



METS Laboratories

179 Smallwood Village Center, Waldorf Maryland 20602

Metro: 301.870.1995
Toll Free: 800.604.1995
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Lead Paint Chip Analysis Report

NLLAP / AIHA ELLAP #21506, NY ELAP #11603

Lead Analysis Method EPA SW-846, 7420

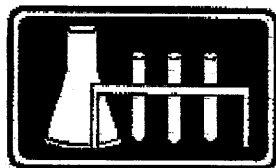
Account Number: 11-0809	Report Number <u>991026059</u>	Date Collected: 102099
Client Name: Sommer Apartment and Home		Date Received: 102699
Address: 4224 Janick Circle		Date Analyzed: 102899
Stevens Point WI 54481		Date Reported: 102899
Project: 1524 Brawley Stevens Point, WI		

METS Sample No.	Client Sample ID/ Location	Total Pb ug	% Pb by Wt	Pb mg/ cm2
991026059-002	7-Hall	98,900.0	10.217	15.333

Federal lead guidelines for lead Paint Chips is 0.5% by Weight or 1.00 mg/cm2
Method Detection Limit (MDL) is 15.0ug.Total Lead

Reviewed by:
Marion Metzger, Quality Control
M. Metzger

Page 1
Reviewed by:
Maria P. Perez, Quality Control
M. Perez



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Lead Paint Chip Analysis Report

NLLAP / AIHA ELLAP #21506, NY ELAP #11603

Lead Analysis Method EPA SW-846, 7420

Account Number: 11-0809 Report Number 991026058 Date Collected: 102099
Client Name: Sommer Apartment and Home Date Received: 102699
Address: 4224 Janick Circle Date Analyzed: 102899
Stevens Point WI 54481 Date Reported: 102899

Project: 1524 Brawley Street-Stevens Point WI

METS Sample No.	Client Sample ID/ Location	Total Pb ug	% Pb by Wt	Pb mg/ cm2
991026058-005	5-Exterior	59.1	0.0096	0.009

Federal lead guidelines for lead Paint Chips is 0.5% by Weight or 1.00 mg/cm2
Method Detection Limit (MDL) is 15.0ug Total Lead

Page 1

Reviewed by:

Marion Metzger, Quality Control

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Maria P. Perez, Quality Control



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Lead Paint Chip Analysis Report

NLLAP / AIHA ELLAP #21506, NY ELAP #11603

Lead Analysis Method EPA SW-846, 7420

Account Number: 11-0809	Report Number <u>991026060</u>	Date Collected: 102099
Client Name: Sommer Apartment and Home		Date Received: 102699
Address: 4224 Janick Circle		Date Analyzed: 102899
Stevens Point WI 54481		Date Reported: 102899
Project: 2324 Wyatt Apt. E-Stevens Point WI		

METS Sample No.	Client Sample ID/ Location	Total Pb ug	% Pb by Wt	Pb mg/ cm ²
991026060-001	8-N. Bedroom	37,620.0	5.8634	5.833



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Clearance Test - Self

Lead Composite Dust Wipe Analysis Report

Method EPA SW-846, 7420

Account Number: 11-0809
Client Name: Sommer Apartment and Home Rentals
Address: 4224 Janick Circle
Stevens Point WI 54481
Project: 1524 Brawley Stevens Point WI

Report Number **991214036**

Date Collected: 121099
Date Received: 121499
Date Analyzed: 121599
Date Reported: 121599

Clearance Level

METS Sample	Client Sample ID/ Location	Surface	Total Pb ug	Total Area ft ²	Pb ug/ftsq
991214036-002	2 Wood Floors	FL	39.1	4	9.77
991214036-004	3 KIT, LR, DR, S Bed	SL	19.15	1	19.15

1000
500

Federal lead guidelines for leaded dust clearance levels by wipe sampling; Floors(FL) - 100ug/ftsq, Interior Window Sills(SL) - 500 ug/ftsq Window Wells(WW) - 800 ug/ftsq, Exterior Concrete Surfaces - 800 ug/ftsq.
(MDL) Method Detection Limit is 5.0ug Total Pb. (<) signs indicate less than (MDL)

Reviewed by
M Metzger
Quality Control

Reviewed by
M Perez
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Jane R. Henkel
Acting Director

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January 14, 2000

TO: MEMBERS OF THE SENATE COMMITTEE ON ECONOMIC
DEVELOPMENT, HOUSING AND GOVERNMENT OPERATIONS

FROM: Jane R. Henkel, Acting Director

A handwritten signature in black ink, appearing to read "Jane R. Henkel".

Enclosed, for your information, is a copy of Joint Legislative Council Report No. 5 to the 1999 Legislature, *Legislation on Lead Poisoning Prevention and Control*, dated October 4, 1999.

1999 Senate Bill 232, relating to lead hazard control, lead-bearing paint hazard reduction, use of oil overcharge funds for lead hazard reduction in dwellings, providing restricted immunity from civil liability to certain property owners, employees and agents, requiring the Wisconsin Housing and Economic Development Authority to promote certain loan programs, granting rule-making authority and making appropriations, is scheduled to be considered by your Committee at its meeting which will be held on ***Friday, January 21, 2000, beginning at 1:00 p.m., at the Gateway Technical College Administrative Building, Kenosha.***

If you have any questions relating to the above report or bill, please feel free to contact Senior Staff Attorneys Pam Shannon, at 266-2680, Richard Sweet, at 266-2982, or Staff Attorney Anne Sappenfield, at 267-9485, Legislative Council Staff.

JRH:wu;ksm

Enclosure

100 people attend 1-22-80 property tax hearing

BY DAVE ENGELS
KENOSHA NEWS

If the state can target property tax relief to certain types of owners, who should get it?

And should anybody get it all? Arguments were made on both sides Friday as a legislative committee held a public hearing in Kenosha.

The Senate's Economic Development, Housing and Government Operations Committee, chaired by Sen. Robert Wirth, D-Kenosha, heard comment on allowing exceptions to the Wisconsin constitution's uniformity clause. About 100 people attended the hearing at Gateway Technical College's Kenosha campus.

The clause essentially states that any tax relief must be applied to all property owners without singling out individuals or groups.

Sponsoring the bill is Sen. Russ Decker, D-Schofield, who said single-family homeowners and landlords have borne the burden of property taxes statewide since the 1970s.

"Twenty-five years ago, residential property owners were paying less than \$600 million in taxes a year," Decker said. "Now, they are paying more than \$3 billion.

"Clearly, there is an inequity that needs to be addressed, and it can only be addressed by a change in the constitution."

Disputing Decker was James A. Buchen, a vice president with the Wisconsin Association of Manufacturers and Commerce.

Buchen said a constitutional change would lead to political chaos. "You would have decisions about property tax relief influenced by a war between special interest groups, whichever ones can apply the most pressure to legislators at a given moment," he said.

Wisconsin has the seventh highest property taxes and the 15th highest corporate taxes in

the nation, Buchen said, "and the only meaningful answer is controlling local spending. You can dump all the money you want into tax credits, but that does not ultimately address the root of the problem."

Decker challenged Buchen, saying more than \$400 million in potential revenue was exempted from the property tax through the state's exemption on business equipment, machinery and inventory.

Buchen said the exemption created in the 1970s was a major boost to the Wisconsin economy "and property tax relief can work for everybody depending on how it is structured. That is your (legislators') prerogative."

If approved by the Legislature in two consecutive sessions, the constitutional change would go to a statewide referendum. If the referendum is approved, lawmakers still have to pass bills specifying targeted relief. Referendums failed in 1989 and 1992.

The committee also heard testimony on lead-based paint abatement in rental dwellings.

A bill by Sen. Robert Jauch, D-Poplar, would set removal and content standards, provide \$2.5 million in loans and grants to landlords, give them limited immunity from liability, and provide public education to landlords and tenants. Estimates show more than 75 percent of the state's residential dwellings con-

tain lead-based paint, typically those built before 1978.

"First, we all have to agree on the health hazard that lead-based paint poses for young children," Jauch said. "Then we have to address the dilemma of landlords, who buy property as an investment, a commitment to a neighborhood, and are forced to deal with a problem not of their own making."

Ken Hassler, chairman of the Kenosha-based, 75-member Landlords Helping Landlords, said insurance companies will not cover the cost of legal complaints stemming from lead paint litigation.

"Our members just want a fighting chance," Hassler said.

Robert Demik, governmental affairs director for the Wisconsin Apartment Association, agreed: "We have a hammer hanging over our head and we are defenseless. If abatement costs are prohibitive and there are no legal safeguards, rental properties can become vacant and a blight on neighborhoods."

Juan Carlos Ruiz, an organizer for Wisconsin Citizen Action, said the law is well-intentioned but contains no budget or personnel for enforcement.

"It is fine to give loans to landlords and hold them harmless from lawsuits," Ruiz said. "But where is the accountability? How do you ensure that they do what the law requires?"

Concerned Citizens for the Betterment of the State of Wisconsin Housing
P.O. Box 13507, Milwaukee, Wisconsin 53213 • Milwaukee Area (414) 475-5622 Fax (414) 257-0687

Please read very carefully and more than once if necessary!

E M E R G E N C Y !

Attention elected city and state officials, lawmakers and the concerned citizens of the State of Wisconsin, regarding prebuilt 1978 housing!

Housing owners, their employees, businesses, associations, owner occupied property owners and the housing industry in general have done a good thing in doing their part in representing the much needed prebuilt 1978 housing!

As you may know, there are several housing suppliers (big and small) that are in a mode of shifting their ways in deleting their talents of working with and owning prebuilt 1978 housing! Obviously, negatively affecting the cities' and state's housing stock and the lower income residents!

The reason is simple!
Property owners (including the municipalities that own lower income rental housing!) have no lead based paint lawsuit protection!

This is an absolute outrageous insult to the owners and suppliers of prebuilt 1978 and low income housing! This also includes the lower income renters, businesses, our communities, cities and our entire state of Wisconsin!

With a further lack of property owners, you will then find even more older homes vacant, boarded and off the cities' property tax rolls!

This trend will only continue placing our neighborhoods, communities and cities further and further into ugly blight, despair and depression!

This may place the cities alone to try to mend the upcoming catastrophe! Obviously, this can and should be prevented!

Our cities are having enough difficult times maintaining their own older rental properties!

What happens when your city gets hit with a huge lawsuit!? With more following! Who pays!? Obviously the tax payers! What happens when any property owner (including owner occupied property owners!) gets hit with a huge lawsuit!?

It is now known that several Wisconsin property owners have received documentation from law firms indicating lawsuits against the property owners because of lead based paint!

This is only the beginning! The panic button has now been pressed by many Wisconsin property owners!

Any and all lawmakers, movers and shakers must take charge and make change now! Not later! Wisconsin needs your help today! Before the approaching war! Not during the war! Think about this!

Just why is it, cities, towns, various businesses, privately owned rental property and owner occupied property owners doing a good and difficult deed, have serious lawsuit potentials against them for something they have nothing to do with!? This is incredible and absurd!

Wisconsin property owners did not put the lead in the paint, nor did they give the permission to do so! In those days, the buyer of lead based paint did not know they were being sold a faulty product!

Now, virtually anyone who owns prebuilt 1978 housing may be vulnerable to expensive lawsuits! Note: The lawsuit potentials are also there for property owners of properties built after 1978 if lead based paint exists in that property! (Which is possible!)

Please implement a previous, present and future Wisconsin emergency protection law preventing lead based paint lawsuits!

How could anyone that owns housing not support an immediate Wisconsin emergency protection law!? We're all vulnerable one way or another!

You should immediately pass this law preventing our valued cities, state rental and owner occupied property owners and businesses from any forthcoming lawsuits! Period!

