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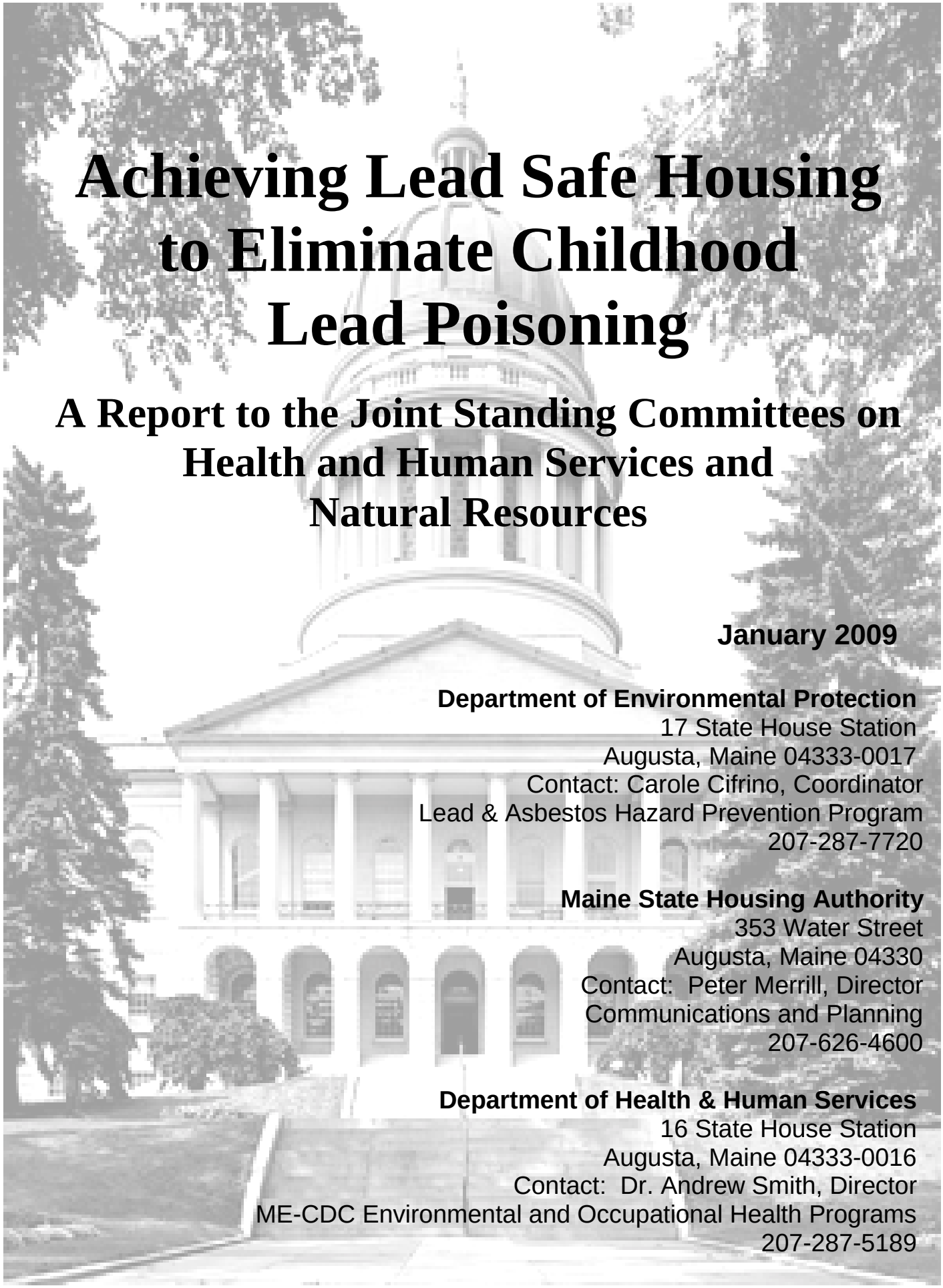

Achieving Lead Safe Housing to Eliminate Childhood Lead Poisoning

A Report to the Joint Standing Committees on Health and Human Services and Natural Resources

January 2009

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List of Acronyms

DEP - Maine Department of Environmental Protection

DHHS – Maine Department of Health and Human Services

eBBL – elevated blood lead level

EMP – Essential Maintenance Practices

HUD - United States Department of Housing and Urban Development

LPPF - Maine Lead Poisoning Prevention Fund

MCLPPP - Maine Childhood Lead Poisoning Prevention Program

ME-CDC – Maine Center for Disease Control and Prevention

MRSA – Maine Revised Statues Annotated

OSHA – U.S. Occupational Safety and Health Administration

TSCA – Toxic Substance Control Act (federal law)

ug/dL – micrograms per deciliter (the common unit of measure for lead in blood)

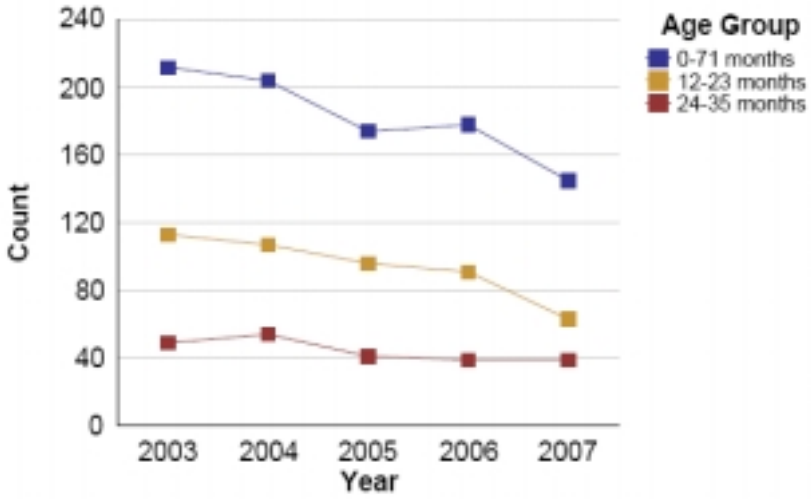
US-CDC – United States Centers for Disease Control and Prevention

US-EPA – United States Environmental Protection Agency

Executive Summary

In 1991, Maine set a goal of eliminating childhood lead poisoning by 2010. However, lead poisoning remains one of the major environmental hazards threatening children in Maine. Even low levels of lead poisoning may cause lowered IQ, learning disabilities, speech delay, hearing impairment, hyperactivity, and aggressive behavior. Because of lead's effect upon a child's brain, hundreds of Maine children may fail to reach their full potential and dozens of communities are prevented from reaping the benefits of the child's long-term productivity. Studies have shown children who are lead poisoned are more likely to become involved with the juvenile justice system and that lead poisoned children are more likely to drop out of school before graduating.

In 2003, over 200 Maine children were newly identified as having an elevated blood lead level. We have seen a steady decline over the past five years such that in 2007, the number of Maine children newly identified as having an elevated blood lead level had dropped to 150[1]. While we continue to make progress in reducing the number of children with elevated blood lead levels in Maine, we are unlikely to achieve the 2010 goal on time (see Appendix A for details on childhood lead poisoning in Maine) .



Number of newly identified children with an elevated blood lead level, by age group and by year.

Recognizing that attainment of the 2010 goal was in question, Maine's 121st Legislature took action to increase state resources dedicated to the primary prevention of lead poisoning by establishing the Lead Poisoning Prevention Fund (LPPF) to expand education and outreach efforts primarily intended to enhance the ability to identify lead paint hazards. The fund is supported by requiring paint manufacturers to annually pay $0.25 for every gallon of paint they sell in Maine. This fund received approximately $830,000 in the first full year of applicability (calendar year 2007). The LPPF is making it possible to a) establish community contracts to promote education and outreach at the local level; b) perform targeted mailing of informational materials to families at risk; c) establish a lead dust testing program to identify lead paint hazards

[1] Using data national housing and 2000 census data, the Maine Center for Disease Control estimates that more than 1000 Maine children currently have elevated blood lead levels.

in homes; and d) provide increased training in Lead Smart Renovation, Essential Maintenance Practices, and Lead Dust Sampling.

Collectively, these new resources will enable us to substantially expand our ability to identify housing with lead paint hazards. This, in turn, will result in an increased demand for incentives and resources to mitigate these newly identified lead hazards. Primary prevention ultimately requires mitigation of lead hazards in housing. We confront a daunting challenge of a legacy of decades of using paint containing high amounts of lead. Maine has over 350,000 houses built prior to 1978 that may contain some level of lead paint, and over 180,000 built prior to 1950 that are more likely to have high levels of lead paint[2]. US Census data indicate that there are nearly 30,000 Maine children under age six living in pre-1950 housing.[3]. There is no question that as we adopt a more aggressive approach to identifying housing with lead paint hazards we will find them, and resources and incentives will be needed to make them both lead-safe and affordable.

Recognizing the challenge of providing lead safe and affordable housing, Maine's 123rd Legislature directed the Department of Environmental Protection (DEP), the Maine State Housing Authority (MaineHousing) and the Department Health and Human Services, Maine Center for Disease Control and Prevention (DHHS, ME-CDC) ("the agencies") to jointly review issues related to achieving affordable housing safe from lead hazards and the elimination of childhood lead poisoning (Appendix B). Specifically:

> 1. The agencies shall review and make recommendations on resources and incentives to promote housing that is lead-safe, as defined in the Maine Revised Statutes, Title 38, section 1291, subsection 19-A, including the lead poisoning prevention fee established in Title 22, section 1322-F and lead-safe renovation notification and work practice requirements.
>
> 2. The agencies shall review and make recommendations concerning the establishment of a requirement to ensure that every leased residential dwelling is maintained as lead-safe, including routine maintenance and owner self-inspection requirements, and the inclusion of such a requirement under a warranty of habitability.
>
> 3. The agencies shall review and make recommendations concerning the establishment of a requirement that the owner of a residential property built before 1978 subject the property to a lead inspection and provide a copy of the lead inspection report to any prospective buyer prior to transfer of the property to a new

[2] U.S. Census Bureau, DP-4. *Profile of Selected Housing Characteristics:2000 – Geographic Area: Maine.*
[3] Census 2000 Public Use Microdata Sample Files

owner and the capacity of qualified lead professionals to perform this work.

4. The agencies shall review ways to fully implement and enforce lead poisoning prevention programs established by statute and make recommendations to eliminate lead paint and lead poisoning risks in the State.

This report responds to these four charges, each as a separate section. Appendices are provided to present the latest update on childhood lead poisoning in Maine (the most comprehensive compilation and analysis of available data to date), an update on the education and outreach activities undertaken with the Lead Poisoning Prevention Fund, a listing of federal lead poisoning prevention laws, and possible statutory revisions.

To date, the primary method of identifying homes with lead hazards in Maine has been through the diagnosis of a child with an elevated blood lead level and subsequent mandatory environmental inspection of the dwelling where the child resides by the ME-CDC. It is the consensus of the agencies that to end lead poisoning we must expand our efforts from primarily a reactive program of identifying children with elevated blood lead levels to a model where risks are identified and managed before a child is exposed. There are a number of new initiatives underway that will substantially enhance our ability to identify dwellings with lead paint hazards prior to a child being identified with an elevated blood lead level. However, once a lead paint hazard is identified, it is necessary to take the appropriate steps to control this hazard. The greatest impediment for Maine's homeowners, landlords, and lead poisoning prevention programs in achieving more lead safe housing is the lack of funding available to support mitigation of lead paint hazards, a problem only worsened by the recent economic conditions.

We are fortunate to have several programs that already provide incentives and resources such as low interest or forgivable loans to promote lead-safe and affordable housing. These include MaineHousing's *Lead Hazard Control, Weatherization* and *HOME Repair Programs*. Collectively our current federal and state resources of about $1.3 million per year allow for making only 100 units lead safe each year. Since the study resolve specifically directed the agencies to consider use of the Lead Poisoning Prevention Fee as a potential source of resources, we have considered how increasing the fee could be used to provide additional funds to expand these existing programs. For this, we have looked to the experience in New Jersey.

- A doubling of the Lead Poisoning Prevention Fee paid to Maine by the paint manufacturers to a level similar to the tax New Jersey imposes on every gallon of paint sold in their state[4] could provide the resources needed to annually at least double the number of housing units reached with lead mitigation activities.

These additional funds could be used to both integrate and leverage our existing housing programs with increased lead hazard reduction activities. This takes advantage of the key moments when state agencies and other organizations and professionals interact with families and property owners regarding homes to reach more families with lead poisoning prevention resources and more efficiently allocate state and local resources.

[4] New Jersey instituted a similar lead poisoning prevention fee on paint manufacturers at the level of $0.50/gallon sold annually. The *Lead Hazard Control Assistance Act (*52:27D-437.11) was signed by Governor McGreevey on January 20, 2004. New Jersey's program uses these funds to support mitigation of lead hazards in housing.

In response to the charge to examine lead-safe renovation and notification requirements, the agencies identified an option that would help support Maine's contractors, property owners, and school maintenance personnel to identify lead-based paint and likely lead hazards, to perform

renovation, repair and painting so that they do not create new lead hazards (including unintentionally bringing lead dust home), and to meet new federal requirements. Beginning in April 2010 new federal regulations require that anyone performing renovation, repair and painting in housing built before 1978 for remuneration receive training and certification. Although this requirement may be perceived as a burden by landlords and contractors, Maine has the opportunity to implement its own program in lieu of a more costly and onerous federal program.

- Allow Maine to administer and enforce a program in lieu of the U.S. Environmental Protection Agency's (US-EPA) 2008 *Renovation, Repair and Painting* rule by amending 38 MRSA §1292 and 1295 to provide DEP with the authority to adopt and implement requirements for renovation, repair and painting activities in pre-1978 housing; allocate additional resources as needed to implement contractor certification, and compliance and enforcement of lead-safe work practices at least as protective as the TSCA 402(c) regulations. DEP regulations can be amended to include a "General Permit" provision to provide for certification of regulated firms through a simpler process and at a lower cost than if implemented in Maine by the US-EPA.

These two legislative options as well as others presented in this document were developed in response to the study charges and are not necessarily supported by all of the agencies or the Administration.

To end lead poisoning we must expand beyond a solely reactive program of identifying children with elevated blood lead levels to a model where risks are identified and managed before a child is exposed. To use state resources most effectively, we need to ensure that additional initiatives are guided by three criteria:

- Target resources to the housing that is most likely to poison a child and the families most likely to have a child poisoned by lead;
- Focus on broad adoption of high impact, lower cost measures for assessing housing for lead risk, remediating lead hazards and their underlying causes, and maintaining housing to be lead-safe; and
- Make every "touch" count by using existing programs and staff for greater impact through coordination.

These three criteria can be used to guide the development of new state efforts to reach the goal of eliminating childhood lead poisoning in Maine.

I. Resources and incentives to promote lead-safe housing

Study charge: *The agencies shall review and make recommendations on resources and incentives to promote housing that is lead-safe, as defined in the Maine Revised Statutes, Title 38, section 1291, subsection 19-A, including the lead poisoning prevention fee established in Title 22, section 1322-F and lead-safe renovation notification and work practice requirements.*

In 1978, the sale of residential lead-based paint was banned, however over the last 5 years over 900 Maine children have been newly identified as having elevated blood lead levels. The most common source of lead poisoning among Maine children is ingestion of lead dust from lead paint in housing. Maine has the 14th oldest housing stock in the nation, the 7th oldest in terms of percent of homes older than 1940, and the 6th oldest rental housing stock[5].

