

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF INTENTION TO AMEND §§45.12, 47.44 AND 173.13;
REPEAL AND RE-ENACT §173.14; AND REPEAL §173.15
OF THE NEW YORK CITY HEALTH CODE

NOTICE OF PUBLIC HEARING

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice is hereby given of the proposed amendment of §§45.12, 47.44 and 173.13; repeal and re-enactment of §173.14; and repeal of §173.15 of the New York City Health Code (the “Health Code”).

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE (the “DEPARTMENT”) WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON WEDNESDAY, JUNE 23, 2004 FROM 1:00 P.M. TO 3:30 P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK; (212) 788-5010 BY 5:00 P.M., TUESDAY, JUNE 22, 2004. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013; (212) 788-5010 BY JUNE 9, 2004.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 3:30 P.M. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, BY MAILING TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, OR BY E-MAIL TO RBRYANT@HEALTH.NYC.GOV ON OR BEFORE WEDNESDAY, JUNE 23, 2004.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY TO THE BOARD OF HEALTH AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR

PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY.

SPECIAL NOTICE

At its meeting on May 19, 2004, the Board of Health approved this resolution for publication. While the Board is interested in obtaining comments about all aspects of the proposal, it requested the Department to specifically solicit comments on the following issues:

1. **Chewable surfaces.** Is there scientific evidence justifying the inclusion of intact protruding window sills in the definition of a chewable surface as a lead-based paint hazard? Will requiring “remediation” of such surfaces, which will result in a disturbance of intact lead-based paint, create a new public health hazard? See, proposed definitions of “chewable surface” and “lead-based paint hazard” in §173.14 (b) and definitions, effective August 2, 2004, in Local Law 1 of 2004 (Administrative Code §27-2056.2).
2. **Temporary access to work areas after completion of daily cleanup, but before final cleanup and clearance dust testing is achieved.** The proposal indicates that tenants shall be relocated whenever work cannot be done safely. The Department’s experience has been that many occupants reject relocation as an option, even when there is a child with an elevated blood lead level residing in the home. In remaining in the home, the family may require access to certain rooms where work may not be completed at the end of a workday. Such rooms include primarily bathrooms and kitchens and foyers giving access to other rooms.
3. **Reoccupancy. Dust test clearance results.** The proposal prohibits any occupant from entering or reoccupying a work area prior to the owner’s and occupant’s receipt of acceptable dust clearance test results. See §173.14 (e)(1)(I)(iv). The Board has pointed out that this would mean that all sampled areas (floors, window sills and window wells) be given equal weight in clearance for reoccupancy, and that a single sample result (such as in a window well which may not be accessible to a child) in excess of the clearance limits would prevent reoccupancy.
4. **Notice.** The proposed amendments and Local Law 1 would require notice to the Department of voluntary work that disturbs lead-based paint affecting over 100 square feet per room in a multiple dwelling unit in a multiple dwelling constructed before 1960, where a child under seven resides. In the absence of scientific evidence that all such work invariably results in elevated blood lead levels in young children, the question the Board raises is whether all such work causes the same risk and whether notice should be uniformly required in every case or whether there should be prioritizing or targeting of notice.

5. **Common areas.** The existence of any scientific evidence justifying the inclusion of “common areas” in multiple dwellings as areas wherein a child under seven years of age is at risk of exposure to lead-based paint hazards. See, proposed definition of “common area” in §173.14 (b) and Administrative Code §27-2056.4, which makes owners of multiple dwellings in which a child under seven years of age resides responsible for investigation and remediation of lead-based paint hazards in common areas as well as within such dwelling units.
6. **Applicable age.** In Local Law 1 of 2004, the City Council established seven or younger as the “applicable age” triggering owner responsibilities for remediating lead-based paint hazards in multiple dwellings built before January 1, 1960. See, Administrative Code §27-2056.18. It authorizes the Board to consider if the applicable age should be changed to six years of age or under, one year after Local Law 1 goes into effect, or after August 2, 2005. Although this issue is not addressed in this proposal, the Board seeks comments on this issue now.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter and Local Law 1 of 2004. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 grants the Department rule-making authority. Local Law 1 of 2004 provides that the Department shall promulgate rules to implement certain provisions of such law on or before August 2, 2004.

STATEMENT OF BASIS AND PURPOSE

Introduction

The Department is proposing that various provisions of the Health Code be amended to harmonize current provisions of the Health Code, applicable to public and private lead poisoning prevention activities and safe lead-based paint work practices in child-occupied dwelling units and children’s group day care and kindergarten programs, with Local Law 1 of 2004 (Local Law 1) and current regulations of the U.S. Environmental Protection Agency (“EPA”).

Over the past 30 years there has been a dramatic decline in childhood lead poisoning; however, childhood lead poisoning remains a significant public health concern. Elevated blood lead levels have been associated with intelligence deficiencies, reading and learning disabilities, reduced attention span, hyperactivity and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is believed to be a primary factor in lead poisoning occurring in children under six years of age.

In 1960, the Board of Health amended the Health Code to ban the use of lead-based paint on residential interior surfaces. In 1970, the Health Code was further amended to provide that the Department investigate a child’s home for possible environmental lead hazards when there is a report of a child with an environmental intervention blood lead level (“EIBLL”). Local Law 1 of

1982, the City's first lead poisoning prevention law, amended the Housing Maintenance Code (Title 27 of the Administrative Code of the City of New York) to require owners to correct lead-based paint hazards in dwelling units in multiple dwellings where children under seven years of age resided, but was never fully implemented. Its provisions were interpreted as requiring abatement of all lead-based paint, not just deteriorating lead-based paint, despite the nearly universal consensus that requiring abatement of intact lead-based paint could result in increasing children's risk of lead poisoning. In 1999, after many years of litigation relating to implementation of Local 1 of 1982, the City Council enacted Local Law 38, repealing Local Law 1, to create a more pragmatic and workable approach to housing maintenance than was possible under Local Law 1 of 1982. However, on July 1, 2003, New York's highest court invalidated Local Law 38 on the grounds of inadequate review under the State and City environmental quality laws and on February 5, 2004, the City Council, overriding the Mayor's veto, enacted Local Law 1 of 2004, repealing Local Law 1 of 1982 and Local Law 38 of 1999.

In 1992 the U.S. Congress enacted Title X - the Residential Lead-Based Paint Hazard Reduction Act (Title X), to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in federally assisted housing. Throughout the 1990's, federal agencies sponsored studies and assessments to help determine how to best prevent lead poisoning in young children. The U.S. Department of Housing and Urban Development ("HUD") initially published guidelines for lead hazard assessment and remediation in 1995. Comprehensive HUD regulations did not become effective, however, until September 15, 2000, and are applicable to lead remediation in federally subsidized housing. It was not until March 1, 1999 that EPA's regulations for "abatement" of lead-based paint by certified workers and firms became effective in New York State.

