



City of New York
DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT
100 GOLD STREET, NEW YORK, N.Y. 10038

RAFAEL E. CESTERO
Commissioner

December 3, 2009

Hon. Christine Quinn, Speaker
New York City Council
City Hall
New York, N.Y. 10007

**Re: Report to the City Council:
Implementation of Local Law #1 of 2004 in FY 2009**

Dear Speaker Quinn:

I am pleased to submit to the City Council the Department of Housing Preservation and Development's (HPD) report on implementation of Local Law #1 of 2004, in accordance with Administrative Code §27-2056.12. The report contains a narrative analysis of the program and incorporates a statistical section on expenditures, enforcement, and implementation.

Thank you for your time and attention to the report.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Cestero".

Rafael E. Cestero

**REPORT TO THE CITY COUNCIL:
THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S
IMPLEMENTATION OF LOCAL LAW #1 OF 2004
IN FY 2009**

This report was prepared by the Department of Housing Preservation and Development (HPD) in accordance with Administrative Code § 27-2056.12. The report describes the implementation of Local Law #1 of 2004 (Administrative Code § 27-2056.1 *et seq.*) in FY 2009.

LOCAL LAW #1

Local Law #1 is the City's Lead Poisoning Prevention and Control Law. HPD has successfully implemented and enforced this Local Law since its effective date in August, 2004.

PROCESS FOR ENFORCING LOCAL LAW #1

Complaints

Since 2004, complaints have been received for lead paint under Local Law #1 in the same manner that all complaints are received. Complaints are called in to the Citizen Service Center at 311 (311) by tenants. 311 operates 24 hours a day, seven days a week. If a complaint includes peeling paint or other deteriorated surfaces in a pre-1960 multiple dwelling, the operator will ask if there is a child under six living in the apartment.¹ For lead complaints, unlike most complaints, 311 operators attempt to obtain information regarding children in the household, including the name and age of any children under six. In FY10, HPD will modify this intake process. In addition to asking about a child under 6 in cases where there is a potential peeling paint complaint, 311 will ask about children under 6 for all complaints. These complaints will then be treated just like lead-based paint complaints in terms of inspections by the Lead-Based Paint Inspection Program, as outlined below. This change is anticipated to reduce the number of violations for assumed lead-based paint.

After an attempt is made to contact the landlord, the complaint is automatically forwarded as a lead emergency complaint to HPD's Lead-Based Paint Inspection Program (LBPIP) for scheduling of an inspection. LBPIP may attempt to contact the tenant to find out if the owner has taken any steps to begin to correct the condition. If the tenant indicates that the condition has not been corrected, an appointment is set. If the tenant is not reached, an inspection is scheduled.

Inspections

Complaint Inspection - Pursuant to statutory mandate, an inspection must be attempted within 10 days from the date of the complaint. An inspection that is the result of a lead complaint consists of an inspector making a sketch of the apartment to designate all rooms, checking all painted surfaces for the presence of peeling or deterioration and gathering any additional information regarding children. The inspector will also test any deteriorated surfaces within the apartment using an X-Ray Fluorescence Analyzer (XRF). Results from the XRF are downloaded on a laptop computer. At the time of inspection, the inspector gives a copy of the

¹ As of October 1, 2006, the Board of Health reduced the applicable age of a child to under six years old from under seven years old pursuant to the authority provided by Local Law #1. HPD modified its documents and procedures to implement this change.

Department of Health and Mental Hygiene information pamphlet to the family. If a violation is observed, the inspector enters the violation information into the computer system. When the inspector's supervisor approves the violation, the computer system automatically mails it to the Emergency Services Bureau's (ESB) owner notification departmental mailbox. A Notice of Violation is sent to the owner along with a copy of the HPD booklet on safe work practices.

Line of Sight Inspection - If a Code Enforcement inspector enters an apartment in a multiple dwelling, for any reason, the inspector will ask the occupant if a child under six lives there. If the occupant answers "yes" or if the inspector observes a child, the inspector is then required under Local Law #1 to check all painted surfaces for the presence of deteriorated or peeling paint. The inspector will note any peeling paint or deteriorated surfaces and will refer the apartment to the LBPIP for an XRF inspection conducted pursuant to the *Complaint Inspection* process. If there is no access when LBPIP attempts to inspect, a presumed lead-based paint violation is issued for each room in which peeling paint was noted.