Maine Homeownership Facts 2007- Housing Stock Age and Condition[6]

Type of Housing Unit	Units built 1970-79	Units built 1960-69	Units built 1950-59	Units built 1940-49	Units built Pre-1940	Total Units built pre-79	Estimated units with Lead Paint Hazards
All Units	86,432	43,423	41,446	33,205	151,492	355,998	276,574
Owned	62,937	31,127	29,495	21,241	97,282	242,082	186,463
Rented	23,495	12,296	11,951	11,964	54,210	113,916	90,111

Paint manufacturers began to voluntarily reduce the concentration of lead in paint in 1950. Because housing built before 1950 contains significantly more lead paint than newer housing, most of the children identified with elevated blood lead levels live in this pre-1950 housing. Lead paint in good condition or under layers of intact paint will not poison a child. However, if the condition of the housing degrades, allowing lower layers of paint to become exposed or abraded, lead dust levels can rise quickly. Similarly, if renovation activity is undertaken without the use of lead-safe practices, lead dust contamination can be significant.

A. Existing programs

1. Housing Programs that touch homes with potential lead hazards

MaineHousing has several programs that currently touch housing that has or potentially has lead hazards. These are the *Lead Hazard Control* Program, the *Weatherization Program*, and the *Home Repair Network*. The *Lead Hazard Control Program*[7] is the primary program targeted to mitigating lead hazards in housing. From 1998 - 2007, MaineHousing has successfully competed for three *Lead Hazard Reduction* grants from the federal Department of Housing and Urban Development (HUD), receiving a total of $7.9 million dollars. In that time period,

[5] MAINEHOUSING *2005 Consolidated Plan, pg. 18*
[6] Adapted from Maine State Housing Authority Factsheet *Maine Homeownership Facts 2007*
[7] http://www.MaineHousing.org/PROGRAMSLeadSafe/aspx?ProgramID=35

MaineHousing allocated an additional $2.88 million from other sources to supplement the HUD grants. In October 2008, MaineHousing was awarded its fourth HUD Lead Hazard Reduction grant; with the required matching funds, a total of $4,377,000 has been allocated to be used from October 2008 through September 2010. These monies are targeted to perform lead abatement (complete removal of lead paint and lead-contaminated soil, or permanent enclosure of lead-painted surfaces) in low-income residences of lead-poisoned children and children with elevated blood lead levels.

> The ME-CDC currently defines a child as lead poisoned when their blood lead level (BLL) is 20 micrograms per deciliter (ug/dL) or greater, and as having an elevated blood lead level when the level is 10 ug/dL or higher. Research shows children with measurable blood lead levels which are less than 10 ug/dL also suffer detrimental developmental health effects. **There is no known safe level of lead exposure for children**.

MaineHousing's *Lead Hazard Control Program* provides 0% deferred, forgivable loans (interest free with no monthly payments). The program provides up to $16,000 to eligible homeowners, and up to $100,000 to eligible landlords of lower-income tenants for lead safety improvements. The entire amount of the loan is forgiven after 3 years, provided the property isn't refinanced or sold during that time, and, in the case of rental property, rental units are kept affordable. Making homes lead safe may involve paint removal or stabilization, and window and door replacement.

MaineHousing has completed lead hazard reduction work in 746 residences with its first three grants, and expects to complete 280 more units over the next three years with the most recently awarded HUD funds.

MaineHousing's *HOME Repair Network* provides low-interest loans and grants to low income homeowners for home repairs. This program provides 1% mortgages or 0% deferred/forgivable mortgages (i.e., 0% interest rate with no monthly payment) to low-income homeowners for necessary home repairs. MaineHousing targets $150,000 of its "Home Repair" funding annually to remediate lead hazards in conjunction with other work under this program in homes with young children, thus making on average an additional 15 housing units lead-safe annually. All "Home Repair" work in pre-1978 housing is performed in a lead-safe manner, and the work area is thoroughly cleaned and tested to ensure no lead hazards remain in the work area.

MaineHousing's *Weatherization Program* provides grants to low-income homeowners and renters to reduce energy costs by improving home energy efficiency. Weatherization improvements may include insulation, weather stripping, caulking, and some safety-related repairs. To be eligible to receive weatherization assistance, total household income must fall within 230% of the federal poverty guidelines or 75% of the state area median income, whichever is less. Eligibility for households with incomes between 200% and 230% of the federal poverty guidelines is limited to those households with a member who is susceptible to hypothermia, such as elderly, a child under the age of two, or with a doctor's diagnosis. Funds are prioritized to do insulation and air sealing (weather stripping and caulking) for the most rapid energy savings. MaineHousing's *Weatherization Program* touches approximately 800 Maine homes per year, many of which are older and have the potential for lead hazards.

2. Programs to ensure lead-safe renovation, repair and painting

Studies show that renovation, repair or painting in homes with lead paint creates lead hazards that can poison children[8]. Maine's *Lead Abatement* law, 38 MRSA Chapter 12-B, includes an *Emergency Provision* at §1296 that requires anyone not subject to licensing and certification requirements (licensing/certification authority in this statute currently applies only to lead abatement and lead inspection personnel) who is "engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint….[to] take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project."

Lead dust left by painting contractor on child's dresser – October 2008

Since enactment of this law, DEP Lead Hazard Prevention Program staff has responded to complaints of contractors sanding and grinding lead-based paint. Although staff is generally able to convince contractors to clean up any visible lead paint dust and chips they've put into the environment, the enforcement procedure set out in this provision has been unwieldy to implement. It includes the issuance of an order by the Commissioner which requires substantial compliance staff resources to prepare, and provides an appeal process which may run as much as 27 days prior to final action by the Board of Environmental Protection. This means a contractor may delay clean up of lead hazards for as long as 27 days after the commissioner issues an order and the contractor chooses to pursue the appeal process.

At the federal level, the US-EPA adopted the *Renovation, Repair and Painting Rule* on April 22, 2008 to address the risks posed by renovation, repair and painting in pre-1978 housing. This rule amends Section 402 of the *Toxic Substances Control Act* (TSCA)(15 U.S. C 2684(g)) to require beginning April 22, 2010 that:

- individuals engaged in renovation, repair and painting in residential dwellings and child-occupied facilities (e.g. day cares, kindergartens, child care facilities) are properly trained;
- training programs are accredited;
- contractors and firms engaged in such activities are certified; and
- appropriate work practices are utilized.

US-EPA is requesting that Maine seek authorization to implement the additional provisions of this new *Renovation, Repair and Painting Rule* promulgated under TSCA 402(c).

[8] *Federal Register* Volume 73, No. 78, April 22, 2008, pp. 21696-21697

3. Training initiatives

Until all lead-based paint is eliminated from Maine's housing stock, people will need to be trained to recognize when lead-based paint may be present and how to mitigate any risk it may pose. Anyone who performs renovation, repair or painting work in housing built before 1978, families with young children, and couples planning to have children all need to be educated about lead paint and lead paint hazard prevention and mitigation.

Utilizing the Lead Poisoning Prevention Fund (LPPF – see Appendix C for background on the fund), DEP is able to offer lead training at no charge to Maine residents, eliminating a cost barrier to participation. In 2008, the target audience for this training was contractors and landlords. Future trainings will be coordinated to meet the needs of groups which receive community grants funds from the LPPF, including an "Essential Maintenance Practices" course for landlords, as well as "Lead-Smart Renovation" and "Lead Dust Sampling Technician" courses for contractors, landlords, property maintenance personnel, homeowners, and community groups.

MaineHousing integrates lead training into other training programs it offers at a level of detail appropriate to the audience. For example, the First Time Home Buyers training includes a lead awareness component and information on resources for additional assistance on lead-related issues. A new initiative in 2009 will integrate Lead Dust Sampling Technician training into the Residential Energy Auditor training courses offered by MaineHousing. This will enable MaineHousing-trained residential energy auditors to offer lead dust sampling in conjunction with their energy audits to provide the property owner with information on the potential for lead hazards in their housing. This will increase the number of people working in housing in Maine who understand the issue of lead poisoning and lead in housing and can direct owners to resources to help them control and mitigate the risks of lead paint in housing.

B. Opportunities

1. Remediate lead hazards and their underlying causes

The greatest impediment for Maine's homeowners, landlords, and lead poisoning prevention programs in achieving more lead safe housing is the lack of funding available to provide incentives and resources for control of lead paint hazards. Current resources will allow Maine to continue to make roughly 100 additional dwelling units lead-safe each year. These resources are largely targeted to those units that have been identified as having a child with an elevated blood lead level in the dwelling.

It is the consensus of the agencies that to end lead poisoning we must expand beyond a reactive program of using children with elevated blood lead levels as the primary basis for identifying housing with lead hazards to a model where risks are identified and managed before a child is exposed to lead hazards.

This consensus is being acted upon in several new initiatives made possible by the LPPF which substantially expand the ability to identify lead paint hazards prior to a child becoming exposed. Briefly, these initiatives (further described elsewhere in this document and in Appendix C) include a new lead dust testing program for identifying lead paint hazards in households and rental units, community contracts to support education and outreach in areas with a high number of children with elevated blood lead levels, a targeted mailing campaign to families most at risk, a lowered blood lead level threshold for offering environmental inspections, and a more aggressive response to inspecting all units in a rental property that has a child with an elevated blood lead level.

Collectively, these initiatives are expected to substantially increase demand for access to MaineHousing's programs that provide incentives and resources to address lead paint hazards. This will create an opportunity to increase the rate at which affordable lead safe housing is created if we can find resources to expand the existing MaineHousing programs with funding focused on lead mitigation. The study resolve specifically directed the agencies to consider use of the Lead Poisoning Prevention fee as a potential source of resources. We have therefore evaluated how increasing the fee could be used to provide additional funds to expand the existing MaineHousing programs.

Doubling of the Lead Poisoning Prevention Fee paid to Maine by the paint manufacturers to a level currently assessed in New Jersey ($0.50 for every gallon of paint sold in their state) [9] would provide sufficient resources needed to annually at least double the number of housing units reached with lead mitigation activities.

We believe it is best to maintain flexibility in how these funds would be allocated among the three existing MaineHousing programs (*Lead Hazard Control, Weatherization,* and *HOME Repair*) which already reach people in their homes. MaineHousing has the program management structures available to direct additional funding to the highest risk housing and families. Integrating such services holds the promise of providing families with more comprehensive care, while more efficiently allocating state and local resources. Taking advantage of the key moments when state agencies and other organizations and professionals interact with families and property owners regarding homes can leverage these opportunities to reach more families with lead poisoning prevention resources.

MaineHousing's *Weatherization Program* is a case in point. Existing funds are prioritized to do insulation and air sealing (weatherstripping and caulking) for the most rapid energy savings. There are not sufficient weatherization funds to also replace windows for energy savings; however, window replacement significantly contributed to a reduction in the number of lead poisonings that occurred nationwide from 1990 to 2000[10]. Given the worth of window replacement to housing value, long-term structural security and energy savings[11], one option for

[9] New Jersey instituted a similar lead poisoning prevention fee on paint manufacturers at the level of $0.50/gallon sold annually. The *Lead Hazard Control Assistance Act (*52:27D-437.11) was signed by Governor McGreevey on January 20, 2004. New Jersey's program uses these funds to support mitigation of lead hazards in housing.

[10] Jacobs, D.E, Nevin, R., 2006. Validation of a twenty-year forecast of US childhood lead poisoning: updated prospects for 2010. Environ. Res. 102(3) 352-364.

[11] For example, annual energy savings of $130-$486 and average market value benefit of $5,899 - $14,304 per housing unit, depending on number of windows replaced and size of home, from: Nevin, R, et al., *Monetary*

leveraging more window replacements in rental housing to attain both the energy savings and lead poisoning prevention benefit is to provide incentives, such as partial subsidy, to property owners to replace lead-painted windows in dwellings that are candidates for a *Weatherization* grant.

2. Implement a streamlined state program for ensuring lead-safe renovation

In 1996, US-EPA promulgated the final regulations under TSCA 402(a) with certification, licensing, training, and work practice provisions applicable to lead-based paint activities only. Later that year, DEP received authorization from US-EPA to administer and enforce all of the elements of the 1996 rule. US-EPA is now requesting that Maine seek authorization to implement the additional provisions of the new *Renovation, Repair and Painting Rule* promulgated under TSCA 402(c).

To determine whether Maine should seek authorization, DEP has examined the benefits and challenges that would result if DEP were to implement the rule rather than leave implementation with US-EPA personnel in Boston to enforce in Maine. Considerations include:

- It would be significantly easier for Maine "firms" that are required to be licensed (including contractors, landlords, property maintenance personnel, and school maintenance personnel who work on areas of schools frequented by kindergarteners) to receive permitting services in Augusta rather than Boston (US-EPA Region 1).
- To reduce the burden on the firms which must be licensed, DEP can create a streamlined licensing process by adopting "general permit" provisions, and can implement for a lesser licensing fee than will be charged by US-EPA.
- There is great concern that the US-EPA protocols for ensuring no lead dust remains will not be appropriately implemented so that lead hazards will remain after the work is completed (the cleaning required to achieve lead dust clearance levels is extensive and contractors are allowed to check their own work); if DEP seeks authorization, Maine can set a more protective clearance standard to ensure no lead hazards remain after renovation, repair and painting projects subject to this rule.
- DEP would have broader authority to enforce protective work practice standards than it currently has under 38 MRSA §1296 ("Emergency Provision") when a person does not take reasonable precautions to prevent the release of lead to the environment and the exposure of children to lead (including "take home" lead).
- On the other hand, Maine does not have general contractor licensing or registration or a centralized listing of all landlords, and therefore it will be difficult to identify and contact all the regulated entities to ensure they understand and comply with the regulatory requirements.
- DEP will not be able to implement the certification, compliance & enforcement responsibilities of the new rule without additional funding to support a minimal requirement for two field staff positions to conduct compliance inspections and initiate enforcement actions.

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benefits of preventing childhood lead poisoning with lead-safe window replacement. Environmental Research (2007), doi:10.1016/j.envres.2007.09.003

- DEP currently receives funding from US-EPA to implement the TSCA 402(a) program; Maine may experience a reduction in the baseline 402 grant funding if it does not receive authorization for the 402(c) program; it may receive an increase if it does receive authorization and US-EPA receives additional allocation for the 402(c) program.

On balance, DEP could implement a less burdensome and more effective program than the US-EPA to ensure that renovation, repair and painting projects performed in pre-1978 residential dwellings and child-occupied facilities by entities receiving compensation do not result in exposure of children to lead hazards. Maine's *Lead Abatement* law, 38 MRSA Chapter 12-B, §1291-1298, currently provides DEP with the authority to adopt rules that set standards for the training of, and standards of acceptable practice for, persons engaged in renovation and remodeling (38 MRSA §1295.2 - 1295.3). To receive authorization from US EPA, Maine law must be amended at 38 MRSA §1292 and §1295.1 to include provisions for the licensing or certification of renovation contractors that work in pre-1978 housing. Additionally, DEP must demonstrate it has the resources to implement an effective compliance and enforcement program. To do this, DEP will need sufficient funding to support field staff to respond to complaints and conduct inspections across the state according to department protocols, and to pursue enforcement as needed.

C. Legislative options

1. Designate new LPPF fees to increase incentives and resources to promote affordable and lead-safe housing.

Amend 22 MRSA §1322-E to enable at least half of the allocations from the Lead Poisoning Prevention Fund to be used to provide MaineHousing funds for use in their *Lead Hazard Control*, *Home Repair*, and *Weatherization* programs to mitigate lead paint, and amend 22 MRSA §1322-F to increase the fee imposed on the manufacturer or wholesaler of paint from $0.25 to $0.50 per gallon of paint estimated to have been sold in the State during the prior year.