This should have been done years ago! Where has the concern been for Wisconsin property owners regarding this issue!? Amazing!

Finally, many people in this state are now aware of this problem (with that population growing fast!) and also obviously want this emergency lawsuit protection now! Before it's too late!

It is now beyond time for the elected officials, lawmakers and changers to make this change rapidly and swiftly!

There cannot be procrastination here!

Take the initiative! You now have an opportunity to make a difference in our state's history (that affects so much of the state's population!) in doing something no one to date has done! Check into it! Then run with it!

This protection law should be implemented in very little time with very little if any opposition!

You will have major supporters backing you and not limited to Wisconsin citizens, businesses, various associations and banking and lending institutions! This should include your very own elected legislative colleagues working together!

Only you can help the cities' publicly owned housing, businesses, and the hundreds of thousands of property owners across the state of Wisconsin, do what they do best! Let them continue supporting our older precious neighborhoods to flourish! To help make our environment a better, safer, cleaner, more enjoyable and beautiful place for our state of Wisconsin renters and owner occupants to reside!

Rightfully stop the coming unfair lawsuits towards Wisconsin citizens!

Prevent the forthcoming! You will then naturally and quickly shape a clear path of full speed ahead in creating more emphasis, energy and enthusiasm of more property owners in working together more closely, collectively and cooperatively within the cities' health departments, and the state of Wisconsin's various programs regarding the real and proper solutions to the problems regarding lead based paint!

Once the lawsuit protection law and the cities' various health departments and the State of Wisconsin's various programs are implemented, and if there is a noncompliance by a property owner, then perhaps penalize and fine (city and/or state citations!) that property owner and that property owner only!

That's the solution!!!

At that time, many Wisconsinites will take notice with appreciation of your quick and responsible efforts!

Working Together! It works!

Emergency Protection Law!

Now Is The Time!

Concerned Citizens for the Betterment of the State of Wisconsin Housing

A Commodity We Cannot Do Without!



**STATE OF WISCONSIN
JOINT LEGISLATIVE COUNCIL**

REPORT NO. 5 TO THE 1999 LEGISLATURE

**LEGISLATION ON LEAD POISONING PREVENTION AND
CONTROL**

1999 SENATE BILL 232,

Relating to Lead Hazard Control, Lead-Bearing Paint Hazard Reduction, Use of Oil Overcharge Funds for Lead Hazard Reduction in Dwellings, Providing Restricted Immunity From Civil Liability to Certain Property Owners, Employes and Agents, Requiring the Wisconsin Housing and Economic Development Authority to Promote Certain Loan Programs, Granting Rule-Making Authority and Making Appropriations

Legislative Council Staff
October 4, 1999

One East Main Street, Suite 401
Madison, Wisconsin

RL 99-5

JOINT LEGISLATIVE COUNCIL
REPORT NO. 5 TO THE 1999 LEGISLATURE*

LEGISLATION ON LEAD POISONING PREVENTION AND CONTROL

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* This Report was prepared by Pam Shannon and Richard Sweet, Senior Staff Attorneys, and Anne Sappenfield, Staff Attorney, Legislative Council Staff.
Also available at www.legis.state.wi.us/lc

PART I

KEY PROVISIONS OF LEGISLATION; PROCEDURAL
HISTORY AND VOTES

A. 1999 SENATE BILL 232, RELATING TO LEAD HAZARD CONTROL,
LEAD-BEARING PAINT HAZARD REDUCTION, USE OF OIL OVERCHARGE FUNDS
FOR LEAD HAZARD REDUCTION IN DWELLINGS, PROVIDING RESTRICTED
IMMUNITY FROM CIVIL LIABILITY TO CERTAIN PROPERTY OWNERS, EMPLOYES
AND AGENTS, REQUIRING THE WISCONSIN HOUSING AND ECONOMIC
DEVELOPMENT AUTHORITY TO PROMOTE CERTAIN LOAN PROGRAMS,
GRANTING RULE-MAKING AUTHORITY AND MAKING APPROPRIATIONS

- Housing Standards

The bill creates standards for the prevention and control of lead-bearing paint hazards in pre-1950 dwellings. The standards include essential maintenance practices, required responses to a notification of a child with lead poisoning or lead exposure in a dwelling, control of identified lead hazards and the performance of standard treatments. Owners of dwellings constructed between 1950 and 1978 may voluntarily comply with the standards.

- Liability of Property Owners

The bill provides immunity from liability to property owners and their employees and agents for damages relating to lead poisoning or lead exposure if their property meets the standards specified in the bill, with certain exceptions. In addition, the bill requires the Commissioner of Insurance to establish a Residential Lead Liability Fund to issue policies that insure residential property against liability resulting from lead-bearing paint hazards, if the property meets the standards specified in the bill and if the Commissioner determines that insurance is not sufficiently available in the private insurance market for this purpose.

- Funding of Lead Hazard Control Activities in Dwellings

The bill requires that the Department of Administration (DOA) use all available oil overcharge funds for the reduction of lead hazards in dwellings in conjunction with energy conservation activities. The bill appropriates \$2.5 million general purpose revenue (GPR) in fiscal year 2000-2001 (the second year of the 1999-2001 biennium) to the Department of Health and Family Services (DHFS) to fund specified lead-bearing paint hazard reduction activities. The bill also requires the Wisconsin Housing and Economic Development Authority (WHEDA) to attempt to make loans of \$5 million per year in total under its Home Improvement Loan Program and Rental Improvement Loan Program for funding the elimination, abatement or control of lead-bearing paint hazards.

B. PROCEDURAL HISTORY AND VOTES

The bill is the product of the Joint Legislative Council's Special Committee on Lead Poisoning Prevention and Control. The bill was introduced by the Joint Legislative Council late in the 1997-98 Session of the Legislature as 1997 Senate Bill 502. However, the bill failed to pass. The bill was reintroduced by the Joint Legislative Council in the 1999-2000 Legislature. The following provides a brief overview of the votes taken on the bill and its procedural history.

By a mail ballot, the Special Committee on Lead Poisoning Prevention and Control voted to recommend WLCS: 0387/5 to the Joint Legislative Council for introduction in the 1997-98 Session of the Legislature on a vote of Ayes, 11 (Sen. Jauch; Rep. Coggs; and Public Members Bader, Baxmann, Blaha, Brandenburg, Bushey, Layde, Murphy, Newman and Thompson); Noes, 4 (Reps. Owens and Kreibich; and Public Members Ballering and Munson); and Not Voting, 1 (Public Member Berrien).

Two of the Committee members who voted "no" filed a Minority Report in which they expressed their reasons for doing so. A copy of that Minority Report is included in **Appendix 3** to this Report.

At its February 11, 1998 meeting, the Joint Legislative Council voted to amend WLCS: 0387/5 to delete a proposed \$.08 per gallon tax on paint and similar architectural coatings. The Joint Legislative Council then voted to introduce the draft, as amended, on a vote of Ayes, 21 (Reps. Kelso, Duff, Foti, Freese, Gard, Hubler, Jensen, Klusman, Kunicki, Linton and Schneider; and Sens. Risser, Burke, Chvala, Cowles, Drzewiecki, Ellis, Jauch, Moen, Shibilski and Zien); Noes, 0; and Absent, 1 (Sen. Moore). The bill was officially introduced on March 17, 1998 as 1997 Senate Bill 502. On April 2, 1998, the regular session of the Legislature ended and the bill failed to pass.

On May 26, 1999, the Joint Legislative Council voted unanimously (14 affirmative votes) to reintroduce the bill into the 1999-2000 Legislature. 1999 Senate Bill 232 was officially introduced on September 16, 1999. It is the same as 1997 Senate Bill 502, other than for updating to reflect 1997 acts that were not incorporated into Senate Bill 502 and minor, technical changes suggested by the Legislative Reference Bureau to fully capture the Special Committee's intent, which have been incorporated into the bill.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee on Lead Poisoning Prevention and Control and appointed its chairperson by a July 19, 1996 mail ballot. The Special Committee was directed to:

- . . . (1) evaluate the implementation of 1993 Wisconsin Act 450 and its effectiveness in reducing the incidence of lead poisoning and exposure in children; and (2) determine whether there is a need for additional legislation to address lead poisoning and exposure in children.

The establishment of the Special Committee was based on SECTION 68 of 1993 Wisconsin Act 450.

The membership of the Committee, appointed by September 20 and 27, 1996 mail ballots, consisted of one Senator, three Representatives and 12 Public Members. A membership list of the Joint Legislative Council is included as **Appendix 1**. A list of the Committee membership is included as **Appendix 2**.

B. SUMMARY OF MEETINGS

The Special Committee held 12 meetings on the following dates (except as otherwise indicated, all the meetings were held at the State Capitol, Madison):

October 1, 1996	February 27, 1997
October 15, 1996 (Milwaukee)	April 7, 1997
October 29, 1996 (Wausau)	June 9, 1997
November 21, 1996	July 22, 1997
December 19, 1996	September 8, 1997
January 23, 1997	December 4, 1997

At its October 1, 1996 meeting, the Committee heard testimony from **Meg Ziarnik, Deputy Director, Bureau of Public Health, Division of Health, Wisconsin DHFS**. She discussed the effects of lead poisoning on children and developing fetuses and explained the economic and social consequences of lead poisoning. She described which children are most at risk for lead poisoning and the projections for how many children may be at risk of lead poisoning in Wisconsin. Ms. Ziarnik said that the DHFS provides technical assistance and consultation to local health departments, housing agencies, health care providers and other individuals regarding case management, inspections, screening, abatement options and work

practices, certification and training requirements and regulatory assistance. She said that the DHFS also collects data on lead poisoning and prepares reports on the prevalence and incidence of lead poisoning to assist in determining the DHFS's directions and policy. The department also develops lead training certification programs and develops the administrative rules as directed by the statutes enacted in Act 450. Finally, the DHFS administers local aid programs.

Ms. Ziarnik said that although there has been a decrease in blood lead levels among Wisconsin children, there are still several challenges facing the state in dealing with lead poisoning. She said that it is important to prevent children from becoming lead poisoned and to remediate lead hazards when children are lead poisoned. She said that it would be helpful to provide lead hazard inspections in all dwellings in which a child with a blood lead level of ≥ 20 ug/dL resides and to provide appropriate treatment and follow-up for lead-poisoned children. In addition, she said that another goal should be to increase the number of trained and certified people to perform safe lead abatement and hazard reduction activities, in order to make services readily available when needed and economically feasible. Finally, she said that coordination within the managed care system with the core functions of public health with respect to childhood lead poisoning prevention initiatives should be assured.

At the October 15, 1996 meeting in Milwaukee, the Committee heard testimony from invited speakers.

Amy Murphy, Lead Poisoning Program Manager, City of Milwaukee Health Department, discussed the lead poisoning prevention program in the City of Milwaukee. Ms. Murphy said that the Milwaukee Health Department has identified where most lead poisoned children reside in the city and that these areas have a great deal of older housing stock, high rates of poverty and low rates of home ownership. She explained that under a research grant from HUD, the City of Milwaukee is comparing four levels of lead hazard reduction.

Laura Thacker, Director, Environmental Health, City of Racine Health Department, described the City of Racine's Lead Poisoning Prevention Program. She said that under the program, a majority of parents or guardians of children ages one to six in a high-risk census tract in the inner city of Racine have been given information about lead poisoning prevention, including screening guidelines, proper diet, lead hazards and environmental sanitation. She also discussed various ordinances that the City of Racine has passed and discussed lawsuits that the City of Racine has dealt with based on these ordinances.