Since HPD's Code Enforcement inspectors must conduct a full apartment inspection each time an inspector enters an apartment, repeat inspections are being conducted in the same apartment where a child resides. On average, inspections where XRF testing is done take one hour and a half to complete.

For Fiscal Year '09, 8% of all tests of painted surfaces have been positive for lead paint. Approximately 92% of tests of painted surfaces have been negative.

While only 8% of tests of painted surfaces in apartments with children under six actually turned out to be lead paint, about 35% of the apartments inspected for lead have at least one lead violation.

Letters detailing the results of the inspection – including whether surfaces tested positive or negative – are sent to both tenants and owners.

Notification of Owners Prior to Emergency Repairs

When the Emergency Services Bureau (ESB) receives a Notice of Violation for lead, the ESB supervisor sends the violation (along with any associated violations for the same address) via the computer system to a researcher, who attempts to contact the owner. If the researcher speaks with the owner, the researcher informs him or her about the violations and what should be done to correct them. Researchers follow a script when providing this information. When ESB contacts the owner, staff informs the owner of the date by which he or she must correct the condition. If violations have not been certified as corrected by the end of the certification period, HPD sends an inspector within 10 days of the certification date to determine if the repairs have been made. If they have not been made or completed, HPD's Bureau of Environmental Hazards will issue a repair order to its contractors.

HPD Repair of Lead Violations

The Bureau of Environmental Hazards (BEH) is comprised of both in-house staff, including research and scheduling units, and field operations staff, including scoper-survey, review, and monitoring units. The units work cooperatively in an effort to encourage owner compliance and ensure that lead hazard violations are corrected. The violations are routed for scoping and appointments are made with tenants for access.

As noted above, if an inspection is performed and the work has not been done by the owner, HPD issues an Open Market Order to one of its requirements contractors or orders in-house staff to perform the repair.

If the landlord has done work to correct the lead hazard violations but failed to file a dust wipe test and other required documentation, then dust wipe samples are taken by HPD staff and sent to a laboratory for analysis. If dust wipe test results are positive, HPD cleans the affected area and performs a dust wipe test. If the dust wipe test shows clearance levels have been achieved, the repair order is closed. However the violation remains open on HPD's violation record, because the statute does not permit HPD to remove the violation if there is no record that the repair was performed using required work practices.

All repair work is performed by properly trained and certified workers. If the amount of work to be done is considered a small job (i.e., a relatively small amount of square footage in the unit must be repaired) it is referred to the HPD's area site office to do the repairs. After the site office completes the work, an HPD Clearance Technician takes dust wipe samples and forwards the samples to a laboratory. If the samples are below clearance levels, the job is closed. If the sample fails, the area is re-cleaned and tested again.

If the amount of work required is beyond the capability of HPD's own work crews, the violations and scope of work are forwarded to the Bureau of Maintenance Procurement (BMP). BMP then awards the job to one of the requirement contractors. Once awarded, the order is sent to BEH for daily monitoring of the contractor's work.

When the contractor finishes the work and it has been approved by HPD, dust wipe samples are taken by BEH staff and sent to a laboratory for testing. As is the case for small jobs, if the dust sample fails, the contractor must re-clean the area and BEH takes a new test. The job is not considered completed until the dust wipe test results are below clearance levels.

If the property owner certified that the violations were corrected, Code Enforcement attempts to reinspect the condition. If, when Code inspects, they find the work not done, the violations are forwarded to the BEH for scoping.

One of the main obstacles to HPD's ability to correct lead hazard violations when the owner fails to do so is gaining access to the dwelling unit. HPD personnel have to gain access on several occasions: to inspect, to XRF test and scope the unit, to perform the work, and to perform dust clearance testing. The necessity of gaining access multiple times increases the likelihood that at some point access will be denied. In order to improve access HPD conducts a large number of inspections outside of normal work hours and on weekends.

