

Guidebook for Developing State and Local Lead-based Paint Enforcement Bench Books

How-to information, advice, and resources for non-lawyer
lead poisoning prevention professionals, advocates, and others

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**National Center for
Healthy Housing**

Foreword

This *Guidebook* is designed to help lead poisoning prevention professionals and others develop “bench books” (legal reference manuals) for judges who adjudicate state and local enforcement cases involving lead-based paint.

The purpose of such a bench book is to promote enforcement aimed at eliminating lead-based paint hazards by:

- Increasing judges’ awareness about lead poisoning and lead-based paint hazards;
- Sensitizing them to the importance of enforcing cases involving lead-based paint; and
- Identifying the variety of laws that can be applied to compel risk reduction work.

This *Guidebook* does not tell which laws apply in a particular state, county, or city. Rather, it tells the reader what laws to look for; how to find them; and how to compile the laws, and other information, into a useful reference.

A separate publication, *The Federal Lead-Based Paint Enforcement Bench Book*, also published by the National Center for Healthy Housing, discusses federal lead-based paint laws and enforcement programs.

Guidebook for Developing State and Local Lead-based Paint Enforcement Bench Books

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This book is intended solely as a reference. Nothing herein is intended to constitute or substitute for legal advice.

1. Introduction

A. Lead Poisoning and Lead-based Paint

Lead is a poison to the human body. Lead poisoning continues to be a major environmental health problem in the United States, although it is completely preventable.¹ The most common source of childhood lead poisoning is lead-based paint (LBP) in older homes and buildings. The primary exposure pathway is the ingestion of lead-contaminated *dust*.²

The serious and potentially lethal effects of lead poisoning are undisputed.³ Lead persists and accumulates in the body. While lead is potentially harmful to individuals at any age, it is particularly dangerous to children under the age of six, due to their normal hand-to-mouth behavior (which increases exposure by ingestion) and increased physiological ability to absorb lead.

Lead exerts a broad array of deleterious effects on multiple organ systems.⁴ It causes neurological damage, thus contributing to intellectual impairment, developmental delays, learning disabilities, memory loss, hearing problems, attention deficits, hyperactivity, and behavioral disorders. Severe cases of childhood lead poisoning can result in organ failure, convulsions, coma, and death. Exposure to lead before or during pregnancy can alter fetal development and cause miscarriages. The damage from lead poisoning is irreversible. Studies have linked lead poisoning to aggression, juvenile delinquency, and adult criminal behavior.⁵ Also, exposure to lead in adults has been associated with reproductive problems in males and females, memory and concentration problems, hypertension, nerve disorders, cardiovascular damage, and other maladies.⁶

An estimated 310,000 children in the United States have elevated blood-lead levels (EBLLs)⁷ – and millions of people have the continuing adverse effects of prior lead poisoning. Even children who appear

¹ See e.g., U.S. Environmental Protection Agency (EPA), *Basic Information*, www.epa.gov/lead/pubs/leadinfo.htm#health.

² See e.g., 73 Fed. Reg. 21692, 21694 (Apr. 22, 2008) (Preamble to EPA's final Renovation, Repair and Painting Rule). This preamble provides an excellent summary of current knowledge regarding lead poisoning.

³ See e.g., EPA, *Basic Information*, *supra* note 1. See also U.S. Centers for Disease Control and Prevention (CDC), *General Lead Information: Questions and Answers*, www.cdc.gov/nceh/lead/faq/about.htm. See also Appendix 2, *Overview of Lead and Children's Health*, and references therein.

⁴ 73 Fed. Reg. 21692, 21693, *supra* note 2.

⁵ Wright, J.P., Dietrich, K.N., *et al.*, *Association of Prenatal and Childhood Blood Lead Concentrations with Criminal Arrests in Early Adulthood*, 5 PLoS Medicine 5, e101 (May 2008). http://medicine.plosjournals.org/archive/1549-1676/5/5/pdf/10.1371_journal.pmed.0050101-L.pdf.

⁶ See EPA, *Basic Information*, *supra* note 1; 73 Fed. Reg. 21692, 21693, *supra* note 2.

⁷ See CDC, *General Lead Information: Questions and Answers*, *supra* note 3. CDC defines an elevated blood-lead level to be equal to or more than 10 micrograms per deciliter ($\geq 10\mu\text{g/dL}$). www.cdc.gov/nceh/lead/surv/stats.htm. There is no safe exposure level.

healthy can have dangerous levels of lead in their bodies.⁸ The costs to communities to address the effects of lead poisoning – for medical intervention; special education; and juvenile, criminal justice, social, and other services – is staggering.⁹

Although there are numerous sources of lead poisoning,¹⁰ the major source is lead-contaminated dust, paint, and soil in pre-1978 homes, schools, or other locations that children frequent. The use of lead in residential paint and certain other consumer products became illegal in 1978.¹¹ LBP, however, is pervasive in buildings across the nation constructed prior to that time.¹² Approximately 38 million pre-1978 dwellings in the nation have LBP.¹³ Approximately 24 million of these have deteriorated (chipping, peeling, flaking) LBP, and elevated levels of lead-contaminated dust.¹⁴ More than 4 million of these dwellings are homes to one or more young children.¹⁵

Like any paint, LBP does not just disappear. It persists and chips, flakes, powders into dust and soil over time, or otherwise deteriorates if not properly maintained. The lead content makes deteriorated paint a hazard. LBP must be eliminated, or properly maintained, using lead-safe work practices.

B. National Commitment to Eliminate Lead-based Paint Hazards

In 2000, the U.S. Environmental Protection Agency (EPA), U.S. Department of Housing and Urban Development (HUD), U.S. Centers for Disease Control and Prevention (CDC), and other federal entities established the national goal to “eliminate lead paint hazards in housing where children under six live” by 2010, through “enforcement of lead safety laws and regulations” and other means.¹⁶ Even after 2010, continuing effort will be needed to maintain (or improve upon) success achieved by that time, since LBP will be present in millions of pre-1978 properties for the foreseeable future.

⁸ See EPA, *Basic Information*, *supra* note 1.

⁹ One study estimates that lead poisoning costs \$43.4 billion in the United States. See Landrigan, P.J., Schechter, C.B., et al., *Environmental Pollutants and Disease in American Children: Estimates of Morbidity, Mortality, and Costs for Lead Poisoning, Asthma, Cancer, and Developmental Disabilities*, 110 *Environmental Health Perspectives* 7, 721-728. <http://ehpnet1.niehs.nih.gov/docs/2002/110p721-728landrigan/abstract.html> or www.ehponline.org/docs/2002/110p721-728landrigan/abstract.html.

¹⁰ Other sources of lead include toys, toy jewelry, candies, candy wrappers, cosmetics, mini-blinds, and other consumer products; hobbies (e.g., pottery making, stained-glass, refinishing furniture); older furniture and items with lead-containing surface material; lead from work (e.g., from automobile batteries), which can be brought into the home on hands or clothing; drinking water (lead pipes, solder, brass fixtures, valves which leach lead); food and liquids stored in lead crystal or lead-glazed porcelain or pottery; and so-called “folk” home health remedies (azarcon and greta, used for indigestion; and pay-loo-ah, used for rash or fever). See e.g., CDC, *General Lead Information: Questions and Answers*, *supra* note 3. Recently, artificial turf also has been found to contain lead.

¹¹ 16 C.F.R. § 1303.

¹² See e.g., www.cdc.gov/nceh/lead/faq/tips.htm.

¹³ See e.g., 73 Fed. Reg. 21692, 21790, *supra* note 2.

¹⁴ See CDC, *General Lead Information: Questions and Answers*, *supra* note 3.

¹⁵ *Id.*

¹⁶ President’s Task Force on Environmental Health Risks and Safety Risks to Children, *Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards* (Feb. 2000). www.cdc.gov/nceh/lead/about/fedstrategy2000.pdf.

C. Enforcement's Contribution to Eliminating Lead-based Paint Hazards

1. Federal Lead-based Paint Laws

The federal government has several legal authorities pertaining to LBP and LBP hazards:

- The Residential Lead-based Paint Hazard Reduction Act of 1992,¹⁷ enacted as Title X of the Housing and Community Development Act of 1992 (Title X)¹⁸;
- The Disclosure Rule, pursuant to Title X¹⁹;
- The Lead Safe Housing Rule, pursuant to Title X²⁰;
- The Toxic Substances Control Act (TSCA),²¹ and regulations thereunder:
 - The Pre-renovation Education Rule,²²
 - The Renovation, Repair, and Painting Rule,²³
 - The Lead-based Paint Activities, Certification, and Training Rule (LBP Activities Rule)²⁴; and
- The Resource Conservation and Recovery Act (RCRA) Section 7003 imminent hazard authority.²⁵

The *Federal Lead-Based Paint Enforcement Bench Book* examines these laws.²⁶

But for two exceptions, these federal laws do *not* impose an affirmative obligation to perform LBP “risk reduction” work (any project to prevent or eliminate LBP hazards²⁷), and do *not* empower federal authorities to demand such work.²⁸ Instead, federal LBP laws generally establish disclosure obligations, and performance standards for activities that disturb LBP. See Fig. 1, *Authority to Compel Work to Address LBP Hazards or Other Deleterious Conditions*.