No significant cost to State to manage additional funds within existing programs; additional cost to paint manufacturers, or brand name or private label owner, dependent on amount of fee increase and amount of paint sales.

2. Provide DEP with authority to certify contractors disturbing lead paint

a. Amend 38 MRSA §1292 and 1295 to allow DEP to adopt and implement regulations for renovation, repair and painting activities in pre-1978 housing that are at least as protective as the TSCA 402(c) regulations, and allocate additional resources as needed.
   - DEP regulations can be amended to include a "General Permit" provision to provide for simple certification of regulated firms at a low cost;
   - DEP will continue to offer training programs funded by the Lead Poisoning Prevention Fund at no cost to Maine residents to meet the state and federal requirements;

- Timely enforcement action can be taken under the DEP's general enforcement authority (38 MRSA §347-A).

Potential annual cost to the State of at least $180,000 for two full-time field positions plus support. Estimated annual average revenue from certification fees is $20,000 (US-EPA estimates 1060 firms in Maine will need certification, however, many believe this estimate is low). Potential grant revenue from US-EPA is unknown; US-EPA received no additional funding to support implementation of its new rule. DEP may experience a reduction in the baseline 402 grant funding if it does not receive authorization for the 402(c) program; it may receive an increase if it does receive authorization and US-EPA receives additional allocation for the 402(c) program. State would need to cover any program costs not covered by US-EPA grants and certification fees; potential unmet costs may range from $85,000 (assuming additional US-EPA grant of $75,000) to $160,000. Possible sources for additional revenue include the General Fund and the LPPF. Reduction in certification costs for renovation contractors (including "do-it-yourself" landlords and property maintenance personnel) estimated to average $40 annually based on assuming fee for five-year certification for US-EPA is $300 and for DEP is $100. If funding to support the program is needed from the LPPF, it would be necessary to amend the purposes for which the LPPF can be used.

b. If authority for licensing of renovation, repair and painting contractors working in pre-1978 housing is not provided to DEP, then amend 38 MRSA §1296 to allow the commissioner to pursue enforcement proceedings pursuant to 38 MRSA 347-A and provide additional resources to support increased enforcement.
   - Provides for more timely enforcement action of the *Emergency Provision* by DEP in response to complaints;
   - Contractors will be subject to the US-EPA's *Renovation, Repair and Painting* rule, including training, licensing, and work practice requirements enforced by US-EPA.

Additional compliance and enforcement resources needed for the DEP to implement (approximately $90,000 per position). Average annual cost to contractors (including landlords who do their own work) for licensing is $60 (EPA's currently proposed fee).

II. Maintaining lead-safe rental housing

Study charge: *The agencies shall review and make recommendations concerning the establishment of a requirement to ensure that every leased residential dwelling is maintained as lead-safe, including routine maintenance and owner self-inspection requirements, and the inclusion of such a requirement under a warranty of habitability.*

A. Existing programs

1. Pre-Renovation Notice and Education

In 2007, the Maine Legislature enacted Public Law Chapter 238, *An Act to Protect Children from Lead Exposure by Requiring Sufficient Notice of Renovations* (14 MRSA §6030-B, sub-§3). This requires landlords of residential property to provide residents with notice at least 30 days before any renovation will occur. This provides residents with the time needed to determine if the renovation may disturb lead-based paint, and if so, to take steps to protect their family from exposure to lead dust and lead paint chips that may be generated by the project. This law is enforceable by the tenant pursuing a case in District Court or Superior Court.

Federal law requires anyone performing renovations for compensation in pre-1978 residential dwellings to provide the building owner and residents with a pamphlet containing information on the health effects of lead and steps that can be taken to reduce or eliminate the risk of exposure during renovation. Contractors must distribute this pamphlet prior to beginning renovations. Similar to the 402(c) rule, this 402(b) rule contains exemptions for projects that disturb less than 6 square feet of internal, or 20 square feet of external painted surface, as well as projects that only affect components which have been tested and shown to be free of lead-based paint. This law is enforced by U.S. EPA.

2. Essential Maintenance Practices for Landlords

Owners of pre-1978 rental housing can take steps at turnover (i.e., between tenants) to ensure they are renting a lead-safe property. Generally, property owners already perform basic maintenance, such as spot repairs and cleaning after one tenant moves out and before the next moves in. By being lead-aware, landlords can target painting and repair efforts, and implement a more thorough cleaning regime to create a lead-safe unit before a new tenant moves in. Using resources from the LPPF, DEP is providing half-day training courses for landlords on the risks posed by lead paint in housing and in essential maintenance practices. ME-CDC's community contracts are providing funds to grassroots community-based organizations with direct ties to the at-risk communities to directly engage in an outreach strategy to reach landlords and tenants with this information. It is hoped this will encourage implementation of a lead-aware approach at unit turnover in the known high-density areas of childhood lead poisoning. The community contracts include additional incentives for communities to provide free lead dust testing for high risk rental units during unit turn over. Depending on the efficacy of these efforts and available funding, this program may be expanded throughout the state.

3. Maine's Lead- Safe Rental Housing Registry

The 123rd Maine Legislature passed P.L. 628, *An Act to Protect Children from Hazardous Lead-based Paint* in 2008. This law directs the DEP to establish a registry of leased lead-safe residential dwellings to provide tenants with information on rental housing that landlords have registered with the DEP as lead-safe. DEP is currently designing a web site to include an on-line searchable registry as well as information to help landlords achieve lead-safe properties. The registry will include rental units that:

- are certified by the landlord to have no deteriorated paint and no lead dust hazards through 3rd party testing at turnover,
- have been inspected and found to be lead safe (on a certain date),

- have been inspected and found to have no lead paint; or
- were built after lead paint was banned from use in housing (1978).

Because this registry is voluntary, its success is dependent upon landlords perceiving a benefit to being listed in the registry. To complement the registry, DEP is preparing an on-line listing of housing that has been subject to a lead inspection, including the date of inspection. If they know a property has had a lead inspection in the past, potential purchasers or tenants will also know that they should receive a copy of the lead inspection report as part of the lead disclosure requirements on property transactions.

4. Maine's Warranty of Habitability and lead-safe rental housing standards

Maine's *Rental Property* law, 14 MRSA §6021, *Implied warrant and covenant of habitability*, paragraph 2 states "In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation." This law provides tenants with the right to file a complaint against a landlord in District or Superior Court if a landlord does not remediate a condition which "endangers….the health or safety of the tenants" after receiving written notice of the condition. The Maine Attorney General's *Consumer Law Guide* includes "hazardous lead based paint" in its listing of conditions that can make a house unsafe or unhealthy. However, no Maine law currently requires that property owners maintain leased residential dwellings as lead-safe. Thus, the burden of proving that "hazardous lead-based paint" exists and of pursuing enforcement of the warranty of habitability is borne by tenants. Because enforcement through the courts takes time, a tenant's children could be exposed to lead hazards for a significant amount of time before a landlord may be forced by the courts to fix the problem.

To help tenants appropriately notify their landlord of an unsafe or unhealthy condition, the Attorney General's *Consumer Law Guide* includes sample forms. New lead dust testing procedures developed by ME-CDC and DEP can be used by tenants to show that there is some amount of lead dust in a home, thus alerting tenants and landlord to a potential problem. The tenant and landlord can then take steps as appropriate to mitigate the lead dust, e.g., routine cleaning for dust, paint repair, window tracks, rugs, stair treads, etc. If the landlord does not take appropriate action, the tenant can document that failure and use the dust testing results to demonstrate an unhealthy condition.

B. Opportunities

Implement "Essential Maintenance Practices" in rental housing

In 1995, the Lead-Based Paint Hazard Reduction and Financing Task Force convened by U.S Housing and Urban Development published a report, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*[12]. This report recommends the preventive approach of

[12] U.S. Department of Housing and Urban Development. 1995, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*. Report submitted by the Task Force on Lead-Based Paint Hazard Reduction and Financing, Washington, D.C.

implementing a housing maintenance code (or similar legal requirement) to ensure that rental housing does not become unfit for human habitation due to hazardous lead-based paint. If property owners can document compliance with such a legal requirement, then the law could afford them some limit on liability if a resident child were found to have an elevated blood lead level.

Specifically, owners of all pre-1978 rental housing can be required to perform "Essential Maintenance Practices" (EMP) at the time of turnover. EMPs include a visual inspection for peeling paint, use of safe work practices to repair deteriorated painted surfaces (including thorough clean up and third-party testing for lead dust), and training of maintenance staff in lead-safe work practices. Additionally, owners of pre-1950 properties (most lead poisoning caused by deteriorated paint occur inpre-1950 housing) can be required to implement "EMPs plus", e.g., create smooth, cleanable horizontal surfaces; correct conditions in which painted surfaces are rubbing, binding or being crushed; and cover or restrict access to bare soil. Any residence which has been tested and shown to be free of lead paint should be exempted from these requirements.

The efficacy of implementing EMPs can be demonstrated by testing for lead dust. ME-CDC and DEP have developed a protocol that landlords can use to identify if a unit which has been cleaned at turnover has lead dust remaining at a level that may pose a hazard to a young child. Through the LPPF community contracts program, owners of rental housing that is likely to have lead paint will be offered free lead dust testing. Owners and property managers who complete an EMP course (offered free through LPPF funding) and routinely test to ensure there is not a lead dust hazard prior to allowing new occupants to move in will be eligible to list their tested properties on the lead-safe housing registry.

C. Legislative Options

1. Voluntary implementation of EMPs in rental housing.

The Legislature may provide DEP with the authority to set standards for implementing Essential Maintenance Practices in pre-1978 rental housing. Property owners who choose to implement these standards may qualify for listing on Maine's Lead-Safe Housing Registry if they choose to have lead dust testing performed by a qualified third party (Lead Dust Sampling Technician or Lead Inspector). This documentation that a unit is lead-safe prior to occupancy will help property owners demonstrate their good faith efforts to provide housing that is safe from lead hazards.

2. Mandatory implementation of EMPs in rental housing.

Alternatively, the Legislature may require that property owners implement EMPs in rental housing built before 1978 unless a lead inspection has found that there is no lead paint in a rental unit (including common areas). Again, DEP will need to have the authority to set EMP standards, including voluntary confirmatory dust lead sampling. A mandatory EMP requirement can be coupled with legal provisions that provide landlords with some liability relief if a resident

child develops lead poisoning. For example, there could be a rebuttable presumption that the owner exercised due care set in law to provide liability relief. Alternatively, liability could be limited to uncompensated medical expenses, re-location to lead-safe housing, and funding for remedial education to an unspecified amount.

Potential costs to the property owner for additional cleaning plus third-party dust sampling at unit turnover estimated at $150 per unit[13]; additional professional dust lead sampling capacity may be needed. Potential benefits in avoidance of lead poisonings and possible insurance cost reductions. DEP will need additional enforcement resources to ensure EMPS are implemented.

III. Lead inspections prior to residential property transfer

Study charge: *The agencies shall review and make recommendations concerning the establishment of a requirement that the owner of a residential property built before 1978 subject the property to a lead inspection and provide a copy of the lead inspection report to any prospective buyer prior to transfer of the property to a new owner and the capacity of qualified lead professionals to perform this work.*

A. Existing programs

Prior to the sale of a residential property built before 1978, both Maine and the federal government require that the owner provide the potential buyer with a "lead disclosure". Both disclosure laws require statements about any known lead-based paint and lead-based paint hazards. Additionally, the federal law requires sellers to provide the potential purchaser with 10 days to have a lead inspection performed on the residential building at the buyer's expense. A lead inspection provides the purchaser and the owner with a report that identifies all lead-based paint in a residence, as well as information as to whether the paint is currently in such poor condition that it is an immediate hazard. Once a lead inspection is performed on a property, the owner is required by law to provide the next purchaser with all known information on lead-based paint, including a copy of the lead inspection report. This ensures that new home buyers are aware whether lead paint has been identified in a home prior to purchase so they can plan purchase and renovations appropriate to their individual needs and circumstances.

B. Opportunities

Require lead inspection prior to sale of pre-1978 housing

There were an average of 4600 homes built before 1950, and an average of 3900 homes built between 1950-1979, sold annually from 2004-2007[14]. Currently, there are only 13 individuals in Maine who maintain their Lead Inspector credentials to perform contracted work. The number is limited, as there is not sufficient demand for lead inspections to support a larger pool of

[13] Center for Government Research Albany NY, December 2008, *An Evaluation of the City of Rochester's Lead Law: 2006-2008*(www.cgr.org)
[14] P. Merrill e-mail to C. Cifrino 10/20/2008 containing data from Maine Real Estate Information Services

professionals on an on-going basis. If lead inspections are required prior to the sale of pre-1978 residential properties, Maine would need to develop additional lead inspection capacity.

C. Legislative Options

The 123rd Maine Legislature directed the agencies to make recommendations concerning the establishment of a requirement that the owner of a residential property built before 1978 subject the property to a lead inspection and provide a copy of the lead inspection report to any prospective buyer prior to transfer of the property to a new owner and the capacity of qualified lead professionals to perform this work.

One option would be to require that a lead inspection be conducted at the owner's expense prior to the sale of pre-1950 or pre-1978 residential properties. A complete lead inspection costs an average of $400; implementing a lead inspection requirement before property transfer would add this cost to the sale of approximately 8400 homes annually, with the numbers eventually decreasing as houses that had already been inspected come back onto the market and the lead inspection report documenting the presence of lead paint is made available to the prospective purchaser.

IV. Implementation and enforcement of current lead poisoning prevention programs

> ***Study charge:*** *The agencies shall review ways to fully implement and enforce lead poisoning prevention programs established by statute and make recommendations to eliminate lead paint and lead poisoning risks in the State.*

A. Existing programs addressing lead poisoning

Maine passed its first law to address the issue of lead poisoning in 1973, with amendments in 1991 to create the *Lead Poisoning Control Act* (LPCA)(22 MRSA §1314-A)[15]. This set the State's goal of eradicating childhood lead poisoning by the year 2010 through the elimination of potential sources of environmental lead. DHHS's Maine Childhood Lead Poisoning Prevention Program (MCLPPP) implements the actions required by this law, including blood lead testing, environmental investigations, posting notice of lead hazards, issuing notice of removal of lead hazards, and performing education and outreach on lead poisoning prevention to parents and medical care providers. Additionally, MCLPPP provides case management services for lead

[15] This law included provisions to:

- Ban the use of lead-based paint in residences and child care facilities, and on toys and furniture;
- Require health care providers to screen at-risk children for elevated blood lead levels in accordance with guidance developed by DHHS, and to have the samples analyzed by the State Health Laboratory;
- Require that child care facilities annually screen for and correct any lead hazards in order to be licensed;
- Authorize DHHS to set training, licensing and work practice standards for lead inspections, lead abatement, and related activities.
- Authorize DHHS to conduct a lead inspection of residences and child-occupied facilities when a case of lead poisoning has been reported, and to order abatement of lead hazards; and
- Enforce abatement orders.

poisoned children, and on-going epidemiological surveillance of blood lead levels in Maine children.

MCLPPP's activities have historically been funded with grant monies from the U.S. Centers for Disease Control and Prevention (US-CDC) and support from Maine's General Fund, with federal funds primarily supporting blood lead surveillance activities. Historically, funding limits have restricted MCLPPP's ability to fully implement some of the provisions of the LPCA. For example, until recently, environmental lead inspections were only conducted in the homes of the most highly-poisoned children, reaching approximately 20 to 30 dwellings per year. Inspections in multifamily dwellings have been limited to the unit with a lead-poisoned child and other units in the dwelling only if a child under six years of age was currently in residence.