Access problems arise when either an owner or tenant affirmatively refuses access to HPD personnel or contractors, or when the tenant is uncooperative in providing access to the apartment. If the tenant affirmatively denies access to the dwelling unit, the work is canceled. If after two unsuccessful visit attempts, access has not been obtained, a letter is sent to the tenant asking him or her to contact HPD to schedule an appointment to scope the dwelling unit. If no response is received within eight days the job is canceled. If the tenant responds and access is still not gained after scheduling an appointment, the job is canceled.

If the property owner or one of his employees denies access to the dwelling unit, the lead hazard violations are forwarded to the Housing Litigation Division (HLD) to seek a court order for access. HLD prosecutes access warrant cases to allow BEH to perform lead repairs. Housing Court judges are often reluctant to issue access warrants without giving the owner several opportunities to do the work themselves, particularly when there is partial compliance, even though the statutory period to correct has passed.

Most access warrant cases are concluded when a re-inspection finds that the owner has completed the work, often under consent orders issued as interlocutory relief during the course of the case. HLD commenced 584 access warrant cases in FY '09 under LL# 1.

HLD also commenced 90 cases against owners for false certification of the correction of violations. In FY '09, the Lead Unit was awarded \$208,050 in civil penalties and collected \$166,363.

Certifications of Violations

If an owner certifies that the violation has been corrected within the statutory time period for correction, a notice is automatically generated to the tenant. The notice informs the tenant that the owner has submitted a certification to HPD that the condition has been corrected and provides the tenant with information on how to challenge that certification. Whether or not a tenant protest is received, however, inspectors attempt to re-inspect the condition within 14 days of the certification period.

The tenant is also advised that he or she should give access to an inspector who will visit to verify the correction. Unfortunately, HPD inspectors often cannot obtain access to verify the correction and, although the violations have been properly corrected, the violations remain open, since Local Law #1 requires both appropriate documentation and a physical inspection. In 65% of re-inspection attempts to verify owner certification of corrected lead violations, inspectors are unable to gain access to verify the correction.

HPD must re-inspect all violations at the end of the 21 day correction period. If HPD is re-inspecting after the owner has filed a certification of a lead violation, then the inspector must

determine if the certification is correct. Should the inspector find noncompliance with any aspect of the required work, he or she reports that the violation was not corrected. A written notice is sent to the owner and tenant indicating that the certification has been invalidated, and the reason why the certification was invalidated. The violation is automatically referred to HLD for appropriate action for false certification. If the violation has been falsely certified, BEH will complete the repair process so that the lead violation can be corrected. If the Code Enforcement inspector finds that the condition has been corrected, the violation is dismissed.

Other Repairs

Local Law #1 added new requirements for safe work practices when work that is disturbing lead paint is performed and there is a child under six residing in the unit.

As a result HPD had to change its processes in order to ensure that all such repairs were done properly. Both the Division of Property Management (DPM) and ERP had to identify units with children under six that were undergoing non-lead repairs that involved presumed lead or identified lead paint. HPD adopted procedures to test work areas, where appropriate, to determine if lead paint was present. HPD utilizes safe work procedures and requires its contractors to do so as well.

Training

All new Code Enforcement inspector field staff receive a three-day training with an approved EPA provider, as a precursor to taking the EPA Certification Exam as a Lead-Based Paint Inspector. They are also trained in: (1) Local Law #1 requirements regarding the surfaces and the definitions of surface conditions that require issuance of a specific violation; (2) how to designate the surfaces in a uniform manner (i.e., size of services, compass location of wall, compass location of room) to ensure that the proper area is identified and remediated by the owner or HPD; and (3) the new violation order numbers. Inspectors assigned to the LBPIP are additionally trained in the use of XRF machines and the use of notebook computers to automatically enter XRF and violation data. All inspectors working as of November 1, 2004 received the same training in advance of implementation of Local Law #1. Through both the Lead-Based Paint Inspection Unit supervision and HPD's Field Audit Review Unit, there is continual review of the work of these inspectors and training as warranted.