The two exceptions are the Lead Safe Housing Rule, and RCRA Section 7003. The Lead Safe Housing Rule applies only to federally owned or assisted pre-1978 housing, which accounts for approximately 3% (1.3 million) of the 38 million pre-1978 housing units with LBP.²⁹ RCRA Section 7003 applies to an “imminent and substantial endangerment” involving the handling, storage, treatment, transport, or disposal of solid waste (or hazardous waste). EPA has invoked Section 7003 to respond to LBP hazards on only two occasions.

¹⁷ 42 U.S.C. §§ 4851-4853a.

¹⁸ Pub.L. 102-550 (Oct. 28, 1992).

¹⁹ 24 C.F.R. Part 35, Subpart A (HUD) and 40 C.F.R. Part 745, Subpart F (EPA), *pursuant to* 42 U.S.C. § 4852d (Section 1018 of Title X).

²⁰ 24 C.F.R. Part 35, Subparts B-R, *pursuant to* Sections 1012 and 1013 of Title X.

²¹ 15 U.S.C. §§ 2601-2692.

²² 40 C.F.R. Part 745, Subpart E.

²³ 73 Fed. Reg. 21692 (Apr. 22, 2008), *supra* note 2, *to be codified at* 40 C.F.R. Part 745, Subpart E.

²⁴ 40 C.F.R. Part 745, Subpart L.

²⁵ 42 U.S.C. § 6973.

²⁶ See www.nchh.org.

²⁷ “Risk reduction” and other generic terms used in this *Guidebook* are explained in section I.D.4, below.

²⁸ Violators may commit to perform *voluntary* risk reduction work in settlement agreements that resolve federal enforcement actions against them.

²⁹ See e.g., Exhibit 4-3 in HUD’s economic analysis for the final Lead Safe Housing Rule (Sept. 7, 1999). www.hud.gov/offices/lead/library/enforcement/completeRIA1012.pdf.

2. State and Local Housing and Lead-based Paint Laws

State and local laws can be powerful tools in preventing and eliminating LBP hazards. Virtually every sizeable jurisdiction has a housing code, health code, nuisance law, or other law that imposes generic maintenance or safety requirements. Many such laws also empower authorities to demand that property owners correct deleterious conditions. Furthermore, an increasing number of jurisdictions have laws specifically to make property owners perform LBP risk reduction work. Consequently, vigorous enforcement of state and local laws offers greater potential to eliminate LBP hazards than does federal enforcement alone.

Fig. 1: Authority to Compel Work to Address LBP Hazards or Other Deleterious Conditions

Federal LBP Laws		State and Local Laws	
Disclosure Rule	No	LBP Law	The answer for each depends upon the law in the state or locality.
Pre-renovation Education Rule	No	Housing Code	
Renovation, Repair & Painting Rule	No	Property Maintenance Code	
LBP Activities Rule	No	Nuisance Law	
Lead Safe Housing Rule (For federally owned/assisted housing only)	Yes	Health Code, or Sanitary/Sanitation Code	
RCRA § 7003 (For an “imminent and substantial endangerment”)	Yes	Laws for buildings or conditions that are “unsafe,” “unfit,” “dangerous,” “uninhabitable,” “hazardous,” et cetera. Building Code Rental property laws, such as: - Multiple Dwelling Laws; - Certificate of Occupancy laws; - Rental Registry laws; - Rental Housing Quality laws; - Landlord-tenant statutes; and - the Uniform Residential Landlord and Tenant Act (URLTA).	

D. *Guidebook for Developing State and Local Lead-based Paint Enforcement Bench Books*

1. Purpose of this *Guidebook*

This *Guidebook* is essentially a *book about creating a book*: your own, jurisdiction-specific “bench book” - a legal reference manual for judges (and others) – to promote enforcement of cases involving LBP in your community.³⁰

In many communities, judges preside over courts of *general* jurisdiction, and only occasionally adjudicate lead or housing cases. In such jurisdictions, judges may have little exposure to the issues and laws associated with cases that involve LBP. They may be unaware of the effects of lead poisoning, its relation to LBP hazards, and the importance of enforcing existing laws as a means to eradicate this health problem. A bench book that educates judges about such matters would promote enforcement aimed at eliminating LBP hazards and preventing lead poisoning.³¹

A Tip

“Law” is a generic term which includes and may refer to:

- A legislative enactment (statute, act, ordinance, code, et cetera);
- An agency regulation (rule);
- A court decision (ruling or opinion); or
- A constitution or local charter.

“Code.” A code organizes the law on a common topic (e.g., housing) and presents it in a sequence of numbered provisions (paragraphs). A local housing code, state health code, and the Code of Federal Regulations are examples.

“Ordinance.” A local statute typically is called an “ordinance.”

For more information, see the generic terms in section I.D.4, below – and see Appendix 3, *Tips on Understanding the Law*.

A bench book provides background information, and an objective recitation and analysis of a particular law or group of laws. Due to the great diversity of state and local laws (statutes, regulations, codes, et

³⁰ For examples of jurisdiction-specific bench books, see *Lead-based Paint: The Law in Indiana*, published by Improving Kids’ Environment in Indiana, Inc. www.ikecoalition.org/Lead/index.htm. Also, see *Benchbook on Lead Paint Poisoning for the Circuit Court of Cook County Municipal Division Housing Court*, published by the Civitas ChildLaw Center, Loyola University Chicago School of Law.

www.luc.edu/law/academics/special/center/child/special_programs.html or www.luc.edu/law/academics/special/pdfs/leadpaint_benchbook.pdf.

³¹ CDC and the lead poisoning prevention community encourage projects to compile and disseminate information about state and local laws, as a means to promote lead safety. See CDC, *Building Blocks for Primary Prevention: Protecting Children from Lead-Based Paint Hazards* (Oct. 2005), at 125.

www.cdc.gov/nceh/lead/publications/pub_Reas.htm or www.afhh.org/buildingblocks/BB%20Intro%20Level%20One.asp.

cetera), no single bench book on LBP enforcement would be accurate or relevant for every jurisdiction. Therefore, this *Guidebook* is designed to help non-lawyer “lead professionals,” advocates, and others create state and local LBP enforcement bench books (*Bench Books*) for their own jurisdictions. Lead professionals include staff in childhood lead poisoning prevention programs (CLPPPs), health educators, inspectors, and other health department personnel.

2. The Contents of Your *Bench Book*

The *Bench Book* that you create will consist of two components:

- Part One will provide a “Problem Statement,” which is a discussion of the problem of lead poisoning from the national, state, and local perspectives; and
- Part Two will provide copies of each relevant state *and* “local” (e.g., city, county³²) law in your jurisdiction.

The laws in Part Two of your *Bench Book* should include all:

- “LBP laws,” meaning any law that explicitly addresses LBP and/or LBP hazards³³; and
- “Housing laws,” meaning any law that addresses housing conditions or maintenance, such as a housing code, health code, or nuisance law.³⁴

These are the laws that state and local courts have authority to enforce. State and local courts do not enforce federal LBP laws; however, they have jurisdiction over *state and local* laws that administer EPA-authorized LBP programs,³⁵ incorporate federal LBP requirements into their own state/local code,³⁶ or otherwise address LBP and housing.³⁷ See Fig. 2: *Authority to Enforce Federal LBP Statutes and Regulations*.

³² See the generic terms in section I.D.4, below.

³³ See *id.*

³⁴ See *id.*

³⁵ States and Tribes, but *not* local governments, may enact laws to administer and enforce EPA-authorized programs under TSCA’s Pre-renovation Education Rule; Renovation, Repair, and Painting Rule; and Lead-based Paint Activities Rule. 40 C.F.R. Part 745 Subparts E, L and Q. These programs need not be identical to EPA’s program, but must be at least as protective and provide for adequate enforcement. So far, EPA has authorized 44 such programs. See www.epa.gov/lead/pubs/authstatus.pdf or www.epa.gov/lead/pubs/traincert.htm.

³⁶ A state or local government may “adopt” federal LBP requirements by enacting legislation to “incorporate by reference” a federal regulation. No federal approval is needed. Also, state and local governments may incorporate “uniform” or model laws, such as the International Property Maintenance Code or Uniform Residential Landlord and Tenant Act. See section III.D, below, *State and Local Laws for Your Bench Book – Housing Laws*.

³⁷ A State or local government may enact its own LBP (and other) laws, which may or may not complement the federal LBP regulatory scheme. For example, state and local governments cannot enforce the federal Disclosure Rule. They, however, can enact their own disclosure laws, which would be enforceable by state and local courts. Furthermore, state and local disclosure laws may impose more and/or different requirements and sanctions than in the federal rule.

Fig. 2: Authority to Enforce Federal LBP Statutes and Regulations

	Federal Government	State/Tribal Government	Local Government
Disclosure Rule	X EPA or HUD		
TSCA LBP Rules:			
Pre-renovation Education Rule	X EPA only	X*	
Renovation, Repair & Painting Rule	X EPA only	X*	
LBP Activities Rule	X EPA only	X*	
RCRA § 7003 Imminent Hazard Authority	X EPA only		
Lead Safe Housing Rule	X HUD only		
*Requires EPA-authorized program. Blank space means <i>no</i> authority.			

