmeurett@maximusa.com; mmokler@vbemail.net; msmith@ci.mil.wi.us; mtheo@wra.org; noah@maaaonline.org; RCOLLA@ci.mil.wi.us; rday@charter.net; rentman@wi.net; rgaeta@ci.mil.wi.us; rickpep@execpc.com; rikstaff@wra.org; rocksog@execpc.com; rsommer@wctc.net; schooler@TDS.net; sfoldy@ci.mil.wi.us; SOgungbe@town.mount-pleasant.wi.us; spendl@ci.mil.wi.us; sschuh@ci.mil.wi.us; tabrentals@aol.com; Preston-Koenig, Terri; tracysue@execpc.com; vzerpa@ci.mil.wi.us; weid@powercom.net; wiaptassoc@aol.com; Wiebenga.Marylse@epamail.epa.gov; Brehm, Joseph G; Evanson, Marty; Hovden, Julie; Link, Tony; Wilson, Martha; Korbitz, Adam; Sappenfield, Anne; Sen.Jauch; Welch, Bob; Wirsch, Bob; Lasee, Frank; Hess, Martha; Shannon, Pam; Sweet, Richard; Jermstad, Sara; Sykora, Tom; [aol.com].gblead; [chorus.net].KGECorp2; Chao, Richard; Johnson, Todd; Anderson, Henry; Garman, Susan; Gilbertson, Larry; Hibray, Dennis; Harris, Robert; Young, Mary; Dow, Susan; Esrael, Sandra; Hartzke, Larry; Kiesow, John; Timmers, Terri; [ecol.net].Iseltd; [facstaff.wisc.edu].Aarnesen; [home.com].eileen408; [HUD.GOV].Robert_Berlan; [ilzro.org].cbremer; [mlic.com].ada; [msn.com].carolgraham; [msn.com].peacelovehope; [sflabs.com].geipelg; [superiorserv.com].pdvandezande; [wi-citizenaction.org].ccastore; [wismed.org].lizz

Cc: Chapin, John; Manor, Perry; Moen, Terry
Subject: FYI-New Hampshire Man Pleads Guilty in Lead Paint Poison Case
Auto forwarded by a Rule

NH - New Hampshire Man Pleads Guilty in Lead Paint Poison Case

Associated Press -- 12/19/2001 -- CONCORD, N.H. (AP) -- A property manager and his company pleaded guilty to federal offenses Wednesday in a case that grew out of the lead-poisoning death of a 2-year-old girl who had apparently eaten paint chips in her apartment. Under the plea agreement, James Aneckstein, 36, of Manchester, will get 15 months in jail and a fine of up to \$40,000 at sentencing March 26. His company could be fined up to \$3.2 million.

Federal prosecutors said it is the first case in the nation in which a rental property manager was charged with criminal offenses for failing to provide the required lead hazard warnings. The only other lead case prosecuted criminally involved the Maryland owner of numerous apartment buildings, mainly in Washington. He pleaded guilty in July and will be sentenced next month. Normally such cases are handled with civil or administrative penalties.

"Criminal sanctions are only used in egregious cases, such as this one," said Michael Hubbard, agent in charge of the Criminal Investigation Division of the Environmental Protection Agency in Boston. "This underscores the significance of why environmental crimes matter. They often have to do with greed at the expense of human health and the environment." In both criminal cases, the defendants not only failed to comply with the law, but also lied about it. The Manchester case grew

out of the death last year of Sunday Abek, a refugee from the Sudan who had moved to the city with her mother and three siblings 12 days before she died. Officials said they believe she ate lead paint chips and dust in their apartment. City health officials said it was the first case of a child dying of lead poisoning in Manchester in at least 25 years. Under federal law, anyone selling or renting property must give buyers and renters information on lead poisoning -- and particularly the danger to children and get a signed acknowledgment that they provided the information. Prosecutors said

Aneckstein supplied federal authorities with falsified forms that certified the girl's mother and other tenants in the apartment building had been given the required lead disclosures. (END)