In 1995, Maine amended the *Lead Poisoning Control Act* and enacted 38 MRSA Chapter 12-B, *Lead Abatement*. These changes reassigned responsibility for implementing training, licensing and work practice standards for professionals involved in lead abatement and lead inspection activities from DHHS to DEP. This was done to realize efficiencies afforded by managing this program in conjunction with DEP's similarly-structured Asbestos Hazard Prevention Program. DEP funds these programs with grants from the U.S. Environmental Protection Agency (US-EPA) and with licensing fees. In addition, DEP provides technical assistance to contractors, homeowners and tenants to help them understand the problem of lead poisoning and the actions they can take to prevent it.

As previously discussed in Section I, the US-EPA adopted the *Renovation, Repair and Painting Rule* on April 22, 2008 to address the risks posed by renovation, repair and painting in pre-1978 housing. This rule amends Section 402 of the *Toxic Substances Control Act* (TSCA)(15 U.S. C 2684(g)) to require beginning April 22, 2010 that:

- individuals engaged in <u>renovation, repair and painting</u> in residential dwellings and child-occupied facilities (e.g. day cares, kindergartens, child care facilities) are properly trained;
- training programs are accredited;
- contractors and firms engaged in such activities are certified; and
- appropriate work practices are utilized.

US-EPA is requesting that Maine seek authorization to implement the additional provisions of this new *Renovation, Repair and Painting Rule* promulgated under TSCA 402(c).

Since 1998, MaineHousing has successfully competed for four *Lead Hazard Reduction* grants from the federal Department of Housing and Urban Development (HUD), receiving a total of $10.9 million dollars. In that time period, MaineHousing allocated an additional $2,257,000 from other sources to supplement the HUD grants. In all, MaineHousing has completed lead hazard reduction work in 746 residences, and expects to complete 280 more units over the next three years. Additionally, MaineHousing targets $150,000 of its "Home Repair" funding annually to remediate lead hazards in conjunction with other work under this program, thus making an additional 15 housing units lead-safe annually. All "HOME Repair" work in pre-1978 housing is performed in a lead-safe manner, and the work area is thoroughly cleaned and tested to ensure no lead hazards are created or remain as a result of this work.

At the federal level, there are three primary agencies involved in childhood lead poisoning prevention. US-CDC has primary responsibility for medical standards and practice, US-EPA has primary responsibility for environmental standards and practice, and HUD has responsibility for activities related to federally-assisted housing. Maine's state agency counterparts carry similar responsibilities. Appendix D is a summary of the federal law and regulations implemented by these agencies.

B. Opportunities

The primary method of identifying homes with lead hazards has been through the diagnosis of a child with an elevated blood lead level and subsequent mandatory environmental inspection of the dwelling where the child resides by the MCLPPP. There are two opportunities to more fully implement this program: a) lowering the blood lead level threshold at which environmental lead inspections are offered, and b) requiring inspections of all units in any dwelling in which a child with an elevated blood lead level has been identified *regardless* of whether there are any children living in these units. The current ME-CDC rules (10-144 Chapter 292) reflect the ability to operate and sustain an environmental inspection program with resources that have historically been available. The agencies believe there is sufficient statutory authority to increase the offerings of environmental inspections to all units in a dwelling that has a child with an elevated blood lead level. The LPPF identifies measures to prevent children's exposure to lead including the identification of lead sources and actions to take to prevent lead as allowable purposes, and thus can be used to support expanding the ME-CDC's offering of environmental lead inspections. Indeed, LPPF funds have already been used to support inspections whenever a child with a confirmed blood lead level of 15 ug/dL is identified, which has resulted in doubling the annual number of inspections being performed (the current rule states inspections shall be performed if a *persistent* blood lead level of 15 ug/dL is identified). Requiring environmental inspections in all units of a dwelling in which an identified lead poisoned child lived or regularly visited would require a rule change.

As discussed in Section I, renovation, repair or painting in homes with lead paint creates lead hazards that can poison children. With the adoption of the new TSCA 402(c) *Renovation, Repair and Painting* rule, US-EPA has set minimum standards of practice for these activities whenever a significant amount of lead paint will be impacted. Maine has the opportunity to institute a more protective yet administratively more streamlined program. However, this would require additional statutory authority for DEP, as well as additional resources to support compliance and enforcement of new state regulations.

C. Legislative Options

Please refer to page 11, Section I.C, Legislative option #2 – "Provide DEP with authority to certify contractors disturbing lead paint".

D. A new approach to assessing at-risk housing for potential lead hazards

Continuing to use children as the tool for identifying housing with lead hazards is an extremely slow and reactive approach, and many feel is unethical in that preventative action is undertaken only after a child has become harmed. If we continue to use this intensive approach of inspection and abatement once a lead poisoned child is identified, Maine will be unlikely to do better than the current pace of creating barely more than a hundred units of lead-safe housing per year rather than the thousands that a real primary prevention strategy requires.

Historically, a full lead inspection has been the primary tool available to identify lead hazards, at an average cost of approximately $400 per residence. A full lead inspection identifies all lead and lead hazards in a property; this is clearly the gold standard. Due to this cost, voluntary unsubsidized lead inspection by property owners rarely occurs in Maine.

There are other, less rigorous approaches to identifying lead paint risk. Looking for peeling or chipping paint and decayed surfaces is a very inexpensive method of identifying potential risk. Visual inspection, however, is subjective, different inspectors may consider the "condition" of a window or floor differently. In addition, even where paint is intact and components are in fair condition there may be significant lead dust hazards. Conversely, there may be older properties that have components in degraded condition but that don't actually contain lead. Unfortunately, visual inspection alone can not confirm or negate the likelihood of lead risk.

A lower cost method of identifying lead risk is to pair a visual inspection with a test for lead in paint using a commercially-available lead check swab. The lead check swab provides an immediate and visual pass/fail result; it does not provide a quantitative assessment, and there is a concerning rate of false negatives (where lead is present but not detected by the swab).

Another alternative is lead dust testing. Lead dust testing very accurately reveals true lead risk, i.e., the amount of lead dust available that presents an immediate risk to children. Lead dust loadings (or levels) have been extensively studied and we can be confident that housing with very low or non-existent dust levels is safe (until an activity or structural condition causes a change). It has also been demonstrated that ordinary people without training can successfully

take relatively accurate dust wipe samples from floors, and that with very modest training (a one day course) trained dust technicians are extremely reliable[16].

DEP, MaineHousing and Maine CDC are currently working to develop a three tiered lead risk assessment system to encourage broader screening and identification of lead hazards in high risk units.

- Provide for full lead inspection for the highest risk houses, i.e., those with children with eBLLs. Recently, ME-CDC has begun using the lead poisoning prevention fund to extend full inspection and investigation services to children with elevations between 15 and 20 ug/dL, and is working aggressively to build the programmatic systems to allow us to provide services to all children with blood lead levels above 10ug/dL.

- By statute, ME-CDC can require environmental inspections on all units in a multi-family dwelling in which a lead-poisoned child has been identified. Current rules only partially implement this statutory authority. ME-CDC intends to undertake rule-making to require inspections in all units regardless of whether a child under six years of age is currently in residence. LPPF funds will be used to support more fully implementing this authority.

- MaineHousing's *Lead Hazard Reduction* grant also provides funds for 100 inspections per year in high-risk, low income housing.

- Create capacity to provide a visual inspection paired with dust testing by a third party. DEP and Maine CDC are utilizing the Lead Poisoning Prevention Fund (LPPF) to develop a system with community partners to train additional lead dust sampling technicians and to encourage rental property owners in the high density areas to have this level of assessment done. This can be most cost effective when performed at unit turn over after essential maintenance practices or standard treatments have been performed (discussed below). While lower in cost than a full inspection, landlords may need incentives to broadly implement this level of assessment.

  Additionally, DEP and MaineHousing have partnered to include lead dust sampling technician training within the residential energy auditor trainings provided by MaineHousing. These cross-trained energy auditors will be able to provide families receiving an energy audit with visual inspection and dust testing to determine if lead is currently an issue they should be addressing. The estimated cost of this form of assessment is between $100 and $150 per unit and is likely to decrease as increased energy audit volume allows savings on both personnel time and dust wipes analysis costs.

- Provide families with an inexpensive method of checking their immediate risk of exposure to lead dust. Utilizing the LPPF, Maine CDC is developing the capacity to provide lead dust test kits containing two or three "test wipes" and instructions for homeowners/parents to take the sample themselves. Such kits are estimated to cost $25 dollars including sample analysis and postage. This testing relies on the tester being

[16] http://www.centerforhealthyhousing.org/html/dust_lead_test_kit_study.htm

interested in finding a lead hazard if it exists, and is most appropriately used by homeowners or tenants to check areas of particular concern to them to see if in fact there is lead dust. They can then use this information to take immediate precautions to protect their children, such as thorough cleaning or restricting access to the area, and recognize that a full lead inspection may be warranted. It can provide tenants with an objective measure to alert their landlords to a deteriorated paint condition. Dust testing can be particularly valuable to families who may be engaging in repair work on their own to determine if they are spreading lead dust and/or have adequately cleaned up.

The combined effect of these new initiatives will be to substantially increase the number of homes identified as having or potentially having lead paint hazards.

VI. Summary of Legislative Options

The US-CDC Advisory Committee on Childhood Lead Poisoning Prevention has delineated four conditions necessary for states to successfully implement primary prevention of lead poisoning:

- ✓ targeting of the highest risk areas, populations, and activities;
- ✓ fostering of political will for jurisdictions to provide adequate levels of funding;
- ✓ expansion of resources for housing remediation and identification and correction of lead hazards; and
- ✓ establishment of a regulatory infrastructure to create and maintain lead-safe housing and to support the use of lead-safe construction practices.[17]

To ensure that we target the highest risk areas, populations, and activities, ME-CDC has spent considerable time over the past two years analyzing and reviewing the data on childhood lead poisoning in Maine to identify areas, populations, and activities of highest risk for lead poisoning. Much of this work is summarized in Appendix A. As a consequence of this work, new initiatives are being launched using LPPF funds to expand resources at the local level for identification and correction of lead hazards. A statewide mailing campaign targeted to families with young children is soon to be launched, and this campaign will be offering free lead dust tests. These and other new initiatives supported by the Lead Poisoning Prevention Fund are detailed in Appendix C.

The agencies have also identified additional options for enhancing our ability to identify dwellings with lead paint hazards. MaineHousing intends to integrate lead hazard identification training into other training programs it offers at a level of detail appropriate to the audience. For example, the First Time Home Buyers training includes a lead awareness component and information on resources for additional assistance on lead-related issues. A new initiative in 2009 will integrate Lead Dust Sampling Technician training into the Residential Energy Auditor training courses offered by MaineHousing. This will enable MaineHousing-trained residential

[17] Binns HJ., Campbell C, Brown MJ. Interpreting and Managing Blood Lead Levels of Less than 10 ug/dL in Children and Reducing Childhood Exposure to Lead: Recommendations of the Centers for Disease Control and Prevention Advisory Committee on Childhood Lead Poisoning Prevention, *Pediatrics* 2007; 120:e1285-e1298, downloaded from www.pediatrics.org on October 3, 2008..

energy auditors to offer lead dust sampling in conjunction with their energy audits to provide the property owner with information on the potential for lead hazards in their housing.

Collectively, these efforts are expected to substantially increase the number of dwellings that are identified as having lead paint hazards, and expectedly, increase the demand for incentives and resources to control and eliminate these lead hazards. The current resources to correct lead hazards have been reviewed, and combined will reach roughly 100 units per year – the same capacity that has been in existence for several years.

Maine's 123rd Legislature directed the agencies to jointly review issues related to achieving affordable housing safe from lead hazards and the elimination of childhood lead poisoning and make recommendations regarding achieving lead-safe housing and eliminating lead poisoning with proposed legislation. Several legislative options were identified and are summarized below. These legislative options were developed in response to the study charges and are not necessarily supported by all of the agencies or the Administration.

> ***Study charge #1:*** *The agencies shall review and make recommendations on resources and incentives to promote housing that is lead-safe, as defined in the Maine Revised Statutes, Title 38, section 1291, subsection 19-A, including the lead poisoning prevention fee established in Title 22, section 1322-F and lead-safe renovation notification and work practice requirements.*

Legislative Options:

1. Designate new LPPF fees to increase incentives and resources to promote affordable and lead-safe housing.

Amend 22 MRSA §1322-E to enable at least half of the allocations from the Lead Poisoning Prevention Fund to be used to provide MaineHousing funds for use in their *Lead Hazard Control*, *Home Repair*, and *Weatherization* programs to mitigate lead paint, and amend 22 MRSA §1322-F to increase the fee imposed on the manufacturer or wholesaler of paint from $0.25 to $0.50 per gallon of paint estimated to have been sold in the State during the prior year.

No significant cost to State to manage additional funds within existing programs; additional cost to paint manufacturers, or brand name or private label owner, dependent on amount of fee increase and amount of paint sales.

2. Provide DEP with authority to certify contractors disturbing lead paint

a) Amend 38 MRSA §1292 and 1295 to allow DEP to adopt and implement regulations for renovation, repair and painting activities in pre-1978 housing that are at least as protective as the TSCA 402(c) regulations, and allocate additional resources as needed.

- DEP regulations can be amended to include a "General Permit" provision to provide for simple registration of regulated firms at a low cost;
- DEP will continue to offer training programs funded by the Lead Poisoning Prevention Fund at no cost to Maine residents to meet the state and federal requirements;
- Timely enforcement action can be taken under the DEP's general enforcement authority (38 MRSA §347-A).

Potential annual cost to the State of at least $180,000 for two full-time field positions plus support. Estimated annual average revenue from certification fees is $20,000 (US-EPA estimates 1060 firms in Maine will need certification, however, many believe this estimate is low). Potential grant revenue from US-EPA is unknown; US-EPA received no additional funding to support implementation of its new rule. DEP may experience a reduction in the baseline 402 grant funding if it does not receive authorization for the 402(c) program; it may receive an increase if it does receive authorization and US-EPA receives additional allocation for the 402(c) program. State would need to cover any program costs not covered by US-EPA grants and certification fees; potential unmet costs may range from $85,000 (assuming additional US-EPA grant of $75,000) to $160,000. Possible sources for additional revenue include the General Fund and the LPPF. Reduction in certification costs for renovation contractors (including "do-it-yourself" landlords and property maintenance personnel) estimated to average $40 annually based on assuming fee for five-year certification for US-EPA is $300 and for DEP is $100. If funding to support the program is needed from the LPPF, it would be necessary to amend the purposes for which the LPPF can be used.

b) If authority for licensing of renovation, repair and painting contractors working in pre-1978 housing is not provided to DEP, then amend 38 MRSA §1296 to allow the commissioner to pursue enforcement proceedings pursuant to 38 MRSA 347-A and provide additional resources to support increased enforcement.

- Provides for more timely enforcement action of the *Emergency Provision* by DEP in response to complaints;
- Contractors will be subject to the US-EPA's *Renovation, Repair and Painting* rule, including training, licensing, and work practice requirements enforced by US-EPA.

Additional compliance and enforcement resources are needed for the DEP to implement (approximately $90,000 per position). Average annual cost to contractors for licensing is $60 (US-EPA's currently proposed fee).

Appendices E and F delineate the statutory changes needed to implement these options.

Study charge #2: *The agencies shall review and make recommendations concerning the establishment of a requirement to ensure that every leased residential dwelling is maintained as lead-safe, including routine*

maintenance and owner self-inspection requirements, and the inclusion of such a requirement under a warranty of habitability.