3. How to Use this *Guidebook* to Create Your *Bench Book*

Subsequent chapters of this *Guidebook* provide background information, advice, and specific “Action Items” to guide you in developing your *Bench Book*.

- Chapter II tells how to create the Problem Statement using available information;
- Chapter III discusses how to find and compile the laws for your state and locality; and
- Chapter IV suggests ways to maximize the effectiveness of your *Bench Book*.

The appendices provide:

- A summary of the Action Items (Appendix 1);
- Sample Problem Statements (Appendix 2);
- Information to help non-lawyers locate and understand the law (Appendices 3 and 4); and
- Enforcement interview questions (Appendix 5) to help focus conversations you may have with local judges and enforcement personnel about LBP enforcement in your community.

4. Terms in this *Guidebook*

The nomenclature used in state and local laws varies widely. Also, the meaning of terms in state and local laws may or may not be the same as under federal law. Therefore, this *Guidebook* uses generic terms, below. *Translate these generic terms to the nomenclature used in your state and local laws.*

Child-occupied property means a place that young children frequent, such as childcare centers and preschools. It includes, but is not necessarily limited to, “child-occupied facilities” within the meaning of federal LBP law.³⁸

Housing law means any state or local law that applies to housing conditions or maintenance, such as a housing code, property maintenance code, health or sanitation code, building law, nuisance law, et cetera. (Section III.D, below, suggests a dozen such types of law.)

LBP hazard means any housing hazard associated with LBP, such as deteriorated paint (chipping, peeling, flaking, et cetera), lead-contaminated dust, and lead-contaminated soil. This term is not necessarily limited to hazards as defined by the federal lead hazard standard.³⁹

LBP law means any state or local law that explicitly addresses LBP and/or LBP hazards, including but not limited to laws that govern abatement and other activities subject to federal regulation.⁴⁰

Local and *locality* refer to jurisdictions such as counties, cities, and towns.

Local law refers to laws enacted by a county, city, or town government; or by a regional authority, such as a regional health district.

Risk reduction means any type of work or project to control, minimize, or eliminate risks from LBP or LBP hazards, including activities which may be called “abatement,” “hazard reduction,” or “interim controls”; or the “correction,” “removal,” or “remediation” of a housing violation.

³⁸ Under federal LBP regulations, for a property to be a “child-occupied facility,” a child must be present two days a week for at least three hours each day, and for at least six hours a week and 60 hours a year. See 40 C.F.R. § 745.83, § 745.223.

³⁹ 40 C.F.R. Part 745, Subpart D.

⁴⁰ EPA’s LBP Activities Rule regulates LBP abatements, risk assessments, inspections, and related activities. 40 C.F.R. Part 745, Subpart L.

Fig. 3: Commonly Used Acronyms

CDC	U.S. Centers for Disease Control and Prevention
CPSC	U.S. Consumer Product Safety Commission
DOJ	U.S. Department of Justice
EBLL	Elevated blood-lead level
EPA	U.S. Environmental Protection Agency
HUD	U.S. Department of Housing and Urban Development
RCRA	Resource Conservation and Recovery Act
RLBPHRA	Residential Lead-based Paint Hazard Reduction Act of 1992 (a.k.a. Title X of the Housing and Community Development Act of 1992)
Title X	Title X of the Housing and Community Development Act of 1992 (a.k.a. Residential Lead-based Paint Hazard Reduction Act of 1992)
TSCA	Toxic Substances Control Act

2. Problem Statement for Your Bench Book

This chapter discusses:

- The purpose of the Problem Statement in your *Bench Book*;
- What information to include in the Problem Statement; and
- Where to find the information.

A. Overview

Complete the Action Items in this chapter to produce Part One of your *Bench Book*: the “Problem Statement.” The Problem Statement should be objective and based on information from reliable sources.

The primary purpose of the Problem Statement is to educate judges about lead poisoning from a national, state, and local perspective. Include information about the effects of lead poisoning, its link to LBP hazards, and the relation between risk reduction work and lead poisoning prevention. CDC is a premiere resource for such information. EPA also has extensive, authoritative information.

A second purpose of the Problem Statement is to *sensitize* judges (and others) to the importance of enforcing LBP cases. Therefore, do more than recite statistics. Include information of interest to a court, such as the link between lead poisoning and juvenile delinquency and criminal behavior. Furthermore, explain the following:

- Prompt enforcement to compel risk reduction work avoids the “irreparable harm” of lead poisoning caused by exposure to LBP hazards.
- Affordable and low-cost risk reduction projects exist, so that compelling performance of risk reduction work does not necessarily impose an onerous burden on a property owner.
- LPB hazards cause lead poisoning, not “poor housekeeping” or “negligent” parenting.

B. National Problem Statement

A wealth of information about lead poisoning and LBP is available on the internet. For your convenience, Appendix 2 provides three alternative national problem statements (each progressively more detailed), along with the internet address for each:

- CDC’s basic explanation of the problem;
- EPA’s more detailed statement; and
- The *Overview of Lead Paint and Children’s Health* from the Indiana LBP bench book.⁴¹

Use the version that you prefer for your *Bench Book*.

⁴¹ *Lead-based Paint: The Law in Indiana*, *supra* note 30.

Action Item #1

- Select the *national* Problem Statement from among the alternatives in Appendix 2, *National Problem Statements*. Either photocopy the version in the Appendix, or download the original from the Internet.
- Insert this Problem Statement into your *Bench Book*.

C. State and Local Problem Statement

Create a state and local Problem Statement, using available resources from your CLPPP, local media, state/local agency's internet sites, et cetera. Include information about the following:

- Lead poisoning in the community, such as incidence rates, the population affected, and geographical distribution of the population;
- The housing stock in the community, such as the age and condition of housing, the percent of rental housing, and the rate and geographical distribution of housing code violations; and
- Local "case studies," such as stories about lead-poisoned children and successful interventions.

Action Item #2

- Compile the *state and local* Problem Statement for your community, using information available from your CLPPP and other local resources.
- Insert this Problem Statement into your *Bench Book*.

3. State and Local Laws for Your Bench Book

This chapter discusses:

- Which laws to include in your *Bench Book*;
- How to find them; and
- How to analyze and compile them.

A. Overview

Complete the Action Items in this chapter to produce Part Two of your *Bench Book*: a compilation of the laws in your state and locality that can be used to obtain LBP risk reduction work.

The purpose of this part of your book is to present the array of available legal authorities. Those authorities include any laws that pertain specifically to LBP or LBP hazards and any housing laws that apply to property maintenance, deteriorated paint, building hazards, and other deleterious conditions. Since each law applies only to a particular situation, you need to include all of the relevant laws in your book. Also, remember that more than one governmental entity may have enforcement authority for housing matters, such as a health department, housing code enforcement agency, fire marshal, building commissioner, et cetera.

Noteworthy aspects of a law may be overlooked if seldom enforced. Therefore, review each law that you place in your *Bench Book*. The information in sections C and D below is designed to help you spot important aspects of both LBP and housing laws.

B. Finding the Law

1. Which Version of the Law to Use

Be certain to include only the *current, official* version of each law in your *Bench Book*. Unofficial versions may have been “superseded” (replaced), and may omit or misstate words, punctuation, and other important elements. Caution: Providing an outdated or inaccurate version of the law will undermine the judge’s confidence in the reliability of your information as a whole.

An authoritative source will state whether the law posted on its internet site is an official version, and when that version was last updated. Proprietary legal services such as Lexis/Nexis® (www.lexis.com) and Westlaw®⁴² (www.westlaw.com) are quite reliable, although they generally charge fees for use. The official internet site of a state, county or local government may or may not provide the official version of the jurisdiction’s law.

⁴² No endorsement of any database or service is intended or implied.

2. Legal Resources

State Laws

State laws usually are available via a state government's official internet site. The *statutory* code may be posted on the state legislature's home page. The *administrative* (regulatory) code also may be on this page, or on the home page of the state's Attorney General. Some states also have a legislative legal library reference service. Law schools and universities in the state also may post the state's statutes and regulations on their respective Internet home pages. Use Google® (www.google.com), Yahoo® (www.yahoo.com), or another search engine to find these sites. Proprietary services also provide extensive state law resources.

Some non-governmental organizations also provide information about state laws. For example, several states have enacted comprehensive property maintenance codes, and the National Healthy Homes Training Network posts some of these laws: www.healthyhomestraining.org/Codes. In addition, the National Conference of State Legislatures provides a national database of state lead laws: www.ncsl.org/programs/environ/envHealth/LEADDES.htm or www.cdc.gov/nceh/lead/Legislation%20&%20Policy/Legislation.htm.