To perform all this training, in addition to training for property owners about Local Law #1, the Housing Education Services Unit created the Lead Education Program (LEP). This program's objective is to identify, recruit/reach out to and provide training for individuals impacted by Local law #1. Trainers provide courses in Lead Awareness, Safe Work Practices, Local Law #1 Compliance and Visual Assessment and work to increase the awareness of the general public about Local Law #1 through various community outreach events and marketing initiatives. To increase capacity of contractors, HES offered Local Law #1 Awareness and Lead Safe Work Practices certifications.

The LEP program has also expanded access to EPA certified courses in safe work practices and lead abatement activities. To date, LEP has provided various classes in Local Law #1 Compliance and Lead Awareness to agency staff in Property Services, the Division of Anti-Abandonment, the Division of Alternative Management Programs, Housing Finance and Code Enforcement. Additionally, the program has provided training to contractors for the Department of Homeless Services (DHS) as well as DHS staff. Through its partnership with BHFS and

HANAC in the HUD Healthy Homes Grant Program, LEP has provided Lead Awareness, Local Law #1 Compliance and Safe Work Practices training in targeted areas. LEP's collaborative efforts with the Department of Consumer Affairs, Neighborhood Housing Services (NHS) and community groups throughout the city to ensure all field personnel and contractors are trained in lead related courses. LEP's training experience has allowed HPD to reduce the cost of payment for external training consultants. During FY'09, LEP delivered training to more than 6,000 participants at a cost of \$96,860.

Contracts

In order to comply with Local Law #1, HPD's Emergency Repair Program currently has six contracts for lead hazard reduction in the amount of \$6.3 million. Three contracts were also written in the amount of \$300,000 for dust wipe analysis.

City-Owned Housing

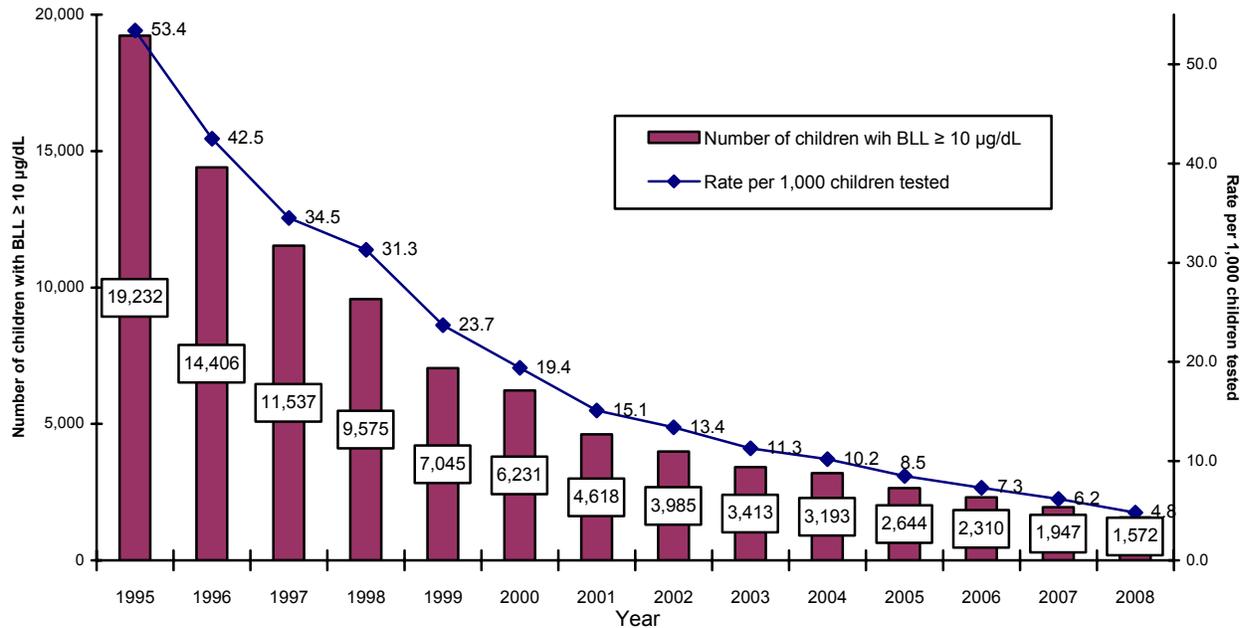
In addition to implementing a process for the enforcement of Local Law #1, HPD, as the owner of many multiple dwellings, also implemented procedures to ensure conformance with Local Law #1 in its property management programs. The Division of Property Management (DPM) inspects for and identifies the existence of lead paint hazards in these units. Inspections resulting in the identification of lead paint hazards are entered into the computer system, and conditions in units where children under six reside are referred to the BEH for correction. Conditions identified in units with no children under six are corrected through the Division of Maintenance. The ongoing annual notification process for tenants was revamped to reflect the Local Law #1 requirements. Responses to the annual notification are entered into the system; those responses reporting the presence of children under six are automatically forwarded to BEH to scope and perform all necessary work related to the correction of lead paint hazards. Units that do not respond to the annual notification are inspected in order to determine whether a child under six resides in the unit. The results of these inspections are also entered into the system. DPM responds on an ongoing basis to complaints of peeling paint by inspecting the unit and correcting any hazards in the manner described above.