Legislative Options:

1. Voluntary implementation of EMPs in rental housing.

The Legislature may provide DEP with the authority to set standards for implementing Essential Maintenance Practices in pre-1978 rental housing. Property owners who choose to implement these standards may qualify for listing on Maine's Lead-Safe Housing Registry if they choose to have lead dust testing performed by a qualified third party (Lead Dust Sampling Technician or Lead Inspector). This documentation that a unit is lead-safe prior to occupancy will help property owners demonstrate their good faith efforts to provide housing that is safe from lead hazards.

2. Mandatory implementation of EMPs in rental housing.

Alternatively, the Legislature may require that property owners implement EMPs in rental housing built before 1978 unless a lead inspection has found that there is no lead paint in a rental unit (including common areas). Again, DEP will need to have the authority to set EMP standards, including voluntary confirmatory dust lead sampling. A mandatory EMP requirement can be coupled with legal provisions that provide landlords with some liability relief if a resident child develops lead poisoning. For example, there could be a rebuttable presumption that the owner exercised due care set in law to provide liability relief. Alternatively, liability could be limited to uncompensated medical expenses, re-location to lead-safe housing, and funding for remedial education to an unspecified amount.

Potential costs to the property owner for additional cleaning plus third-party dust sampling at unit turnover estimated at $100-$150 per unit; additional professional dust lead sampling capacity may be needed. Potential benefits in avoidance of lead poisonings and possible insurance cost reductions. DEP will need additional enforcement resources to ensure EMPS are implemented.

Study charge #3: *The agencies shall review and make recommendations concerning the establishment of a requirement that the owner of a residential property built before 1978 subject the property to a lead inspection and provide a copy of the lead inspection report to any prospective buyer prior to transfer of the property to a new owner and the capacity of qualified lead professionals to perform this work.*

Legislative Options:

1. Require that a lead inspection be conducted at the owner's expense prior to the sale of pre-1950 or pre-1978 residential properties

The Legislature could require that a lead inspection be conducted at the owner's expense prior to the sale of pre-1950 or pre-1978 residential properties. A complete lead inspection costs an average of $400; implementing a lead inspection requirement before property transfer would add this cost to the sale of approximately 8400 homes annually, with the numbers eventually decreasing as houses that had already been inspected come back onto the market and the lead inspection report documenting the presence of lead paint is made available to the purchaser.

> ***Study charge #4:*** *The agencies shall review ways to fully implement and enforce lead poisoning prevention programs established by statute and make recommendations to eliminate lead paint and lead poisoning risks in the State.*

Aside from the legislative option discussed under Study Charge #1 (DEP implementing state regulations for renovation, repair and painting activities in pre-1978 housing), no additional legislative options were identified. The following opportunities to more fully implement and enforce existing lead poisoning prevention programs through changes to the DHHS 10-144 Chapter 292 rules have been identified:

a). Lower the blood lead threshold at which environmental inspections to identify lead paint hazards are offered to property owners

Increased programmatic costs of increased number of inspections to be covered by the LPPF.

b). Require that inspections be performed on all units within a dwelling that has a lead poisoned child or a child with a persistent elevated blood lead level.

Increased programmatic costs of increased number of inspections to be covered by the LPPF.

Maine has demonstrated political will to provide funding for lead poisoning prevention efforts to date by providing state resources to assist families with lead poisoned children and to leverage federal lead hazard reduction funds, but these efforts fall short of eliminating childhood lead poisoning. The recent establishment of the Lead Poisoning Prevention Fund has provided new resources to reach out to high risk populations and property owners with lead poisoning prevention information. However, to eliminate the root causes of childhood lead poisoning in Maine and accelerate the pace at which we achieve lead–safe housing, additional funding is needed to assist owners of properties that are at the greatest risk for having lead hazards.

Appendix A - Lead Poisoning in Maine, 2008 Update

Maine Childhood Lead Poisoning Prevention Program

Childhood Lead Poisoning in Maine

2008 Update December 17, 2008

Did you know?

- **In 2003, there were 220 newly identified children with an elevated blood lead level.**
- **In 2007, there were less than 150.**
- **4 0% of children newly identified with elevated blood lead came from just five Maine communities, where they mostly lived in rental housing.**
- **Children on MaineCare are about twice as likely to have an elevated blood lead level as compared to other children.**

Inside this Update

Lead Poisoning

Lead poisoning remains one of the major environmental hazards threatening children in Maine. Children under the age of six are at the greatest risk for lead poisoning because their still developing brains and bodies can be adversely effected by very small amounts of lead. Additionally, their crawling and playing on the floor, their hand-to-mouth activity, puts them at greater risk of ingesting lead paint dust and chips. Lead poisoning often occurs with no obvious symptoms, it frequently goes unrecognized.

Lead poisoning can lead to physical and mental disabilities. More concerning is that even low levels of lead poisoning may cause lowered IQ, learning disabilities, speech delay, hearing impairment, hyperactivity, and aggressive behavior. Because of lead's effect upon a child's brain, hundreds of Maine children may fail to reach their full potential and their communities do not realize the full benefits of the child's long-term productivity. Studies have shown children who are lead poisoned are more likely to become involved with the juvenile justice system and that lead poisoned children are more likely to drop out of school before graduating.

Lead poisoning is a completely preventable disease.

"The harmful effects of lead poisoning can be permanent.

The best remedy for lead poisoning is to prevent it before it occurs."

Screening Children for Elevated Blood Lead Levels (eBLL)

Maine and Federal laws require that all children enrolled in MaineCare must have a blood lead level test at 1 year of age and again at 2 years of age. All children of the same ages who are not enrolled are also required to have a blood lead test unless a health care provider determines it is not needed.

This testing (or screening) of blood lead levels in children provides data that is used to evaluate progress toward the goal of eliminating childhood lead poisoning.

Since 2003, the percent of 1 year old children screened for blood lead has remained stable at 50 percent. For 2 year olds, the screening rate has remained stable at roughly 25 percent (Figure 1).

Statewide, 67 percent of children have been tested at least once by the age of three. For several counties, the percentage of children with at least one blood lead test by age three is over 80 %(Figure 2).

"Two-thirds of Maine children are likely to get a blood lead test by 3 years of age, but far less are tested <u>both</u> at age 1 <u>and</u> 2 years."

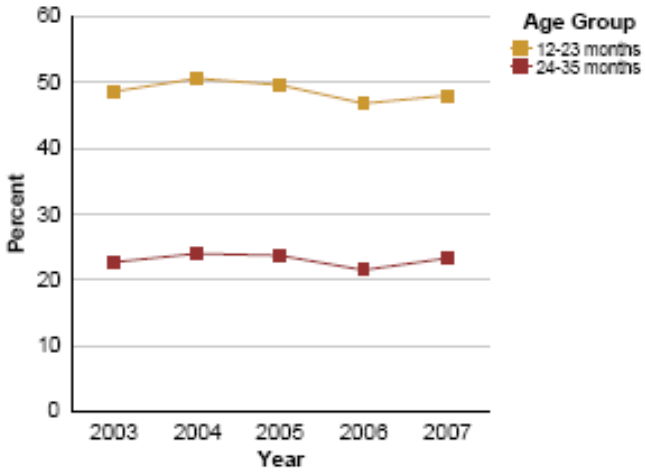
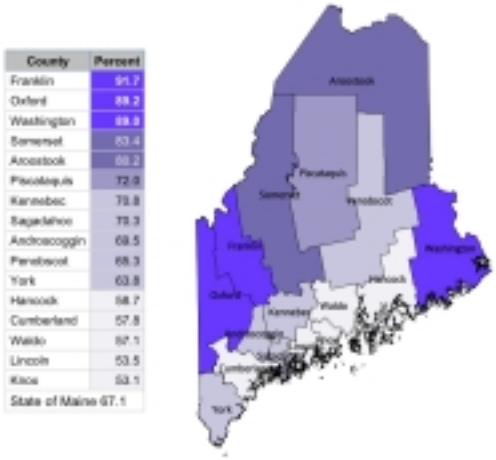


FIGURE 1. Percent of children screened for blood lead, by age group and by year.

"Screening rates of children for blood lead levels have remained fairly constant for the years 2003—2007."



County	Percent
Franklin	91.7
Oxford	89.2
Washington	88.9
Somerset	83.4
Aroostook	80.2
Piscataquis	72.8
Kennebec	70.8
Sagadahoc	70.3
Androscoggin	69.5
Penobscot	68.3
York	63.8
Hancock	58.7
Cumberland	57.8
Waldo	57.1
Lincoln	53.5
Knox	53.1
State of Maine 67.1	

FIGURE 2. Percent of children screened for blood lead at least once by 3 years of age, by county.

"Statewide, two-thirds of children have been tested for lead by age three years."

Trends for Numbers of Children with Elevated Blood Lead Levels (eBLL)

There is no "safe" level of lead in blood. A blood lead level of 10 micrograms lead per deciliter of blood is widely referred to as an "elevated blood lead level" or "eBLL". It is a level that triggers public health action. At these blood lead levels, studies have found interventions are likely to be successful in identifying lead hazards and lowering blood lead levels.

National data suggest there are an estimated 1000 Maine children under the age of six that have an elevated blood lead level (eBLL).(1)

The annual number of newly-identified children with an eBLL has declined over the past 5 years (Figure 3).(2)

This decline is also apparent when viewed as the percent of children screened, indicating that the decline is not a consequence of a change in screening rates (Figure 4).

For the five year period 2003 – 2007, a total of 913 children were newly identified as having an elevated blood lead.

"There are roughly 1000 Maine children under six years that have an elevated blood lead level (eBLL)."

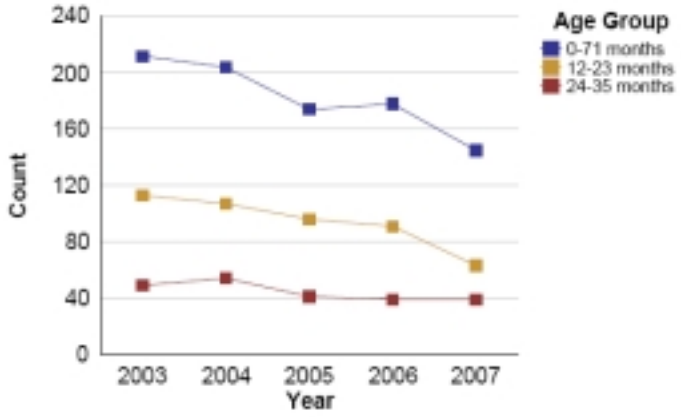


FIGURE 3. Number of newly identified children with an elevated blood lead level, by age group and by year.

"The number of newly identified children with an eBLL declined over the years 2003 to 2007."

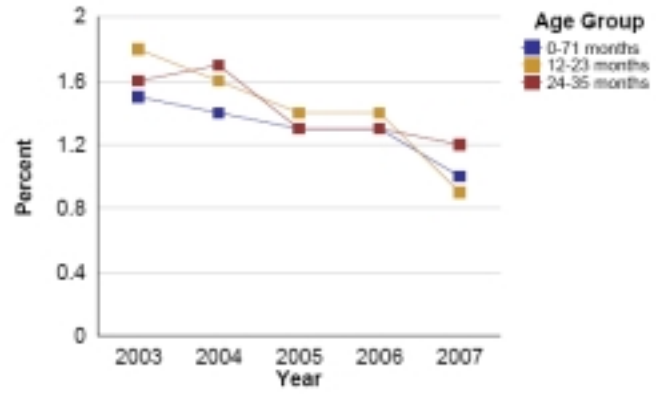


FIGURE 4. Percent of newly identified children with an elevated blood lead level among those screened, by age group and by year.

"The percentage of newly identified children with an eBLL relative to those screened has declined over the years 2003 to 2007."

Communities with a High Density of Children having Elevated Blood Lead Levels

There are areas of Maine that have a greater burden of children with elevated blood levels (Figure 5).

Just five communities have accounted for roughly 40% of all newly identified children with eBLLs over the years 2003 to 2007. These five communities are:

- Sanford
- Biddeford/Saco
- Portland/South Portland/ Westbrook
- Lewiston/Auburn, and
- Bangor.

These same five communities also have higher percentages of children with elevated blood lead levels among those screened, when compared to the statewide average of 1.3 percent (Table 1). We therefore refer to this communities as having a "high density" of children with eBLLs.

"Just five Maine communities account for 40% of all newly identified children with an elevated blood lead level."

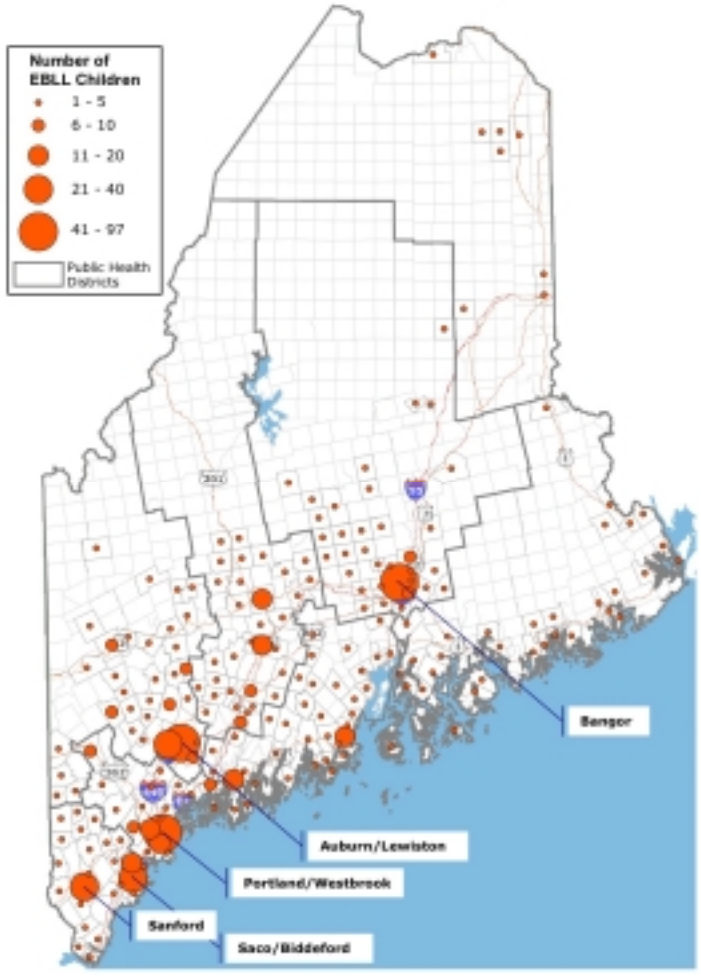


FIGURE 5. Number of newly identified children under 6 years of age with an elevated blood lead level, by town for the years 2003- 2007.

It is useful to look at both the counts of children with eBLLs, and the percent (or rate). The latter is the number of the children with eBLLs divided by the number of screened children.

Selected Area	Number Screened	Number EBLL	Percent
Bangor	2,096	41	2.0
Biddeford/Saco	2,229	44	2.0
Lewiston/Auburn	4,162	119	2.9
Portland/Westbrook	5,146	110	2.1
Sanford	1,660	34	2.0
Maine	69,715	913	1.3

Table 1. Number and percent of newly identified children under 6 years of age with an elevated blood lead level for "high density" communities.

Mapping Lead Paint Hazards in our High Density Communities

If we want to empower communities to address the lead paint hazards in their neighborhoods, we need to help them identify areas of high risk.

Mapping where a child was living when identified as having an elevated blood lead level is one way to identify high risk neighborhoods.