Local Laws

Local laws tend to be more difficult to locate, since they are less likely to be posted online. Therefore, you may need to obtain hard paper copies of the law, and work to keep abreast of enactments that amend (or repeal) a law. Also, local laws may not be organized into a code, which means that you may have to look at several ordinances to find all of the relevant provisions. Nonetheless, a few no-cost online databases specialize in county and municipal codes: www.generalcode.com/, <http://gcp.esub.net/>, <http://municipalcodes.lexisnexis.com/>, and www.municode.com.⁴³

If your local ordinances are not available online, then you may need to obtain copies from the local prosecutor, clerk of the court, or the librarian of the local law school, university, or public library. Alternatively, the office of the city or county attorney should be able to provide or direct you to a source for official copies of the law. Also, you could contact the legal counsel or enforcement manager for each agency responsible for enforcing LBP and housing laws.

3. Case Law

Locating and interpreting case law (court opinions) is a fairly sophisticated task. If a court ruling has impacted the interpretation or effect of a state statute or regulation, then the case probably will be identified on an "annotated" version of the state code, usually at the end of the affected section of the law. An "annotated" version of a law sets forth both the law, and reference information such as historical notes and citations to significant cases.

Annotated versions usually are not available for local codes. Therefore, once you have located the text of the law, you should ask the local prosecutor and each enforcement agency whether any judicial rulings have affected the laws they enforce.

⁴³ Caveat: be certain to confirm that no-fee (*non*-proprietary) databases have the most recent version of the law.

Action Item #3 (Recommended)

- See Appendix 3, *Tips on Understanding the Law*, for general background information.

C. Lead-based Paint Laws

Many states and localities have laws that explicitly govern LBP and/or LBP hazards. Approximately 40 states have laws that implement EPA-authorized LBP programs for pre-renovation education; and LBP abatements, risk assessments, and inspections.⁴⁴ Your state's LBP law, if one exists, may govern activities beyond those regulated by federal law.

1. Advantages and Limitations of Lead-based Paint Laws

Typically, LBP laws address the common pathways for lead exposure (dust, paint, and soil), and require risk reduction work under certain circumstances. Probably no jurisdiction has the full complement of laws needed to prevent lead poisoning and address LBP hazards.⁴⁵ An "ideal" LBP law would require permanent elimination of all LBP using lead-safe work practices; however, such a law is viewed as impracticable, since the cost of such work would exceed the value of many lead-contaminated properties.

LBP laws (like laws in general) tend to be narrowly crafted, with prerequisites and "gaps," so that they apply under limited circumstances. For instance, your state/local LBP laws may:

- Authorize inspections for LBP hazards *after* a child has been poisoned (a prerequisite);
- Require disclosure of *known* LBP hazards, but not mandate proactive inspections to detect such hazards (gap); or
- Authorize complaint-based inspections, but not protect tenants against landlord retaliation (gap).

Be aware of such omissions, and determine whether they are addressed by any state or local housing laws.

2. State and Local Disclosure Laws

Disclosure of information about actual or potential hazards is an important tool in the effort to eliminate lead poisoning. Therefore, add to your *Bench Book* any state and local laws that require disclosure concerning LBP, LBP hazards, and/or non-LBP conditions such as housing code violations.

The federal Disclosure Rule requires that a landlord disclose information about LBP and LBP hazards to a tenant *before* the tenant is obligated under a contract to lease pre-1978 housing.⁴⁶ State and local governments cannot enforce (or waive) the federal Disclosure Rule. Several jurisdictions have enacted their own disclosure laws, or incorporated the federal rule by reference into their state or local code. State/local disclosure requirements may be broader than those in the federal rule, and the sanctions for

⁴⁴ See discussion in Section I.C.1 and note 35, *supra*. See also *Federal Lead-Based Paint Enforcement Bench Book*. www.nchh.org.

⁴⁵ San Diego, California's LBP law, however, is noteworthy: Lead Hazard Prevention and Control Ordinance (Chapter 5, Article 4, Division 10). www.sandiego.gov/directories/government.shtml.

⁴⁶ 24 C.F.R. Part 35, Subpart A; 40 C.F.R. Part 745, Subpart F. The rule also requires sellers of pre-1978 housing to make comparable disclosures to prospective purchasers. For a detailed discussion of the Disclosure Rule, see the *Federal Lead-Based Paint Enforcement Bench Book*. www.nchh.org.

violation may be more stringent. State and local courts have authority to enforce the disclosure laws of their respective jurisdictions. Be certain to include these laws, if any, in your *Bench Book*.

A Tip

Read closely. Laws are fairly straightforward, but should be read carefully. Each word matters. For instance:

- “Shall” and “may” are *not* interchangeable. “Shall” and “must” are commands (obligations) -- whereas “may” or “can” are permissive (they indicate an *authority* to act, but *not* an *obligation* to act).
- Qualifying terms, such as “if,” “but,” and “provided that,” create prerequisites, exceptions, and defenses.

See Appendix 3, *Tips on Understanding the Law*.

3. Noteworthy Provisions in Lead-based Paint Laws

When reviewing your state and local LBP laws, pay attention to any prerequisites and gaps. Also, be aware of other important aspects and limitations, such as:

- The types of property subject to (or excluded from) the law, such as whether the law covers only housing, or also child-occupied properties;
- The types of lead-containing substances covered by the law (e.g., paint only, or also other surface coatings such as plaster);
- The types of lead hazards covered by the law (e.g., paint, soil, and/or dust; or other housing components containing lead, such as glazed tile);
- Any property maintenance requirements;
- Any requirements that an owner identify, disclose, prevent, and/or eliminate LBP hazards;
- Any recordkeeping requirements imposed upon an owner;
- The circumstances under which the enforcement agency may (or must) conduct inspections;
- Whether the agency may (or must) order risk reduction work, and under what circumstances;
- Any performance standards for risk reduction work;
- Whether the agency may (or must) perform risk reduction work itself if the owner (or other responsible person) fails to do so; and
- Any protection for tenants, such as anti-retaliation provisions or the right to relocate during certain risk reduction work.

Action Item #4

- Locate any state and local LBP laws applicable in your jurisdiction. Use the information in section B, *Finding the Law*, above (or in Appendix 4, *How to Find State and Local Laws*) to help you.
- Review each law, paying special attention to noteworthy provisions.
- Insert a copy of the official version of each law into your *Bench Book*.

D. Housing Laws

1. The Variety of Laws to Address Lead-based Paint Hazards

A jurisdiction may have several laws that are not LBP-specific, but which pertain to housing and cover deteriorated paint, LBP, or other housing-related hazards. Include *each* relevant housing law in your *Bench Book*, because each presents an enforcement alternative.

Housing laws vary by name, but generally include:

- Housing Codes;
- Property Maintenance Codes, which might be your jurisdiction’s version of the International Property Maintenance Code (IPMC) if adopted;⁴⁷
- Building Codes, which typically pertain to new construction, but also may include safety standards for all buildings and structures (Also look at the International Existing Building Code, which applies to renovations of existing buildings, if adopted by your jurisdiction);
- Health or Sanitary/Sanitation Codes;
- Nuisance codes or provisions;
- Provisions in any codes or the local charter (constitution) which discuss buildings that are “unsafe,” “unfit,” “uninhabitable,” “substandard,” “dangerous,” or otherwise problematic or hazardous to human health or safety (Do not overlook the fire code);
- Rental property laws, which may impose maintenance requirements, as well as establish conditions for lawful rental, such as:
 - Landlord-tenant statutes;
 - Your jurisdiction’s adoption of the Uniform Residential Landlord and Tenant Act (URLTA)⁴⁸;
 - Multiple Dwelling laws;
 - Certificate of Occupancy laws;
 - Rental Registry laws; and
 - Rental Housing Quality laws.

2. Approaches to Locating Multiple Housing Laws

The relevant laws in your jurisdiction may be:

- Located within a single code, such as a chapter of the housing code;
- Scattered across several codes, such as multiple provisions in the housing, health, *and* fire codes; and/or
- A single paragraph in the local charter, such as a declaration of the building commissioner’s powers, including authority to order removal of a hazard.

There are several ways to simplify the task of searching multiple bodies of law. If your jurisdiction’s laws are available online, then search for general terms, such as “paint,” “deteriorated,” “walls,” “hazard,”

⁴⁷ The current (2007) version IPMC does not explicitly address LBP hazards. It addresses deteriorated (peeling, flaking, chipping) paint. Adopting jurisdictions, however, may have added their own LBP provisions.

⁴⁸ URLTA requires that landlords comply with health and safety codes and keep premises in a fit and habitable condition. www.law.upenn.edu/bll/archives/ulc/fnact99/1970s/urlta72.htm or www.law.upenn.edu/bll/archives/ulc/ulc_final.htm#final Twenty-one (21) states have adopted URLTA. See www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urlta.asp.

“nuisance,” “unfit,” or “rodent.”⁴⁹ Such a search should retrieve all of the relevant provisions, and the codes within which each such provision is located. Alternatively, ask each state and local enforcement agency responsible for property and health matters to identify the laws they enforce – and then obtain and review copies of each of those laws.

3. Advantages and Limitations of Housing Laws

Three types of provisions in housing laws apply, or can reasonably be construed to apply, to LBP hazards.

