

“GET THE LEAD OUT OF VERMONT”

**REPORT OF THE COMMITTEE ON LEAD IN
HOUSING**

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Introduction

On January 19, 2006, Vermont Attorney General Bill Sorrell and then Commissioner of Health, Dr. Paul Jarris, convened a meeting of stakeholders interested in formulating a plan to “get the lead out of Vermont.” Four committees were established to focus on subject areas needing attention. Over the next several months, the Housing Committee met periodically and also communicated via email to formulate recommendations aimed at getting the lead out of Vermont housing. This report is the work of the Housing Committee. The committee’s recommendations are listed at the end of this report as Appendix A.

The recommendations and opinions in this report reflect the committee’s hard work, dedication, and commitment to dealing with the vexing problems caused by our lead painted world. The Housing Committee was comprised of folks representing a wide variety of interests. Appendix B lists committee attendees and their relevant affiliation, if any. Due to the diversity of interests represented at the table and the gravity of the childhood lead poisoning as a centerpiece topic, opinions often and quite naturally varied and were delivered with conviction. Thus, where the report indicates a consensus was reached, an absence of dissent should not necessarily be implied. The recommendations and the opinions in this report reflect the overall agreement of most, but usually not all of, the committee participants. Despite the participants’ differences, they each, without exception, remained respectful of each other’s opinions and cognizant of the weight of the public health issue at hand throughout the process.

Housing Committee Report

The Housing Committee Report contains four sections. Section I provides some basic background information. Section II lays out the primary state and federal laws concerning lead in housing in Vermont. Section III describes EMP compliance and enforcement efforts. Section IV explains the committee’s recommendations.

I. Background on Vermont’s lead paint problem

A. Lead dust from paint in housing is the primary cause of lead poisoning in Vermont children.

Lead contaminated dust in housing is the primary cause of childhood lead poisoning in the United States and in Vermont.¹ Young children typically ingest lead dust through normal hand-to-mouth behaviors. The greatest sources of lead dust in the home are deteriorated lead-based paint (LBP), abraded LBP from friction surfaces (like windows, doors, and floors), and lead contaminated soil. In addition to lead dust created by the ordinary day-to-day use of our homes, unsafe renovation, remodeling, and maintenance activities also create significant amounts of toxic lead dust.

¹ VDH Report to the Vermont Legislature, January 1, 2004-December 31, 2004; *see also* 42 U.S.C. §4851 (4) (“the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children.”)

B. Vermont's housing stock is saturated with LBP.

[P]re-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint.

42 U.S.C. §4851 (3) (Congressional findings)

Most Vermont homes are painted with LBP. Prior to being banned for residential application in the United States in 1978², LBP was applied widely in home interiors and exteriors. In fact, during the early and mid 1900s, the lead pigment industry actively promoted the application of lead-based paint in homes and public buildings, even after the dangers of lead were widely publicized and known to the lead pigment industry.³ The lead paint pigment industry is a largely absent but highly culpable and essential party to Vermont's lead poisoning abatement efforts.

Vermont's LBP problem is expansive because most Vermont homes were constructed before 1978, when LBP was being actively marketed and widely applied. Vermont's housing stock is among the oldest in the nation.⁴ About 168,593 (or 70%) of Vermont's 240,634 total housing units were built before 1978 (based on 2000 census data). Vermont defines nearly all housing built prior to 1978 as "target housing." See 18 V.S.A. §1751(24). "Rental target housing" is target housing offered for lease or rent. See 18 V.S.A. §1751(19). All paint in target rental housing is presumed to be LBP. See 18 V.S.A. §1759(a).

Generally, the older the housing, the more likely it is to contain LBP; older LBP also has the higher concentrations of lead. Children living in Vermont communities with the highest percentage of pre-1950 housing are more than four times more likely to have elevated blood lead levels (EBLLs) than those living in communities with the lowest percentage of pre-1950 housing.