Background on the case from Boston Globe

Lead paint kills young refugee -- Boston Globe, 12/20/2001 -- by Mac Daniel
-- CONCORD, N.H. - Sunday James Abek survived a lot in her short life. She trekked with her family from Sudan to Egypt as an infant, survived 11/2 years in a squalid refugee camp, and made it safely to Manchester, N.H. by the time she neared her third birthday. Then, on April 21, 2000, after just one month of American life, Abek fell into a coma and died two days later, becoming the first child to die of lead poisoning in the United States in 10 years. Doctors found a blood-lead count six times the level that would normally require a child to be hospitalized. The culprit turned out to be the lead paint chips and dust in apartment 5 at 102 Bridge St. in Manchester, where the malnourished child had spent a month picking small holes in a bedroom wall to eat the plaster, and nibbling on the abundant chips on the outdoor porch. Yesterday, Abek's tragic story came one step closer to ending when, for the first time in New England history, the landlord who rented the apartment pleaded guilty to federal criminal charges in connection with the lead poisoning case. Although he was not blamed for the girl's death, he pleaded guilty to failing to tell Sunday's parents of the lead paint danger and then trying to cover up that failure. "Landlords who fail to notify tenants about the dangers of lead paint perpetuate the hazards of lead poisoning," said New Hampshire Assistant Attorney General John C. Cruden. "Dishonesty during the investigation is misconduct that will not be tolerated." Lead paint has been banned since 1978, but, 23 years later, 1,300 children are lead-poisoned in Massachusetts alone each year. Property owners are required to protect children age 6 and under from exposure to lead paint, but violations are seldom prosecuted. Instead, the parents of lead-poisoned children commonly sue property owners. In fact, James T. Aneckstein, the property manager for 102 Bridge St., is only the second man nationwide charged with federal crimes related to lead-hazard disclosure requirements that were enacted in 1992, and took effect in 1996. Yesterday, a visibly weary Aneckstein, 36, admitted in federal court in Concord that he falsified documents claiming he had told Abek's parents about the lead paint danger. When he is sentenced in March, Aneckstein could face a maximum 15 months in prison and a criminal fine of up to \$40,000, part of a growing campaign by the Department of Justice and the Environmental Protection Agency to prosecute offenders of the lead paint disclosure law. Lead poisoning can impair a child's central nervous system, kidneys, and bone marrow, and at high levels can cause coma, convulsions, and death. Aneckstein's lawyer, Steven M. Gordon, said after yesterday's hearing that his client had felt "the full weight of the government upon his shoulders." "This is very traumatic," Gordon said. "But any suggestion that Jim did something that caused that child's unfortunate death is simply wrong." Aneckstein, whom Gordon said will be a parent himself soon, became the focus of a federal investigation shortly after Abek's death. He is the sole owner of JTA Real Estate Brokerage and Property Management Inc., of Manchester, and he oversaw upkeep and rent payments for several apartment buildings around the city. As part of the 1992 federal lead paint disclosure law, Aneckstein was required to notify residents renting apartments in housing built before 1978 about the dangers of lead paint - even if he didn't believe there was lead paint in the house. The law requires signed disclosures that the tenants had been notified at the time of signing a lease. However, when Sunday Abek and her family arrived at 102 Bridge St., Aneckstein admitted yesterday, he did not give them the lead paint warning. It's unclear whether he knew about the exceptionally high lead levels in the house. When the child died, EPA inspectors asked Aneckstein to provide evidence of such notification. Initially he could not, and later he gave investigators notices that had been backdated and appeared to be doctored. In one case, prosecutors said, a form dated August 1997 was