- First, many codes have provisions that apply explicitly to paint (not necessarily limited to LBP), such as prohibitions against deteriorated paint, or against sandblasting and other abrasive paint removal techniques.
- Second, some laws impose maintenance obligations to prevent or address paint deterioration, such as requirements to repaint periodically, or avoid moisture and leaks.
- Third, many laws contain “generic” provisions. These may vary in specificity, but often can reasonably be interpreted to cover LBP and LBP hazards. For example:
 - Some laws impose broad requirements (e.g., to keep property “in good repair”), and define those requirements in a manner that covers deteriorated paint (e.g., “good repair” means “free from breaks, loose plaster and similar conditions”).
 - Also, most of the larger jurisdictions have laws which prohibit conditions that are a “hazard” or “danger” to the health, safety, or welfare of occupants; or that render a building “unfit” or “substandard.”

Such generic requirements have the advantage of covering a variety of situations; however, they may be difficult to enforce due to vagueness. Therefore, include in your *Bench Book* examples of any cases in which a court has applied a generic requirement to a LBP hazard. The local prosecutor should be able to provide such examples.

Obviously, housing laws are imperfect tools for addressing LBP hazards. For example, they tend not to cover lead-dust and lead-soil hazards. Also, the physical conditions which constitute a violation of a generic requirement tend to be ambiguous; enforcing those requirements may be disfavored by very conservative courts. Despite their shortcomings, however, housing laws of longstanding duration tend to become integrated into the enforcement “infrastructure” over time. That is:

- Inspectors are experienced in spotting violations;
 - Agency forms and databases have been designed to automatically capture violations, so no extra effort is required to cite and record violations; and
 - The enforcement agency and prosecutors have experience successfully enforcing violations.
- Such practical considerations may make it easier to overcome bureaucratic “inertia” that is sometimes an obstacle to obtaining enforcement.⁵⁰

⁴⁹ The search term “rodent” usually retrieves any housing and property maintenance codes, but also may retrieve food service and commercial pest control provisions. You can ignore any search results that you do not need.

⁵⁰ For information and strategies on how to use code enforcement to prevent lead poisoning, see two publications by the Alliance for Healthy Housing: *Preventing Childhood Lead Poisoning through Code Enforcement: Ten Effective Strategies* (Apr. 2000), www.afhh.org/res/res_Operation_LEAP_toolkit.htm or www.afhh.org/res/res_publications.htm#effcodeenfhh, and *Effective Practices for Enforcing Codes to Ensure Decent Housing Condition* (updated Aug. 2006). www.afhh.org/res/res_publications.htm#effcodeenfhh.

4. Noteworthy Provisions in Housing Laws

When reviewing a housing law, pay special attention to:

- Whether the law covers any omissions in the state and local LBP laws; and
- Whether the agency's enforcement authority applies also to violations of the LBP law. For example, a LBP violation may be enforceable under only the LBP law; under the housing law; or under both, which may provide greater leverage in an enforcement action for multiple counts and higher penalties.

Also, note other important aspects and limitations of the law, such as:

- The types of property subject to the law (e.g., housing, or only rental housing);
- The persons subject to the law (owners, property management firms, et cetera);
- Any property maintenance requirements;
- What property conditions the law prohibits or regulates;
- What lead-containing substances, paint conditions, or paint-related activities the law regulates;
- What an owner is required to do to correct a violation, and what triggers the obligation to do so;
- Under what circumstances the enforcement agency may (or must) conduct inspections;
- Under what circumstances the enforcement agency may (or must) order risk reduction work;
- Whether the agency may (or must) perform risk reduction work itself if the responsible person fails to do so;
- Whether there is authority for the appointment of a receiver who ensures that proper action is taken regarding the property;
- Whether the law requires disclosure of violations or other information to tenants; and
- Whether the law protects tenants from retaliation.

Action Item #5

- Locate any state and local housing laws applicable in your jurisdiction. Use the information in section B, *Finding the Law*, above (or in Appendix 4, *How to Find State and Local Laws*) to help you.
- Review each law, paying special attention to noteworthy provisions.
- Insert a copy of the official version of each law into your *Bench Book*.

E. Compiling the Law for Your *Bench Book*

1. What Provisions of Each Law to Include

To properly interpret and apply the law, a judge needs to know the *context* within which the law operates. Both the statute and regulation inform a judge's view regarding what the law means and how to apply it. Therefore, include both the statute and the rules that implement the statute in your *Bench Book*. Also, include the following provisions from each:

- The “operative” provisions – meaning what the law prohibits; or what it requires to be done, by whom, when, and how. The language may be broad (e.g., “keep property in safe condition”), or quite specific (e.g., “repaint a rental dwelling every three years with a paint that does not contain lead”).
- The “scope” of the law, often described in an “Intent” or “General” section. The scope explains the matters (persons, activities, conditions, et cetera) to which the law applies. A matter must be *within* the scope of a law to be subject to its requirements and prohibitions. For example, a property

maintenance code may apply only to rental properties of a certain size, or only to residences but not to child-occupied properties.

- The Definitions section. Whether and how a term is defined determines the scope of the law and the reach of its operative provisions. For instance, if a law empowers an agency to order risk reduction work to remove a “lead hazard” but that term is not defined to include soil, then the agency probably cannot use this particular law to compel removal of a lead-soil hazard. Also, if a “person” must correct a violation and that term is limited to the “owner” of a property, then it may be difficult to get a property *management firm* to correct a violation and require locating the owner.
- The enforcement provisions, which set forth what the responsible agency must (or merely “may”) do to monitor compliance and enforce violations, and when and how such agency action is to occur. For example, the law might state that the agency must (“shall”) inspect a property in response to a complaint, versus that the agency has authority to (“may”) inspect. Likewise, a law may empower (permit), rather than require, an agency to perform risk reduction work if an owner fails to do so in a timely manner.

A Tip

A **statute** is a legislative enactment. Generally, it establishes the *broad framework* of the law, such as its requirements, the agency’s authority, and maximum penalties.

An agency issues **regulations** (rules) to implement a statute. The regulations provide *specific information* about what is prohibited – or what is required, by whom, when, and how.

See Appendix 3, *Tips on Understanding the Law*.

2. When to Include an Entire Code

For LBP laws, include the entire statute and regulations, since LBP codes tend to include all of the necessary provisions without any superfluous ones. For housing codes, however, include only the pertinent unit (chapter, subchapter, division, part, et cetera) of the code. For instance, omit unrelated units of the housing code, such as those that cover electrical and mechanical matters.

3. What Not to Include

Avoid including in Part Two of your *Bench Book* any writings that *talk about* the law, but are not actually *part* of the law itself. These include fact sheets, summaries, descriptions, analyses, and commentary on the law (unless published by a recognized scholarly legal authority⁵¹). Agency enforcement policies also are not law but, because courts give deference to certain written agency policies, you may want to include these in your *Bench Book*.

⁵¹ Law school journals and legal treatises (such as *American Jurisprudence*) are scholarly legal publications that summarize, analyze, and/or critique the law. They are not law themselves. The publications usually focus on federal or state, but not local, laws. You should not need to use such publications, since the purpose of your *Bench Book* is to present (not comment on) the law. They, however, may provide you useful background information and citations to case law. Law journals and treatises are available on the proprietary database services and in libraries. Law journals also may be available on the Internet page of the law schools which publish them. Material published by law firms, regulated businesses, and trade organizations are not scholarly legal authority.

Action Item #6

- Review the laws in your *Bench Book* to confirm that all relevant provisions are included. Supplement the book as necessary.

4. Maximize the Effectiveness of Your Bench Book

This chapter discusses:

- How to organize and distribute your *Bench Book*; and
- How to use your *Bench Book* to promote vigorous enforcement.

A. Organize Your *Bench Book* to be a Handy Reference

When you've gathered all of the content for your *Bench Book* (the Problem Statement and laws), then organize the book so that it's easy and convenient to use. Compile the information in a three-ring binder or other durable cover, and provide the following:

- A cover page;
- A detailed table of contents;
- A list of each of the laws included in the book, using the official title of each; and
- Your contact information.

Also, provide any other helpful information, such as contact details for the legal counsel of your agency or organization.

Also, consider organizing copies of the law by category,⁵² based upon the regulated activity or the “trigger” that makes the law applicable. For example, you could use the following categories:

- Disclosure requirements;
- Property maintenance standards;
- Right of entry (for agency inspections);
- Agency authority to compel risk reduction work;
- Work practice standards; and
- Agency enforcement options and mechanisms.⁵³

B. Distribute Your *Bench Book* Widely

Give a hard copy of your *Bench Book* to each judge who may preside over LBP cases. Also, distribute copies to these professionals and organizations:

- The local prosecutor;
- Enforcement personnel and inspectors in the housing and health departments;
- Librarians in the court, prosecutor's office, and enforcement agency; and
- The public library, for its reference collection.

Also, provide a copy on your organization's internet site (a PDF version recommended).

⁵² If you organize select provisions of the law into categories, be certain to also include a complete version of the law as it appears in the official source.

⁵³ For more information and suggestions see *Lead-Safe Housing Policy Guidance Series - Legal Authorities*, published by the Alliance for Healthy Housing. www.afhh.org/res/res_publications_LSHPGS.htm.

C. Use Your *Bench Book*

Use your *Bench Book* in your organization's outreach and education programs. Also, rather than just sending your *Bench Book* to local judges and prosecutors, take the opportunity to engage with them in a conversation about lead poisoning and the importance of enforcement. Use the information in the Problem Statement to help you. Also, find out when and why enforcement tends to stall or break down, and what might be done to avoid these problems.