C. LBP risks and hazards

Even if properly applied and maintained, lead-based paint creates significant health hazards through the normal use, wear, and tear of our homes, such as the opening and closing of painted doors and windows or walking on stairs with lead painted treads and risers. The age and condition of a property and its painted surfaces also influence childhood lead poisoning risk levels.

² LBP was banned in many European countries in the early 1900s.

³ G. Markowitz and D. Rosner, *Deceit and Denial*, (chapters 1-3), Univ. Calif. Press 2002.

⁴ The following table shows Vermont's housing units by type and decade of construction:

Housing Units by Decade of Construction

Type	Total #	Pre-1940	1940's	1950's	1960's	1970's	Post-1979
Owner-Occupied	169,777	46,133	6513	11,353	17,444	30,818	57,516
Rental	70,857	29,483	4459	5221	6517	10,652	14,525

- 112,261 owner occupied units were constructed before 1978 (66% of homes).
- 56,332 rental units were constructed before 1978 (80% of rentals).

Several conditions and/or events are known to *elevate* lead poisoning risks. For example, deteriorated LBP, which includes paint that is peeling, chipping, chalking, crackling or damaged, presents an immediate health hazard.

Also, renovations performed in an unsafe manner create serious lead poisoning risks. Unsafe renovation/repainting practices include the use of power sanders, dry scraping and the uncontrolled power washing of lead painted surfaces, and the failure to use adequate precautions, such as plastic sheathing barriers to isolate work areas from other areas of the house. Unsafe renovation conditions are also caused by the failure to properly clean up lead dust to assure that dust levels are below acceptable risk levels when a renovation or repair is complete.

Finally, exposed soils around the house also contribute to childhood lead poisoning. Soils lying within a few feet of the typical pre-1978 building are highly contaminated with lead. Research shows that the average lead levels in soil around old homes in Vermont is 1071 parts per million. (In comparison, federal "Superfund" sites must meet a 400 part per million or lower standard to be considered clean.)

In sum, even when properly maintained, LBP poses a lead poisoning risk due to normal wear and tear. Deteriorated LBP, renovation projects performed in an unsafe manner, and exposed soils also compound lead poisoning risks.

D. Rental housing and owner-occupied housing.

LBP poisons children in *both* rental and owner-occupied housing, though the lead poisoning rate is significantly higher in rental housing. According to the Vermont Department of Health (VDH), 60% of lead poisoned children in Vermont live in rental housing and 40% live in owner-occupied housing.

Careful consideration of these percentages leads to several conclusions. First, 40% of known lead poisoned children live in housing units (*i.e.*, owner-occupied housing) that are not directly regulated for LBP hazards. Unfortunately for these children, lead safety is addressed *only (if and) after they have been identified as lead poisoned*. Clearly, owner-occupied housing is an area that needs stronger regulation to protect children's health.

Second, a far greater *concentration* of lead poisoned children live in rental housing. Target rental housing units are outnumbered nearly 2 to 1 by owner-occupied units⁵, but the target rental market houses 2 out of every 3 lead poisoned children.⁶ The number and concentration of lead poisoned children living in rental housing is particularly disturbing considering that target rental housing *has been regulated for lead paint hazards for more than ten years*. Our existing regulation of target rental housing—the Essential Maintenance Practices (EMP) law, discussed below—is not achieving its purpose of significantly reducing the risk of childhood lead poisoning.

⁵ See footnote 3.

⁶ The greater concentration of lead poisonings associated with rental housing versus owner occupied housing may be due, in part, to rental housing tending to be older (and possibly in poorer condition, in general) than owner-occupied housing.

E. Temporary and permanent risk reduction.

Proper maintenance of lead painted surfaces, regular removal of lead dust from floors and windowsills, and adequate soil coverage around a house's footprint can *temporarily reduce* the risk of childhood lead poisoning. Vermont's EMP law requires that *some* of these procedures be completed annually in target rental housing. If followed, these practices reduce the chance that young children will be poisoned but are not designed for the long-term elimination of childhood lead poisoning. As noted below, most landlords do not comply with the EMP law.