Since 1993, Health Code §173.14 has specified procedures and methods for correcting lead-based paint hazards when ordered or directed by the Department, or, in some cases, when correcting violations placed by the City's Department of Housing Preservation and Development (HPD) pursuant to Title 27 of the Administrative Code of the City of New York (hereinafter "Administrative Code" or "Housing Maintenance Code"). Section 173.14 has been amended periodically by the Board to reflect prevailing safety standards and legal requirements. Methods and work practices for lead based paint abatement are specified in the Health Code and generally prohibited any person from performing an "abatement" if the person had not complied with applicable laws requiring training, licensing, certification, or other authorization. However, as noted, it is only since March 1, 1999 that EPA regulations have specified training, certification and work rules for firms and personnel performing various lead-based paint activities. See, e.g., EPA regulations at Title 40 Code of Federal Regulations Part 745 ("40 CFR 745").

EPA's rules now govern procedures and requirements for the certification of individuals and firms engaged in certain lead-based paint activities state-wide, and work practice standards for performing the activities defined in EPA's rules. These rules require certain changes in the Health Code. For example, EPA's rules define "abatement" as any measure or set of measures designed to permanently eliminate lead-based paint hazards, and any firm or individual performing abatement as defined by EPA must be EPA-trained and certified. EPA's definition of abatement excludes activities that are not designed to permanently correct lead-based paint

hazards, such as renovation, remodeling, or repair activities that may incidentally result in a reduction or elimination of lead-based paint hazards or disturbing lead-based paint. Furthermore, EPA's certification requirements do not apply to interim controls or other operations and maintenance activities designed to temporarily, but not permanently, reduce lead-based paint hazards. EPA also does not regulate individuals or firms engaged in non-abatement activities.

Local Law 1 of 2004 requires owners of older multiple dwellings in which a child under seven resides to identify and remediate lead-based paint hazards. There is also a broad requirement for remediation of lead-based paint hazards whenever a tenant vacates a rental unit. Local Law 1 defines remediation as the "reduction or elimination of a lead-based paint hazard by wet scraping and repainting, removal, encapsulation, enclosure, or replacement ... or other method approved by the commissioner of health and mental hygiene." Local Law 1 does not specify a preferred method to be utilized in remediation. Although the method of remediation is optional, Local Law 1 requires lead dust clearance testing after correction of HPD violations and after voluntary repairs by owners which disturb more than two square feet of lead-based paint per room in housing subject to the law. Local Law 1 also specifies minimum training and certification requirements for individuals and firms engaged in remediation and conducting final lead dust clearance testing.

Local Law 1 also provides that the work practices in HPD rules "shall be no less stringent than the safety standards required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards pursuant to section 173.13 of the health code or a successor rule. ..." See, e.g., Administrative Code §27-2056.11 (a)(1). This and other requirements in Local Law 1 have resulted in parallel, nearly identical, work practices rules in both the proposed amended Health Code and HPD rules.

There are, however, some differences in terms in proposed HPD rules and in the existing Health Code, particularly pertaining to the use of wet scraping and repainting. This method was considered an "exclusive interim control" in Local Law 38, but is only one of several methods of remediation in the new Local Law 1 and in the proposed amended Health Code. Currently, the Health Code defines this as a method of "abatement" and the Department allows its limited use in certain circumstances. Although EPA rules do not define wet scraping and repainting as a method of abatement, this method of lead-based paint hazard reduction will continue to be an acceptable way to correct violations, both pursuant to HPD rules and when ordered by the Department in certain circumstances. Accordingly, the Department proposes that wherever the term "abatement" appears in the current Health Code with respect to lead-based paint and lead hazards, the term "remediation," a broader and more inclusive term, be used. The proposed work practices governing remediation of lead-based paint hazards will incorporate the provisions of Local Law 1, EPA rules applicable to "abatements" and nearly all the current provisions of existing Health Code § 173.14, but such provisions shall be reorganized according to the magnitude and permanence of the remediation work.

Local Law 1 adds a new Chapter 9 ("Lead-Based Paint in Day Care Facilities") to Title 17 of the Administrative Code, imposing some additional requirements for lead-based paint hazard remediation and inspections on group day care operators and the owners of the buildings in which day care is located, which will need to be harmonized with existing provisions in Article

47 of the Health Code. Although Local Law 1 imposes no new requirements for remediation of lead-based paint hazards in Department of Education-operated kindergartens, the Department has imposed in the past, and proposes that the Board continue to impose, the same requirements for preventing exposure of children under six in public kindergartens to lead-based paint hazards as may be applicable to day care, pre-kindergarten classes and non-public kindergartens. See, e.g., Health Code §§45.12 and 47.44.

The Department is proposing that the Board amend the Health Code as follows:

Amend Health Code §173.13 (“Lead Paint”)

1. Amend Health Code §173.13 (a) by adding a provision to enhance enforcement of the prohibition in both Health Code §173.14 and Local Law 1 of dry sanding and scraping. This provision requires places of business selling paint or paint removal products to post a warning sign alerting consumers to the prohibition of this method in dwellings, day care centers and schools.

2. Amend Health Code §173.13 (d) (1) to better reflect national recognition, federal guidelines, and the Department’s experience in identifying and ordering remediation of lead hazards in housing, other buildings, and the areas surrounding such structures, in which children may reside or spend time, but which are not subject to the lead poisoning prevention provisions of the Housing Maintenance Code. Such premises include owner-occupied cooperative, condominium and one- and two-family homes, and commercial buildings in which children’s institutions and programs are located, or to which children at risk may have access. While the Department has exercised its general nuisance abatement authority (see, e.g., Health Code §3.11), in ordering the abatement of lead hazards on building exteriors, from fire escapes or yard soil and even at a museum exhibition of soft lead tiles, it is now also proposing that §173.13 (d)(1) be amended to include in this provision the authority to order the remediation of any leaded substances it finds which may present a hazard to children.

3. Amend §173.13 (d)(1) to authorize the Department to order remediation of lead-contaminated dust in a dwelling unit where the source of the lead-contaminated dust is not a condition of the dwelling in which the unit is located.

4. Amend §173.13 (d)(2) to change the mandatory environmental intervention action level for a lead poisoned child from a single 20 mcg/dL or greater blood lead level to a single 15 mcg/dL or greater. Local Law 1 amends Title 17 of the Administrative Code to provide for this intervention level.