Action Item #7 (Recommended)

- Use the *Enforcement Interview Questions* in Appendix 5 to help focus conversations you may have with judges, prosecutors, and agency enforcement personnel.

D. Keep Your *Bench Book* Current

Provide updates to your *Bench Book* for each recipient whenever the following situations occur:

- The law changes;
- There is new information for the Problem Statement; or
- You have new contact information.

-End-

Appendix 1

Guidebook Action Items

Action Items #1

- Select the *national* Problem Statement from among the alternatives in Appendix 2, *National Problem Statements*. Either photocopy the version in the Appendix, or download the original from the Internet.
- Insert this Problem Statement into your *Bench Book*.

Action Items #2

- Compile the *state and local* Problem Statement for your community, using information available from your CLPPP and other local resources.
- Insert this Problem Statement into your *Bench Book*.

Action Item #3

- See Appendix 3, Tips on Understanding the Law, for general background information.

Action Items #4

- Locate any state and local LBP laws applicable in your jurisdiction. To help you, use the information in section B of the *Guidebook, Finding the Law*; or in Appendix 4, *How to Find State and Local Laws*.
- Review each law, paying special attention to noteworthy provisions.
- Insert a copy of the official version of each law into your *Bench Book*.

Action Items #5

- Locate any state and local housing laws applicable in your jurisdiction. To help you, use the information in section B of the *Guidebook, Finding the Law*; or in Appendix 4, *How to Find State and Local Laws*.
- Review each law, paying special attention to noteworthy provisions.
- Insert a copy of the official version of each law into your *Bench Book*.

Action Item #6

- Review the laws in your Bench Book to confirm that all relevant provisions are included. Supplement the book as necessary.

Action Item #7 (Recommended)

- Use the Enforcement Interview Questions in Appendix 5 to help focus conversations you may have with judges, prosecutors, and agency enforcement personnel.

Appendix 2

National Problem Statements

Three alternative statements are provided. Select the one you prefer for your Bench Book.

- First is CDC's basic statement, from www.cdc.gov/nceh/lead/faq/about.htm.
- Second is EPA's problem statement, excerpted from www.epa.gov/lead/pubs/leadinfo.htm#facts.
- Third, is *Overview of Lead Paint and Children's Health*, reprinted from *Lead-Based Paint: The Law in Indiana*. <http://www.ikecoalition.org/Lead/index.htm>.

U.S. CENTERS FOR DISEASE CONTROL AND PREVENTION¹

Lead Poisoning

What is the problem?

Approximately 310,000 U.S. children aged 1-5 years have blood lead levels greater than 10 micrograms of lead per deciliter of blood, the level at which CDC recommends public health actions be initiated. Lead poisoning can affect nearly every system in the body. Because lead poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death.

How are children exposed to lead?

The major source of lead exposure among U.S. children is lead-based paint and lead-contaminated dust found in deteriorating buildings. Lead-based paints were banned for use in housing in 1978. However, approximately 24 million housing units in the United States have deteriorated leaded paint and elevated levels of lead-contaminated house dust. More than 4 million of these dwellings are homes to one or more young children.

Other sources of lead poisoning are related to:

- hobbies (making stained-glass windows).
- work (recycling or making automobile batteries).
- drinking water (lead pipes, solder, brass fixtures, valves can all leach lead).
- home health remedies (azarcon and greta, which are used for upset stomach or indigestion; pay-loo-ah, which is used for rash or fever).

Who is at risk?

- Children under the age of 6 years because they are growing so rapidly and because they tend to put their hands or other objects into their mouths.
- Children from all social and economic levels can be affected by lead poisoning, although children living at or below the poverty line who live in older housing are at greatest risk.
- Children of some racial and ethnic groups and those living in older housing are disproportionately affected by lead. For example, 3% of black children compared to 1.3% of white children have elevated blood lead levels.

Can lead poisoning be prevented?

Lead poisoning is entirely preventable. The key is stopping children from coming into contact with lead and treating children who have been poisoned by lead.

- Lead hazards in a child's environment must be removed.
- Public and health care professionals need to be educated about lead poisoning and how to prevent it
- Children who are at risk of lead poisoning need to be tested, and, if necessary, treated.

¹ From www.cdc.gov/nceh/lead.

What can the public and parents do to reduce blood lead levels?

- Ask a doctor to test your child if you are concerned about your child being exposed to lead.
- Talk to your state or local health department about testing paint and dust from your home for lead if you live in a house or apartment built before 1978, especially if young children live with you or visit you.
- Damp-mop floors, damp-wipe surfaces, and frequently wash a child's hands, pacifiers, and toys to reduce exposure to lead.
- Use only cold water from the tap for drinking, cooking, and for making baby formula. Hot water is more likely to contain higher levels of lead, and most of the lead in household water usually comes from the plumbing in your house, not from the local water supply.
- Avoid using home remedies (such as azarcon, greta, pay-loo-ah) and cosmetics (such as kohl, alkohol) that contain lead.
- Take basic steps to decrease your exposure to lead (for example, by showering and changing clothes after finishing the task) if you remodel buildings built before 1978 or if your work or hobbies involve working with lead-based products.

What is CDC's Role in preventing lead poisoning?

- CDC provides technical and financial assistance to state and local childhood lead poisoning prevention programs. These programs are working to ensure that screening, lead-hazard reduction, new legislation, and other prevention mechanisms occur throughout the country.
- CDC has established a national system to identify children with elevated blood lead levels.
- CDC provides guidance for the proper care of children after they are identified as having elevated blood lead levels.
- CDC provides national guidance and policy for the prevention of childhood lead poisoning. CDC will continue to work with state and local areas to improve capacity and provide guidance.

- End -

U.S. ENVIRONMENTAL PROTECTION AGENCY¹

Lead Poisoning

FACT: Lead exposure can harm young children and babies even before they are born.

FACT: Even children who seem healthy can have high levels of lead in their bodies.

FACT: You can get lead in your body by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.

FACT: You have many options for reducing lead hazards. In most cases, lead-based paint that is in good condition is not a hazard.

FACT: Removing lead-based paint improperly can increase the danger to your family.
If you think your home might have lead hazards, read on to learn about lead and some simple steps to protect your family.

Health effects of lead

Childhood lead poisoning remains a major environmental health problem in the United States.

People can get lead in their body if they:

- Put their hands or other objects covered with lead dust in their mouths.
- Eat paint chips or soil that contains lead.
- Breathe in lead dust, especially during renovations that disturb painted surfaces.

Lead is more dangerous to children because:

- Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.
- Children's growing bodies absorb more lead.
- Children's brains and nervous systems are more sensitive to the damaging effects of lead.

If not detected early, children with high levels of lead in their bodies can suffer from:

- Damage to the brain and nervous system
- Behavior and learning problems, such as hyperactivity
- Slowed growth
- Hearing problems
- Headaches

Lead is also harmful to adults. Adults can suffer from:

- Reproductive problems (in both men and women)
- High blood pressure and hypertension

¹ From www.epa.gov/lead.

- Nerve disorders
- Memory and concentration problems
- Muscle and joint pain

Where lead is found

In general, the older your home, the more likely it has lead-based paint.

- Paint. Many homes built before 1978 have lead-based paint. The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:
 - In homes in the city, country, or suburbs.
 - In apartments, single-family homes, and both private and public housing.
 - Inside and outside of the house.
 - In soil around a home. Soil can pick up lead from exterior paint, or other sources such as past use of leaded gas in cars, and children playing in yards can ingest or inhale lead dust.
 - Household dust. Dust can pick up lead from deteriorating lead-based paint or from soil tracked into a home.
 - Drinking water. Your home might have plumbing with lead or lead solder. Call your local health department or water supplier to find out about testing your water. You cannot see, smell or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it:
 - Use only cold water for drinking and cooking.
 - Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.
1. The job. If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.
 2. Old painted toys and furniture.
 3. Food and liquids stored in lead crystal or lead-glazed pottery or porcelain. Food can become contaminated because lead can leach in from these containers.
 4. Lead smelters or other industries that release lead into the air.
 5. Hobbies that use lead, such as making pottery or stained glass, or refinishing furniture.
 6. Folk remedies that contain lead, such as "greta" and "azarcon" used to treat an upset stomach.

Where lead is likely to be a hazard

Lead from paint chips, which you can see, and lead dust, which you can't always see, can be serious hazards.

- Peeling, chipping, chalking, or cracking lead-based paint is a hazard and needs immediate attention.
- Lead-based paint may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear. These areas include:
 - Windows and window sills.
 - Doors and door frames.
 - Stairs, railings, and banisters.
 - Porches and fences.

Note: Lead-based paint that is in good condition is usually not a hazard.

- Lead dust can form when lead-based paint is dry scraped, dry sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep or walk through it.
- Lead in soil can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. Contact the National Lead Information Center (NLIC) to find out about testing soil for lead.