Lead poisoning risks can also be reduced by using lead safe renovation/repainting practices. These practices, such as wet (instead of dry) scraping and avoiding the use of power sanders to prepare lead painted surfaces, are mandatory in target rental housing yet inexplicably remain legal and commonplace in owner-occupied housing.

Long-term control or permanent removal of lead paint hazards is protective of children's health, and should be a core part of the State's lead poisoning protection policy. Two measures currently available, "full abatement" and "lead safe housing," provide long-term protection of children's health. These measures include the removal, permanent sealing or encapsulation of LBP, and the removal/replacement of lead painted friction surfaces such as doors and windows. However, these measures are often expensive and therefore, rare.

II. Overview of existing lead hazard law

This section provides a summary of basic federal and state law relevant to childhood lead poisoning prevention.

A. Federal law

In 1992, the federal government passed the "Residential Lead-Based Paint Hazard Reduction Act of 1992," which for the first time provided federal funding to fight childhood lead poisoning. Federal resources were made available as Centers for Disease Control (CDC) grants to encourage and track testing children for lead poisoning, Environmental Protection Agency (EPA) grants to develop lead abatement regulations and license related professionals, and Housing and Urban Development (HUD) grants to complete lead hazard control in private, low income housing. Grant recipients must satisfy fund-matching requirements. Currently, a number of federal regulations cover LBP in housing, including:

- **Disclosure:** Owners of target housing must disclose to potential buyers and renters in such housing and provide to the buyer or renter any lead hazard evaluation report available to the owner. The Disclosure Rule also requires the seller or lessor to provide the pamphlet "Protect Your Family from Lead in Your Home."
- **Pre-Renovation Notification:** Any person who receives compensation for the renovation of target housing must provide a lead hazard information pamphlet to the owner and occupant before starting the renovation.
- **Hazard Identification/Abatement Standards:** EPA regulations define lead hazards and the requirements for properly completing lead hazard control work.
- **Lead Safe Housing Rule:** This rule requires control of lead paint hazards in all federally-assisted housing (Section 8, HOME, CDBG, etc.). The exact requirements depend on the type and amount of assistance.

- **Worker Safety:** Occupational Safety & Health Administration (OSHA) rules regulate exposure of workers to lead in construction and industry. (Vermont OSHA rules are identical to the federal rules and are discussed below.)

Compliance with these regulations is mixed, at best. For example, in New England, the EPA has instituted dozens of lead-related civil and criminal cases to address violations of federal lead disclosure laws.⁷ According to the New England Lead Coordinating Committee (NELCC), a regional consortium of state agencies working to eliminate lead poisoning, the federal government pursues only the most egregious violations and landlords with few properties are not investigated unless a child is lead poisoned. *See* NELCC comment to EPA on Lead; Renovation, Repair, and Painting Program; Proposed Rule Docket ID number EPA-HQ-OPPT-2005-0049, date May 24, 2006. Thus, the disclosure law is not achieving its primary goal of preventing childhood lead poisoning. *Id.* Likewise, there is little evidence that renovation and remodeling contractors are providing advance notice to occupants about potential lead hazards associated with remodeling or renovation projects. Some committee members' experiences bear out that contractors are simply not following these rules.

While EPA has brought some enforcement actions elsewhere in New England, EPA has not focused enforcement in Vermont.

B. Vermont law

This section discusses: (1) VDH's general authority to implement and enforce the state's health laws, (2) Vermont's Lead Poisoning Prevention Act, and (3) other Vermont laws related to lead.

1. VDH's general enforcement duties and authority.

VDH has the "power to supervise and direct the execution of all laws relating to public health." 18 V.S.A. § 1. VDH also has the authority to investigate suspected health hazards, 18 V.S.A. §104, and to issue health orders to prevent or remove any public health hazard. *See* 18 V.S.A. §126(a).