5. Add a provision to §173.13 concerning the disposition of objections to Department orders to remediate lead hazards. From 1970 to 1997, the Department used X-ray fluorescent analysis (XRF) equipment for sampling lead-based paint. This equipment began to be outdated in the early 1990’s, because it was not able to adjust for composition of the substrate of building components in calculating the value of lead on surface paint. The Department’s orders to abate nuisance were subject to routine challenge by owners submitting contrary results of laboratory analysis of paint chip samples, thereby further deteriorating lead painted surfaces and delaying

correction of lead-based paint hazards in dwellings where children with EIBLL resided. In 1997, the Department purchased XRF equipment that is able to self-adjust for substrate composition. At the same time, a new Health Code definition of lead-based paint was adopted which incorporated federal definitions and the availability of federal calibration standards for XRF equipment. This has resulted in the Department generally rejecting the challenges of owners who simply submitted results that differed from the Department's, and two suits by such owners. The Department's practices were upheld by the courts. See, e.g., *601 Realty Corp. v. City of New York Department of Health*, 269 AD2d 268, 703 NY2d 458 (AD 1st Dept. 2000). Processing such contestations unacceptably delays remediation of surfaces in the home of a lead poisoned child and promotes the taking of paint chips from deteriorating surfaces, further endangering such children. Currently, objections to Department orders are considered only if the objector presents evidence that the Department's XRF equipment is not functioning or was not calibrated properly, not merely because the owner's XRF or laboratory sampling results are different than the Department's.

Repeal and re-enact Health Code §173.14

1. Add definitions to Health Code §173.14(b). Define "abatement" as a set of measures specifically designed to permanently correct lead-based paint hazards, consistent with the federal definitions [24 CFR 35.110 (1999) and 40 CFR 745.223 (1997)]; "remediation" as the reduction or elimination of a lead-based paint hazard (Local Law 1, Administrative Code §27-2056.2); and "disturbance" as any action taken which breaks down, alters or changes lead-based paint (15 RCNY Chapter 1). Other applicable definitions of terms in the rules generally adopt the same definitions in Local Law 1 or in EPA rules.
2. Add provisions to Health Code §173.14(c), tracking Local Law 1 and EPA rules, differentiating training and credentialing requirements for abatement, other remediation of lead-based paint hazards, and disturbance of lead-based paint in the course of conducting other non-ordered repair and maintenance activities.
3. Amend the administrative requirements of Health Code §173.14 (c)
 - (i) Notification of commencement of work requirements. Local Law 1 [§27-2056.11(a)(2)(ii) of the Administrative Code] requires building owners or their representatives to notify the Department prior to performing work that will disturb greater than 100 square feet of paint per room or involve removing two or more windows.
 - (ii) Recordkeeping. Currently, Health Code §173.14 (c)(3) requires building owners to maintain records for seven years; Local Law 1 [§27-2056.17 of the Administrative Code] requires building owners to maintain records for ten years.
4. Amend licensing and training requirements in Health Code §173.14 (c)(2) to harmonize EPA, Local Law 1 and Department remediation requirements. EPA regulations (40 CFR Part 745, Subpart L) specify that firms, inspectors, risk assessors, supervisors, project designers and

workers be EPA certified. Local Law 1 specifies that only the *firms* engaged to perform work to remediate HPD violations, or non-violation work that disturbs greater than 100 square feet of paint per room or which involves the removal of two or more windows must be certified to perform lead abatements in accordance with 40 CFR Part 745, Subpart L. See, §27-2056.11(a)(2)(ii) of the Administrative Code. The amended Health Code would require that all *abatement* activities be performed only by firms and personnel who are EPA certified, but that only the firms require EPA-certification to conduct other lead-based paint remediation activities regulated by Local Law 1 or the Health Code.

5. Workers performing work other than abatement. Local Law 1 specifies that persons performing work that disturbs from two to 100 square feet of paint per room or does not involve the removal of two or more windows must have successfully completed a course on lead safe work practices offered or approved by HUD or the Department. See, §27-2056.11 (a)(2)(i) of the Administrative Code. HUD regulations specify training requirements and courses for persons performing interim control work (including remediation by the method of wet scraping and repainting) as defined in federal regulations. See, 24 CFR §35.1330 (a)(4). The amended Health Code would require workers performing such remediation pursuant to Local Law 1 [see, §27-2056.11 (a)(2)(i) of the Administrative Code] to be trained in accordance with these HUD regulations. Local Law 1 exempts from its worker training requirements any worker performing work that disturbs lead-based paint surfaces consisting of less than (a) two square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame in a multiple dwelling unit or day care facility. See, §§27-2056.11 (a)(2)(iii) and 17-912 of the Administrative Code.

6. The Department believes that it would be desirable that every person performing any work that disturbs lead-based paint should be minimally trained, but is not proposing such a requirement in the Health Code. The Department is, however, conducting an ongoing public health education campaign to increase awareness of potential lead hazards to young children from exposure to leaded dust and debris resulting from even minimal home repairs and maintenance, and is proposing that signs be posted at places where paints are sold and paint scrapers are sold or rented warning that dry scraping of lead-based paint is prohibited in the City in any building where children reside. The Health Code, Local Law 38, HPD rules and Local Law 1 contain provisions prohibiting dry scraping and sanding as a method of removal of lead-based paint, but the signage requirement would be new and is not mandated by any law.

7. Workers remediating lead-based paint hazards violations pursuant to Department orders (other than when ordered to permanently abate lead-based paint), issued pursuant to Health Code §§45.12, 47.44 and 173.13(d)(1), HPD orders or violations issued under §27-2056.11 (a)(1) of the Administrative Code, or where any work disturbs greater than 100 square feet of paint per room or involves the removal of two or more windows pursuant to §27-2056.11 (a)(2)(ii) of the Administrative Code, should be minimally trained in accordance with HUD regulations. See, 24 CFR §35.1330 (a).

8. Amend Health Code §173.14 (c)(2)(bb) requirements for qualifications of persons performing lead-contaminated clearance dust tests after the completion of work that disturbs lead-based paint. Dust test training requirements implementing Local Law 38 would be amended to

incorporate Local Law 1's requirements for persons performing lead-contaminated dust clearance tests after work performed other than abatement. Local Law 1 requires lead-contaminated dust clearance testing at the completion of all work performed in compliance with Department orders; to correct HPD violations pursuant to §27-2056.11 (a)(1) of the Administrative Code; that disturbs areas consisting of (a) two or more square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame, pursuant to §27-2056.11 (a)(2)(i) and (ii) of the Administrative Code; on turnover, pursuant to §27-2056.8 of the Administrative Code; and in day care facilities, pursuant to § 17-912 of the Administrative Code. Health Code §45.12 requires that lead-based paint work performed in kindergartens operated by the City Department of Education must be performed in accordance with Health Code §173.14, and dust wipe tests by similarly trained personnel will also be required after the completion of such work in these facilities.