The 123rd Maine Legislature amended State Law to make it possible to share address information that relates to the home where an environmental lead hazard or a case of lead poisoning has been identified.[3]

This new law makes it possible to share maps like the one below for Lewiston/Auburn, with the effected communities. This in turn helps them to target local interventions made possible with new support from the Lead Poisoning Prevention Fund.[4]

The address data used to make maps can also be linked with property tax records to identify whether housing is rental or privately owned.

"More than 80% of the children in our five high density areas for lead poisoning live in rental housing."

FIGURE 6. Map showing the number of all newly identified children with an elevated blood lead level for census block groups within the Lewiston/Auburn area for the years 2003-2007.[5]

Mapping the Location of Homes Built Before 1950 in our High Density Communities

Lead paint in older homes is the number one cause of childhood lead poisoning. Housing built before 1950 is generally of higher concern. Prior to this time, paint was more likely to contain high amounts of lead.

The sale of paint containing lead was banned in 1978, and thus homes built later than this date are considered unlikely to have lead paint hazards.

Mapping areas with a higher proportion of homes built before 1950 can be used as another indicator for targeting community-based interventions, such as efforts to enhance blood lead screening rates or lead dust testing.

Maps, such as the one below, have been prepared for each of the five Maine communities with a high density of children with elevated blood lead levels.

"In a small survey, Maine children were found to be up to three times more likely to have a blood lead level greater than 5 ug/dL if they lived in pre-1950 housing, as compared to other housing." [7]

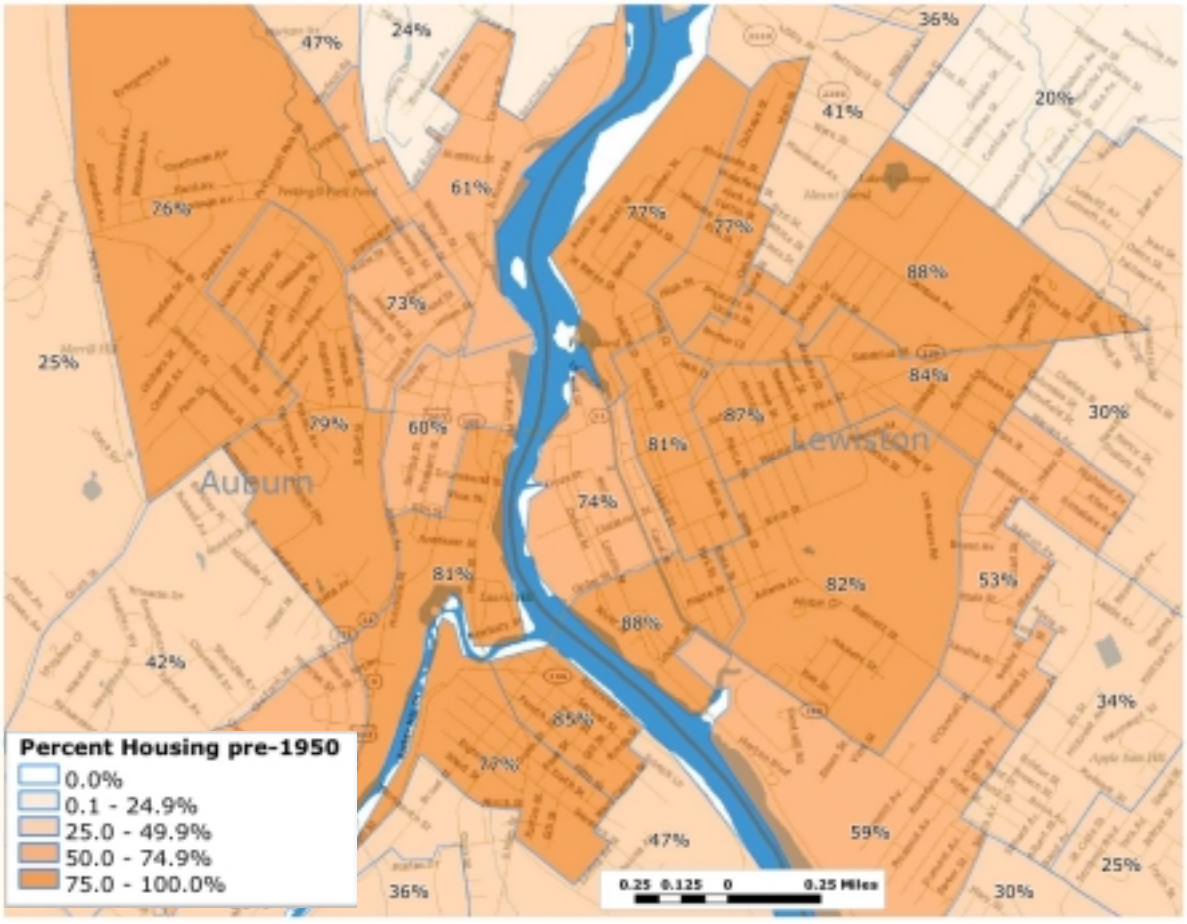


FIGURE 7. Mapping of the percent of pre-1950 housing stock by census block group within the Lewiston / Auburn area.

Actions that Make Lead Paint Hazards more Dangerous

A pre-1950 home with lead paint that is in good repair, structurally sound and well maintained presents little risk of causing a lead poisoned child. However, if these lead paint surfaces are disturbed during a home renovation project lacking proper safeguards, lots of dangerous lead dust can become generated.

Since 2003, we have performed over 130 environmental investigations of homes with a lead poisoned child. In about a third of these homes, a home renovation project had recently occurred and lead dust hazards were present. Almost all of these renovations were performed by the owner rather than a hired contractor.

A worker who comes in contact with lead paint may unknowingly carry lead dust on their clothes and deposit lead dust in the family car or in the home. In a small survey, Maine children with a parent in a job with a high risk of lead exposure was 6 times more likely to have a blood lead level above background than children without.

"In the past year, five lead poisoned children were identified where lead dust on a car seat was the only hazard.".(7)

"Workers exposed to lead paint can carry lead dust on clothing and footwear into their family automobiles and homes. This "take home lead" is emerging as an important risk for a child having an elevated blood lead level."

"About a third of identified lead poisoned children live in a home that has undergone recent renovation work.

These home renovations are almost always being done by the property owner, not a contractor." (7)

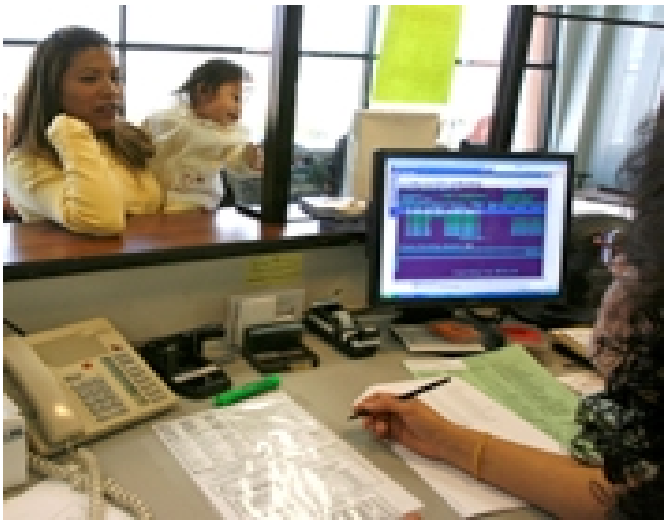
Disparities in Lead Poisoning

Children from low-income families are at higher risk of becoming lead poisoned than other children. Low-income families are more likely to live in older housing with deferred maintenance.

This is why federal and state laws require that all Medicaid-eligible children should receive a blood lead screening test at ages 1 and 2 years.

Among children screened for blood lead, those on MaineCare are about twice as likely to have an elevated blood lead level as children who are not enrolled.

Many new refugee and immigrant families have been moving into some of our high density areas that are known to have housing with lead paint hazards. The Somali community in Lewiston is one example.



"Children on MaineCare are about twice as likely to have an elevated blood lead level upon screening than children not on Maine Care."

"For the year 2007, 20 out of the 37 children found to have an elevated blood lead level and living in Lewiston, were children from refugee and immigrant families." (7)

MAINE CHILDHOOD LEAD POISONING PREVENTION PROGRAM

Environmental and Occupational Health Programs
Maine Center for Disease Control and Prevention

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Maine Center for Disease Control and Prevention
An Office of the Department of Health and Human Services

John E. Baldacci, Governor Brenda M. Harvey, Commissioner

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The two pictures of lead poisoning in Maine

The Maine Childhood Lead Poisoning Program in collaboration with the Environmental and Occupational Health Programs have recently completed over two years of intensive compilation and analysis of Maine's lead poisoning surveillance data.

Two pictures of lead poisoning in Maine are becoming apparent. One of rental stock in our older cities and towns, predominantly occupied by low income families. Here, the picture of lead poisoning looks very similar to many other urban areas of the U.S.

The other picture is that of rural lead poisoning. This picture is less clear — we understand the risk factors for rural lead poisoning less well. Rural lead poisoning appears to mostly involve owner occupied housing.

Lead poisoning in Maine is roughly split between these two pictures — with about half of identified cases falling into each picture.

Importantly, what we are learning is being used to target new education and outreach efforts aimed at eliminating childhood poisoning; efforts made possible by the Lead Poisoning Prevention Fund.

End Notes .....

(1) The estimate that there are roughly 1000 Maine children under age 6 years with an elevated blood lead level is based on extrapolating results from a national survey of children randomly tested for blood lead. See http://www.cdc.gov/exposurereport/pdf/factsheet_lead.pdf.

(2) ***"newly identified children"*** ...the word "newly" is used to make it clear that these are new cases of children with an elevated blood lead identified within a specific period of time (e.g., a year). This is a measure of incidence. Incidence should not be confused with prevalence, which is a measure of the total number of cases in a population.

(3) Public Law 2008 Chapter 628

(4) The ***Lead Poisoning Prevention Fund*** was established by the 121st Maine Legislature and funded by a $0.25 per gallon fee on all paint sold in the State. The fee is assess to the paint brand label owner. The fund is to be allocate to support education, outreach and training to identify and reduce lead paint hazards.

(5) A ***census block group*** is a geographical unit used by the United States Census Bureau. It is the smallest geographical unit for which the Census Bureau publishes sample data. Generally a block group contains between 600 and 3,000 people, with an optimum size of 1,500 people.

(6) The Maine Environmental and Occupational Health Programs undertook a survey of 739 Maine families that had child recently screening for an eBLL. The survey assessed risk factors for having a blood lead level ob 5 micrograms per deciliter or higher.

(7) Data on the presence of renovation work in homes of children with an eBLL, as well as data on racial and ethnic group status, comes from the Maine Childhood Lead Poisoning and Prevention's case management investigations.

Appendix B - An Act to Protect Children from Hazardous Lead-Based Paint - Part C

123rd Maine Legislature, Public Law Chapter 628

Sec. C-1. Review and report. The Department of Environmental Protection, the Maine State Housing Authority and the Department of Health and Human Services, Maine Center for Disease Control and Prevention, jointly referred to in this section as "the agencies," shall review the following issues related to achieving housing safe from lead hazards and the elimination of childhood lead poisoning. The agencies shall report by January 1, 2009 and may make recommendations regarding achieving lead-safe housing and eliminating lead poisoning with proposed legislation to the joint standing committees of the Legislature having jurisdiction over health and human services matters and natural resources matters.

1. The agencies shall review and make recommendations on resources and incentives to promote housing that is lead-safe, as defined in the Maine Revised Statutes, Title 38, section 1291, subsection 19-A, including the lead poisoning prevention fee established in Title 22, section 1322-F and lead-safe renovation notification and work practice requirements.

2. The agencies shall review and make recommendations concerning the establishment of a requirement to ensure that every leased residential dwelling is maintained as lead-safe, including routine maintenance and owner self-inspection requirements, and the inclusion of such a requirement under a warranty of habitability.

3. The agencies shall review and make recommendations concerning the establishment of a requirement that the owner of a residential property built before 1978 subject the property to a lead inspection and provide a copy of the lead inspection report to any prospective buyer prior to transfer of the property to a new owner and the capacity of qualified lead professionals to perform this work.

4. The agencies shall review ways to fully implement and enforce lead poisoning prevention programs established by statute and make recommendations to eliminate lead paint and lead poisoning risks in the State.

Appendix C - The Lead Poisoning Prevention Fund - Update

Background
In 2005, the 122nd Maine Legislature established the Lead Poisoning Prevention Fund (LPPF or 22 MRSA c.252 §1322-E). Revenue for the LPPF is obtained from a 25 cent per gallon fee imposed on manufacturers or wholesalers of paint sold in Maine. The LPPF was established to provide resources to support lead poisoning prevention education, outreach and training programs. The legislation creating the LPPF specified seven prevention actions that the Fund should pursue:

- Contracts for funding community and worker educational outreach programs;
- An ongoing major media campaign;
- Measures to prevent children's exposure to lead, including targeted educational mailings to families with children;
- Measures to prevent occupational exposures to lead for private and public employees;
- Funding an assessment of current uses of lead;
- Funding of educational programs and information for rental property owners; and
- Implementation of the lead safe housing registry.

The legislation authorized the Bureau of Heath to administer the funds with the review and advice of an advisory board and specified that preference should be given to programs that reach high risk or underserved populations. The legislation allows for the contracting of professional services to carry out the actions listed above.

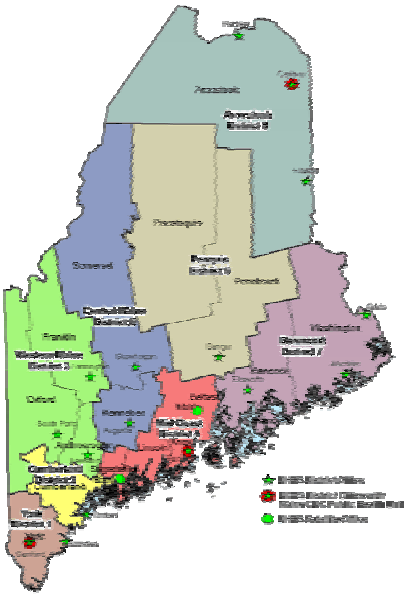
Beginning in July 2006, the fee (25 cents per gallon of paint estimated to have been sold in the State during the prior calendar year) was imposed on manufacturer and brand label owners. The first payment of fees due April 1, 2007 raised approximately $392,000 for sales between July and December 2006. Fees for the first full calendar year were due April 1, 2008, and raised approximately $830,000.

Our goal for the first year was to assess the needs in the areas listed above, and to begin to establish local, grassroots infrastructure to support any actions created in response to this assessment. The LPPF has made significant progress in our first full year of operation. The LPPF has created the resources to reach across Maine to help families understand and take precautions to prevent lead poisoning. Highlights include contracting for a project director, launching a community contracts program, designing targeted programming for rental property owners and tenants, development of a targeted educational mailing to help families with young children, providing lead safe renovation and dust sampling technician trainings, and doubling the number of full environmental inspections performed in homes that have a child with an elevated blood lead level.

Community Contracts
The LPPF legislation calls for contracts to support "community outreach programs to enable the public to identify lead hazards and take precautionary action to prevent exposure to lead."

In designing a program we wanted to provide on-the-ground support that could reach across Maine but was flexible enough to allow for regional variation. We were fortunate to be developing the community contracts program while Maine Center for Disease Control and Prevention (ME CDC) was developing a local public health infrastructure through the creation of the eight public health districts and integration and expansion of the successful Healthy Maine Partnerships.

The Healthy Maine Partnerships provide a trusted and effective set of coalitions across Maine with a track record of working in partnership with community groups to support health. We are supporting each Healthy Maine Partnership with training in lead poisoning prevention and building connection points through these communities for distribution of lead poisoning prevention education and outreach materials to their networks of families and other key stakeholders.