Lead Poisoning Cases in New York City

On September 30, 2009, the Commissioner of the Department of Health and Mental Hygiene (DOHMH) issued a press release describing the strides made by New York City in combating childhood lead poisoning. As reported by DOHMH:

In 2008, 1,572 children (ages 6 months up to 6 years) were reported with first-time blood lead levels of 10 µg/dL (micrograms per deciliter) or greater, compared to 1,947 children in 2007 and 19,232 children in 1995 – an overall reduction of 92% over the past 14 years. (Figure 1)

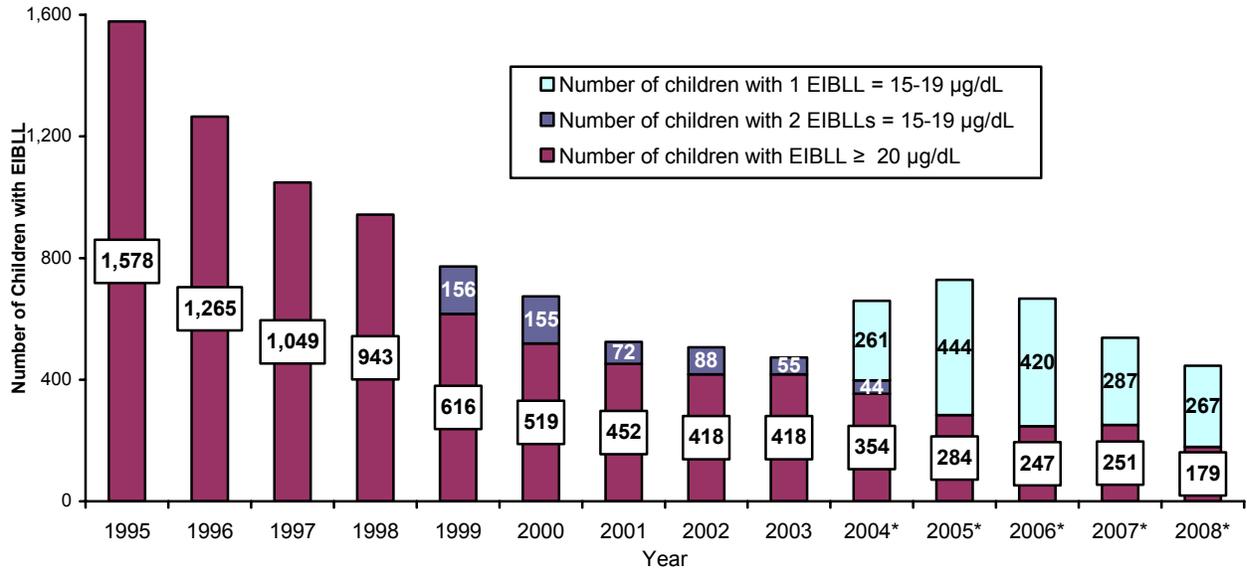
Figure 1 - Newly Identified Children with Elevated Blood Lead Levels of 10 µg/dL or Higher, Ages 6 Months to Less Than 6 Years, 1995-2008