9. Health Code §173.14 (e)(4)(cc) and §27-2056.11 (b) of the Administrative Code specify that no person shall perform a lead-contaminated dust clearance test unless such person is a third-party, who is independent of the owner and firm that performs the work. Therefore, it is proposed that any lead-contaminated clearance dust tests performed after work subject to the Health Code be performed by an independent third party. Section 27-2056.11 (b) of the Administrative Code specifies that no person shall perform a lead-contaminated dust clearance test unless such person has successfully completed a course approved or administered by the Department, EPA or HUD. HUD regulations specify training requirements and courses for persons performing clearance dust testing following work other than abatement. The proposal amends the Health Code accordingly, requiring persons performing work affecting lead-based paint, or paint of unknown lead content, pursuant to Local Law 1, in Department of Education kindergartens and work conducted in compliance with orders issued by the Department to remediate lead-based paint hazards, when such work would not be considered an "abatement," to be trained in accordance with the HUD regulations. See, e.g., 24 CFR 35.1340 (b)(1).

10. Revise work methods and occupant protection standards in Health Code §173.14 (d) and (e). Local Law 1 specifies that the rules for an owner correcting HPD violations, or doing any work that disturbs more than 100 square feet of lead-based paint without a violation, shall be no less stringent than those utilized in complying with an order issued pursuant to Health Code §173.13. The proposed Health Code amendments accordingly specify work methods and occupant protection practices in buildings constructed before January 1, 1960, where children under 7 reside, for various types of lead-based paint activities. Required preparation of the work area is categorized in subdivision (e) as follows: (1) work to remediate lead-based paint hazards pursuant to a Department order, an HPD violation or non-ordered work that disturbs over 100 square feet of lead-based paint; (2) work performed that disturbs small or moderate amounts, i.e., two to 100 square feet, of lead-based paint or any non-ordered work performed in a day care facility or a Department of Education kindergarten; and (3) work performed in a dwelling unit upon turnover.

11. Remediation work to comply with a Department order or correct an HPD violation, or non-ordered work that disturbs more than 100 square feet of lead-painted surfaces, shall require that floors be cleaned before commencing work. In conducting work that disturbs lead-based paint in

accordance with §17-911 (day care services), §27-2056.11(a)(2)(i) of the Administrative Code, or §45.12 (kindergartens) of the Health Code additional requirements would include using multiple layers of plastic or equivalent sheeting as needed to prevent dust from contaminating the floor; and, where applicable, turning off forced air systems in the work area and sealing off any openings in the work area with polyethylene.

12. Work to remediate lead-based paint hazards on turnover would require preparation of the work area using the procedures described above. However, since the dwelling unit will not be occupied while work is in progress, clean-up procedures are only specified at completion of all work, followed by lead-contaminated clearance dust testing.

Repeal §173.15 (“Unsafe lead based paint work practices”)

This section authorizes the Department to respond to complaints of unsafe work practices, and the Department proposes that its substantive provisions be incorporated within §173.14 of the Health Code. The provision was originally adopted to implement Local Law 38 of 1999, and was modeled on the procedures in current Health Code §173.14 (c)(1)(cc). Local Law 1 of 2004 includes such a provision in a new §17-185 of the Administrative Code, mandating that the Department respond to such complaints, and such provisions may be found in proposed subdivision (f) of the reenacted §173.14 of the Health Code.

Amend §§47.44 and 45.12

Amend §47.44 (“Lead Based Paint Restricted”) of Article 47 (“Day Care Services”) to harmonize Health Code provisions for remediation of lead-based paint hazards in day care services with new provisions added to Title 17 of the Administrative Code and amend §45.12 (“Lead Based Paint Restricted: Kindergartens”) to track §47.44. The proposal to amend §47.44 includes a new declaration of nuisance, modeled on that in §173.14, which would enable the City to recover its costs in remediating lead-based paint hazards in day care services whenever the owner or operator ordered to remediate failed to do so.

STATEMENT PURSUANT TO SECTION 1042 – REGULATORY AGENDA

This proposal was not included in the Department’s Regulatory Agenda because it was made necessary by the enactment of Local Law 1 of 2004 on February 5, 2004.

The proposal is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that §45.12 of the New York City Health Code, as added by resolution on the second of October, nineteen hundred ninety-five, be, and hereby is, amended, to be printed together with explanatory notes, as follows:

§45.12 [**Lead Based**] **Lead-Based Paint Restricted: Kindergartens.**

(a) This section shall apply to a kindergarten conducted as part of an elementary school by the [Board] Department of Education.

(b) Peeling lead-based paint prohibited.

(i) There shall be no peeling [lead based] lead-based paint or peeling paint of unknown lead content on any surface in a kindergarten.

(ii) Peeling [lead based] lead-based paint or peeling paint of unknown lead content shall be immediately abated or remediated upon discovery, [with such covering, materials and by such methods as may be authorized by] using the remediation methods and work practices of §173.14 of this Code, [or as otherwise directed by the Department]

(iii) Children shall not be present and shall not have access to any room undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(iv) The work practices of §173.14 of this Code shall not apply to repair and maintenance work which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(c) Effective January 1, 1997, interior window sills and window wells accessible to children, window friction surfaces, and other surfaces in kindergartens as may be determined by the Department, containing or covered with lead based paint or paint of unknown lead content shall be abated with such covering, materials and by such methods as may be authorized by §173.14 of this Code or as otherwise directed by the Department. Children shall not be present and shall not have access to any room undergoing abatement until completion of final clean-up. Abatement and clean-up shall be conducted in a manner consistent with §173.14 of this Code and as may further be directed by the Department.

(d) For purposes of this section “window well” shall mean the horizontal structure of the window frame that receives the window sash or the trough in which the lower part of the window fits or

rests. The terms “peeling” “lead based paint,” “abatement,” and “friction surface” shall have the meanings as set forth in §173.14 of this Code.

(e)] (c) Painted equipment must have lead-free paint.

(d) Annual survey. Each year the Department of Education shall conduct a survey of the condition of surfaces in kindergarten classrooms, where the surfaces of such classrooms or other areas used by children under six years of age are covered with lead-based paint or paint of unknown lead content. Survey results shall be recorded on a form provided by or satisfactory to the Department, and copies of survey results shall be provided to the Department upon request.

Notes:

Section 45.12 was amended on _____ to harmonize its provisions, with the lead-based paint hazard remediation provisions applicable to children under six years of age in Local Law 1 of 2004 and in Health Code §47.44. Subdivision (a) has been amended to indicate that these provisions are applicable to kindergartens in elementary schools operated by the City’s Department of Education. Subdivision (b) has been amended, by inserting its provisions into separate paragraphs. Former subdivision (c) is repealed, since all definitions applicable to lead-based paint hazard remediation may be found §173.14 of this Code. Former subdivision (d) has been relettered as subdivision (c), and a new subdivision (d) establishes a requirement for an annual survey for peeling lead-based paint and peeling paint of unknown lead content in kindergartens in elementary schools for children under six years of age that is similar to a new requirement for such a survey to be conducted by day care services. See, Health Code §47.44.