In cases involving the violation of a health statute, rule, regulation or permit, the VDH can seek compliance through a variety of means. Among VDH's compliance tools are: voluntary compliance, administrative Assurances of Discontinuances (AODs), health orders, and civil or criminal enforcement.

i. Voluntary compliance: 18 V.S.A. § 124

"Voluntary compliance" is one means VDH has at its disposal to implement the state's health laws. The health statute provides: "When appropriate [VDH] shall make all practicable efforts to secure voluntary compliance." 18 V.S.A. § 124. Voluntary compliance is achieved when warnings, encouragement, or other cooperative measures succeed in assuring compliance. It was not intended to be an exclusive means of enforcing the law. Rather, the "voluntary compliance" provision specifically reserves VDH's authority to use any statutory or common law enforcement powers. *See id.* As discussed below, VDH relies heavily, almost exclusively, on voluntary compliance measures to enforce the EMP law.

⁷ *See* www.epa.gov/NE/enforcement/leadpaint (index enforcement articles)

ii. AODs: 18 V.S.A. § 125

VDH may settle violations or resolve a health hazard by accepting an AOD that requires the violation to be corrected or the public health hazard to be discontinued. *See* 18 V.S.A. §125(a). AODs must be written and filed with the superior court, and they become court orders. *See id.* (b). An AOD may include the assessment of a civil penalty and reimbursement of the State's investigative costs. *See* 18 V.S.A. §125(a). As discussed below, VDH had occasionally used AODs to enforce the EMP law, but halted the practice sometime in the mid-1990s.

iii. Health orders: 18 V.S.A. §§ 126 and 127

The VDH commissioner (and town selectmen) may issue a health order to prevent or abate any public health hazard, mitigate any significant health risk, or to correct any violation of the health laws. *See* 18 V.S.A. §§ 126 and 127. Persons subject to a health order are entitled to a pre-issuance hearing for regular health orders and a post-issuance hearing in the case of emergency health orders. *See id.* While the statute provides some specific powers, *e.g.*, prohibiting distribution of certain food, water, or other goods and services, the commissioner's health order authority is broad enough to reasonably rectify any public health hazard, significant health risk, or violation. VDH has not used health orders with respect to lead hazards.

iv. Civil and criminal enforcement: 18 V.S.A. §§ 130 and 131

VDH may institute an action in superior court to enforce any public health law or to enjoin a public health hazard. *See* 18 V.S.A. § 130 (a). The statute provides for a full range of potential injunctive and remedial relief, and allows for penalties of not more than \$10,000 per violation. *See id.* (b).

VDH may also criminally prosecute, through the state's attorney, violations of the state's health laws, failures to comply with a health permit or health order, and intentional submission of false statements. *See* 18 V.S.A. § 1316. Criminal penalties range, depending on the level of criminal intent and level of contribution to a health hazard, with the maximum penalty being six months in jail and a \$25,000 fine per violation. *See* 18 V.S.A. § 131(a), (b) and (c).

VDH has not used civil or criminal enforcement to enforce the EMP law.

2. Vermont's Lead Poisoning Prevention Act.

Vermont's lead law focuses on lead hazards in target *rental* housing, and seeks to reduce (but not eliminate) lead hazards caused by both normal wear-and-tear and by renovations/repairs. Primarily, the law requires landlords to conduct statutory Essential Maintenance Practices, or EMPs, to install window well linings (which establish a cleanable surface) and to prevent and remedy deteriorated LPB at their properties.

Lead hazards in *owner-occupied* housing, whether caused by deteriorated LBP or renovation activities, are not directly regulated. The State also regulates lead abatement work and trains/licenses lead abatement professionals, and it regulates employee safety issues under VOSHA regulations. Vermont does not currently license renovators, painters or other construction workers that ply their trades in pre-1978 homes. Most unsafe work practices are banned in rental target housing yet allowed in pre-1978 owner occupied housing.

i. Essential Maintenance Practices (EMPs) govern pre-1978 rental housing.