The DOHMH provides environmental intervention and case coordination services for NYC children with blood lead levels greater than or equal to the Environmental Intervention Blood Lead Level (EIBLL). Between 1999 and 2004, environmental investigation occurred for children with one blood lead level ≥ 20 µg/dL or two blood lead levels of 15-19 µg/dL taken at least three months apart. In August 2004, the EIBLL was reduced to one blood lead level ≥ 15 µg/dL. This change resulted in DOHMH providing intervention services to more NYC children with elevated blood lead levels.

As shown in Figure 2, the increase in the number of children with EIBLLs, which began in 2004 and continued through 2008 (446 children), reflects the lowered threshold for providing intervention services, and not a rise in number of children with elevated blood lead levels. This can be illustrated by the steady decline in the number of children newly identified with blood lead levels ≥ 20 µg/dL. Also, the rate of children newly identified with blood lead levels ≥ 20 µg/dL has declined steadily, from 4.4 out of every 1,000 children tested in 1995 to 0.55 out of every 1,000 children tested in 2008 – an overall decline of 88%.

Figure 2 - Newly Identified Children with Environmental Intervention Blood Lead Levels (EIBLL), Ages 6 Months to Less than 6 Years, 1995-2008



*The increase in the number of children who received environmental intervention services in recent years reflects the lowered EIBLL, and not a rise in number of children with elevated blood lead levels.

Statistical Section Pursuant to §27-2056.12

Detailed Statement of Expenditures

The following table summarizes Expenditures and Capital Commitments for HPD's Lead Program in FY'09

FY'09 Lead						
	H/C*	Personnel Service Expenditures	Other Than Personnel Service Expenditures	Expense Total	Capital Commitments	TOTAL
Total Lead	282	15,638,875	6,466,805	22,105,680		22,105,680
HPD/DOH Outreach Initiative	6	348,970		348,970		348,970
Housing Finance					3,081,715	3,081,715
HUD Lead Grant (PPP)					2,460,177	2,460,177
Lead Demonstration	3	173,338	1,974,633	2,147,971		2,147,971
Lead Outreach		15,606	28,107	43,713		43,713
Lead Hazard Control	5	161,188	664,258	825,446		825,446
TOTAL	296	16,337,977	9,133,803	25,471,780	5,541,892	31,013,672

* PS active H/C as of 6/30/09

Enforcement and Implementation Statistics

(1) The number of complaints for peeling paint in pre-1960 dwelling units where a child under six years of age resides, disaggregated by city or non-city ownership of the building which is the subject of the complaint;

Apartments with Lead Complaints in non-city owned buildings	16,885
Apartments with Lead Complaints in city owned buildings	436

(2) The number of inspections by the department pursuant to this article, disaggregated by city or non-city ownership of the building where the inspection occurred;

Total Inspections in non-city owned buildings	31,636
Total Inspections in city-owned buildings	582

(3) The number of violations issued by the department pursuant to this article;

Violations issued	31,463
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(4) The number of violations issued pursuant to this article that were certified as corrected by the owner, the number of such certifications that did not result in the removal of such violations, and the number of civil actions brought by the department against such owners;

Violation certifications submitted	5,099
Certifications that did not result in removal of violations	97
Civil actions brought pursuant to false certification of violations	<u>90</u>

(5) The number of jobs performed in which violations issued pursuant to this article were corrected by the department, the total amount spent by the department to correct the conditions that resulted in the violations, and the average amount spent per dwelling unit to correct such conditions.

Jobs performed to correct violations	2,418
Violations corrected by HPD	6,455
Total amount spent to correct conditions	\$ 5,496,224
Average amount spent per dwelling unit (all jobs):	\$ 2,273

Council Districts Where Local Law #1 Violations Have Been Placed During City Fiscal Year 2009