Dr. John Bartkowski, Chief Executive Officer, and Dr. Sharon Fleischfresser, Medical Director, The 16th Street Community Health Center, described The 16th Street Community Health Center's Lead Screening and Outreach Project. Dr. Bartkowski said that the objective of the project is to reduce the risk of lead poisoning to children through education of parents, early intervention, case management and exposure prevention. He said that the project is using a community-based neighborhood approach.

Ramona Jensen, SDC/Head Start, discussed the lead screening that Head Start is conducting. She said that more money and more education needs to be focused on lead poisoning and that communities need to do more to prevent lead poisoning of younger children.

Kim Queen, Apartment Association of Southeastern Wisconsin, said that the Lisbon Avenue Neighborhood Development Project, which trains property owners to control lead hazards, is a good model of cooperation between the City of Milwaukee and apartment owners. He stressed the importance of communication between tenants and property owners and said that tenants need to take more responsibility for their own health. He also said that the methods and goals of lead poisoning prevention must be attainable and affordable.

Laurie Casey, said that she is a parent of two children who are lead poisoned. She said that the best approach to lead poisoning is prevention and that housing, instead of children, should be tested and treated.

Orville Seymer, said that the problem of lead poisoning was created by the government because HUD recommended the use of lead paint. He said that it is unfair that property owners are being held solely responsible for controlling the lead hazards in their properties.

Jeff Chitko, landlord, said that the City of Milwaukee has a good weatherization program and that this program should be used as a model for lead poisoning prevention.

Tim Dewane, Director, Start Smart, said that the focus of lead poisoning prevention should be holistic and culturally sensitive. He said that lead poisoning is a more urgent problem now because under the Wisconsin Works program more children will be in child care in home settings.

Alan Koenig, landlord, builder and remodeler, said that he believes that more research should be done on the connection between lead poisoning and poor diet. He also said that often repairing and remodeling cause more lead hazards than leaving lead paint undisturbed.

Bill Lauer, President, Milwaukee Property Management Company, said that most property owners did not cause the lead hazards in their properties but have the responsibility to cure them. He said that it is important to improve the current housing stock because otherwise housing will be destroyed faster than it can be replaced and that it should be recognized that it is not realistic to eliminate all lead hazards in all property.

Brenda Bell-White, Executive Director, Milwaukee Healthy Women and Infants Program, said that the City of Milwaukee currently knows where its lead poisoning problems are and that the emphasis of any program should be on screening and early intervention for children ages birth to three without ignoring others who may be lead poisoned.

The Committee also conducted a public hearing at the October 15, 1996 meeting.

At its October 29, 1996 meeting in Wausau, the Committee heard testimony from invited speakers.

Steve Schaefer, Environmental Health Sanitarian, Marathon County Health Department, described Marathon County's Lead Poisoning Prevention Program. He said that the Health Department saw an increase in the amount of screening for lead poisoning at private

clinics when it increased its interaction with physicians and urged them to do universal screening for lead. However, he said that this has caused some problems for the Health Department, because the Health Department has been required to provide more services since more screenings have been performed. He said that most of the lead hazards in the county are in the City of Wausau and that privately owned homes which have deteriorating paint present the biggest problem because many of the families in those homes do not have the financial resources to address the hazards.

Nancy Eggleston, Environmental Health Sanitarian, Wood County Health Department, and Kay Larsen, Loan Specialist, Wisconsin Rapids Redevelopment Authority, described the Wood County Health Department Lead Poisoning Prevention Program. Ms. Eggleston explained that the Wood County Health Department has received funds from the Federal Housing and Urban Development (HUD) Lead Hazard Reduction Grant since 1995. She said that the HUD program funding is intended to determine the effectiveness of various abatement activities and that the money is used to abate lead hazards in eligible homes. Ms. Larsen said that property owners are given a grant with a repayable loan which is due when the person sells the property. She said that the repaid loan funds go into a revolving loan fund, which was established with community development block grant funds in 1976, to continue the program. Ms. Eggleston said that, based on her experience with the program, she believes that it may be more reasonable to make homes "lead safe" than to make them totally lead free. She said that a risk assessment could be conducted to indicate areas with lead which are hazardous and accessible to children in the home and that risk-based abatement could then be conducted.

Kathy Newman, Director, Barron County Health Department, described Barron County Health Department's Lead Poisoning Prevention Program. Ms. Newman said that an environmental health subcommittee in the county has developed a community health needs assessment for Barron County and has identified lead as the number one problem. She said that the assessment led to the development of a community health plan for Barron County in 1995 which sets forth the primary prevention strategy to reduce the incidence of childhood lead poisoning in Barron County by the year 2000. She said that the Health Department hopes to develop a coalition with hardware stores, lead contractors, doctors, HUD and others to address environmental problems relating to lead. Ms. Newman also stated that the lead hazards in her rural area are often different from the typical lead hazards in more urban areas.

Sheila McNulty, Environmental Health Sanitarian, La Crosse County Health Department, described La Crosse County's Lead Poisoning Prevention Program. She said that La Crosse County has a lead ordinance which was created by a task force and which permits the county health officer to condemn housing units which, because of their condition, have been implicated as the source of a confirmed case of lead poisoning. She said that the ordinance has increased the number of properties that have been remediated. She said that there are disadvantages to the ordinance, however, in that some people are just forced to move out of one deteriorated unit to another one. She also said that the cost of repairs has forced some landlords to increase the amount of rent they charge. She said that the county is also trying to build or purchase a lead safe house for families to stay in while their houses are being repaired.

Dr. Paul Wegehaupt, Pediatrician/Adolescent Medicine, Rhinelander Medical Center, discussed the incidence of lead poisoning in Forest, Vilas, Langlade, Lincoln and Oneida Counties. He said that, contrary to his experience in Milwaukee, he has not found an elevated blood lead level among the children he treats in Rhinelander. He said that in Oneida County, the community health improvement plans have not identified lead as a priority issue and that in the Wisconsin Indian communities which he served, lead poisoning was not a priority issue either.

Tony Fraundorf, Environmental Health Specialist, Taylor, Price and Lincoln Counties, described the lead hazard prevention programs in Taylor, Price and Lincoln Counties. He said that in those programs, there is little assistance to families in which a child has a blood lead level under 20 ug/dL.

The Committee also conducted a public hearing.

Ann Werth, Community Development Department, City of Wausau, said that her department has been receiving HUD grant funds from the Division of Health for the past few years. She said, however, that her agency has found that participating in the program is too labor intensive for their small agency and that they intend to drop out of the program. She said that there are not enough people in her agency to do all of the work that is required under the grant and that there must be knowledgeable staff available in order to sell the program to homeowners.

Mary Gleason, North Central Community Action Program, said that her area needs a specific program to deal with lead-based paint issues because currently no one knows what to do to address the problem in the area.

At its November 21, 1996 meeting, the Committee heard testimony from **Doug Farquhar, Program Principal, Environmental Health, National Conference of State Legislatures (NCSL).** He described current federal law relating to lead-based paint hazard reduction. He also described current statistics relating to the percentage of children with elevated blood lead levels nationally, the age and condition of housing stock nationally and the number of low-income owned and rented housing which was built between 1940 and 1979 nationally. In addition, Mr. Farquhar discussed several states' statutes relating to lead hazard reduction and how various state programs are funded. He said that Wisconsin has the most comprehensive lead poisoning legislation that he has seen and that Wisconsin's current law is beyond most states in that area. Finally, Mr. Farquhar discussed the recommendations in the HUD Task Force Report and how states have implemented those recommendations.

At the December 19, 1996 meeting, the Committee discussed current funding available for housing rehabilitation and current laws relating to lead hazard reduction in Vermont and Maryland as set forth in Memo No. 1, *Vermont and Maryland Lead Poisoning Laws* (December 12, 1996). The Committee also discussed recommendations that have been made to the Committee by Committee members and others and recommendations made by the HUD Task Force as set forth in Memo No. 2, *Recommendations and Other Items for Consideration by the Special Committee on Lead Poisoning Prevention and Control* (December 12, 1996). Finally, the Committee discussed two examples of standards of care for the prevention and control of

lead-based paint hazards in the rental units as set forth in Memo No. 3, *Standards of Care for Lead-Based Paint Hazard Prevention Control* (December 13, 1996).

Chairperson Jauch directed the staff to develop a preliminary draft for the Committee and a draft letter to the U.S. Consumer Products Safety Commission relating to requiring labeling regarding the dangers of dry sanding lead-based paint for sandpaper and power sanding tools. In addition, Chairperson Jauch asked staff to prepare draft legislation to create a one-day training course on safe work practices.

At the January 23, 1997 meeting, the Committee heard testimony from invited speakers.

Marge Hannon Pifer, Acting Section Chief, Policy Section, Bureau of Health Care Financing, DHFS, described requirements for blood lead level screening and environmental inspections of homes under the Medical Assistance Health Check Program.

The Committee again heard testimony from *Meg Ziarnik, DHFS*. She discussed lead inspection requirements for individuals who wish to be licensed as child care providers, the provision of lead screening at local women, infants and children (WIC) clinics and current compliance of laboratories in reporting lead screening results to the state.

The Committee also discussed a draft letter to the Consumer Products Safety Commission requesting that the Commission require that manufacturers of dry sandpaper, scrapers, belt sanders and propane torches place a warning on such products regarding the dangers of improperly removing lead-based paints and WLCS: 0100/1, which prohibits a retailer from selling sandpaper or any power sanding tool unless it contains a message about the health hazards associated with sanding surfaces that contain lead-bearing paint. In addition, the Committee discussed WLCS: 0104/1, relating to creating a one-day lead hazard control training course.

At the February 27, 1997 meeting, the Committee heard testimony from *Jackson L. Anderson, Jr., Director of Finance and Insurance, the National Center for Lead-Safe Housing*. Mr. Anderson described the essential elements of any comprehensive lead poisoning legislation and said that such legislation must consider the creation of standards of care and, possibly, issues relating to limits on liability and insurance availability. He said that the two goals which should be kept in mind are to create safer residential environments for children and to preserve older, affordable housing, particularly for low-income families. He suggested that the Committee consider the following topics in the following order:

1. The creation of standards of care for property;
2. How the standards will be enforced;
3. Whether to limit liability for property owners who meet a specific standard;
4. Issues relating to availability and affordability of insurance and its impact on the system; and

5. Funding and resources.

He also said that, in developing standards of care for property, the Committee must consider to which types of housing the standards will apply. He said that this could be based on the age of the housing and whether the housing is owner occupied or is rental housing. Mr. Anderson also discussed alternatives for liability protection for property owners and for offering insurance coverage to such owners.

At the April 7, 1997 meeting, the Committee again heard testimony from *Jackson L. Anderson, Jr.* Mr. Anderson described the standards of care that should apply to all housing built before January 1, 1978, and also described the standards that the Committee could consider applying to "higher priority" housing which could include pre-1950 housing, older housing in a dilapidated condition, housing located in areas with historically high lead poisoning rates or all of these types of housing. He also discussed possible methods of enforcing such standards.

Chairperson Jauch directed the staff to prepare a preliminary draft for the Committee relating to standards of care.

At the June 9, 1997 meeting, the Committee discussed WLCS: 0387/1, which creates requirements for maintenance and standards of care which apply to all owners of housing built before January 1, 1978. The Committee directed staff to revise the draft so that compliance with the standards by owners of housing built between January 1, 1950 and January 1, 1978 would be voluntary. Chairperson Jauch also directed staff to meet with certain Committee members to determine if specific portions of the draft should be placed into nonstatutory sections that require the DHFS to promulgate rules.

At the July 22, 1997 meeting, the Committee discussed WLCS: 0387/2, relating to maintenance practices and standards to control lead hazards in dwellings constructed before January 1, 1978, and directed staff to make various revisions to the proposed legislation.