- End -

OVERVIEW OF LEAD PAINT AND CHILDREN'S HEALTH^{1,2}

It can often be extremely difficult to make the connection between exposure to a particular pollutant, or combination of pollutants, and human disease or injury. Not so with lead. The physical effects of lead in the body are very well understood and documented. The effects on young children can be devastating, leading to permanent loss of IQ, developmental challenges, and the potential for violent tendencies that can affect them throughout their lives.^{3,4,5,6}

Lead is a heavy, malleable metal that people have used in a variety of ways for centuries. It is very dense, soft and workable, resists corrosion, and has a low melting point. Early industrial uses included plumbing,⁷ kitchen implements, coins, printer's type, crystal and ceramics. Lead can still be found in a variety of products such as certain cosmetics, spices, candy and candy wrappers, metallic toy trinkets and toy jewelry, medicines (including vitamins), plastics (as an additive to make the plastic more durable), glazes and paints on food and beverage containers, solder, plumbing, and certain colored inks or coatings.

The addition of lead to paints, stains and other coatings was seen as beneficial because it made the paint faster drying, more durable, enhanced the visual effect of pigments, and made the painted surface more resistant to corrosion.⁸ Lead-based paint was used widely for residential purposes in the United States throughout the 20th century until it was banned for that purpose in 1978.⁹

Past lead control policies have resulted in substantial reductions in childhood lead poisoning; however, hazards still exist and continue to threaten children's health. Beginning in the late 1970's and ending in

¹ Reprinted with permission from *Lead-Based Paint: The Law in Indiana* (April 2006), published by Improving Kids' Environment, Inc., Indianapolis, Indiana. <http://www.ikecoalition.org/Lead/index.htm>.

² Basic information about lead is widely available from a number of resources. This section draws heavily from EPA's training manual for the Lead Inspector Initial Course, *Inspecting for Lead-Based Paint Student Manual* (May 2000 edition), which is available for purchase through the National Technical Information Service, www.ntis.gov, and supplementary training materials developed by the Environmental Management Institute in Indianapolis, www.envtlmgmt.org.

³ Needleman H, Gunnoe C, Leviton A. Deficits in psychologic and classroom performance of children with elevated dentine lead levels. *N Engl J Med* 1979; 300:689-95.

⁴ Needleman H, Schell A, Belling D. The long-term effects of childhood exposure to low doses of lead: an 11 year follow-up report. *N Engl J Med* 1990; 322:83-8.

⁵ Needleman HL, Riess JA, Tobin MJ, Biesecker GE, Greenhouse JB. Blood lead levels and delinquent behavior. *JAMA*. 1996;275:383-69.

⁶ Canfield RL, Henderson CR, Cory-Slechta DA, Cox C, Jusko TA, Lanphear BP. Intellectual impairment in children with blood lead concentrations below 10µg per deciliter. *N Engl J Med*. 2003; 348:1517-1526.

⁷ The Roman plumbing system used lead as a primary material; it is thought that the decline of the Roman Empire may have been due to widespread lead poisoning among the citizenry.

⁸ The famous Golden Gate bridge got its original color from lead-containing red litharge in the paint.

⁹ In 1978, the Consumer Product Safety Commission banned the use of paint with more than 0.06% lead in residential uses. [16 CFR 1303](http://www.cpsc.gov). See <http://www.cpsc.gov> for more information. Lead-based paint is legal, and still widely used, for non-residential purposes.

the late 1990's, a significant decline in blood health levels of U.S. children aged 1-5 occurred.¹⁰ This decline is felt to be primarily due to the phase-out of leaded gasoline, and the resulting decrease in lead emissions. Additional contributors were the elimination of lead in water pipes and tin can solder, and the ban on the use of lead paint in residential housing. Although these policies reduced the number of lead poisoned children, lead that is already in the environment continues to poison children today.

Approximately 87% of homes built before 1940; 69% of homes built between 1940 and 1959, and 24% of homes built between 1960 and 1978 have lead-based paint.¹¹ Lead based paint and lead contaminated dusts located in these homes harm more than 2/3 of lead poisoned children. Across the country, the United States Environmental Protection Agency (USEPA) estimates that approximately 38 million houses contain deteriorated leaded paint or elevated levels of lead contaminated dusts (40% of all housing units).¹² These numbers illustrate the present threat lead poses to children's health despite a past decline in lead poisoning.

Lead can enter the body through the skin, through ingestion (from water, food, lead dust from contaminated soil or paint debris), or through inhalation (of lead dust). Ingestion is the most common route of exposure in young children. Lead does not break down or change into something else in the body. What is not eliminated will damage body systems, especially the central nervous system. Lead is also absorbed into soft tissue and bone, where it takes the place of calcium and can remain there for many years.¹³ Since there are often no symptoms of lead poisoning, a blood test is the only way to detect it. Low-income, minority children living in urban environments are at greatest risk of elevated blood lead levels because they are more likely to be exposed to lead contaminated dust from deteriorated lead-based paint in substandard housing.

Toddlers are most at risk of lead poisoning. Toddlers can more readily ingest lead-based paint dust, chips and debris and lead-contaminated soil because as part of their normal development they spend much of their time on the floor, where dust accumulates, and they put everything in their mouths. Also, their blood brain barrier is not yet fully formed, so lead can easily cross over from the blood into the brain where it can cause irreversible damage. Blood lead levels will drop quickly once the child is removed from the source of exposure. Waiting until the child is exposed is an ineffective and dangerous strategy, however, since by that time irreversible damage may have already been done.

The health effects of lead poisoning in young children are very well documented.¹⁴ Recent research is finding adverse effects at increasingly lower blood lead levels. According to the CDC, there is no safe level of exposure.¹⁵ The health effects include lowered IQ, poor hearing, speech, language and

¹⁰ Schwemberger JG, Mosby JE, Doa MJ, US Environmental Protection Agency. Jacobs DE, Ashley PJ, US Dept of Housing and Urban Development, Brown MJ, Jones RL, Homa D, National Center for environmental Health, CDC. Blood Lead Levels – United States 1999-2002. MMWR 2005; 54(20):513-16.

¹¹ [71 Fed. Reg. 1588, 1599](#) (January 10, 2006).

¹² [71 Fed. Reg. 1588, 1591](#) (January 10, 2006).

¹³ Nordberg, GF, Mahaffey KR, Fowler BA. Introduction and Summary. International Workshop on Lead in Bone: Implications for Dosimetry and Toxicology. Environmental Health Perspectives. 1991; 21:3-7.

¹⁴ See, for example, <http://www.atsdr.cdc.gov/toxprofiles/tp13.html>.

¹⁵ See "Preventing Lead Poisoning in Young Children," CDC, August 2005, p. 1 (<http://www.cdc.gov/nceh/lead/Publications/PrevLeadPoisoning.pdf>).

coordination problems, learning disabilities, behavioral disorders, hyperactivity, stomach aches and other problems. At extremely high levels of exposure, lead poisoning can cause seizure, coma, and even death. Childhood lead poisoning continues to pose a public health problem. The Centers for Disease Control and Prevention estimates that nationwide approximately 310,000 children aged 1-5 have blood lead levels greater than 10 micrograms of lead per deciliter, the CDC's current action level recommendation for reducing a child's exposure to lead.^{16, 17}

According to CDC's National Health and Nutrition Survey (NHANES) data from 1999-2002, 1.6% of all children under the age of 6 had elevated blood lead levels (i.e., blood lead level $\geq 10\mu\text{g/dL}$) compared to 3.1% of black (non-Hispanic) children of the same age.¹⁸ This disproportionate threat to children from different ethnic populations illustrates lead poisoning's unjust effects, however, *all* children living in or playing around old homes are at risk.

A US Healthy People 2010 goal is to eliminate elevated blood lead levels in young children (Objective No. 8-11).¹⁹ Primary prevention is key to this goal. Primary prevention focuses on preventing exposure prior to a child becoming exposed to lead, rather than treating children after exposure. This emphasis on primary prevention recommends state and local health departments shift their focus away from secondary prevention (which is providing follow-up services to children already exposed), and develop regulatory tools that will further childhood lead poisoning prevention. State and local courts across the country are now flooded with cases concerning lead inspection and abatement prosecutions, housing violations, and landlord/ tenant disputes over lead violations. Only when states adopt aggressive primary prevention programs and strict regulatory structures for safe housing will the threat of childhood lead poisoning decline significantly.

How Does Paint Poison Children?

Well maintained paint poses only a minimal risk to children. Unfortunately, much of the older housing stock in the United States is not well maintained, especially rental housing, and keeping it clean and free of lead dust is a challenge.

Paint becomes damaged and deteriorates with age or when it becomes water-damaged. Chipping, peeling, or otherwise deteriorating paint creates lead-contaminated dust that is the real threat to children. Lead-contaminated dust and soil are also tracked inside from outside the home. Dust is commonly found in areas of high friction or impact, for example window sills and sashes, staircases, around door frames, and where paint has deteriorated.²⁰ Hand-to-mouth activity on the floor is the way most young children are exposed to lead. Chips and dust on window sills and in window troughs are another route of exposure, and are also a good indicator of whether the floor is dusty.

¹⁶ Id.

¹⁷ 10 $\mu\text{g/dL}$ is the equivalent of 1 ounce in a swimming pool 6 feet deep, 20 feet wide, and 85 feet long.