written on a document manufactured in 1998. In another, they said a whitening-out liquid had been used. Sunday Abek's mother, Mary Aloruot, and father, James Abek, have long since moved out of the building, which is no longer managed by Aneckstein. The couple remain in town, however, represented by a lawyer who said language barriers prevent them from talking to the news media. "Mary appreciates the coordinated federal effort in bringing someone to answer for their role in this otherwise preventable tragedy," said her lawyer, Ronald L. Abramson. The eight apartments at 102 Bridge St. continue to be filled with recently arrived refugees from Kosovo, Sudan, Rwanda, and Zimbabwe. Tenants yesterday said workers had been deleading some apartments but were uncertain if the entire building, built in 1910, was lead-free. Athanase Hagengimana, a research fellow at Harvard Medical School, said many of the tenants have never been told about Sunday Abek's death. "And most of these people don't know what lead is, or the dangers," he said. "They are hardly speaking English." Children played around Hagengimana, near a back staircase that had recently been replaced and remained paint-free. Down the street at the city health department, Richard DiPentima said he can't forget the case of Sunday Abek, which prompted testing of all newly arrived refugees for lead levels. "Here's a family that went through so much for so many years," DiPentima said. "It just seems like it wasn't fair, not that there's anything fair in life."

The WI Rental Housing Legislative Council (WRHLC) and its mission is strictly lobbying and political fundraising. WRHLC is the only full-time lobbying presence in the capitol for the rental housing industry. The need to continue a legislative presence was important to many members and non-members and this is how and why WRHLC was created. The formation of WRHLC was founded by rental housing providers like you to continue a presence in the legislature that is critical for the industry.

I have been lobbying for the rental housing industry for almost three years and members of the legislature have begun to rely on myself and other members of WRHLC for advice and accurate information of the industry. We need to continue this presence in the Capitol.

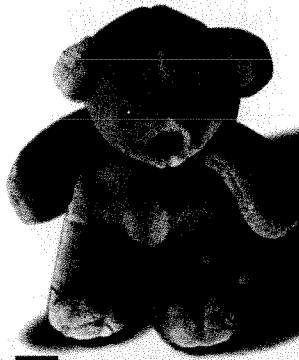
The following items I have been working for some time are beginning to come into fruition:

1. **Rules for Act 113 "The Lead Paint Bill"** has been sent over to the legislature. This is the first step in completion of these difficult rules. The rules have been sent to Rep. Sykora's, Assembly Housing Committee and Sen. Mark Meyer, Senate Universities and Housing Committee. There have been significant changes to the rules and WRHLC have had some responsibility in the changes of these rules. There is a meeting shortly with all of the involved parties to request other changes to these rules. I can say as of now the rules are better but there is still a need to improve for the rental property owners.
2. **Carpet Cleaning Change** – Rep. Glenn Grothman (R-West Bend) who has been a real friend of the rental housing industry contributed an amendment in this years budget to resolve the Carpet Cleaning issue.

Rep. Grothman's amendment was defeated in the process and we will submit a new piece of legislation in the next legislative floor period.

3. **Revolving Loan Fund** – We have been working with several members of the legislature to institute a low interest revolving loan fund for window replacement in pre-1978 rental properties. We are working with several state agencies to see if a program such as this is feasible and if dollars can be allocated. A program like this is important to those landlords who provide safe and affordable housing.
4. **Wisconsin Calls** – This organization is comprised of other trade organizations to keep an eye on Ameritech, the PSC and other telephone providers across Wisconsin.
5. **Customers First** – This organization is also comprised of other trade and business groups to add influence on electric reliability in Wisconsin.
6. **LRB 2925/P2 Tenant Safety Bill** – Rep. Sykora (R-Chippewa) who has been a real good friend of the industry has been working on this piece of legislation for quite some time. This bill would give rental property owners the ability to remove tenants or guests who threaten, harass or commit violent acts against other tenants or guests. A hearing was held last month and was once again heavily opposed by battered women's groups, tenant groups and university student groups. My feeling is that there will be no movement on this bill until there is some sort of tragedy in a building. I hope that is not one of yours.
7. **For - AB 187** – Expanding the sales tax exemption for coin-operated laundry services to include all self-service laundry services.