The Committee again heard testimony from *Doug Farquhar of NCSL*. Mr. Farquhar described options for limiting the liability of property owners and legislation relating to liability in other states. He also described issues relating to lead poisoning which have been litigated and the results of such litigation.

Chairperson Jauch directed the staff to prepare a preliminary draft for the Committee limiting the liability of property owners whose dwellings meet the standards set forth in WLCS: 0387/2, drafts to require insurance companies to provide coverage and to create a state compensation system and a draft relating to the admissibility of dust testing results.

At the September 8, 1997 meeting, the Committee heard testimony from *Jim Langdon, Chief Communications Officer*, and *Arlene Norris, Credit Manager, WHEDA*. Mr. Langdon described two programs operated by WHEDA that could be used by property owners to finance repairs relating to residential lead contaminants--the Home Improvement Loan Program and the Rental Improvement Loan Program.

The Committee discussed several amendments to WLCS: 0387/3, relating to maintenance practices and standards to control lead hazards in dwellings constructed before January 1, 1978. The first amendment provided that property owners are presumed to be not liable for lead-related damages if they have a certificate verifying that they have met the standards set forth under WLCS: 0387/3 in effect at the time of the lead poisoning or lead exposure. The Committee directed staff to make various revisions to the amendment and include it in WLCS: 0387/3.

Next, the Committee discussed three alternatives relating to insurance coverage for lead liability. One required liability insurance to provide such coverage; one established a state residential lead liability fund; and the third required the Office of the Commissioner of Insurance (OCI) to prepare a report on the availability of private insurance for lead liability and the need to establish a mandatory risk-sharing plan to provide this coverage. The Committee agreed to adopt the amendment establishing the state lead liability fund and set aside the other two amendments.

The next amendment provided that the results of a lead dust test are not admissible in civil or criminal actions or proceedings or administrative proceedings unless the test was conducted by a certified lead inspector or risk assessor. The Committee directed staff to make revisions to this amendment and agreed to include it in WLCS: 0387/3. The Committee then discussed an amendment adding a preamble to the prefatory note to WLCS: 0387/3 to address concerns regarding the constitutionality of limiting liability for lead poisoning. The Committee agreed to include this amendment in the draft. Finally, the Committee discussed and adopted an amendment which would provide for the expenditure of all available oil overcharge funds for the replacement of windows in dwellings in which the replacement would improve energy efficiency and reduce lead-bearing paint hazards.

At the meeting, the Committee also discussed WLCS: 0387/3 and directed staff to make several revisions to the draft.

At the December 4, 1997 meeting, the Committee discussed three amendments requested by the DOA, which the Committee agreed to include in the draft. The Committee also discussed WLCS: 0557/1 which creates a fee on the sale of paints and other architectural coatings by dealers of such products and requires WHEDA to aggressively promote its Home Improvement Loan Program and Rental Improvement Loan Program with property owners whose properties contain lead-bearing paint and to attempt to make loans of at least \$10 million per year under the two programs. The Committee voted to revise the amendment to include a \$2.5 million GPR appropriation and to decrease the amount that WHEDA must attempt to make in its loans from \$10 million per year to \$5 million per year. Chairperson Jauch directed staff to include the amendments in WLCS: 0387/4 and to prepare WLCS: 0387/5 and a mail ballot for Committee members to approve the draft.

C. STAFF MATERIALS AND OTHER MATERIALS

Appendix 5 lists all of the materials received by the Special Committee on Lead Poisoning Prevention and Control. In addition to these listed materials, Legislative Council Staff

prepared bill drafts for the Special Committee and a summary of each of the Special Committee meetings. The following document, prepared by the Legislative Council Staff, may be of particular interest to persons interested in the work of the Committee:

- Staff Brief 96-1, *Lead Poisoning Prevention and Control in Wisconsin* (September 24, 1996).

PART III

BACKGROUND: DESCRIPTION OF BILL

A. BACKGROUND

Lead poisoning is a significant public health hazard in the United States, having a major impact on young children. High levels of lead in the blood of young children can cause permanent nervous system damage and even relatively low levels of lead can cause significant nervous system effects, such as reducing intelligence and attention span, reading and learning disabilities and behavior problems.

While steps have been taken to reduce children's exposure to lead through elimination or reduction of lead in gasoline, cans and pipes and through a ban on lead in paint beginning in 1978, there is still a significant potential for exposure from lead-bearing paint in pre-1978 housing. The potential for exposure is highest in pre-1950 housing. However, lead hazards are also present in housing that was built between 1950 and 1978, a period when alternatives to lead-bearing paint were becoming available, but were not required to be used.

Deteriorating lead-based paint creates an exposure hazard, both through paint chips and lead-contaminated dust which settles on surfaces such as windowsills which are easily accessible to young children. Lead dust can be created by paint deterioration or abrasion or by repainting and renovation projects that disturb lead-based paint without proper precautions.

According to data compiled by the DHFS, lead poisoning is a significant problem among Wisconsin children and lead poisoning rates in Wisconsin far exceed the national average. Several factors place Wisconsin children at particular risk for lead poisoning. These include the number of young children living in poverty and the age and condition of the state's housing stock. 1990 Census figures indicate that 18% of Wisconsin children under age six live in poverty. Wisconsin has the highest percentage of Asian children living in poverty (48.1%) and the second highest percentage of African-American children living in poverty (54.1%) of any state in the country.

1990 Census figures also indicate that 85% of all housing in the state was built before 1980. Using the national lead paint incidence rate of about 86% for pre-1980 homes, it is estimated that about 73% of the pre-1980 housing in Wisconsin contains some lead paint. Also, it is thought that the harsh midwest climate, with its temperature extremes and moisture accumulation, contributes to the deterioration of paint, leading to a hazardous lead presence in Wisconsin homes.

In recent years, efforts have been made at both the federal and state levels to address the lead poisoning problem. At the federal level, HUD established the Lead-Based Hazard Reduction and Financing Task Force (hereinafter, "the HUD Task Force") to develop recommendations on expanding resources and efforts to evaluate and reduce lead-based paint hazards in private

housing. The Task Force Report was issued in 1995 and contained recommendations in the following six broad categories: (1) adopt benchmark lead-based paint maintenance and hazard control standards; (2) provide public financing of lead-based paint hazard and control in economically distressed housing; (3) modify the liability and insurance systems; (4) increase public awareness; (5) follow strategies to match households with young children with lead-free housing units; and (6) promote more research on cost-effective strategies.

A number of the provisions of the bill recommended by the Special Committee are based on recommendations in the HUD Task Force Report.

In the 1997-99 biennium, several federal agencies provided funding to states for lead-related activities. Specifically, Wisconsin received funding from HUD, the Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention, the Preventive Health and Health Services Block Grant and the Maternal and Child Health Block Grant.

At the state level, in 1992, the Wisconsin Council on Developmental Disabilities and the March of Dimes Birth Defects Foundation established a Childhood Lead Poisoning Prevention Study Committee to investigate the issues surrounding childhood lead poisoning and to develop recommendations for legislation. The Committee had 60 members representing a wide range of interest areas, including the Legislature, public health, health care practitioners, health advocates, environmental protection, the housing industry, the real estate industry and private contractors. The Committee was assisted by a number of resource persons from the Department of Health and Social Services (predecessor to the DHFS).

The Committee reported its recommendations in the April 1993 *Report of the Childhood Lead Poisoning Prevention Study Committee Sponsored by the Wisconsin Council on Developmental Disabilities and March of Dimes Birth Defects Foundation*. The report discussed the funding available for lead poisoning prevention activities in Wisconsin at the time it was issued. The report cited as shortcomings of the then-current prevention efforts that they served less than 1/3 of Wisconsin counties and did not provide adequate information about lead risks for children in rural communities. The report's conclusion was that it was necessary to develop a framework for a statewide lead prevention program with an infrastructure that established basic lead prevention services as well as standards for delivery of those services. The report noted that the Committee's recommendations represented the minimum components of a comprehensive lead poisoning prevention program.

Shortly after the Committee's report was released, Representative G. Spencer Coggs, a member of the Committee, introduced 1993 Assembly Bill 540, which contained many of the recommendations in the report. The bill, with some modifications and a partial veto by the Governor, was enacted as 1993 Wisconsin Act 450 ("Act 450").

Act 450 significantly expanded the state's lead poisoning prevention activities by requiring the Department of Health and Social Services (now DHFS) to develop and implement a comprehensive statewide lead poisoning and lead exposure prevention and treatment program. The Wisconsin Childhood Lead Poisoning Prevention Program (WCLPPP) was created in response to Act 450 and is now located in the Bureau of Environmental Health in the Division of

Public Health, DHFS. The Bureau is responsible for investigating and preventing the impact of environmental hazards on public health, as well as for conducting epidemiological and health outcome studies and other research. Therefore, the Bureau had an existing infrastructure and expertise for the WCLPPP to gather and evaluate lead-based paint hazard reduction and blood laboratory data.

The WCLPPP has testing equipment and the capability to assess homes for lead-based paint hazards. It also has purchased and distributed lead paint analyzer instruments to local health departments and trained local personnel so that they are equipped to assess homes for lead in paint. Staff also provide technical assistance and consultation in the areas of screening, follow-up care, case management, education, environmental assessment and lead hazard reduction. Further, the WCLPPP gathers data to target areas most in need of assistance through ongoing surveillance of the incidence and prevalence of lead poisoning in Wisconsin. The program works closely with local health and housing departments, health care providers, community-based organizations such as weatherization agencies, realtors, contractors, citizens and many others.

The Lead Certification/Accreditation Program is also located in the Division of Public Health, in the Bureau of Occupational Health. This program is responsible for the accreditation of courses for, and certification of, lead reduction supervisors and workers. The staff from the Lead Certification/Accreditation Program often work with the staff of the WCLPPP and the two programs collaborate on training. In November 1997, the DHFS promulgated permanent administrative rules, in ch. HFS 163, Wis. Adm. Code, governing certification of persons to perform lead abatement, other lead hazard reduction and lead management activities, accreditation of lead training courses and approval of training managers and instructors.

The WCLPPP received \$1,004,100 GPR in each year of the 1997-99 biennium. From this funding, grants were awarded to county health departments using the criteria set forth in ch. HFS 182, Wis. Adm. Code, for the following childhood lead poisoning activities: (1) educational programs about the danger of lead poisoning and lead exposure; (2) screening, care coordination and follow-up services, including lead inspections for children under age six not covered by a third-party payer; (3) administration or enforcement of responsibilities delegated by DHFS to local health departments; (4) other activities related to lead poisoning or lead exposure; (5) any combination of the activities under items (1) through (4), above; and (6) develop and implement outreach and education regarding lead poisoning for health care providers.

In addition, in the 1997-99 biennium, 3.0 GPR positions in WCLPPP were funded from the DHFS general program operations appropriation.

In addition to requiring establishment of the WCLPPP, Act 450 requested the Joint Legislative Council to study the implementation of the Act and the need for remedial legislation to reduce the incidence of lead poisoning and lead exposure of children in the state. The Special Committee on Lead Poisoning Prevention and Control was established by the Joint Legislative Council to conduct that study. (More information about the establishment, membership and activities of the Special Committee is included in Part II of this Report.)

B. DESCRIPTION OF BILL

- 1999 Senate Bill 232, relating to lead hazard control, lead-bearing paint hazard reduction, use of oil overcharge funds for lead hazard reduction in dwellings, providing restricted immunity from civil liability to certain property owners, employes and agents, requiring the Wisconsin housing and economic development authority to promote certain loan programs, granting rule-making authority and making appropriations.