In 1995, Vermont enacted its primary lead law, “An Act to Prevent Lead Poisoning in Children in Rental Housing and Child Care Facilities.”⁸ The Act is designed to “reduce, but not eliminate, the risks of lead exposure.”⁹ See Vermont Regulations for Lead Control, § 1.1.

The Act seeks to reduce lead exposure risks by requiring owners of pre-1978 rental housing and child care facilities to take a four-hour training course and complete annual EMPs. EMP requirements include:⁹

- annual visual inspection of painted surfaces
- prompt repair of deteriorated paint using safe practices
- installation of window well inserts
- specialized cleaning at change of tenant
- filing of an affidavit of EMP compliance annually
- providing tenants with the “Protect Your Family From Lead in Your Home” pamphlet
- following lead safe work practices during renovations and repairs
- prominent posting of notice to tenants about the importance of reporting deteriorated LBP to the landlord (or their agent)

Rental property owners should be able to complete the EMPs themselves, at a minimal cost. The Vermont Housing & Conservation Board’s Lead-Based Paint Hazard Reduction Program (VHCB Lead Program) estimates¹⁰ that achieving initial compliance with the EMP law at a property in fair condition requires 27 hours (including training) and about \$550 of materials. Thereafter, maintaining compliance annually requires about 7 hours of time and \$200 for materials. The estimated cost of hiring someone to achieve initial EMP compliance for a rental unit in fair condition is \$790; thereafter, it costs an estimated \$350 annually to maintain compliance.¹¹

ii. Owner-occupied homes are not regulated for lead hazards.

Even though 40% of lead poisoned children live in owner occupied housing, these homes are not directly regulated for lead paint hazards.¹² Owner-occupied housing presents two general categories of lead hazards: (1) those created by deteriorated LBP and through the everyday use of the home, and (2) those created by unsafe renovation projects. Unlike target rental property owners, private homeowners have no statutory duty to periodically inspect their homes for lead paint hazards and to fix any such hazards. Also, unlike target rental property owners, a private homeowner can repaint or remodel their home using dangerous, but unfortunately very common, renovation practices. Indeed, because unsafe work practices are not banned in private homes, a homeowner or their hired help can almost instantly contaminate an occupied home with lead

⁸ 18 V.S.A. §§1751 *et seq.*

⁹ See 18 V.S.A. §1759

¹⁰ See EMP cost estimates, Appendix C.

¹¹ VDH Report to the Vermont Legislature, January 1, 2004-December 31, 2004, pp. 6-8.

¹² The VDH commissioner does have authority to issue a health order to abate any health hazard, including, presumably, lead paint hazards in owner-occupied housing. See 18 V.S.A. §§126, 127.

dust, potentially creating a serious lead poisoning hazard, by running a power sander over painted wood, or sanding a painted floor.

iii. Lead Poisoned Children Rule: 18 V.S.A. § 1757.

Section 1757 imposes special obligations on VDH when a child is lead poisoned (*i.e.*, blood lead level of 10 micrograms or more per deciliter). Additional obligations are imposed in the case of severely lead poisoned children (*i.e.*, blood lead level of 20 micrograms or more per deciliter). Section 1757 also requires VDH to adopt implementing rules, at least with respect to lead poisoned children that reside in target rental housing. VDH's Lead Poisoned Children Rule is attached to this report at Appendix D.

In the case of a lead poisoned child, the diagnosis must be confirmed promptly by VDH. *See* 18 V.S.A. § 1757(a). VDH must adopt rules that assure prompt action will be taken to confirm a lead poisoning diagnosis for children residing in target rental housing. 18 V.S.A. § 1757(d). VDH's Lead Poisoned Children Rule III.1 provides: "Upon receiving a report that a child under age six has been diagnosed by a qualified physician to have lead poisoning, the Commissioner of Health or the Commissioner's designee shall take prompt action to confirm the diagnosis."