8. **Against - AB 205** – Receiverships for rental and private housing that is declared a public nuisance. If a property has criminal, gang, gang, public nuisance or health hazard the city of first or second class may ask the court to put the property into receivership. This could also include properties that have housing that resides a lead-poisoned child. (This bill has been killed in committee due to WRHLC involvement)
9. **For - Assembly Joint Resolution 2**, The increase certain taxes may only be approved through of a referendum of the electorate and passed two consecutive session of the Wisconsin Legislature.
10. **For - Assembly Joint Resolution 7**, The increase certain tax rates or broaden the base of the state sales tax may only be approved through of a referendum of the electorate and passed two consecutive session of the Wisconsin Legislature.
11. **For - Assembly Joint Resolution 10**, The limiting the annual percentage increases in property tax assessed on real property may only be approved through of a referendum of the electorate and passed two consecutive session of the Wisconsin Legislature.
12. **For - Assembly Joint Resolution 50**, The requiring of local approval of certain taxes and charges approved through of a referendum of the local electorate.
13. **Against - SB 135**, Disclosure of credit reports and providing a penalty for non-compliance. Requires a credit check-reporting agency to send notification to the applicant notifying them that a credit check is being on the person or persons. The question is who sends out notification to the person. (I.e.: Landlord doing credit



Health Hazard in the Home

By Michelle Banks
Staff Writer

Home is truly where the heart is, but for many families, home can also be a health hazard for very young children. Childhood lead poisoning poses a clear and present danger to the more than 24 million children under age 6 years. The substance that poses such a danger is leaded paint. More than 80 percent of all homes built before 1978 contain hazardous levels of leaded paint. Homes built before 1960 have the most concentration of leaded paint within their walls. In the inner city, where a substantial number of these houses have aged with little upkeep, many low-income minority children are more likely to be diagnosed with higher levels of lead in their bloodstreams. These elevated levels are caused by the poisonous dust generated from peeling and cracking paint on walls, window sills, porches, and outside

walls painted with lead contaminated paint. Although all children living in older housing (where leaded paint is most prevalent) are at risk, 16 percent of low-income children living in such housing are poisoned compared to just 4.4 percent of all children. Whenever lead paint peels or is disturbed by sanding or scraping, emissions in the form of tiny dust particles from such friction is carried throughout the house and usually land on floors where young children most often play with toys. Because of the constant hand-to-mouth activity of children between the ages of 12 and 72 months, the lead is ingested into their systems.

Lead is toxic and is more harmful to young children than adults. Once ingested, lead does damage to a young body. It inhibits a child's ability to absorb iron, which is

LEAD-POISONING

Federal Agencies and Their Role in Lead Poisoning Prevention

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
— Lead Hazard Control Grant Program, and Federally-Assisted Housing Lead Paint Regulations, National Survey of Lead Paint in Housing, Lead Hotline, and Internet listing of lead paint professionals, public education and training

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS):

Centers for Disease Control and Prevention (CDC) — Blood Lead Screening Grant Program, public education to medical and public health professionals and others, National Health and Nutrition Examination Survey, quality control for laboratories analyzing blood lead specimens, research

Health Care Financing Administration (HCFA) — Covers and reimburses for lead screening and diagnosis, lead poisoning treatment, and follow-up services for Medicaid-eligible children

National Institute of Child Health and Human Development (NICHD) — Conducts lead poisoning related research on the reproductive, neurobiological, developmental, and behavioral aspects

Health Resources and Services Administration (HRSA) — Directs national health programs to assure quality health care to underserved, at-risk populations, including children with lead poisoning

The Agency for Toxic Substances and Disease Registry (ATSDR) — Handles the study of blood lead in populations near highly contaminated areas, including Superfund sites and funds state health agencies to do similar work

Food and Drug Administration (FDA) — Enforces standards for lead in food and water