The Healthy Maine Partnerships are partnering together within each of the eight public health districts (Aroostook, Central, Cumberland, Downeast, Midcoast, Penquis, Western and York) to develop regional action plans and targeted education and outreach for their communities. They will be convening partners, including landlord associations, housing service providers, building inspection programs, new home buyer programs, parents of young children, service providers, and pediatricians, to identify the key barriers and opportunities within their district community for enabling the public to identify hazards and take precautionary action to prevent exposure to lead. From this process, they will develop a prioritized action plan and implement one education program or outreach event developed in response to the barriers and opportunities analysis in their first year of the contract. Contract funds directly to the communities total $136, 000.

Maine CDC is providing significant support to our community partners including: detailed, district and community specific data on lead poisoning rates and trends; mapping of screening for blood lead and cases of elevated blood lead; development of targeted, high quality, professionally designed and printed education materials tailored to their target audiences; free Lead Safe Renovator Trainings and Dust Sampling Technician trainings; and coaching and training on successful model lead poisoning prevention intervention programs used across Maine and the nation.

We will also be designing professional development opportunities for CDC staff to learn more about lead poisoning prevention and develop skills in media relations, community organizing and other areas jointly identified that can support the districts' lead poisoning prevention programs.

This first year of community contracts is building a foundation of local infrastructure, closest to families at risk, with understanding of lead and the skills to help these families understand and prevent lead poisoning. We anticipate the second year being able to focus community contract funding on the implementation of education and outreach program needs identified within the needs assessment process, while continuing to support the infrastructure of local lead experts.

Targeted Community Contracts for High Density Areas
Based on the surveillance and epidemiological work done by ME-CDC to identify high density areas of childhood lead poisoning in the state and the further identification within the high density communities of rental property as a significant risk, we developed a pilot program of community contracts to specifically address the issue of rental property. The high density target areas allow us in this first year to put significant resources where our data suggests the most significant problems exist. It also allows us to engage the affected communities in helping to design the educational intervention for rental property called for in the authorizing legislation.

Within the five high risk communities (Sanford, Biddeford /Saco, Portland / Westbrook, Lewiston /Auburn, and Bangor), we are supporting local partners to develop and implement targeted outreach strategies for landlords and tenants. We provided funds to allow grassroots community-based organizations with direct ties to the at-risk communities (i.e. landlords and renters, special target populations like refugee and immigrant groups) to directly engage in the outreach strategy, building grassroots support for action as well as a sustainable local infrastructure. We offered additional incentives for communities to provide free lead dust testing for high risk rental units to begin to build the local capacity to identify units before they poison a child.

These targeted community contracts are in the beginning stages of developing innovative and exciting programs to work with property owners and tenants. Many are exploring taking advantage of the opportunity of unit turnover, and educating property owners on how to do low cost, effective maintenance that reduces lead hazards. All groups will work with tenants to not only help them become aware of lead hazards but also to understand their role in keeping houses safe and clean. Having local partners in the high density areas has already vastly expanded our ability to reach landlords and target educational messages and resources. Specifically, we have had difficulty attracting landlords to training on lead safe maintenance in the Sanford area because we had no contacts within that community and there is no local landlord association. Now through the community partnership program, the local housing authority and the general assistance program, both of which work with landlords serving low income families, are assisting us in identifying the landlords for training. Having that local connection is truly critical. We're providing $31,000 in direct contract funds to each high density community ($155,000 total) and an additional $25,000 in support for dust testing laboratory services.

Targeted Mailing
The Lead Poisoning Prevention Fund legislation calls for "targeted educational mailings to families with children …with culturally appropriate information on the health hazards of lead, the identification of lead sources, actions to take to prevent lead exposure and the importance of screening children for lead poisoning." We worked extensively with the University of New

England Health Literacy Institute to conduct interviews with Maine professionals working in lead poisoning prevention as well as parents who had had a lead poisoned child. With this formative research, we developed a mailing for parents of one-and two-year olds (the highest risk ages of lead exposure) focused on renovation-related hazards.

The mailer was focus group tested across Maine with both rural and urban young families. This initial round of testing identified a number of key issues for our target population. The most important result showed that they wanted deeper and broader information, and their preferred option was to use the Internet. They were less attracted to talking directly to ME-CDC technical experts to identify their risks than having easy and immediate access to information. We also identified significant preconceptions about lead poisoning, particularly the sources and pathways of exposure most likely to cause poisoning, that conflicted with the messages we wanted to share. Specifically, recent media attention to lead in toys and children's products was prominent in their minds. Few were aware that the major source of lead exposure in Maine was from lead dust from lead paint used in houses.

In response to this focus group testing, the mailer was redesigned to more clearly identify for Maine parents their child's potential susceptibility to lead poisoning. The messaging was refocused to inform Maine parents that dust from lead paint is the most common way children are poisoned. The material also included or provided direction to the tools and resources they need to assess their child's risk for lead poisoning and to protect their child from it. Overall our goal with the mailer became to provide immediately actionable steps and to drive traffic to the Childhood Lead Poisoning Prevention website.

We are currently upgrading the information on the website and the user interface so that when the mailer is released families will be able to get the deeper and broader information in the format they have requested.

During a second round of focus group testing the new mailer was an overwhelming success. Test parents understood the key messages, trusted the information and felt the material would inspire them to act, and provided the level of information and methods of contact for them to be successful. A copy of the mailer is attached to this addendum.

Lead Dust Test Kits

A critical component of empowering parents to identify lead hazards is offering them a tool to do so. Experience to-date has shown little market for full lead inspections. Most full inspections occur when a child has been poisoned or when Maine State Housing Authority lead hazard reduction funds are made available for lead hazard control. Few parents, whether tenants or home owners, will call for a lead inspection simply as a protective measure.

Looking for peeling or chipping paint and decayed surfaces (referred to as a "visual inspection") is a very inexpensive method of identifying potential lead risk, especially if one assumes that the paint may contain lead. This method is recommended to parents in most educational materials. Visual inspection, however, is subjective, different people may consider the "condition" of a window or floor differently. In addition, even where paint is intact and components are in fair condition there may be significant lead dust hazards. Conversely, there may be older properties

that have components in degraded condition but that don't actually contain lead. Unfortunately, visual inspection alone can not confirm or negate the likelihood of lead exposure risk.

What parents really need is to know if there is lead dust available for their child to ingest. Lead dust testing can provide this information. Lead dust testing very accurately reveals current actual lead dust available that presents an immediate risk to children. Lead dust loadings (or levels) have been extensively studied. We can be confident that housing with low or non-existent dust levels is safe (until an activity or structural condition causes a change). It has also been demonstrated that people without specialized training can successfully take accurate dust wipes.

Because lead dust testing is relatively easy to do, we are working on providing dust test kits containing two or three "tests" and instructions for homeowners/parents to do the test themselves. Such kits are estimated to cost $30 dollars including sample analysis fees and postage. This testing relies on the tester being interested in finding a lead hazard if it exists. It is not appropriate for use by landlords or home sellers attempting to prove there is no lead hazard. Rather, this method allows homeowners or tenants to check areas of particular concern to see if in fact there is lead dust. They can then use this information to take immediate precautions to protect their children and recognize that a full lead inspection will be valuable in their situation. This testing will be particularly valuable to families who may be engaging in repair work on their own to be able to see if they are spreading lead dust. It can provide tenants with an objective measure to share with their landlords. Dust test kits can also help identify "take home lead" exposure from a parent who works with lead in their job. Parents can use kits to test car seats, entry areas or areas where the parents work clothes or shoes are stored.

The LPPF is currently working to find a provider of test kits for the initial roll-out of the targeted mailing and is developing the ancillary education materials to accompany the kits.

Lead Safe Trainings

The Lead Poisoning Prevention Fund provides funding to the Department of Environmental Protection (DEP) to offer lead training at no charge to Maine residents. The DEP is authorized under U.S. Environmental Protection Agency rules to certify and audit trainers. ME-CDC and DEP are working closely to determine the types of training and delivery locations of courses to best support reaching high risk properties and community members.

The goal of the training program is to ensure we have a workforce that can identify and remediate lead hazards and to make lead safety the standard of care in all properties. We have focused on levels of training that can be most broadly applied and will allow us to provide service at every level of the housing market.

In 2008, 17 one-day "Lead-Smart Renovation" training courses were offered, reaching 181 people in seven of Maine's eight public health districts. The target audience for this training was contractors and landlords. Additionally, 21 people completed a four-day "Lead Inspector" training course.

DEP and ME-CDC have been working closely to ensure future trainings will be coordinated to meet the needs of groups which receive community contract funds from the LPPF. In 2009,

training courses will include an "Essential Maintenance Practices" course for landlords, as well as "Lead-Smart Renovation" and "Lead Dust Sampling Technician" courses for contractors, landlords, property maintenance personnel and homeowners.

Our goal in adding the essential maintenance course and increasing the number of dust wipe technician courses is to develop an infrastructure at the local level in high density areas that can support landlords taking preventative action and being able to demonstrate with third party dust sampling that their units have low lead dust levels.

As discussed under *Community Contracts* above, the LPPF has made funding available to support local organizations in developing tenant and landlord education. Within these contracts, bonus funding was allocated for risk evaluations (lead inspections or visual inspection with dust wipe testing) for up to 50 units within the highest density areas of the community. Local groups are developing locally relevant, creative strategies and incentives that will help encourage landlords to take advantage of the programs. One strategy is to push the lower cost "essential maintenance practices" at unit turnover, (i.e., between tenants) to ensure they are renting a lead-safe property. Generally, property owners already perform basic maintenance, such as spot repairs and cleaning after one tenant moves out and before the next moves in. By being lead-aware, landlords can target painting and repair efforts, and implement a more thorough cleaning regime to create a lead-safe unit before a new tenant moves in. Using the LPPF training fund support, DEP is revising its trainings to create tailored half-day training for landlords on the risks posed by lead paint in housing and in essential maintenance practices. To encourage landlords to take this lead-aware approach at unit turnover in the known high-risk rental housing areas, local partners in ME-CDC's community contracts are considering incentives such as offering one year membership in the local landlord association for landlords who complete the course, offering combined lead and energy audits and offering small incentives like free carbon monoxide detectors or programmable thermostats.

The LPPF is also funding the lead dust testing by third party testers to ensure there are no lead hazards prior to occupancy by a new tenant. The local partners are identifying a variety of partners from town code officers to community-based organizations that can offer the third party dust testing. These identified testers will be given the dust sampling technician training. As DEP develops a Lead Safe Registry listing units that have had essential maintenance practices and third party dust testing, landlords will benefit because units on the registry will be more attractive to tenants.

Additional Training

Through the ongoing collaborative discussions between the ME-CDC LPPF, MaineHousing and DEP, we have identified opportunities to integrate lead education and training into other training programs. For example, MaineHousing already offers a First Time Home Buyers training which includes a lead awareness component and information on resources for additional assistance on lead-related issues. A new initiative in 2009 will integrate Dust Sampling Technician training into the Residential Energy Auditor training courses offered by MaineHousing. This will enable MaineHousing-trained residential energy auditors to offer lead dust sampling in conjunction with their energy audits to provide the property owner with information on the potential for lead hazards in their housing. In general, additional training will increase the number of people

working in housing in Maine who understand the issue of lead poisoning and lead in housing, and will offer resources to help housing owners control and mitigate the risks of lead paint in housing.

Environmental Inspections for Children with Elevated Blood Lead Levels
The level of lead exposure currently defined as a level of action is 10ug/dL. However, prior to the Lead Poisoning Prevention Fund, the Maine Childhood Lead Poisoning Prevention Program was only able to provide full environmental inspections to children whose levels were significantly elevated, i.e. above 20ug/dL or at a persistent level between 15 and 19 ug/dL. For families with children with lower levels, we were only able to provide modest support to help them take precautions. With the LPPF, ME-CDC is working to ensure all families with children with elevations above 10 are assisted directly in identifying lead hazards and taking action.

In October of 2007 the blood lead level that initiated an Environmental Investigation was lowered from 20ug/dL to15 ug/dL. Prior to this change, the typical number of annual inspections between 2003 and 2006 was 23-29. Lowering the level at which inspections are performed effectively doubled the number of inspections to 49 for the period between October 2007 and September 2008. The inspections continue to be split roughly evenly between private and rental properties. Each full inspection then triggers a series of interventions including potential enforcement actions. In addition, we have expanded the ability to do additional inspections in buildings where one unit has been identified to have caused an elevation in blood lead. Each of these expansions, while helping us reach more and more families with lead safety information and education, requires new systems development and staffing time. As management systems are developed to match the increased volume of work, we are hopeful that we can offer full environmental investigations to all families with a child with a lead elevation. Results of environmental investigations will help further identify the location of the greatest risks and the forms of prevention education most needed.

Media and Marketing Campaign
Through our extensive development and testing of the mailing brochure, it became evident that before launching a major media campaign we need better market research on each of our target audiences, to understand their existing knowledge, prejudices and on the messages and media that influence their behaviors. The LPPF contractor is currently working on development of an RFP for marketing and media services which will offer assistance in identifying critical market information and strategies. We will also contract to develop short term materials needed to support the community contacts work. A follow on contract will be developed to launch the full scale media campaign called for in the LPPF legislation, likely in the later half of 2009 or early 2010.

Evaluation
The Lead Poisoning Prevention Fund has made significant new resources available in the fight to eliminate lead poisoning in Maine. We are now able to try many of the new and exciting programs detailed in this report. We believe it is essential to provide rigorous third-party evaluation of each of these investments to ensure that every dollar spent provides greater protection for Maine children and helps us reach our goal. The LPPF has issued a Request for Proposal for external evaluation of the Lead Poisoning Prevention Fund activities and is actively

reviewing proposals. We anticipate having a contractor on board by February 2009. This contractor will help develop a full-scale logic model for the program – tying short-term strategies and interventions to our long-term goal of eliminating lead poisoning. The evaluator will support our community grantees in developing evaluation tools to focus their work and will help LPPF staff continually improve and refocus strategies and funding priorities based on the measured impact of our programming on clearly defined outcomes. A full evaluation plan is anticipated in July 2009.

It only takes a very small amount of dust from lead paint—about as much as a few grains of sand—to have a very serious effect on your child's growth and development.

❑ **Send me a free lead dust test kit for my home.**

I am also interested in *(please check all that apply)*:

- ❑ Testing my child for lead.
- ❑ Having my home inspected for lead.
- ❑ Learning about lead-safe home renovation or repair.
- ❑ Learning about other sources of lead such as soil, toys and old painted furniture.
- ❑ Learning how to protect my family from lead because my job involves painting or house repair.

Your Name: _____

Mailing Address: _____

_____

_____

This information will be used to help prevent childhood lead poisoning in Maine, and only for that purpose.

Please tear off this card and drop it in the nearest mailbox. Thank you!

www.maine.gov/healthyhomes 1-866-292-3474

Environmental and Occupational Health Program
Maine CDC
11 State House Station
Augusta ME 04333

Each year, nearly 200 of Maine's children are poisoned by lead.

RESIDENT
30 SOME RD.
ANYTOWN ME XXXXX

*Your **home** could be putting your child at risk for*

Lead Poisoning

Caring..Responsive..Well-Managed
We are DHHS.

Maine Center for Disease Control and Prevention

The most common cause of childhood lead poisoning in Maine is dust from lead paint.

Lead dust collects on floors and other surfaces where children put their hands and play with toys. Children, especially those under 3, often put their hands and toys into their mouths. This makes it very easy for lead dust to get into, and damage, their growing bodies.