RESOLVED, that section 47.44 of the New York City Health Code, as adopted by resolution on the twenty-second day of March nineteen hundred and ninety-six be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

§47.44 [Lead Based] Lead-Based Paint Restricted [(a) For purposes of this section “window well” shall mean the horizontal structure of the window frame that receives the window sash or the trough in which the lower part of the window fits or rests. The terms “peeling,” “lead based paint,” “abatement,” and “friction surface” shall have the meanings as set forth in Section 173.14 of this Code.]

(a) Peeling lead-based paint prohibited.

[b] (i) There shall be no peeling [~~lead based~~] lead-based paint or peeling paint of unknown lead content on any surface in a day care service.

(ii) Peeling [~~lead based~~] lead-based paint and peeling paint of unknown lead content shall be immediately abated or remediated upon discovery by the day care service operator, regardless of whether there has been an inspection or order issued by the Department, [with such covering, materials and by such methods as may be authorized by] using the remediation methods and work practices of §[Section] 173.14 of this Code, [or as otherwise directed by the Department.] When there has been an order to abate or remediate lead-based paint hazards issued by the Department, the day care service operator or owner shall use only the remediation methods specified in such order.

(iii) The work practices of §173.14 of this Code shall not apply to repair and maintenance work in a day care service which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(iv) Children shall not be present and shall not have access to any room undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

[(c) Effective May 1, 1997, no] (b) *Day care services in operation prior to May 1, 1997.*

(i) No day care service permit shall be issued or renewed, and no day care service for which no permit is required shall operate, unless all interior window sills and window wells accessible to children, [and window] chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces, and such other surfaces in such day care service as may be determined by the Department, containing or covered with [lead based] lead-based paint or paint of unknown lead content shall have been abated [with such covering, materials and by such methods] or remediated in accordance with [as may be authorized by Section] §173.14 of this Code or as otherwise directed by the Department. [Children shall not be present and shall not have access to any room undergoing abatement until completion of final clean-up. Abatement and clean-up shall be conducted in a manner consistent with Section 173.14 of this Code and as may further be directed by the Department.]

(c) *Day care services commencing operation on or after May 1, 1997.* [(d)] No day care service which [would receive] received its first permit or which, if no permit was or is required, [would

commence] commenced operation after May 1, 1997 shall be issued a permit or [commence operation] operate where there is lead-based paint[, as defined in Section 173.14,] on any interior surface in such day care service.

(d) Painted equipment must have lead-free paint.

(e) Annual survey. Each year the operator of any day care service where any surfaces are covered with lead-based paint or paint of unknown origin shall conduct a survey of the condition of all such surfaces, note the results of the survey on a form provided by or satisfactory to the Department, and shall provide to the Department a copy of the results of such survey. Submission of such survey shall coincide with the permit issuance date, or anniversary thereof, for day care services required to hold a permit issued by the Department, and shall be submitted annually, prior to commencement of the school year, for services not required to hold a permit. Copies of such survey results may be submitted by mail, fax or electronically.

(f) Declaration pursuant to Administrative Code §17-145. The existence of a lead-based paint hazard in a day care service, or failure to comply with this section or §173.14 of this Code in correcting such hazard, is hereby declared to constitute a public nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code. Every person obligated to comply with the provisions of this section of this Code is hereby ordered to abate such nuisance by complying with any order or direction issued by the Department.

Notes:

Section 47.44 was further amended on _____ to harmonize its restrictions on lead-based paint in day care services with provisions of Local Law 1 (the “New York City Childhood Lead Poisoning Prevention Act”) of 2004. Local Law 1 amended Title 17 of the Administrative Code by adding a new Chapter 9 (“Lead-Based Paint in Day Care Facilities”). Former subdivision (a)’s references to specific definitions related to lead remediation were repealed, since these definitions appear in §173.14 of this Code and are referred to subdivision (a) as amended; former subdivision (b) was relettered as subdivision (a); and a new subdivision (f) was added to establish rules for submission of the annual survey results required by §17-913 of the Administrative Code. A declaration of nuisance pursuant to §17-145 of the Administrative Code was added in a new subdivision (f) to enable the City to follow the procedures authorized under Title 17 of the Administrative Code to recover the costs of remediating lead-based paint hazards when an owner or operator fails to comply with an order of

the Department and a City agency is required to remediate such hazards pursuant to §17-911(d) of the Administrative Code.

RESOLVED, that the table of section headings of Article 173 of the New York City Health Code, as amended on the thirteenth day of December nineteen hundred ninety-nine be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

ARTICLE 173

Hazardous Substances

* * *

§173.13 Lead Paint

§173.14 Safety standards for [lead based] lead-based paint abatement and remediation and work that disturbs lead-based paint

§173.15 [Unsafe lead based paint work practices] Repealed

* * *

Notes:

This article was further amended on xxxx by repealing §173.15 (Unsafe lead based paint work practices) and including its substantive provisions in §173.14.

RESOLVED, that subdivision (a) of section 173.13 of the New York City Health Code, as amended by resolution adopted on the twenty-fourth day of September nineteen hundred and ninety-six be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

§173.13 **Lead Paint.** (a) (1) No person shall possess, sell, hold for sale or give away paint or other similar surface-coating material which is intended or packaged in a form suitable for use in or around the household or otherwise for consumer use within the meaning of 15 U.S.C. section 2057 *et seq.* and 16 Code of Federal Regulations (C.F.R.) Part 1303 or its successor regulations, containing more than 0.06 percent of metallic lead, based upon the total non-volatile content of the paint or other similar surface-coating material.

(2) Any place where paint and paint removal products are sold, or where sanding equipment is sold or rented for use in the City of New York, shall prominently post, or otherwise distribute to

purchasers and renters of paint removal and sanding equipment, a notice, in a form provided or approved by the Department, warning that dry sanding and scraping is prohibited as a method of removal of lead-based paint or paint of unknown lead content in any dwelling, day care center or school, and is a public nuisance pursuant to §17-181 of the Administrative Code of the City of New York.

RESOLVED, that subdivision (d) of section 173.13 of the New York City Health Code, as amended by resolution adopted on the twenty-fourth day of September nineteen hundred and ninety-six be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

(d) Orders for abatement or remediation.

(1) Generally. When the Department finds that there is [lead based] lead-based paint, [as defined in Section 173.14(b)(16),] or dust with a lead content in excess of the clearance levels specified in §173.14 (e) of this Code, on the interior of any dwelling, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify, [, and the refinishing of such interior surfaces of the apartment, room or part of a room with a suitable finish which is not in violation of subsection (c) of this section, or the covering of such surfaces with such materials and by such methods as the Department may direct to protect the life and health of the occupants of such apartment or room.] The Department may also order the removal or covering of soil appurtenant to any dwelling when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.