National Institutes of Health (NIH) — Conducts basic research on lead toxicity

ENVIRONMENTAL PROTECTION AGENCY (EPA) — Authorizes states to license lead paint professionals; environments laboratory accreditation; enforcement of lead regulatory laws; public education to parents, environmental professionals, and others; Lead Hotline (with HUD); handles lead contamination at industrial waste sites including drinking water and industrial air emissions

DEPARTMENT OF JUSTICE (DOJ) — Enforces Federal Lead Paint Disclosure Rule (with HUD and EPA), defends Federal lead paint regulations, enforces pollution statutes including hazardous waste laws

CONSUMER PRODUCT SAFETY — Enforces ban of lead paint; investigates and prevents the use of lead paint in consumer products; initiates recalls of products containing lead that present a hazard

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) — Enforces worker protection regulations

DEPARTMENT OF TREASURY — Assesses financial incentives for lead hazard control

DEPARTMENT OF ENERGY — Conducts weatherization activities in a lead-safe manner

DEPARTMENT OF DEFENSE — Administers childhood lead poisoning prevention programs, research on new technologies for lead paint management and abatement and develops policies and guidance for lead hazard management on a national level

Source: *Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards*, February 2000.

Has ^{Rich} ~~Rich~~ — ~~Sommers~~

from central WI
APT Association
Emailed you?

Tom

Stevens
Pt.
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inlw.
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Togethe

~~Rich Sommers~~
TODD
Impact The Rule

His Problem
Built in thege
Process should
be scrapped.
Hvd Training comes
w/ Sta te

12/12/01

Tom,

Per our discussion earlier re: Rich Sommers and Sen. Shibilski

He is a constituent of Sen. Shibilski's and has been in contact with his office extensively.

Rich has been represented in the rule negotiations by the WI Apt. Association and Mike Mokler. But he has continued to discuss the rule and its contents with Sen. Shibilski.

On October 30th, Sen. Shibilski sent the attached letter to Sen. Mark Meyer. Nothing happened with this letter, obviously because of the work the DHFS has been doing to bring the rule up to speed.

The 3 issues that the SE Apt. Association, has shared with you as a heads up are:

1. Allow HUD training in place of Wisconsin training. (Also, how long before the Wisconsin training is in place?)
2. Eliminate the requirement for 1 year certificates to include window replacements.
3. Require that only the supervisor on the job be required to have certification. Many College students are hired to work during the summer and to require a \$50, 8-hour course for these short-term employees seems excessive.

The goal is to NOT impede the rule that is almost done. These are changes that Sen. Shibilski is considering introducing as a budget amendment.

All of these items have been brought up in discussions so far and they are not included in the current draft. It is not the desire to bring these items into the discussion prior to the Rule being complete.

Tim Ballering is going to talk to Rick Staff tomorrow to let him know that this is for later when it will be out of the two housing committees and out of the department's rule making process.

Everyone has worked together and has worked hard on the rule. No one is trying to impede its progress.

Kelly McDowell would like to discuss this with you if you would like to. She requested that I not inform "Bob Dennick, The Realtors and everyone" The SE Apt. Assoc. doesn't want to stir up controversy over this by announcing the possible budget amendment. (Which incidentally may not go anywhere anyway.)

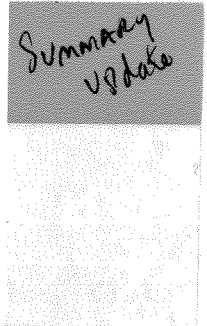
*Im message w/ Realtors - They
already had a call
into Dennick
held off on Caggs
for further
direction to
avoid
"panic"*



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WAA Legislative Day

Act 113 Rules Talking Point



The rewrite of the rules for HFS 163 should seriously be considered because of the following concerns we have with these rules.

1. Liability Issues
2. Difficulty of Training Criteria
3. Bureaucratic Nightmare
4. Anti-Section 8
5. Unfriendly to Landlords and Children
6. Unaffordable by the average rental property owner.