¹⁸ CDC, MMWR 54(20): 513-516 (May 27, 2005).

¹⁹ See www.healthypeople.gov/document/html/objectives/08-11.htm.

²⁰ Lead-based paint was more likely to be used in areas of high friction and impact, because of its durability.

Burning, scraping or sanding paint also generates tremendous amounts of dust, so an innocent and well-meaning effort to spruce up a child's room can result in serious health hazards.²¹ Thorough and regular cleaning is critical in homes with lead-based paint, however lead-contaminated dust particles are so small that they are essentially invisible.²² Lead dust can accumulate on toys (which children often put into their mouths) as well as on couches and other furnishings. Sources of lead exposure outside the home include deteriorating exterior paint and lead-contaminated soil (soil is contaminated either with paint debris from the outside of the home or from outdoor structures such as fences, sheds, porches, or with residual lead left in the environment from the use of leaded gasoline (especially in neighborhoods of historically high traffic)).

- End -

²¹ Pregnant women should never participate in fixing up the baby's room if it involves removing old paint.

²² EPA has established 40 micrograms per cubic meter as the hazard level for lead dust on floors. [40 CFR 745.65\(b\)](#). This is equivalent to a small packet of sweetener sprinkled over an area one third the size of a football field.

Appendix 3

Tips on Understanding the Law

State and local laws are fairly straightforward. Nonetheless, to many people, having to deal with “the law” seems daunting. Here are a few tips.

Read closely. In law, each word matters. For instance, “shall” and “may” are not interchangeable – the former is a command, whereas the latter is an option. Qualifying terms such as “if,” “but,” and “provided that” create pre-requisites, exceptions, and defenses.

“Law” is a generic term. It encompasses and may mean a:

- Statute, act, ordinance, code, or other legislative enactment;
- Regulation or rule (promulgated by an administrative agency);
- Ruling or “opinion” issued by judge or administrative law judge (which interprets and applies a statute or regulation); or
- Constitution or charter (which generally defines how the government is organized, and sets forth the extent and limitations of governmental power).

Certain writings are not law, such as:

- Descriptions and commentaries about the law.
- Agency policies, guidelines, and working documents (inspection forms, violation notices, orders, advisory letters, fact sheets, etc.). Internal agency policies and guidelines, however, indicate and influence agency decision-making about whether and how to pursue enforcement.

Codes. A code is merely a systematic and enumerated compilation of statutory *or* regulatory provisions. Codification organizes related provisions, and eliminates the burden of searching multiple sources to find all of the relevant law on a given topic. For example, the federal government has both a statutory and regulatory code: the United States Code (U.S.C.) and Code of Federal Regulations (C.F.R.), respectively. State and local governments generally codify their statutes and regulations along common themes, such as a state health code, or local housing code. A regulatory code sometimes is called an “administrative” code. A code may consist of provisions from several different enactments or rulemakings (for example, the original act or rulemaking, and subsequent amendments).

“Law” versus “Ordinance.” Generally, a local jurisdiction (city, county, town) refers to a local statute as an “ordinance” (or “code”).

“Regulations” versus “Statutes.” Include both in your book. Regulations provide detailed operative provisions, so that people know specifically what is required, by whom, when, and how – whereas statutes generally speak in broad terms, and authorize the agency to promulgate certain rules. A statute, however, also may set forth important matters not repeated in the rule, such as certain definitions, and the enforcement authority of the court (civil and criminal sanctions), as well as that of an agency.

- End -

Appendix 4

How to Find State and Local Laws To Address Lead-based Paint and Lead-based Paint Hazards

See section III.B of the *Guidebook* for details.

Laws to Search

Check these state and local laws for provisions that explicitly, or generically, address deteriorated paint, lead-based paint, lead-based paint hazards, and other housing or health hazards:

- Lead-based paint laws.
- Disclosure laws.
- Housing laws, such as:
 - Housing Codes;
 - Property Maintenance Codes;
 - Building Codes and Fire Codes;
 - Health Codes, or Sanitary/Sanitation Codes;
 - “Nuisance” laws; and
 - “Hazard” provisions in any code or charter for buildings that are “unsafe,” “unfit,” “uninhabitable,” “substandard,” “dangerous,” or otherwise hazardous to human health, safety, or welfare.

Rental property laws, which may impose maintenance requirements, such as:

- Landlord-Tenant statutes;
- The Uniform Residential Landlord and Tenant Act (URLTA), if adopted by your jurisdiction;
- Multiple Dwelling Laws;
- Certificate of Occupancy laws;
- Rental Registry laws; and
- Rental Housing Quality laws.

Resources for Finding State and Local Law⁷⁸

These electronic resources may provide copies of the law:

- Proprietary data-bases: Lexis/Nexis® www.lexis.com, or Westlaw® www.westlaw.com.
- The Internet site of the state government and of law schools in the state, accessible via Google® www.google.com, Yahoo®, www.yahoo.com, or another search engine.
- National Healthy Homes Training Network for state property maintenance codes: www.healthyhomestraining.org/Codes
- National Conference of State Legislatures for state lead laws:
- www.ncsl.org/programs/enviro/health/LEADDES.htm or
- www.cdc.gov/nceh/lead/Legislation%20&%20Policy/Legislation.htm
- Internet sites that specialize in local laws: www.generalcode.com/, <http://gcp.esub.net/>, <http://municipalcodes.lexisnexis.com/>, www.municode.com.

⁷⁸ No endorsement of any database or service is intended or implied.

Appendix 5

Enforcement Interview Questions

Use these questions as a starting point for conversations with key players in the local enforcement community (judges, prosecutors, enforcement agency personnel, *etc.*) to find out how local lead-based paint and housing laws are interpreted and enforced – and to identify the junctures at which enforcement tends to break down or inertia occurs.

I. General Questions for all interviews

- How does the inspection – or enforcement – process operate in your agency/office? (What events and decisions occur, by whom, by when, how, why?)
- Where does the process tend to stall, or break down? Why? How can these delays and breakdowns be avoided?
- What factors make a particular matter (violation, inspection, or enforcement case) a priority for your office?
- What do you happen to know about lead poisoning? . . . about the connection between LBP hazards and lead poisoning? . . . about risk reduction work? What approach would be best for informing your agency/office about these topics (for example, a presentation)?
- In what ways could my organization help yours enforce violations that involve LBP hazards or lead poisoned children?

II. Administrative Enforcement Proceedings & Case Development

- How does the agency routinely handle the following types of cases (particularly where a violator has already failed to timely correct a violation or comply with an order):
 - failed to timely correct a violation or comply with an order):
 - Lead poisoned child/children?
 - LBP or LBP hazards?
 - Violations that pose a risk to human health?
 - Violators with repeat offenses, or multiple “problem” properties? For example, does the agency just follow-up with the violator to persuade them to comply? . . . proceed directly to refer the case to the prosecutor? . . . request expedited action by the prosecutor? . . . correct the violation itself (then recoup the cost)? What penalties does the agency usually impose (or seek) in such cases?
- What factors (if none of the above) persuade the agency to ask the local prosecutor for expedited action? What type of information has, in fact, been effective in obtaining expedited prosecution?
- Describe any recent cases that have involved LBP, LBP hazards, or lead poisoned child/children? What types of facts presented? , what happened, was risk reduction work performed, how long did it take, etc.? Was this a “successful” enforcement outcome; and what contributed to that result?

III. Prosecution

- Describe generally the information the prosecutor’s office needs in an agency referral? What additional information would be helpful (for example, that an EBL child resides at (or occupies) the property? . . . that the violator owns/controls other properties with EBL children and/or LBP hazards?).
- What factors have persuaded the prosecutor’s office to expedite prosecution, and request prompt docketing?
- If a case does not already involve enforcement of an outstanding risk reduction order, then what factors would persuade the prosecutor’s office to recommend that the court require a defendant to perform risk reduction work (in lieu of, or in addition to, a fine)?
- How do the prosecutor’s office and court handle cases involving violations of vague or generic requirement (such as, keep in “good repair,” or “free of substantial deterioration”)? Describe some examples when a violation was found to exist.
- How does the prosecutor’s office routinely handle these types of cases (particularly, where a violator has already failed to timely correct a violation or comply with an order):
 - Lead poisoned child/children?
 - LBP or LBP hazards?
 - Violations that pose a risk to human health?
 - Violators with repeat offenses, or multiple “problem” properties?
 - For example, does the office . . . assign them to an attorney who specializes in such cases? . . . expedite prosecution in such cases? . . . request expedited docketing? . . . seek a more stringent penalty?
- Describe any recent cases that have involved LBP, LBP hazards, or lead poisoned child/children? What type of facts presented, what happened, was risk reduction work performed, how long did it take, etc.? Was this a “successful” enforcement outcome; and what contributed to that result?

IV. Adjudication

- Is there a lead court in this jurisdiction? . . . a housing court? If not, what is the best way to educate judges about LBP cases, lead poisoning, risk reduction options, and the importance of prompt enforcement?
- What factors usually persuade the court to give a case an accelerated schedule? . . . to compel a defendant to perform risk reduction work (if not already enforcing an outstanding risk reduction order)?

- End -