In the case of a severely lead poisoned child, VDH must provide for an inspection by a licensed inspector. *See* 18 V.S.A. §1757(b). VDH's Lead Poisoned Children Rule III.2 provides: "If the child is severely lead-poisoned, the Commissioner or the Commissioner's designee shall provide for the inspection/risk assessment of the dwelling unit occupied by the child and other locations where the child is known to spend 10 or more hours per week, by a State Inspector/Risk Assessor or Licensed Private Inspector/Risk Assessor."

The statute, without differentiating between lead poisoned and severely lead poisoned children, requires that VDH work with the parents, owner, physician and others to develop a plan to minimize the child's lead hazard exposure, and to adopt an implementing rule, at least with respect to children residing in target rental housing. *See* 18 V.S.A. §1757(c). VDH's Lead Poisoned Children Rule, III.3 requires VDH to develop a plan to minimize exposure of the child to lead hazards for severely lead poisoned children. VDH has not adopted a rule that requires a lead exposure-reduction plan for (less than severely) lead poisoned children.

With respect to lead poisoned children residing in target rental housing, VDH must adopt rules to assure prompt inspection for the possible sources of the lead poisoning, and "to secure voluntary compliance or to take the necessary enforcement action." 18 V.S.A. §1757(d). Any enforcement must include an educational component, and may include abatement of lead-based paint hazards within a specified time. 18 V.S.A. § 1757 (d).

In cases involving a severely poisoned child living in target rental housing with an identified lead-based paint hazard, the Rule requires "[a]batement and/or interim controls."

VDH does home-visits on all EBL cases of 15 $\mu\text{g}/\text{dL}$ or more. In such cases, VDH consults with homeowners, identifies lead paint hazards and suggests a work plan to reduce hazards.

iv. Lead abatement

Lead abatement is the permanent removal of lead-based paint, lead bearing components, or lead hazards in accordance with federal and state standards. *See* 18 V.S.A. §1751(b)(1). In Vermont, lead abatement projects must be permitted in advance, performed only by trained and licensed lead abatement professionals, and meet standards for Vermont Regulation for Lead Control.

Each year, VDH issues between 50 and 75 lead abatement project permits. Most of these projects are completed with assistance from HUD-funded programs at the Vermont Housing & Conservation Board and the City of Burlington. To protect inhabitants and workers from lead poisoning, the permits typically require that

- residents be relocated during the project
- work areas be contained
- access to the work site be restricted
- engineering controls are used to reduce contamination
- worker protection measures are observed
- specialized cleaning and independent lead dust clearance prior to re-occupancy

Dozens of lead abatement supervisors and workers are trained and licensed each year in Vermont. Training requirements and licensing fees vary. For example, Lead Abatement Supervisors receive 32 hours of training, with a refresher course required every 3 years. The annual license fee is \$100. In 2005, VDH licensed 51 Lead Abatement Supervisors. Lead Abatement Workers receive 24 hours of training with a refresher course every three years; the annual license fee is \$50. In 2005, VDH licensed 39 Lead Abatement Workers. In a typical year, VDH also licenses about 20 lead paint inspectors, 16 lead paint risk assessors, 3 lead project designers, and 17 lead training course providers.

v. Insurance-related provisions

The Act does not have any important insurance-related provisions. Under 18 V.S.A. § 1759(10)(b), landlords are required to file a copy of their affidavits of EMP compliance with their insurance carrier. No one tracks compliance with this rule, and compliance is presumably low. Some carriers do require landlords to file an EMP affidavit prior to issuing or renewing a general liability policy. However, at least some, and probably many carriers regularly write policies without an EMP affidavit on file, thus this filing requirement is a nonfactor in pushing EMP compliance.

Since the mid-1980s, the Vermont Department of Banking, Insurance, Securities and Health Care Administration (BISHCA) has refused to approve insurance policies that contain boilerplate lead paint exclusions. However, consistent with the provisions of Title 8 that allow an insurer to deviate from its approved policies in cases where there is a known risk, BISHCA does permit carriers to exclude lead paint liability with the consent of the insured on individual properties where there is an established lead hazard. Carriers are also free, of course, to not write a policy at all if they deem the property's lead associated risks too high. Some carriers do require landlords to file an EMP affidavit prior to issuing or renewing a general liability policy. Again, however, most carriers presumably write policies without an EMP affidavit on file.