1. Dwelling Standards

Senate Bill 232 requires owners of occupied dwellings constructed before January 1, 1950 to meet specified maintenance and treatment requirements unless their properties are found to be free of lead-bearing paint hazards. Owners of dwellings constructed on or after January 1, 1950, but before January 1, 1978, are permitted to have their properties inspected to determine whether any lead-bearing paint hazards exist and to follow the essential maintenance practices and lead hazard control requirements and agree to comply with the requirements for responding to notification of a child with lead poisoning which are set forth in the provisions of the bill relating to pre-1950 dwellings. The bill specifies three types of certificates that may be obtained by property owners: (a) a certificate of lead-free status; (b) a certificate of abatement; and (c) a certificate of lead hazard reduction.

Flow charts that summarize the dwelling standards and the process that property owners use for obtaining a certificate are set forth in **Appendix 4** to this Report.

2. Liability

Senate Bill 232 provides immunity from liability to property owners and their employes and agents for damages relating to lead poisoning or lead exposure if their property has received one of the three types of certificates specified in the bill. There are five exceptions to this immunity from liability. In addition, a grace period on liability is provided to persons for the first 90 days after they become property owners, with an exception for hazards caused by the owner or his or her employes or agents.

The bill establishes a Residential Lead Liability Fund which may issue policies that insure dwellings against liability resulting from lead-bearing paint hazards. The Fund would be administered by the OCI. The Commissioner of Insurance is required to promulgate rules specifying premiums, coverage limits and covered expenses for the policies and may promulgate other rules necessary to administer the Fund. Premiums must be sufficient to pay all costs of the Fund. In addition, the Fund may not pay damages to a claimant if any of the exceptions to immunity from liability apply.

Policies may be issued by the Fund only if the Commissioner of Insurance determines that insurance that provides this type of coverage is not sufficiently available in the insurance market.

3. Funding

Senate Bill 232 requires the DOA to use all available oil overcharge funds for the reduction of lead hazards in dwellings that is done to allow for, and in conjunction with, energy conservation activities. DOA figures provided to the Committee indicated that approximately \$280,000 was available in oil overcharge funds and the DOA indicated that additional funds may be made available to the state in the future.

The bill appropriates \$2.5 million GPR in fiscal year 2000-2001 to the DHFS to fund lead-bearing paint hazard reduction activities. Priority is given to grants and interest-free, deferred-payment loans to reduce lead hazards in housing and for the additional purposes of funding lead poisoning education and lead inspections and the expansion of lead poisoning prevention programs to additional counties.

The bill also directs WHEDA to aggressively promote its Home Improvement Loan Program and Rental Improvement Loan Program with property owners whose properties contain lead paint as mechanisms for funding the elimination, abatement or control of lead-bearing paint. WHEDA is also directed to attempt to make loans of \$5 million per year in total under the two programs for this purpose.

4. Other Provisions

Senate Bill 232 provides that lead dust test results are admissible in court or an administrative proceeding only if the test is conducted by a lead inspector or risk assessor who is certified by the DHFS and who is not the property owner or his or her employe or agent.

The bill amends current law to require, instead of permit, the DHFS to promulgate rules requiring facilities serving children under age six to obtain written evidence that the children have been tested for lead poisoning and to be inspected for lead hazards. Also, the bill requires the DHFS to promulgate rules relating to the conduct of lead inspections and certificates of lead-free status, lead abatement and lead hazard reduction; rules setting forth safe work practices to be followed and unsafe work practices to be avoided to prevent exposing occupants to lead hazards; and rules setting forth standard treatment measures that owners of dwellings built before 1950 must employ.

PS:RNS:AS:all:tlw;wu

APPENDIX 1

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

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Cochairperson

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APPENDIX 2

**LEAD POISONING PREVENTION AND CONTROL,
SPECIAL COMMITTEE ON**

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Vice Chairperson

CAROL OWENS
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Barron 54812-1230

CHAR THOMPSON
Executive Director
Foundation for Rural Housing
4506 Regent Street
Madison 53705-4954

STUDY ASSIGNMENT: The Committee is directed to: (1) evaluate the implementation of 1993 Wisconsin Act 450 and its effectiveness in reducing the incidence of lead poisoning and exposure in children; and (2) determine whether there is a need for additional legislation to address lead poisoning and exposure in children. The Committee is directed to report its recommendations to the Joint Legislative Council by March 1, 1997. [Based on SECTION 68 of 1993 Wisconsin Act 450.]

Established and Chairperson appointed by a July 19, 1996 mail ballot; members appointed by September 4 and 13, 1996 mail ballots.

16 MEMBERS: 1 Senator; 3 Representatives; and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Pam Shannon, Senior Staff Attorney; Richard Sweet, Senior Staff Attorney; Anne Sappenfield, Staff Attorney; and Wendy Ulrich, Administrative Assistant.

DESIGNATED AGENCY LIAISONS: Martin Evanson (DOA); Caroline Hoffman (WCDD); and Meg Ziarnik (DHFS).

(1) Appointed by a March 20, 1997 mail ballot to replace Tonya Mantilla, who resigned from the Committee on February 17, 1997.

December 29, 1997

Legislative Council
Special Committee on Lead
Poisoning Prevention & Control
Suite 401
One East Main Street
P.O. Box 2536
Madison, WI 53701-2536

Dear Committee Members:

I have submitted my ballot voting no for the proposed legislation WLCS: 0397/5 and at the last meeting, Timothy A. Ballering and I requested that we be allowed to submit a minority report providing more detail for the reasons for our negative vote.

After consulting with Mr. Ballering, we have the following joint concerns and/or objections to the proposed legislation:

1. We believe that any certification program should be voluntary. By making any portion of the legislation mandatory, we believe it creates a strict liability risk for property owners. In addition, we do not believe that there is the necessary funding and infrastructure of inspectors to handle a mandatory inspection system. The Department also voiced that concern at the last meeting.
2. A major concern is the lack of adequate funding for this legislation. While a provision was added that allows for some grants and some loans, we believe the level of funding is grossly inadequate compared to the magnitude of the problem. In addition, there is great skepticism that any funding will pass the legislature as was confirmed by two of the representatives on the committee. We believe that the primary funding should be in the form of grants which should be generated from revenue from paint companies and other sources of lead poisoning. We believe and our members that we represent believe that all of the costs will ultimately fall on apartment owners who are serving very low income and depressed housing markets and there is no ability to absorb the cost that will be suffered if this legislation passes.
3. Both Mr. Ballering and I were disappointed that the committee did not agree to more aggressively pursue the establishment of

Legislative Council
December 29, 1997
Page 2

education and training programs, especially programs that could be sponsored through the technical college system. This training is critical for maintenance workers, qualification training for inspectors, and for the residents of properties that contain lead hazards. We also believe the law should mandate tenant responsibility for maintaining and cleaning areas under their control. North Carolina has required such responsibility.

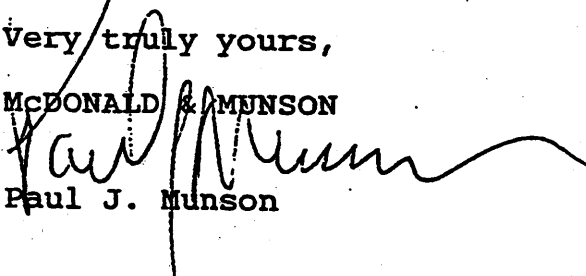
4. Liability protection and the lack of insurance coverage was a major concern of apartment owners and of both Mr. Ballering and I. We are pleased that the legislation attempts to address that issue but the loud and clear message from our members is that with the above noted shortcomings, our members would rather take the risk of having no insurance coverage and maintain current risks of litigation rather than have the legislation as drafted become law.

We appreciate the fact that throughout the process, there was an appropriate amount of give and take between committee members but in the end, in part for the sake of bring out legislation to meet certain scheduling concerns, funding issues and other critical issues to the success of this legislation were minimized and virtually ignored. Since we have seen a decline in numbers of children negatively affected by lead, it is our position that the problem will continue to get better with the law as is without creating a significant economic impact on apartment owners. Any increased economic impact on apartment owners will result in a negative impact on the availability of housing for low income individuals in this state which should be of a major concern for legislators as this package moves forward. The fear of our members is that this legislation represents an unfunded legislated mandate to apartment owners much like the federal government has historically passed unfunded mandates for state government. We do not like such mandates any more than state government appreciates such mandates from the federal system.

If the problem is as serious as some suggest, there must be a significant financial commitment made to the problem and our experience on the committee does not seem to suggest that there is such a willingness to make that commitment. Therefore, one must question if the problem is of enough import to require such extensive legislative control.

Very truly yours,

McDONALD & MUNSON

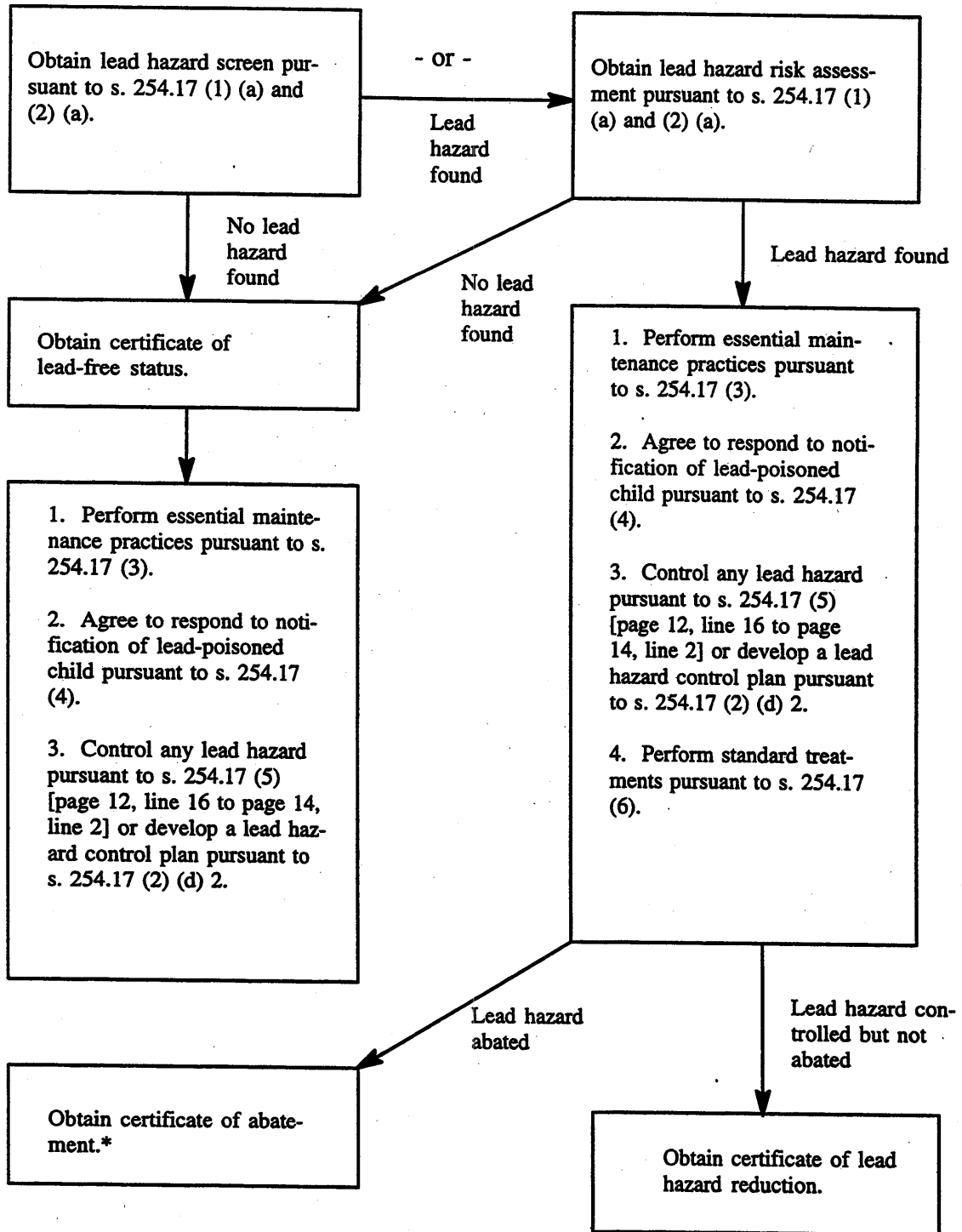

Paul J. Munson

Very truly yours,


Timothy A. Ballering

APPENDIX 4

MAINTENANCE PRACTICES AND STANDARDS TO CONTROL LEAD HAZARDS IN DWELLINGS CONSTRUCTED BEFORE JANUARY 1, 1950 (OPTION A)



*An owner of a dwelling for which two consecutive certificates of abatement have been issued is exempt from performing standard treatments on that dwelling pursuant to s. 254.17 (2) (b).