The Wisconsin Department of Health and Family Services are in the process of rewriting the rules for Act 113 "The Lead-Paint Rules". The department is insistent that the rules be tougher than the standards of the HUD and the EPA because of immunity is being offered.

This is opposite of what was the intent of the legislation for Act 113. It has been presented to the staff of DHFS that immunity was given by the legislature and the department has no concern about immunity.

Liability Issues and Consistency with Federal Regulations

DHFS - The department has made numerous statements that if they are going to grant immunity the rules and laws in Wisconsin need to be above the standards of HUD

and the EPA.

WAA Response - The department has statutory authority to be consistent with federal regulations. What they have done is to exceed the EPA and HUD standards. This was not asked of them in Act 113. The department needs to find a way to make a real and reasonable approach into bringing liability protection based on federal law to rental property owners in Wisconsin. We are looking to fix a problem not over-regulate this problem.

This was supposed to be a carrot approach instead of the stick approach. Landlords would like to cooperate and reduce the potential of lead poisoning. For that cooperation they would get liability protection and hopefully the insurance companies would come back into the marketplace and offer insurance protection.

Training

DHFS - The department states in these rules that a property owner would have to become a certified low-risk worker to do the most basic repairs and cleaning. Beyond this a person would have to become certified as lead high-risk worker, lead low-risk supervisor, lead contractor supervisor, lead project designer, lead sampling technician, lead inspector, lead hazard investigator or lead risk assessor to do any work on properties built before 1978 that may contain lead paint.

WAA Response - The intent of Act 113 was to find a way for landlords to be able to do lead safe work on their own properties without trying to work through a costly bureaucratic nightmare. This is not the case. The cost for training goes anywhere from \$125 to \$1100. This does not include paying the department for certificates of a maximum of seven years for a lead-safe certificate which goes anywhere from \$25 to \$750. The department believed that their modules of training disciplines would help landlords when in fact it will make it virtually impossible for the mom & pop landlords to take the time and expense to complete these costly programs and repairs. It will force the mom & pops to hire contractors to do the work, which will have a devastating impact on affordable housing for both landlords and tenants.

Bureaucracy

DHFS - The department believes the rules they promulgated will ensure that people who perform lead-based paint activities do so safely, to prevent exposure of building occupants to hazardous levels of lead.

WAA Response - These rules if accepted as written create a bureaucracy that may not accomplish the goals of Act 113. This proposed bureaucracy attempting to be established may become one of the largest departments within the Department of Health and Family

Services and will be built on the fees charged to rental property owners and passed on the tenants who live in pre-1978 housing (80+%) in Wisconsin. Why would a rental property owner want to enter into this type of program? This was not the intent of the Act 113. The intent was not to create a new bureaucracy. The department was allocated \$735,000 to begin this program and also be allocated another \$520,000 in fiscal years 2001-2003 for this program. The fees attempted to be collected through this will swell the department ranks and none of this money into training of landlords. The department believes that you are not capable of doing any of your own work unless trained, certified, registered, pay and spend days filling out paperwork.

Low Income and Section 8 Housing

DHFS - Housing needs to be inspected, registered, fees paid, work and repairs done.

WAA Response - The cost is supposed to be affordable. The rules already written by HFS 163 makes Wisconsin one of the most expensive states in America to inspect Section 8 housing. The rules of Act 113 if accepted will have an adverse affect on the affordable housing inventory and may deter landlords from participating in the Section 8 Housing Voucher program.

Unfriendly to Landlords and Unfriendly to Children

DHFS – Once registered in the program you need to report any and all work done on your property that may pose a lead-hazard.