(2) In a dwelling where a child with an elevated blood lead level resides. When the Department finds that there is a child under 18 years of age with a [blood-lead] blood lead level of [20] fifteen (15) micrograms per deciliter or higher residing in any dwelling and further finds that the interior of such dwelling has [lead based] lead-based paint [as defined in Section 173.14(b)(16),] that is (a) peeling, (b) on a [window] friction, impact or chewable surface or (c) on any surface of the dwelling that, in the Department's determination, is a [lead] lead-based paint hazard

because of its condition, location or accessibility to children, [it] the Department shall order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. [, and the refinishing of such interior surfaces of the apartment, room or part of a room with a suitable finish which is not in violation of subsection (c) of this section, or the covering of such surfaces with such materials and by such methods as the Department may direct to protect the life and health of the occupants of such apartment or room. When the above conditions exist and the blood lead-level of any child under 18 years of age residing in such dwelling is between 15 and 19 micrograms per deciliter, the Department, may, in such cases as it deems essential, order the same actions to be taken as above.]

(3) Objections to Department orders. An owner or other person to whom an order issued pursuant to this subdivision is directed shall notify the Department that he or she objects to such order no later than three (3) days after service of the order. In deciding whether objections to an order issued pursuant to §173.13(d)(2) have merit, the Department may rely on the results of its lead-based paint sampling, provided such results are obtained in accordance with the methodology identified within the definition of “lead-based paint” in §173.14(b) of this Code and the Department has a reasonable belief that such reliance will be more protective of the health of a child with an elevated blood lead level.

(4) Failure to comply with Department orders. In the event that the Department determines that the owner or other person having the duty or liability to comply with [such] an order issued pursuant to this subdivision fails to substantially comply therewith within five (5) days after service thereof, [in accordance with the provisions of §17-148 of the Administrative Code,] the Department shall in accordance with §27-2056.14 of the Administrative Code, request the Department of Housing Preservation and Development to execute such order pursuant to the provisions of §17-147 of [such] the Administrative Code.

(5) Definitions. Except as otherwise provided, all terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

Notes:

Subdivisions (1) and (2) of section (d) were amended, a new subdivision (3) was adopted, and a portion of former subdivision (2) was renumbered as subdivision (4) on . The amendments to subdivision (2) incorporate a provision of Local Law 1 of 2004, which

further reduces the Department's "action level" or environmental intervention blood lead level to 15 micrograms per deciliter of blood. A provision of former paragraph (2) of subdivision (d) which affords the Department discretion to issue orders to abate or remediate lead hazards when a child with a blood lead level of 15 to 19 micrograms resides in a dwelling unit has been repealed, since the Department already has that authority pursuant to subdivision (c) of this section. Paragraph (3) of subdivision (d), concerning Department review of challenges to Department orders to correct lead hazards, is new. It incorporates in the Health Code the Department's practice, reviewed in *601 Realty Corp. v. City of New York Department of Health*, 269 AD2d 268, 703 NYS2d 458 (AD 1 Dept. 2000) of providing owners with an opportunity to be heard to object to an order to abate a lead nuisance but declining to accept an owner's findings of allegedly lower values of lead in paint in contestation of the Department's findings where there is a child with an elevated blood lead level. *601 Realty* held that the Department was not being arbitrary and capricious or denying due process to owners who contest orders to abate lead nuisances. was using appropriate equipment and methodology to measure lead in paint. If the Department uses appropriate equipment and methodology to measure lead in paint at the home of a child with an elevated blood lead level it may properly rely on its own findings since it is attempting to be more protective of the health of such a child.

RESOLVED, that section 173.14 of the New York City Health Code, as amended by resolution adopted on the sixth day of September two thousand and one, be, and the same hereby is, repealed and reenacted, to be printed with explanatory notes, to read as follows:

§173.14 Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

(a) Purpose, scope and applicability. This section establishes work practices and safety standards for abatement and other reduction of lead-based paint hazards, and other work that disturbs surfaces covered with lead-based paint, or paint of unknown lead content, and the minimum qualifications of persons who conduct such activities, in premises where young children reside, or attend day care or kindergarten, and is intended to reduce the exposure of such children to the lead-based paint hazards associated with such work.

(b) Definitions. When used in this Article, or in §§45.12 or 47.44 of this Code, the following terms shall have the following meanings:

Abatement shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint hazards, the permanent enclosure or encapsulation of lead-based paint, and the replacement of components or fixtures painted with lead-based paint; and (ii) all preparation, cleanup, disposal and post-abatement clearance testing associated with such measures. Abatement shall not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement shall not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Administrative Code shall mean the Administrative Code of the City of New York.

CFR shall mean this Code of Federal Regulations.

Chewable surface shall mean a protruding interior window sill (i) in a dwelling unit in a multiple dwelling where a child under seven years of age resides, which is readily accessible to such child, or (ii) such surface in a day care service, or kindergarten in an elementary school, that is readily accessible to a child under six years of age. “Chewable surface” shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, day care service or kindergarten, such as a rail or stair, (i) where there is evidence that such other edge or protrusion has been chewed and where an occupant of the dwelling unit has notified the owner that a child under seven years of age resides in that multiple dwelling, or (ii) where the operator of a day care service or kindergarten has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

Common area shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

Contractor shall mean any person or firm engaged to perform work that disturbs lead-based paint pursuant to this section.

Deteriorated subsurface shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

Disturb shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance activities.

Dwelling shall mean any building or structure or portion thereof, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. For the purpose of investigations and orders issued by the Commissioner pursuant to §173.13 of this Code, dwelling shall include exteriors, yards or other areas of the building, and shall also include any structure in which a child with a blood lead level equal to or in excess of 15 micrograms per deciliter spends more than five hours per week.

Dwelling unit shall mean any residential accommodation in multiple dwelling or private dwelling.

Encapsulation shall mean the application of a substance that forms a barrier between lead-based paint and the environment using a liquid- applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

Enclosure shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

EPA shall mean the U.S. Environmental Protection Agency or successor agency.

Firm shall mean a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to 40 CFR 745.226(f) or successor regulation.

Friction surface shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in

relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

HEPA vacuum shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

HPD shall mean the Department of Housing Preservation and Development of the City of New York.

HUD shall mean the U.S. Department of Housing and Urban Development.

Impact surface shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

Lead-based paint, for the purposes of this Code, shall mean paint or other similar surface coating material containing 1.0 milligram of lead per square centimeter (mg/cm²) or greater as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer. If an XRF analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the Performance Characteristic Sheets (PCS) published by the United States Environmental Protection Agency (EPA) for the specific XRF instrument used. XRF readings shall be classified as positive, negative or inconclusive in accordance with the United States Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997), and the PCS published by the EPA and HUD for the specific XRF instrument used. XRF results which fall within the inconclusive zone, as determined by the PCS shall be confirmed by laboratory analysis of paint chips, results shall be reported in mg/cm² and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in mg/cm². Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface coating material. In the absence of a PCS for a specific XRF instrument or a particular function of such instrument, substrate correction, classification of XRF

readings, and determinations of inconclusive readings shall be performed in accordance with the manufacturer's instructions for the specific XRF instrument used.