**MAINTENANCE PRACTICES AND STANDARDS TO CONTROL LEAD
HAZARDS IN DWELLINGS CONSTRUCTED BEFORE JANUARY 1, 1950
(OPTION B)**

1. Perform essential maintenance practices pursuant to s. 254.17 (3).
2. Agree to respond to notification of lead-poisoned child pursuant to s. 254.17 (4).
3. Control any lead hazard pursuant to s. 254.17 (5) or develop a lead hazard control plan pursuant to s. 254.17 (2) (d) 2.
4. Perform standard treatments pursuant to s. 254.17 (6).

Certified independent risk
assessor determines compliance

Obtain certificate of lead
hazard reduction.

COMMITTEE MATERIALS

Staff Materials

1. Staff Brief 96-1, *Lead Poisoning Prevention and Control in Wisconsin* (September 24, 1996).
2. A copy of Subchapter II of Chapter 254, Stats., relating to toxic substances.
3. MEMO NO. 1, *Vermont and Maryland Lead Poisoning Laws* (December 12, 1996).
4. MEMO NO. 2, *Recommendations and Other Items for Consideration by the Special Committee on Lead Poisoning Prevention and Control* (December 12, 1996).
5. MEMO NO. 3, *Standards of Care for Lead-Based Paint Hazard Prevention and Control* (December 13, 1996).
6. Draft letter, to Barbara Lucas, Black & Decker (February 19, 1997).
7. MEMO NO. 4, *Constitutionality of Statutory Limits on Liability* (June 6, 1997).
8. Letter, to Ms. Ann Brown, Chairman, U.S. Consumer Product Safety Commission (August 28, 1997).
9. Letter, to Joseph Leean, Secretary of the DHFS (August 29, 1997).
10. MEMO NO. 5, *Flow Charts of Options in WLCS: 0387/4* (November 25, 1997).
11. Letter, to James E. Doyle, Attorney General (December 17, 1997).

Other Materials

1. *Lead Poisoning Prevention: Directory of State Contacts 1995-96*, National Conference of State Legislatures (NCSL) (October 1995).
2. *The Residential Lead-Based Paint Hazard Evaluation and Control Act--Model Legislative Language*, NCSL (August 1996).
3. *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing--Summary of the Report of the Lead-Based Paint Hazard Reduction and Financing Task Force*, NCSL (June 1995).
4. Packet of materials corresponding to slide presentation from the Department of Health and Family Services (DHFS) (October 1, 1996).
5. Letter, from Committee Member Amy Murphy (October 4, 1996).

6. Testimony submitted by Committee Member Amy Murphy (October 15, 1996).
7. Testimony submitted by Laura Thacker, Director, Environmental Health, Racine Health Department (October 15, 1996).
8. Materials submitted by John Bartkowski, Chief Executive Officer, Sixteenth Street Community Health Center (October 15, 1996).
9. Articles, "How did kids of '50s survive lead in paint?", and "Taylor Tenants Oppose Razing," from *Chicago Sun Times*, submitted by Orville Seymer (October 15, 1996).
10. "Toxic Lead Lurks in Old Paint," *Milwaukee Journal Sentinel*, submitted by Laurie Casey (October 15, 1996).
11. Excerpt from a medical journal, *The Disorders, Part Two*, submitted by Laurie Casey (October 15, 1996).
12. Letter, from Paul W. Spiegel, Health Director, City of Oshkosh (October 23, 1996).
13. Testimony submitted by Nancy A. Eggleston, R.S., Environmental Health Sanitarian, Wood County Health Department (October 29, 1996).
14. Testimony, *HUD Lead Hazard Reduction Grant*, submitted by Sheila McNulty, Environmental Health Sanitarian, LaCrosse County Health Department (October 29, 1996).
15. Testimony submitted by Jim Vang, interpreter for CAP Services in Portage County (October 29, 1996).
16. Excerpt from *Community Health Plan -- Barron County*, submitted by Committee Member Kathy Newman (October 29, 1996).
17. Excerpt from *Barron County Health Department 1995 Annual Report*, submitted by Committee Member Kathy Newman (October 29, 1996).
18. Article, *Provisional Guide for Prevention and Control of Lead-Based Paint Hazards in Rental Housing*, submitted by Committee Member Amy Murphy (October 29, 1996).
19. Article, *Market Share Legislation: Holding the Lead Pigment Companies Accountable for Their Role in Lead Poisoning*, submitted by Committee Member Jonathan Bader (October 29, 1996).
20. Article, *The Role of Nutrition in the Prevention of Lead Poisoning in Children*, submitted by Joe Schirmer, DHFS (October 29, 1996).
21. Article, *Environmental Lead Toxicity: Nutrition As a Component of Intervention*, submitted by Joe Schirmer, DHFS (October 29, 1996).
22. Article, *Lead-Contaminated House Dust and Urban Children's Blood Lead Levels*, submitted by Joe Schirmer, DHFS (October 29, 1996).

23. Article, *Racial Differences in Urban Children's Environmental Exposures to Lead*, submitted by Joe Schirmer, DHFS (October 29, 1996).
24. Lead dust test results from schools submitted by Rodney Anderson (October 29, 1996).
25. Facsimile memorandum, *Poor School Indoor Air Quality*, submitted by Rodney Anderson (October 29, 1996).
26. Letter, and article, from Committee Member Margaret Layde (November 8, 1996).
27. Materials submitted by Doug Farquhar, J.D., Program Principal, Environmental Health, NCSL (November 13, 1996).
28. Letter, from Helen Krause, MPH, Health Officer, Rock County Health Department (November 13, 1996).
29. Letter, from Ada Duffey, Milwaukee Lead Information Center (November 15, 1996).
30. Materials submitted by Doug Farquhar, NCSL (November 21, 1996).
31. *Innovative Financing Sources for Lead Hazard Control*, Alliance to End Childhood Lead Poisoning, submitted by Committee Member Amy Murphy (November 21, 1996).
32. Article, *Lead Poisoning in Utero*, submitted by Committee Member Kathy Newman (December 19, 1996).
33. Article, "Some Question Extent of Lead's Risk to Kids Need to Remove Paint," *The Wall Street Journal*, submitted by Committee Member Tim Ballering (December 19, 1996).
34. Recommendations submitted by Committee Member Jane Bushey (November 29, 1996).

35. Recommendations submitted by Committee Member Jonathan Bader (December 9, 1996).
36. Recommendations submitted by Committee Member Amy Murphy (December 10, 1996).
37. Recommendations and attached materials, submitted by Committee Member Tim Ballering (December 8, 1996).
38. Recommendations submitted by Committee Member Margaret Layde (December 17, 1996).
39. Materials submitted by Committee Member Char Thompson (December 19, 1996).
40. Materials submitted by Martin Evanson, Department of Administration (DOA) (December 19, 1996).

41. Draft, *Overview of Several Current and Proposed State Approaches to Property Owner's Standard of Care and Liability Incentives*, submitted by Committee Member Jonathan Bader (December 18, 1996).

42. Table, submitted by Committee Member Char Thompson (January 22, 1997).

43. Facsimile letter, *A Consultant's View on the Lead Hazard Industry in Wisconsin*," submitted by Tom Demerse, General Manager, Green Bay Lead I.D. (January 18, 1997).

44. Facsimile memorandum, *Cost Benefit Analysis for the 402/404 Training and Certification Rule*, submitted by Doug Farquhar, NCSL (November 27, 1996).

45. Memorandum, *Excise Tax on Paint*, submitted by Kelsie Doty, Fiscal Analyst, Legislative Fiscal Bureau (December 11, 1996).

46. Proposal, *4 Hour Lead-Safe Work Principles & Techniques*, submitted by Committee Member Tim Ballering (December 18, 1996).

47. Materials submitted by Meg Ziarnik, DHFS (January 23, 1997).

48. Excerpts from Wisconsin Medical Assistance Provider Handbook, submitted by Marge Hannon Pifer, Acting Section Chief, Policy Section, Bureau of Health Care Financing, DHFS (January 23, 1997).

49. Overview of conversation with Dennis Livingston, Director, Community Resources, Inc., Baltimore, Maryland, submitted by Committee Member Jonathan Bader (January 23, 1997).

50. Article, *Effort against lead poisoning needs more funding for kids' sake*, submitted by Committee Member Margaret Layde (January 23, 1997).

51. Pamphlet, *Preventing Childhood Lead Poisoning*, State of Wisconsin DHFS, Division of Health (November 1993).

52. Materials submitted by Committee Member Kathy Newman, including a memo with attachments to Regional Office Directors from the Wisconsin Childhood Lead Poisoning Prevention Program (WCLPPP) (February, 3, 1997), and an article from *Rachel's Environment & Health Weekly* (January 16, 1997).

53. Memorandum, submitted by Eric Englund, Wisconsin Insurance Alliance (January 10, 1997).

54. Letter, from Fritz Ruf, Executive Director, Wisconsin Housing & Economic Development Authority (WHEDA) (January 27, 1997).

55. Letter, from David P. Ohrmundt (January 29, 1997).

56. Facsimile letter and attachments, from Committee Member Char Thompson (February 12, 1997).

57. Letter and attachments, from Kelly Rosati, Director of Government and Legal Affairs, Association of Wisconsin HMOs (February 20, 1997).

58. *Medicaid Reimbursement: Healthcheck, Lead Screening & Follow Up*, submitted by Rita Hallett, DHFS (February 21, 1997).

59. Pamphlet, *Lead Encapsulating Compound*, INSL-X Products Corporation, Stony Point, New York, submitted by P.K. McKinsey, INSL-X Products, Inc. (February 27, 1997).

60. Letter, from Ronald Heinritz (February 25, 1997).

61. "Lead-based paint coverage fades," *Milwaukee Journal Sentinel* (February 23, 1997).

62. Nutrition Action Healthletter, submitted by Committee Member Tim Ballering (February 27, 1997).

63. HHS News, *Blood Lead Levels Keep Dropping; New Guidelines Proposed for Those Most Vulnerable*, submitted by Jack Anderson, National Center for Lead-Safe Housing (February 27, 1997).

64. *Understanding the Massachusetts Lead Law: A Guide Prepared by the Conservation Law Foundation*, submitted by Jack Anderson, National Center for Lead-Safe Housing (February 27, 1997).

65. *Wis. Appeals Court Applies Pollution Clause to Lead Poisoning Injuries*, Mealey Litigation Report: Lead, Vol. 6, #10, submitted by Jack Anderson, National Center for Lead-Safe Housing (February 27, 1997).

66. *Essential Elements of New Lead Legislation: Creating Standards of Care, and Addressing Liability and Insurance*, submitted by Jack Anderson, National Center for Lead-Safe Housing (February 27, 1997).

67. *Lead (Pb) Hazard Awareness, 3-Hour Course*, submitted by Perry Manor, DHFS (February 27, 1997).