Lead can cause:

- Learning disabilities
- Behavior problems
- Hearing damage
- Language or speech delays
- Lower intelligence

While lead paint can be found in houses and buildings built before 1978, most lead paint is found in homes built before 1950. **Is your home putting your child at risk?**

"I wish I had known how easy it is for a child to get poisoned before we started fixing up our home. I felt so guilty when my daughter's blood test showed that she had been poisoned by lead dust. I now worry that she might have problems learning in school."

– Leslie, Portland

To keep your child safe from lead at home:

- ✔ Regularly clean floors, windowsills and tabletops with a wet mop or cloth.
- ✔ Always wash your child's hands after play, before meals, and before naps and bedtime.
- ✔ Frequently wipe down toys, clean stuffed animals, and wash bottles and pacifiers.
- ✔ Routinely check painted windows, doors and floors for peeling or chipping paint.
- ✔ Ask your child's doctor about a blood lead test.

If you are renovating or repairing your home:

- ✔ Learn how to control and contain lead dust before you begin working.
- ✔ Keep children, pregnant women and pets away from work areas.
- ✔ Take a shower and change your work clothes before playing with, or handling, your child.
- ✔ Wash work clothes separately from family laundry

To learn more about what you can do to keep your child safe from lead, call the
Maine Childhood Lead Poisoning Prevention Program
at 1-866-292-3474
or visit us online at www.maine.gov/healthyhomes
If you think your home could have lead dust, ask for a free lead dust test kit.

Help ME keep kids lead-free!

Environmental and Occupational Health Program
Maine CDC
11 State House Station
Augusta ME 04333

Appendix D - Listing of Federal Lead Poisoning Prevention Laws and Regulations

Statutory Authority

Residential Lead-Based Paint Hazard Reduction Act (Title X): Developed a comprehensive federal strategy for reducing lead paint hazard exposure. Provided the authority for the following regulations by amending the Toxic Substances Control Act (TSCA) to include Title IV (Lead Exposure Reduction).

Final Regulations

40 CFR PART 745—Lead-Based Paint Poisoning Prevention in Certain Residential Structures.
Lead Renovation, Repair and Painting Program Rule (Standards for Renovation Activities in Homes with Lead-Based Paint (402(c)): Establishes standards for individuals and firms conducting renovation activities that create lead-based paint hazards in target housing and child-occupied facilities.

National Lead Laboratory Accreditation Program (405(b)): Establishes protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint, dust, and soil.

Hazard Standards for Lead in Paint, Dust, and Soil (403): Establishes standards for lead-based paint hazards and lead dust cleanup levels in most pre-1978 housing and child-occupied facilities.

Training & Certification Program for Lead-Based Paint Activities (402/404): Ensures that individuals conducting lead-based paint abatement, risk assessment, inspection, and renovation, repair and painting are properly trained and certified, that training programs are accredited, and that these activities are conducted according to reliable, effective and safe work practice standards.

Pre-Renovation Education Rule (406(b)): Ensures that owners and occupants of most pre-1978 housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing.

Disclosure Rule (1018): Requires disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase-out of residential lead-based paint use in 1978.

Title X, Sections 1012 and 1013 - Requirements for the Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance.

Occupational Health and Safety Standards

General Industry (29 CFR 1910): 1910 Subpart I

- Personal protective equipment, 1910.134
- Respiratory protection; 1910 Subpart Z - Toxic and hazardous substances, 1910.1020 Access to employee exposure and medical records;
- 1910.1025 - Lead, Appendix A Substance data sheet for occupational exposure to lead, Appendix B Employee standard summary, Appendix C Medical surveillance guidelines;

Shipyard Employment (29 CFR 1915): 1915 Subpart Z - Toxic and hazardous substances, 1915.1025, Lead. Requirements applicable to shipyard employment.

Additionally, the following OSHA Safety and Health for Construction (29 CFR 1926) regulations apply:

* 1926.20 - General Safety and Health Provisions
* 1926.21 - Safety Training and Education
* 1926.28 - PPE
* 1926.33 - Access to Employee Exposure and Medical Records
* 1926.59 - Hazard Communication
* 1926.62 - Lead
* 1926.62 - Appendices A, B, C, and D
* Subpart E - PPE with emphasis on 1926.103 - Respiratory Protection

Appendix E - Statutory Changes to Expand Uses of the Lead Poisoning Prevention Fund

22 §1322-E. LEAD POISONING PREVENTION FUND

3. Prevention purposes. Allocations from the fund must be made for the following purposes:

A. Contracts for funding community and worker educational outreach programs to enable the public to identify lead hazards and take precautionary actions to prevent exposure to lead;

B. An ongoing major media campaign to fulfill the purposes of the educational and publicity program required by section 1317-B;

C. Measures to prevent children's exposure to lead, including targeted educational mailings to families with children that occupy dwellings built prior to 1978 with culturally appropriate information on the health hazards of lead, the identification of lead sources, actions to take to prevent lead exposure and the importance of screening children for lead poisoning;

D. Measures to prevent occupational exposures to lead for private and public employees, including improvements in the effectiveness of the occupational disease reporting system required in chapter 259-A in identifying and educating health care providers, employers and lead-exposed adults about occupational lead poisoning prevention strategies;

E. Funding an assessment of current uses of lead and the availability, effectiveness and affordability of lead-free alternatives;

F. Funding for educational programs and information for owners of rental property used for residential purposes; ~~and~~

G. Implementation of the lead-safe housing registry by the Department of Environmental Protection pursuant to Title 38, chapter 12-B and achieving the goal of elimination of childhood lead poisoning risks in the State~~.~~; and

H. Mitigation of lead paint hazards and elimination of lead paint from housing.

22 §1322-F. LEAD POISONING PREVENTION FEE

1. Fee imposed. Beginning July 1, 2006, a fee is imposed on manufacturers or wholesalers of paint sold in the State to support the Lead Poisoning Prevention Fund under section 1322-E. The fee must be imposed at the manufacturer or wholesaler level, in the amount of ~~25~~50¢ per gallon of paint estimated to have been sold in the State during the prior year, as determined by rule adopted by the department.

Appendix F

Statutory Changes to Provide DEP with the authority to Regulate Renovation, Repair and Painting

38 §1291. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Abatement.** "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures.

"Abatement" does not include renovation ~~and remodeling~~, repair and painting as defined in subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

26. **Renovation ~~and remodeling~~, repair and painting.** "Renovation ~~and remodeling~~, repair and painting" means the replacement or reconstruction of any part of a residence in which the primary intent is to repair, restore or remodel a given structure, which may incidentally result in the reduction of lead-based paint hazards.

38 §1292. PROHIBITIONS

1. **License or certificate required for residential lead-based paint activities.** A person may not engage in any residential lead-based paint activities, or in renovation repair or painting in residential dwellings built before 1978, in the State unless licensed or certified pursuant to this chapter.

3. **Notification required.** A person may not engage in any residential lead abatement activity unless that person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, ~~that~~which has the potential to create lead dust. After the effective date of rules adopted by the department pursuant to section 1295 for notification of lead abatement activities in public buildings, commercial buildings and superstructures, a person may not engage in those lead abatement activities unless the person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust.

4. **Work practices.** All residential lead-based paint activities, and renovation ,repair and painting activities in residential dwellings built before 1978, must be conducted in accordance with work practice standards adopted by rule pursuant to this chapter. After the effective date of rules adopted by the department pursuant to section 1295 for work practices pertaining to lead-based paint activities in public buildings, commercial buildings and superstructures, those lead-

based paint activities must be conducted in accordance with the applicable work practice standards adopted by rule.

38 §1293. CERTIFICATION, LICENSING AND ACCREDITATION REQUIREMENTS

1. **Certification and licensing.** The board shall adopt and amend rules necessary to govern the licensing of business or public entities, including, but not limited to, lead abatement contractors and in-house lead abatement units, the accreditation of lead training providers, lead-safe renovation contractors, and the certification of lead abatement professionals and lead-safe renovators.

3. **Renewal.** A license or certificate issued under this chapter expires one year after the date of issue, except that a license for lead-safe contractor or a certificate for a lead-safe renovator expires five years after the date of issue. A licensee or certificate holder may apply to the commissioner for the renewal of a license or certificate. A renewal may not be granted if the application is received more than 2 years following expiration of the previously issued license or certificate.

To qualify for renewal of a license or certificate, the applicant must submit:

A. The appropriate fees as prescribed by rule pursuant to section 1295;

B. Evidence of completion of any continuing education or training that may be required by rules adopted by the board; and

C. A signed statement disclosing any violations of lead abatement standards and lead-safe renovation standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous ~~year~~license period, that fact must be stated. The disclosure must include evidence that all penalties and fees assessed to the applicant are paid in full.

38 §1295. RULES

The department shall adopt and amend rules to carry out the purposes of this chapter and to ensure that state law relating to lead-based paint activities and lead-safe renovation satisfies minimum requirements of federal law in all respects. In adopting the rules, the department shall consult the regulations of the United States Department of Labor, Occupational Safety and Health Administration to ensure that the rules minimize duplicative requirements. The rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A and may address, but are not limited to, the following: [1997, c. 375, §14 (NEW).]

1. **Licenses and certification.** Licensing lead abatement contractors, ~~and~~ in-house lead abatement units, lead-safe contractors, and certification of lead abatement professionals and lead-safe renovators;

2. **Training programs.** Accreditation of training providers offering courses for lead abatement professionals and in lead awareness for homeowners and for contractors involved in renovation, ~~remodeling~~ repair and painting;

3. **Standards of acceptable work practices.** Criteria and procedures of acceptable work practices for licensees and certificate holders ~~and for persons exempt from licensing and certification requirements~~;

4. **Standards of conduct.** Standards of acceptable professional conduct for licensees and

certificate holders engaged in lead-based paint activities and lead-safe renovation, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate; and

38 §1296. EMERGENCY PROVISIONS

A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint not subject to the licensing and certification requirements of this chapter shall take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project. Activities that may result in the release of lead to the environment include, but are not limited to, removal of lead paint by using open-flame burning or torching, machine sanding or grinding without high-efficiency particulate exhaust control, uncontained hydro blasting or high-pressure washing, abrasive blasting or sandblasting without containment and high-efficiency particulate exhaust control and using heat guns operated above 1,100 degrees Fahrenheit. If the commissioner finds, after investigation, that any location at which lead dust, lead chips or other lead-contaminated wastes are or were handled or otherwise came to be located may create a danger to public health or the safety of any person or to the environment, the commissioner may order the person responsible for the lead dust, lead chips or lead-contaminated waste to cease the activity immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution.

An order issued under this section must contain findings of fact describing, insofar as possible, the site of the activity and the danger to the public health or safety. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. The board shall hold the hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order within 15 working days after receipt of the application. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

A person who fails without sufficient cause to undertake abatement or remedial action promptly in accordance with an order issued pursuant to this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action.

The Commissioner may initiate any enforcement proceeding pursuant to §347-A of this Title in lieu of an order issued under this section.

The Attorney General may commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established

pursuant to section 349.

38 §1298. REGISTRY OF LEASED LEAD-SAFE RESIDENTIAL DWELLINGS

1. **Registry.** The department shall maintain a registry of leased residential dwellings built before 1978 that are lead-safe as designated by the property owners in accordance with subsection 2.

2. **Designation as lead-safe.** A leased residential dwelling may be designated as lead-safe for the purposes of this section if the property owner has submitted to the department an application for the property to be placed on the registry created under subsection 1. Submission of an application to the registry is voluntary on the part of the property owner.

3. **Application.** The application under subsection 2 must be submitted together with a report by a lead inspector that indicates that the leased residential dwelling has been tested for the presence of lead-based paint and ~~-~~lead-contaminated dust or a report by a lead dust sampling technician that indicates the leased residential dwelling has been tested for lead-contaminated dust, and that the dwelling meets the requirements for ~~certification as~~inclusion on the registry ~~lead-safe~~ in accordance with the standards and procedures established by ~~rules adopted by the commissioner~~the department.

22 §1322-E. LEAD POISONING PREVENTION FUND

3. **Prevention purposes.** Allocations from the fund must be made for the following purposes:

G. Implementation of the lead-safe housing registry and lead-safe renovation, repair and painting certification, compliance and enforcement program by the Department of Environmental Protection pursuant to Title 38, chapter 12-B and achieving the goal of elimination of childhood lead poisoning risks in the State~~.~~

Appendix G – Comments received on draft report

The agencies circulated a draft report to interested parties for review and comment. The comments received included:

From: Rosemary Moeykens, Legislative Chair, Maine Real Estate Managers Association

Pursuant to Kathy Poulin's email message dated January 8, 2009, on the Lead-Free Housing Report, please accept the following comments on behalf of the Maine Real Estate Managers Association (MREMA), an organization of nearly 100 property management companies managing 22,000 rental units throughout Maine, most of them subsidized or affordable housing. We have one question and one comment.

The report says on page 13 that the Lead-Safe Rental Housing Registry will include rental units that:

1. Are certified by the landlord to have no deteriorated paint and no lead dust hazards through 3rd party testing at turnover,
2. Have been inspected and found to be lead safe on a certain date,
3. Have been inspected and found to have no lead paint, or
4. Were built after 1978.

Under Opportunities on page 14, the report suggests that owners of pre-1978 properties be required to perform Essential Maintenance Practices (EMP) at turnover and owners of pre-1950 properties, EMP Plus, with only properties shown to be lead free being exempt. What then would the benefit be of being on the registry as lead safe housing (category 2 above), if the owner is still required to perform EMP or EMP Plus?

The comment: The report identifies 276,574 units with the potential presence of lead, of which 90,111 are rental units. If EMP and EMP Plus are made mandatory for all but post 1978 and lead free housing, we are concerned that there will be enough qualified 3rd party technicians and inspectors to inspect all units at turnover. With a typical turnover rate of 20% per year in family housing, if there are 90,111 rental units with the possible presence of lead, the number of inspections required per year would be 18,022, with more turnover in some months than others. If there were a scarcity of inspectors, landlords might need to keep the unit off line until an inspector becomes available, thereby increasing the true cost to the owner. If EMP and EMP Plus are established, we recommend that a sufficient number of individuals be qualified so that an inspector is available within one or two days and on week-ends as well as week days, property management being a seven day a week business.

From Jonathan Klane, Licensed Lead Training Provider

Appendix D on Laws and Regulations does not include the OSHA Construction regulations that apply including specifically:

* 1926.20 - General Safety and Health Provisions
* 1926.21 - Safety Training and Education
* 1926.28 - PPE
* 1926.33 - Access to Employee Exposure and Medical Records
* 1926.59 - Hazard Communication
* 1926.62 - Lead
* 1926.62 - Appendices A, B, C, and D
* Subpart E - PPE with emphasis on 1926.103 - Respiratory Protection

Other OSHA reg's will of course apply depending on the site and operation specifics.

From Bruce R. Merrill, Sabattus Maine

My name is Bruce R. Merrill, and I own a home at 118 Stonewall Road in Sabattus. After reviewing the legislative lead report, I felt the need to contact you regarding mandatory lead inspections for single family homes prior to a sale of that home. This is something that should be left to the private market and not forced upon by the Legislature. If someone buying my home wants a lead report, I'm sure the buyer and I can work something out. I would not have wanted a lead report on my home when I bought it because the answer is obvious – it's an old home and it contains lead paint. Why should I have to pay $400.00 extra to ascertain something that is perfectly obvious? This amounts to yet another layer of bureaucracy that is not needed, but will probably generate some additional jobs in Augusta.