Lead-based paint hazard shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

Lead-contaminated clearance dust test shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with this Code or § 27-2056.11 of the Administrative Code.

Owner shall mean the owner, operator, managing agent or other person in control of the premises, dwelling, or dwelling unit subject to this section.

Peeling shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

Permanent shall mean an expected design life of at least 20 years.

Remediation shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the Department.

Removal shall mean a method of abatement that completely eliminates lead-based paint from surfaces.

Replacement shall mean a strategy or method of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

Stabilization shall mean repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated and applying a new protective coating or paint.

Substrate shall mean the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Turnover shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling.

Underlying defect shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

Wet sanding or wet scraping shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Work shall mean any activity that disturbs paint in accordance with Article 14 of subchapter 2 of Title 27 of the Administrative Code or as otherwise ordered by the Department to remediate lead-based paint hazards.

Work area shall mean that part of a building where lead-based paint or paint of unknown lead content is being disturbed.

(c) Administrative requirements

(1) Filing procedures

(A) Time for filing. No less than twenty-four and no more than ninety-six hours prior to the commencement of work ordered by the Commissioner and not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to §27-2056.11 (a)(2)(ii) of the Administrative Code, an owner shall file with the Department a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm performing the work. Where work is required to commence in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the commencement of work.

(B) Content of notice. Such notice shall be in a form satisfactory to or prescribed by the Department and shall set forth at a minimum the following information:

(i) The address of the building and the specific location of the lead-based paint work within the building.

(ii) The name, address and telephone number of the owner of the premises in which the lead based paint work is to be performed.

(iii) The name, address, telephone number and EPA certification number of the firm that will be responsible for performing the work.

(iv) The date and time of commencement of the work, working or shift hours, and the expected date of completion.

(v) A complete description and identification of the surfaces and structures, and surface areas, subject to the work.

(vi) Any changes in the information contained in the notice required by this section, shall be filed with the Department prior to commencement of work, or if work has already commenced, within twenty-four hours of any change.

(2) Licensing and training

(A) Abatement. All work conducted as part of an abatement as defined in this section shall be performed by firms and workers certified to perform lead-based paint activities in accordance with regulations issued by EPA at subpart L of 40 CFR Part 745, or successor rule, for the abatement of lead-based paint hazards.

(B) Other than abatement work.

(i) Other work to remediate lead-based paint hazards that is ordered by the Department or HPD, or work that disturbs large amounts of lead-based paint. Work ordered by the Department,

or by the HPD in accordance with § 27-2056.11(a)(1) of the Administrative Code, or other work performed pursuant to § 27-5056.11 (a)(2)(ii) of the Administrative Code, shall be performed by firms and trained workers meeting the following requirements:

(aa) Firm requirements. Firms conducting such work shall be certified to perform lead abatement by the EPA in accordance with subpart L of 40 CFR Part 745, or successor rule, for the abatement of lead hazards.

(bb) Worker requirements. Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by HUD at 24 CFR 35.1330 (a)(4), or successor rule.

(cc) Clearance dust testing requirements. No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. All personnel performing lead-contaminated clearance dust testing upon completion of work shall be trained, at a minimum, in accordance with regulations issued by HUD at 24 CFR 35.1340 (b)(1), or successor rule.

(ii) Work not ordered by the Department or HPD that disturbs a small amount of paint in a multiple dwelling, or work performed in a day care facility or a kindergarten. Work which is performed in accordance with §17-911 or §27-2056.11(a)(2)(i) of the Administrative Code, or §45.12 of this Code, shall be performed by workers trained in accordance with the following requirements:

(aa) Worker requirements. Workers conducting such work shall be trained under regulations issued by HUD at 24 CFR 35.1330 (a)(4), or successor rule.

(bb) Clearance dust testing requirements. No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated clearance dust testing after completion of work performed in accordance with § 27-2056.11(a)(2)(i) of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340 (b)(1), or successor rule.

(iii) Work not ordered by the Department or HPD, which is performed in a dwelling unit upon turnover. No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any

individual or firm that performs the work. Personnel performing lead-contaminated clearance dust testing after completion of work performed on turnover in accordance § 27-2056.8 of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340 (b)(1), or successor rule

(3) Recordkeeping.

(A) Records to be kept. An owner shall keep a record of the following information for all lead-based paint remediation work subject to the provisions of this Code or Title 27 of the Administrative Code:

(i) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work.

(ii) A copy of all licenses and training certificates, required pursuant to subsection (c)(2) of this section, for the firms and personnel who performed work and clearance dust testing.

(iii) The location of the work performed in each room including a description of such work and invoices for payment for such work.

(iv) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York.

(B) Time to maintain records. Such records shall be maintained by an owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the Department upon request.

(d) Work methods.

(1) Minimizing dust dispersion.

(A) Work to remediate or that disturbs lead-based paint shall be conducted in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas.

(B) Areas designated as a clean changing area shall be segregated from the work area by a physical barrier to prevent the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building and to prevent occupant exposure to materials containing lead.

(2) Prohibited methods. The following methods shall not be used while performing work that disturbs lead-based paint in accordance with this section:

(A) Open flame burning or torching

(B) Machine sanding or grinding without HEPA local exhaust control

(C) Abrasive blasting or sandblasting without HEPA local exhaust control.

(D) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(E) Dry sanding or dry scraping

(F) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the United States Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

(3) *Work practices and surface finishing.*

(A) *Tools and materials.* All tools and materials used when disturbing paint shall be used in accordance with the manufacturer's instructions. Wet sanding, wet scraping, removal, encapsulation, enclosure, replacement and other maintenance and repair activities shall be performed using standard construction and treatment methods.

(B) *Seal surfaces.* All surfaces where paint has been disturbed shall be sealed and finished with appropriate materials. Underlying surface substrates shall be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer's recommendations.

(C) *Repair underlying conditions.* Violations or conditions that cause or may cause paint to peel and which are readily observable and identifiable as to source, including but not limited to water leaks, shall be corrected as part of any lead-based paint remediation work.

(D) *Adjust painted doors and windows.* All painted windows and painted doors, including cabinet doors, shall be adjusted to ensure that they are properly hung, so that no painted surfaces bind or stick in a manner that movement of such windows and doors causes abrasion or friction of the surfaces.

(E) *Work area preparation completed before commencing remediation.* Work intended to remediate lead-based paint hazards shall not commence until work area preparation required by this section has been completed.

(F) *Restrict occupant access to work area.* The owner and persons conducting remediation of lead-based paint hazards shall seal off the work area to restrict access by occupants until all

work, clean-up and final inspections (including collection and analysis of dust wipe samples) and final clearance for re-occupancy is achieved.