68. *Statement of Policy and Current Positions*, Institute of Real Estate Management, submitted by David Pride, Property Manager, Ogden & Co., Inc. (February 27, 1997).

69. Letter, from David Pride, Property Manager, Ogden & Co., Inc. (February 26, 1997).

70. Facsimile letter, from Committee Member Paul Munson (February 27, 1997).

71. Article, *CLEAR Corps Project Serves as a Pathfinder for Successful Interim Lead Controls*, submitted by Committee Member Tim Ballering (November/December 1996).

72. *Innovative Financing Sources for Lead Hazard Control*, Alliance to End Childhood Lead Poisoning, submitted by Jack Anderson, National Center for Lead-Safe Housing (April 7, 1997).

73. *The National Center for Lead-Safe Housing, 1996*, submitted by Jack Anderson, National Center for Lead-Safe Housing (April 7, 1997).

74. Article, *Overreaction Breeds Anxiety Over Lead Studies: Lead Detection and Abatement Contractor*, submitted by Committee Member Tim Ballering (May 5, 1997).

75. Manual, *Maintaining a Lead Safe Home*, by Dennis Livingston, submitted by Committee Member Jonathan Bader (June 9, 1997).

76. Testimony of persons representing Wisconsin Citizen Action, Parents Against Lead and Coalition for Mother Earth (June 9, 1997).

77. "Parents Against Lead, Stop Using Our Children as Lead Detectors Rally," Wisconsin Citizen Action (June 9, 1997).

78. An emergency rule and proposed permanent rule of the DHFS. The emergency rule is currently in effect and the proposed permanent rule is in the process of being promulgated. The title of ch. HSS 163, Wis. Adm. Code, as repealed and recreated by the proposed permanent rule, is "Certification for Lead Abatement, Other Lead Hazard Reduction and Lead Management Activities, and Accreditation of Training Courses."

79. Letter, from Committee Member Tim Ballering (June 11, 1997).

80. Chapters 5 and 7 of guidelines of the Department of Housing and Urban Development, submitted by Committee Member Tim Ballering (June 11, 1997).

81. Letter and attachments, from Committee Member Tim Ballering (June 16, 1997).

82. Copy of slides presented by Doug Farquhar, NCSL (July 22, 1997).

83. Letter with enclosures, from Committee Member Tim Ballering (August 7, 1997).

84. Letter, from Committee Member Paul Munson (August 6, 1997).

85. Materials submitted by Marty Evanson, DOA (August 13, 1997).

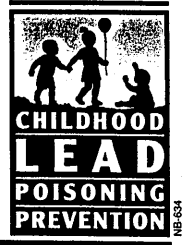
86. Facsimile, *New North Carolina Lead Poisoning Prevention Law*, submitted by Jackson L. Anderson, Jr., CPCU, Director of Finance and Insurance, The National Center for Lead-Safe Housing (September 2, 1997).

87. Testimony submitted by Jim Langdon, Chief Communications Officer, and Arlene Norris, Single Family Credit Manager, WHEDA (September 8, 1997).

88. *Lead Hazard Reduction Program (LHR)*, submitted by Committee Member Jonathan Bader (September 8, 1997).

89. Chart, *Pre-1979 Housing Units, By Tenure, By County*, submitted by Marty Evanson, DOA (September 8, 1997).

90. Excerpt from *Federal Register*, Vol. 61, No. 111, June 7, 1996, Proposed Rules, submitted by Marty Evanson, DOA (September 8, 1997).
91. Letter, from Joe Lcean, Secretary, DHFS (September 16, 1997).
92. Article, "Financing State and Tribal Lead Programs," *1997 Supplement to Lead Poisoning Prevention: A Guide for Legislators*, submitted by NCSL (July 1997).
93. Letter, from Committee Member Tim Ballering (September 18, 1997).
94. Letter, from Committee Member Paul Munson (September 19, 1997).
95. Letter and attachments, from Brian C. Lee, U.S. Consumer Product Safety Commission (September 30, 1997).
96. Letter, from Ellyn McKenzie and Renee Baxmann, Sixteenth Street Community Health Center (November 13, 1997).
97. Chart, *Households By Tenure, Income Group and Age of Occupied Unit: 1990*, submitted by Marty Evanson, DOA (December 4, 1997).
98. Facsimile, *New Lead Poisoning Efforts Launched*, submitted by Committee Member Jonathan Bader (December 4, 1997).
99. Facsimile from Sharon Pendleton, submitted by Committee Member Jonathan Bader (December 4, 1997).
100. Facsimile, *Summary of Wisconsin Housing, 1,450,479 Housing Units Built Before 1980*, submitted by Committee Member Jonathan Bader (December 4, 1997).
101. Letter, from David P. Ohrmundt (December 15, 1997).
102. Letter, from Ed Norman (February 13, 1998).



CITY OF MILWAUKEE HEALTH DEPARTMENT
CHILDHOOD LEAD POISONING PREVENTION PROGRAM

Johnston Community Health Center • 1230 West Grant Street • Milwaukee, WI 53215-2798
phone (414) 225-LEAD • fax (414) 286-0715

TO: Senate Committee on Economic Development, Housing and Government Operations

FROM: Amy Murphy, MPH
Manager, Childhood Lead Poisoning Prevention Program
City of Milwaukee Health Department

RE: Senate Bill 232

DATE: January 21, 2000

On behalf of the City of Milwaukee Health Department, I submit the following comments regarding SB 232. Although I served on the Joint Legislative Council Special Committee which drafted the bill, I have serious concerns about the impact that this law would have on current innovative efforts that are underway in Milwaukee. To this end, I urge you to seriously consider the needs of the City of Milwaukee (which is disproportionately effected by childhood lead poisoning in the State) and the current status of childhood lead poisoning prevention efforts as this bill is considered for passage. Specific comments follow:

Introduction: The current draft of SB 232 lacks focus to effectively prevent childhood lead poisoning in Wisconsin. Scientific studies and experience reveal that children are primarily lead poisoned in pre-1950, rental property located in low-income neighborhoods. This is due to deferred maintenance of painted surfaces that contain lead. To this end, regulating all properties (rather than focusing on rental properties within high risk geographic neighborhoods) and regulating renovation and rehabilitation activities through administrative rule will **not** significantly impact the childhood lead poisoning problem in Wisconsin.

(1) **Section 254.17** should only require prevention and control of lead-based paint (LBP) hazards in high risk geographic areas and only on rental property. Owner occupied properties should be addressed through education, training and funding.

(2) **Section 254.177.1.c** requires that DHFS promulgate rules on safe work practices for repair and remodeling. This section should be limited to lead hazard control activity undertaken with intent on high risk rental property in focused geographic areas. Less than 10% of lead poisoning

cases in the State occur because of renovation and remodeling, as a result, these activities should be addressed through targeted education - not regulation. Further, the legislature should seriously consider how these rules will be effectively implemented and enforced?

As the law is written right now, it appears that *all* pre-1950 properties in the state would require a certificate of lead safety and that *all* renovation and rehabilitation activities would be defined by administrative rule. Again, I urge you to assess if these approaches are realistic and more importantly if they get to the root of the childhood lead poisoning problem in Wisconsin. Be assured that focused activities will bear results.

(3) Section 234.495: Significant resources are needed to support lead hazard reduction of homes that pose the greatest threat to young children. However, homes that are most hazardous to children and a priority for lead hazard reduction are usually not valuable enough to justify a loan for home improvements. If WHEDA is to make money available, it should be in the form of grants to subsidize abatement of high risk surfaces - ie; windows - under the condition that lead-safe maintenance is conducted on less risky painted surfaces. [Note: Through a HUD research grant which was conducted statewide from 1993-1998; it was determined that windows are the most high risk surface in a home related to lead exposure.] The Legislature should consider allocating separate funding for lead hazard reduction grants to off-set a portion of the costs of the requirements in targeted, high risk housing across the State.

(4) Section 3 - 20.435 The \$2.5 million dollars appropriated to DHFS should be targeted proportionally to areas of the state where there is the greatest need. For example, in 1997-1998, Milwaukee reported 58% of children exposed to dangerous levels of lead in Wisconsin.

Milwaukee currently does not have the inspectional resources to conduct lead inspections for lead poisoned children as proposed by this law. Although it is the right thing to do, we would require additional resources for inspectors to comply with this requirement. Requirements need to be funded.

(5) Section 254.162 The requirement that institutions and programs obtain written evidence that each child under age 6 years of age obtain a lead test should be changed to children less than 3 years old as this is the most high risk age group. (Note: The State of Wisconsin and the City of Milwaukee recommended that children 3-6 years old only be tested if they fall into a high risk category. However, all children less than three years of age should be tested.)

(6) Section 254.166 The requirement that efforts be made to provide prior notice of lead inspection to the owner in the case of a lead poisoning should be deleted as these situations pose an imminent health hazard.

(7) The requirement that day care facilities have lead inspections and hazard reduction will result in a major fiscal impact. This area of the law needs to be closely looked at and critically evaluated to ensure that requirements (and funding) facilitate compliance.

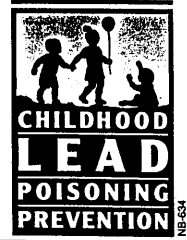
(8) The terms **Essential Maintenance Practices (254.17-3)** and **Standard Treatments (254.17-**

6) are already used and defined in the Milwaukee's Pilot Project for Lead-Based Paint Hazard Control in Residential Rental Property (66-41-75) passed in February of 1999. The definitions within SB 232 are not consistent with those currently utilized in Milwaukee and would confuse (and possibly) override very focused and positive efforts here in Milwaukee - where the majority of lead poisoning risk resides. We urge you to adopt Milwaukee's definitions or to allow Milwaukee to develop their own rules.

(9) **Section 254.173** - should be a two-way rebuttable presumption that provides immunity from civil liability for property owners who are in compliance with the standards via a certification, but that also protects the rights of tenants by "presuming" that the housing unit is the source of the poisoning if the property owners does not comply by having an active certificate. I believe that the two- way rebuttable presumption was in the original bill.

(10) **Section 606.05 - State Residential Lead Liability Fund** - This portion of the bill has great potential to establish the State of Wisconsin as a government leader in childhood lead poisoning prevention. However, this section doesn't go far enough and should be made stronger. Rather than "may" the wording should be changed to "shall" to require that the State Residential Lead Liability Fund be established to provide a positive incentive and protection for property owners who secure a certificate based on lead-safe housing standards. Once private insurance companies see that a lead-safe housing standard is insurable, they will likely, voluntarily, come back into the market and provide lead liability insurance for responsible owners of rental property. In the meantime, state government has an opportunity to provide positive leadership in this regard.

In closing, I would like to recognize the excellent support provided by the Legislative Council Staff and the leadership of Senator Jauch and Representative Spencer Coggs in prioritizing childhood lead poisoning as an issue of statewide concern. Don't hesitate to call me with any questions or concerns that you may have (414-286-8028).



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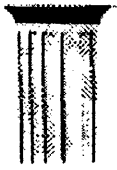
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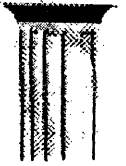
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Legislative Update



Orv Seymer, Legislative Chair

Lead Poisoning according to Britannica.com which is the online version of the Encyclopedia Britannica, is also known as plumbism, deleterious effect of gradual accumulation of lead in body tissues, as a result of repeated exposure to lead-containing substances. "Britannica .com" lists lead - based paint as one of the many sources of lead poisoning in addition to lead pipes, toys that have paint or varnishes, fumes from the petroleum industry, printing, pottery, cutlery and storage battery manufacturing. Other sources may include agricultural use of pesticides which contain lead compounds that may be sprayed on fruits or vegetables and last but not least the constant exposure to exhaust from motor vehicles powered by fuel which contains tetraethyl lead, this last element is suspected of causing lead poisoning, especially in children.