Many stakeholders involved in the passage of the 1996 Act assumed that lead safety would be driven forward, in part, through private lead poisoning damages lawsuits against EMP-noncompliant landlords. Despite hundreds of lead poisonings associated with rental housing and low EMP compliance rates, these private lawsuits never materialized in Vermont. Thus, the threat of lead poisoning claims/litigation is currently not a factor in advancing lead safety or EMP compliance.

3. VOSHA

VOSHA regulations aim at protecting workers from lead exposure; the rules are not intended to and do not protect children from lead dust exposure. Construction work that exposes an *employee* to lead is regulated under VOSHA 29 CFR 1926.62. The VOSHA regulations set worker lead dust exposure limits and require the use of protective work clothes and respiratory equipment. The rule also mandates worker lead training, hand/face washing requirements, biological/blood monitoring, and regular work-site cleaning requirements. VOSHA has not reached all non-compliant contractors. Recommendations to improve VOSHA compliance are beyond the scope of this report.

III. EMP Compliance and Enforcement

Noncompliance¹³ is widespread; most landlords are noncompliant and hundreds of children are lead poisoned in target rental housing. VDH's prevention efforts focus on education and testing, but need to incorporate more traditional enforcement measures, including fine assessment, regular use of Assurances of Discontinuances, and targeted legal action.

A. Few landlords comply with the EMP law.

VDH measures “[c]ompliance with the requirements of [EMP law] by the number of completed affidavit of performance forms that are filed with the Department of Health.”¹⁴ Compliance might also be assessed by looking at the number of lead poisoned children living in target rental housing. Viewed through either lens, EMP compliance levels are, in the committee's view, intolerably low.

1. EMP compliance affidavit filings are low.

As the Attorney General and Health Commissioner's charge letter¹⁵ reflects, few landlords file the required annual EMP compliance affidavit, even though VDH has sent thousands of informational mailings. An exact compliance rate is difficult to pinpoint because, for example, VDH does not know the exact number of target rental housing buildings in the state. However, VDH's annual reports to the legislature show that noncompliance is clearly the rule, rather than the exception. *In 2005, for example, only 1,194 EMP affidavits were filed by landlords, resulting in the lowest compliance quotient since the law's enactment.* VDH reports to the Vermont

¹³ Noncompliance means failure to meet the requirements of the EMP law, *e.g.*, failure to file an EMP compliance affidavit, or failure to undertake EMPs in whole or part, etc. Where a landlord fails to submit an EMP affidavit, it is fair to conclude (absent some evidence to the contrary) that the landlord has also failed to perform the substantive EMP practices. In any event, as reflected in section II.B., EBL cases (involving children in target rental housing) unvaryingly involve substantive EMP noncompliance.

¹⁴ VDH Report to the Vermont Legislature, January 1, 2004-December 31, 2004, pp. 5.

¹⁵ Letter from VDH Commissioner and Vermont Attorney General, dated December 16, 2005 at page 1 (“fewer than 5% of these landlords have filed the required affidavit each year.”).

Legislature for other years consistently reflect similarly low levels of EMP compliance.¹⁶ With EMP affidavit filings levels consistently so low, and with VDH's mailings so numerous, it appears that many landlords are repeatedly and knowingly violating the EMP law.

2. Hundreds of children in target rental housing are lead poisoned every year.

The EMP compliance picture looks equally poor when judged by the large number of children the law fails to protect from lead poisoning. In the committee's view, the steady annual number of lead poisoned children living in target rental housing shows that the law is not being implemented in a way that serves to achieve its goal of reducing the risk of childhood lead exposure. In 2004, approximately 165 children who live in target rental housing had EBLs of 10 µg/dL or more; a significant number of these children were severely lead poisoned.¹⁷ The actual number of lead effected children living in rental target housing is much higher, perhaps in the thousands.¹⁸ Also, between 1997 and 2003, at least ninety-three complaints of alleged non-compliance were logged with the VDH.¹⁹

Not surprisingly, there is a strong correlation between EMP noncompliance and childhood lead poisonings. Most, and probably all, EBL cases involving child-tenants are tied to a rental unit that substantively violates the EMP law.