(e) Occupant protection.

(1) Work ordered by the Department, or by HPD in accordance with §27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11 (a)(2)(ii) of the Administrative Code:

(A) Postings. The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(i) Notice of commencement of work. Information on the notice submitted to the Department pursuant to subparagraph (1) of subdivision (c) of this section shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(ii) Warning sign. A warning sign of at least 8-1/2" by 11" reading in letters at least one inch high, as follows: WARNING: LEAD WORK AREA – NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(B) Pre-cleaning and protecting movable items. All floors, movable furniture, draperies, carpets, or other objects shall be HEPA-vacuumed or washed; all movable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(C) Sealing vents. Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(D) Affixing doorway entrance flap. After all movable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust one sheet shall be taped along all sides of the doorway and a slit shall be cut down the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in

the room or area where work is being conducted and shall act as a flap opening into the work area.

(E) Covering floors. The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-movable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped sheeting.

(F) Sealing openings. All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with §173.14 (e)(1)(C) of this Code, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(G) Instructing occupants. Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clearance levels have been achieved. The owner shall provide temporary relocation of the occupants of a dwelling or a dwelling unit to appropriate housing when work cannot be performed safely.

(H) Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(I) Clean-up and lead-contaminated dust clearance testing procedures.

(i) Daily clean-up. At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA vacuumed. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead contaminated materials shall be cleaned as follows:

(aa) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(bb) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to

keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored along with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(cc) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no lead debris has escaped containment. Any such debris shall be wet swept and HEPA vacuumed, collected and disposed of as described above

(dd) Supply storage. Upon finishing work for the day, all rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(ii) Final clean-up. The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before repainting, if necessary. Final clean-up shall be performed in the following sequence:

(aa) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(bb) Second, all surfaces in the work area shall be HEPA vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(cc) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(dd) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(ee) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(iii) Final inspection: After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is who is independent of the owner and the contractor. The final clearance evaluation shall take place at least one (1) hour after the final cleaning and shall include a visual inspection and surface dust testing. Three wipe samples shall be collected and tested from each room or area where work has been conducted; one wipe sample each shall be taken from a window well, a window sill and the floor. In addition, wipe samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(iv) Clearance for re-occupancy. Dust lead levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every sample result is below the following dust lead levels may be cleared for re-occupancy:

Floors: _____ 40 micrograms of lead per square foot.

Window Sills: _____ 250 micrograms of lead per square foot.

Window Wells: _____ 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for re-occupancy. However, rooms or areas may be re-occupied pending dust lead test results, where occupancy is deemed to be necessary, provided that the clean-up procedures pursuant to §173.14(e)(1)(I) of this Code have been followed, and the visual inspection and collection of dust wipe samples pursuant to §173.14(e)(1)(I)(iii) of this Code have been completed. The owner shall provide a copy of all clearance test results to the occupants (s) of the dwelling or dwelling unit. Copies of dust wipe clearance test results shall be submitted to the Department whenever remediation of lead-based paint hazards has been ordered by the Department or Commissioner.

(2) Work that disturbs lead-based paint in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or §45.12 of the Health Code:

(A) Postings and warning sign. A warning sign shall be posted in accordance with subparagraph (1)(i)(B) of subdivision (e) of this section and caution tape shall be placed across the entrance to the work area.

(B) Pre-cleaning and protecting movable items. All floors, movable furniture, draperies, carpets, or other objects shall be HEPA-vacuumed or washed; all movable items shall then be

moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

(C) *Covering floors.* The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(D) *Sealing openings.* Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(E) *Instructing occupants.* Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean up has been completed. The owner shall provide temporary relocation of the occupants of a dwelling or a dwelling unit to appropriate housing when work cannot be performed safely.

(F) *Hazardous materials.* All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(G) *Clean-up and lead-contaminated clearance dust testing.* Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with §173.14(e)(1)(I) of this Code.

(3) *Work performed to remediate lead-based paint hazards on turnover in accordance with §27-2056.8 of the Administrative Code:*

(A) Preparation and work. The procedures described in §173.14(e)(2)(A) through (D) of this Code shall be followed.

(B) Clean-up. At the completion of work, the work area shall be thoroughly wet-mopped or HEPA vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HEPA vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(C) Clearance dust testing. Clearance testing for lead-contaminated dust shall be conducted in accordance with §173.14 (e)(1)(I) of this Code.

(f) Investigation by the Department.

(1) Authority to inspect. The Department may inspect any premises where work that is subject to this section is in progress or has been completed.

(2) Scope of authority. Such inspection may include but not be limited to premises where abatement or remediation of lead-based paint hazards is being conducted, where any work which may disturb lead-based paint or paint of unknown lead content is being conducted, or which is the subject of a complaint to the Department pursuant to §17-185 of the Administrative Code, and any areas affected by the emission or release of leaded dust or debris.

(3) Actions authorized. If the Department determines that such work is not being conducted in accordance with the provisions of this section, or other applicable law, the Department may order that such work be stopped immediately; that the premises be cleared of uncontained leaded dust and debris; that the conditions or work practices constituting a departure from the provisions of this section be corrected; and that the owner and any persons performing such work submit a work plan prior to resuming work, to demonstrate their ability and willingness to comply with the provisions of this Code or other applicable law.

(g) Declaration pursuant to Administrative Code §17-145. The existence of a lead-based paint condition or lead-based paint hazard pursuant to §173.13 of this Code, or a failure to comply with this section is hereby declared to constitute a public nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code. Every person obligated to

comply with the provisions of this section or §173.13 of this Code is hereby ordered to abate such nuisance by complying with any order or direction issued by the Department.

(h) *Modification by the Commissioner.* When the strict application of any provision of this section presents practical difficulties or unusual hardships, the Commissioner or designee may modify the application of such provision consistent with the general purposes of this section. When granting a modification the Commissioner or designee may impose such conditions as are necessary in the opinion of the Commissioner or designee to prevent lead contamination and to protect the health and safety of any persons likely to be exposed to lead as a consequence of such modification.

Notes:

Section 173.14 was repealed and re-enacted on _____ to harmonize lead-based paint hazard remediation safety standards with Local Law 1 of 2004 (the New York City Childhood Lead Poisoning Prevention Act of 2003) and the rules of the City's Department of Housing Preservation and Development. See, Article 14 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, and Chapter 11 of Title 28 of the Rules of the City of New York.

RESOLVED, that §173.15, adopted on the thirteenth of December nineteen hundred ninety-nine be, and the same hereby is, repealed.

Notes:

Section 173.15 was repealed on _____. The Department is mandated by §17-185 of the Administrative Code to promulgate rules for responding to complaints regarding unsafe lead-based paint work practices. Such provisions have been incorporated in §173.14 of this Code.

These amendments shall be effective August 2, 2004, in accordance with §1043 (e)(1)(c) of the New York City Charter.

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