They go on to say that lead in tissues may be removed gradually with substances such as the calcium salts of ethylene diamine, tetraacetic acid, and penicillamine. They go on to say that in most cases recovery is complete.

Lead was used in cosmetics and eye salves in ancient Egypt and was used as a cure for fever, rash, indigestion and lust in ancient Rome and some have said that is what caused the fall of the Roman empire.

In the early part of the 20th century (we are now in the 21st century) lead poisoning was a fairly common problem

with symptoms such as convulsions, coma, brain damage and in some rare cases death.

As most of us know by now lead was used in paints and coatings from the early part of the 20th century and was available in paints until the early 1970's. But lead was also used as solder in the seams of cans until the early 1990's and tetra-ethyl lead was used as an anti-knock additive in gasoline until the mid 1980's.

Since the removal of lead from gasoline and lead from solder in cans along with the awareness of lead in paint and the damage that it can do, the blood lead levels of young children have dropped dramatically.

It seems that this dramatic drop was not enough for the child advocates or the "get the lead out crowd". In 1991 the Center for Disease Control (CDC) changed the threshold for what is considered elevated blood levels. In the 1960's children averaged more than 20 micrograms of blood lead level. This change resulted in the problem population increasing eighteenfold. It should not surprise anyone that the anti-lead legislation followed along with the lawyers who saw a lawsuit waiting to happen.

Marjorie Smith who is a psychologist at the Thomas Coram research Unit at the Institute of Education at London University says "We looked at more than twenty-six epidemiological studies conducted since 1979, and found that the effect of lead at low levels on IQ was

consistently the smallest of any of the factors that have been studied," Smith says. Low level blood lead was linked to slight deficits in some psychometric measures, but these effects were so small (about one IQ point, on average) that it was impossible to determine what caused them, or if they had any real significance. In any case, the effect of lead was swamped by every other variable. For example, birth order and parental education had several times the impact on IQ of low-level blood lead, as did the amount of parental attention.

"What could be concluded was that parents should worry less about low-level blood lead and more about reading their children bedtime stories," Smith says. "But the approach here in Europe has consistently been more measured and much less reactive than it's been in the United States."

We, as rental property owners have been led to believe that deteriorating paint from our buildings is the major if not only source of the lead poisoning problem but other researchers seem to disagree with the anti-lead advocates. Abraham Wolf who is an assistant professor of psychology at Case Western Reserve School of Medicine says, "There is no question that lead at high levels is dangerous, but the scientific literature does not support the claim that a child will be retarded in any way by low levels."

- Continued on page 13

~ Legislative Update Cont'd

Howard Mielke is an environmental toxicologist at Xavier University of Louisiana is an expert on lead in soils and he says that lead in soil is consistently overlooked by federal agencies. Mielke found that children's blood levels correlate neatly with the lead levels in the soil near their homes, which in turn correspond with past traffic patterns near their homes. "In 1970 when many cars were getting just ten miles to the gallon in stop and go traffic, a busy intersection might have gotten as much as four or five tons of lead dumped on it in a year. That's roughly equal to having a lead smelter at every major intersection in the United States. As a result, there is a very, very large reservoir of lead in soil."

What we must understand is that lead in paint and lead from gasoline are different. Lead from gasoline emissions is almost completely bioavailable as soon as it exits the exhaust pipe. What this means is that it can get into the blood stream much more easily than the lead from paint. It is true that the lead in paint can become bioavailable by being ground into small particles or dust, but this is much more easily controllable than the lead that is in the environment. It has been proven that if proper household cleaning is done and if children receive proper nutrition (adequate amounts of calcium and iron and possibly other trace minerals), it reduces the blood levels dramatically.

This also points to the importance of the "Door Mat Study" which we have talked about extensively. Just to

Owner Magazine

remind you, this is a study in which occupants wiped their feet and/or removed their shoes before entering their homes. When they did this lead levels inside dropped drastically. We have also talked about the high levels of lead in major cities in Japan due also to lead in gasoline, yet the blood lead levels of children in Japan are relatively low because of the strict hygiene of the Japanese people. Very few people in Japan wear their shoes inside their homes and most fast food restaurants in Japan have a wash basin near the entrance so that children actually wash their hands before eating. When owners attend public meetings and suggest these simple and cost effective measures, they are publicly

ridiculed. The phrase, "We are from the government and we are here to help you." comes to mind because everyone knows that we need the government to take care of us.

It is no secret that advocacy groups always like to have a "devil". Landlords or rental owners have traditionally had a bad reputation which we all know is often undeserved but because of that we are easy targets for the advocates. The "junk science" runs rampant while the real facts are buried. I have tried to present a few of the facts here that you will not get from most health department officials. You might want to mention a few of these facts to your legislators in Madison when you call them about SB 232. If we don't, no one else will.



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TO: Senate Economic Development, Housing,
and Government Operations Committee

FROM: Michael Theo and Rick Staff

DATE: January 21, 2000

RE: Lead Paint Legislation (SB 232)

Wisconsin's rental real estate market is currently in a state of apprehension and confusion in light of the state Supreme Court's recent ruling in *Antwaun A. v. Heritage Mutual Insurance Company*. We believe a substitute amendment to SB 232 offers the best opportunity for the legislature to address the unanswered questions raised by the *Antwaun* decision in the brief time remaining in the session.

Background

A new public policy debate has arisen regarding the duty of an owner of pre-1978 rental properties to test for lead paint. This latest lead paint debate was created by the Wisconsin Supreme Court's decision in *Antwaun A. v. Heritage Mutual Insurance Company*. In the *Antwaun* case, the Court held that landlords have a duty to test for lead-based paint (LBP) whenever they know, or in the use of ordinary care, should know, that there is peeling, flaking, or chipping paint in residential rental property constructed before 1978. This ruling was based on common law negligence theories.

Since the *Antwaun* decision, the market has reacted with understandable fear and uncertainty as to the new potential liability for property owners under the Court's ruling. The *Antwaun* decision confirms a landlord's duty to test for LBP but does not specify what the landlord is to do if LBP is discovered. It is clear that state legislation is necessary to delineate the duties and the standard of care required of rental property owners in light of *Antwaun*.

Toward this end, the WRA has been meeting with key legislators, legislative staff and support agencies, the Wisconsin Apartment Association, the Apartment Association of Southeastern Wisconsin, and property owners and managers from across Wisconsin, to identify the salient issues for state legislation.

Political Reality Check

When the legislature reconvenes on January 25, there will be less than 30 floorperiod days remaining in the session. Moreover, many observers believe the partisan disagreements that characterized relations between the two Houses in 1999 will continue and perhaps intensify in light of the upcoming fall elections.

Therefore, it is a political fact that if any meaningful lead paint legislation is to pass this session, the bill will have to be brief, understandable and agreed upon by all the major stakeholders in this debate. Crafting such legislation will require restraint and cooperation from all parties.

- More -

WRA Proposal

To address the unanswered questions raised by the *Antwaun* decision, we believe this legislation must address the following 4 major issues:

- **Certified Workers:** Establish clear standards for training and certifying lead rental property owners/workers to work with LBP in their properties.
- **Owner Response Standards:** Establish clear standards that residential rental property owners can meet in order to receive a certificate indicating that the property is lead free or lead safe as of the date of issuance.
- **Liability Limitations:** Establish clear liability limits for residential property owners who effectively remove or control lead hazards.
- **Funding:** Create tax incentives and state financial assistance for residential property owners to remove or control lead hazards.

1. *Certified Worker Standards*

- **Certification of Rental Property Personnel:** DHFS establishes standards for the certification of lead rental property owners/workers who are authorized to test for LBP and other lead hazards on their own properties, and to engage in LBP abatement activities which will control or remove the hazards.

2. *Owner Response Standards*

- **Triggering Events:** A landlord has a duty to inspect/test for LBP per the *Antwaun* case if deteriorating paint is observed or a tenant notifies the landlord in writing that the paint is chipping, peeling, or flaking in a rental property built before 1978. Under current law, the state may inspect a property for LBP if a child under 6 years old has been reported to have elevated blood lead levels and may order the owner to reduce or eliminate the lead hazard.
- **Hazard Reduction Standards:** Once it is established that a rental unit has a lead hazard, the owner must act to avoid potential liability. The owner has two options -- either make the unit lead free or lead safe. These standards shall be set by DHFS.
- **Certification of Compliance:** A certificate of compliance may be issued upon the successful completion of work done to make a unit lead free or lead safe. Upon completion of the work to reduce or eliminate lead hazard, a certified lead inspector/assessor may inspect the property and provide a certificate verifying that the unit is lead safe or lead free as of the date of issuance. The certificate may be revoked if the property owner violates any of the conditions specified by the certificate.

Insurance Standards: With established state standards for assessment, clean up and compliance, it is assumed that the highly competitive private insurance market will begin to seriously consider creating an insurance product for property owners for lead paint hazards. If such private insurance does not become available in the marketplace, the state should consider subsequent legislation creating a state insurance pool for owners.

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3. *Liability*

- Owners are not liable for lead poisoning of tenants if, prior to the time of poisoning or exposure occurred, the owner or his/her employees or agents (if certified):
 - a. inspected the dwelling/unit within the last year and established and documented that no lead paint hazard exists (annual inspection and documentation required);
 - b. provided a copy of a (state approved) lead paint hazard warning to tenants prior to occupancy;
 - c. provided a written statement to tenants instructing them to immediately notify the owner if tenant discovers a LBP hazard
 - d. at the time of exposure, owner and his/her agents or employees had no notice or knowledge of a LBP hazard in the property.
- Rental property owners are conditionally immune from liability for lead poisoning of tenants if the owner has a certificate of lead-free status or lead-safe status. There would be no immunity, however, if the owner or his employee or agent obtained the certificate by fraud; violated a condition of the certificate; created a LBP hazard during renovation, remodeling, maintenance, or repair after receiving the certificate; or failed to timely respond to notice from a tenant or the health department that a LBP hazard has recurred. There also would be no immunity if the lead poisoning or lead exposure were caused by a source of lead in the dwelling or unit other than from LBP.
- Liability would be limited during the period after work has been completed by certified persons and an inspection has been ordered and the time that a lead-safe or lead-free certificate has been issued. There will be no liability limitations, however, if the owner or his employee or agent either created a lead-bearing paint hazard during renovation, remodeling, maintenance, or repair after receiving the certificate, or failed to timely respond to notice from a tenant or the health department that a lead-bearing paint hazard has recurred. There also would be no liability limitations if the lead poisoning or lead exposure were caused by a source of lead in the dwelling or unit other than lead-bearing paint.
- An owner of a rental unit is conditionally immune from liability for acts or omissions related to lead poisoning that occurs during the first 90 days after the owner acquires the unit, except if the lead poisoning results from a lead hazard created by the owner or his or her employees or agents.

4. *Funding*

- The state tax code is amended to provide for tax incentives for owners to conduct activities to make their property either lead free or lead safe. Such amendments should include, but should not be limited to, the ability to reduce taxable income (personal or business) by an amount equal to the lead paint remediation expenditures.
- WHEDA shall be directed to aggressively promote its home improvement loan program and rental improvement loan program with property owners whose properties contain lead paint as mechanisms for funding remediation efforts.

Conclusion

We believe Wisconsin's real estate market sincerely needs this legislation. On behalf of property owners statewide, we consider this issue a top priority for the industry. We urge adoption of a substitute amendment to SB 232 to address the issues raised in this memo and encourage your timely passage of the amended bill.

K. A. H.

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Bob
could you send me
the changes that the wis
apprais. have added to this
bill.

Thanks.