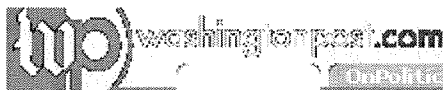
WAA Response – All the research done nation wide and in Wisconsin led HUD to believe that a one day lead-safe work practices course would substantially reduce childhood lead poisoning. The cost alone is one of our major objections to these rules. These rules would not convince landlords to come into this program; on the contrary children will still become the lead-testers. Many of these points that we are bringing out in this document were stated in all of the workgroups. The workgroups consisted of the housing industry (Landlords & Realtors), child care providers, the department of DHFS, painting contractors, children advocates, current lead trainers, City of Milwaukee Health Department and others with concerns about this legislation. The department did not hear what we had to say and the rules reflect only the department position not the position of all the other members of the Technical Advisory Committee. They could not see the forest through the trees!

Unaffordable by the Average Landlord

DHFS – There is no price that can be charged to ensure the safety of a child or a family in Wisconsin. Abatement is more important than lead safety and what is called abatement is

very costly.

WAA Response – We agree with this statement within reason. Is a child or family living in house with lead paint or are they better off living in a box under the bridge with no lead paint? The cost of training, certification, fees, and recertification for training, recertification for lead safe-lead free status is already a substantial cost. Now lets talk about hiring contractors and supervisors and others to do lead sampling is another significant cost. Let's now talk about buying materials and other products. The actual cost to help remedy the situation of making your properties lead-safe or lead-free.


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EDITORIAL

Lead Paint and Lawsuits

Wednesday, April 11, 2001; Page A26

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THE IDEA of suing paint manufacturers to pay for efforts to clean up lead paint hazards is naturally attractive to state and local governments for whom lead abatement is a major problem. The success of the tobacco lawsuits has trial lawyers looking for new targets, and -- like the tobacco companies -- the paint industry is plagued with some unflattering memos suggesting that officials knew early on about the dangers of their product. Lead paint litigation is clearly gathering steam. This week, Milwaukee became the latest city to sue paint manufacturers. And a judge recently allowed portions of a suit by the state of Rhode Island to proceed. But any similarity to the tobacco suits is only superficial. There is, in fact, good reason to be skeptical of a tobacco-style litigation effort.

The dangers of lead are real, and the problem is vast. Particularly in inner-city neighborhoods, where housing is not well maintained, children eat paint chips or dust, and the lead causes serious health problems -- including mental retardation. In some cities, the rate of elevated lead levels in preschoolers remains alarmingly high long after lead paint was banned. The problem is chiefly one of forcing landlords to ensure reasonable conditions in their properties, an effort that has gone on for years. While individual litigants have long sought to sue the paint-makers as well, these suits typically have not been successful.

Unlike the tobacco companies, whose misconduct continued right up to the time of the lawsuits, the paint manufacturers have not made lead-based products in decades. The industry claims that it voluntarily eliminated the lead in paint when it became clear it was hazardous and later, in 1978, supported the government's ban on it. The industry's critics, however, dispute this tale of good corporate citizenship, and they offer evidence that the companies knew about the hazards of their products since the early 1900s but nonetheless marketed them aggressively as safe. Even if this were true, the misconduct is in the past and is a far cry from the nicotine manipulation and outright lying to regulators and Congress that the tobacco companies engaged in. The problem of lead long ago became a public policy problem, rather than one the tort system is well suited to address.

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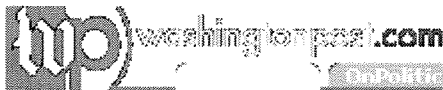
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The advocates of litigation know this and see the suits in policy terms -- as an attempt to force the companies that created the mess to help clean it up. This sounds reasonable in theory, but it is far less so in practice. It is unlikely that many shareholders in today's paint companies held stock at the time of any improper conduct. Whom exactly would liability punish? Moreover, it's hard to imagine any deterrent value for current corporations in the possibility of liability 50 years from now. To hold the paint companies financially responsible now may offer a cash cow for trial lawyers and governments looking for revenue streams to fund lead-abatement programs. But it would be arbitrary and could potentially ruin an industry that provides a necessary and useful product. It's hard to see what good that would do. Protecting children from lead poisoning requires a sustained enforcement and abatement effort, from which the trial lawyers can offer no shortcuts.

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