B. Enforcement

¹⁶ EMP Affidavits Received by the Vermont Department of Health

Year	Rental Properties	Child Care Centers	Total
1996			729
1997			2928
1998			3584
1999			3067
2000	2388	358	2746
2001	2295	350	2645
2002	1958	354	2312
2003	2223	344	2567
2004	2270	197	2467
2005	1194	201	1395

Affidavit data from Vermont Childhood Lead Poisoning Prevention Program

1996 to 1999 includes rental properties and child care centers

Affidavits are reported by unit or building based on property owner preference

¹⁷ In a typically year, VDH identifies 20-30 cases of severely lead poisoned children living in pre-1978 target housing

¹⁸ The actual number of lead poisoned children may be 2,000 or more. The "official" number is lower because it does not include: (1) children that are lead-poisoned children but have not been identified through medical screening/testing; and (2) large numbers of children (2,914 children in year 2004, for example) with blood lead levels of 5-9 micrograms per deciliter—levels that adversely affect health, but which fall below current legal action levels.

¹⁹ VDH Report to the Vermont Legislature, January 1, 2004-December 31, 2004, pp. 6.

EMP noncompliance cases fall into two basic sets. First, there are basic noncompliance cases that do not yet involve a known lead poisoning. In these cases, the Act's preventive aims could presumably still be achieved. Second, there are several hundred EMP noncompliance cases each year in which preventative measures have come, if at all, too late because a child has already been determined to be lead poisoned. Both preventing future lead poisoning cases and dealing immediately with known lead poisonings are important goals of the Act. These two categories of cases (basic EMP noncompliance and noncompliance associated with a lead poisoning) are discussed immediately below.

1. There are no consequences in basic EMP non-compliance cases.

According to its annual reports, VDH's lead poisoning prevention efforts focus on education and lead testing.²⁰ Apparently, these efforts are widely ignored by the vast majority of landlords; each year an estimated 7,000 to 9,000 landlords fail to file an affidavit of EMP compliance.²¹ Thus, there are *several thousand cases annually* in which the Act's preventative measures are probably not achieved. A continued high rate of basic noncompliance will ensure that the Act's preventative aim of reducing childhood lead exposure will never be met.

The vast majority of landlords who violate the EMP law never face any significant consequence; the violations are simply never resolved, formally or informally. In the committee's view, the lack of consequences for breaking the EMP law helps explain the high rate of basic noncompliance.

The committee acknowledges that VDH lacks the resources to enforce against all EMP violators. VDH has only one lead inspector to cover the entire state; it has no dedicated enforcement legal staff. However, the committee also thinks that strides could be made, under existing law and with existing resources, (along with assistance from the Attorney General's Office in Montpelier) through targeted enforcement actions, which would raise the EMP law's profile and would demonstrate to the public that there are consequences for failing to comply with the EMP law. In the committee's view, VDH's lead poisoning prevention efforts should be broadened beyond voluntary compliance through testing and education; VDH should complement its educational efforts with traditional enforcement measures aimed at ensuring compliance with the EMP law's preventative goals.

2. There are few, if any, consequences for violations involving a lead poisoned child.

The second group of violations includes EMP noncompliance that is associated with a lead poisoned child or children. In these cases, landlords are required to do little, if anything, beyond obtaining after-the-fact compliance.

Each year, there are several hundred reported childhood lead poisonings associated with target rental housing. Both VDH's one full time lead inspector and, since 2003, local town health officers investigate these matters. The vast majority of these cases are resolved informally, through consultations and correspondence. VDH attempts to bring landlords into compliance

²⁰ VDH Report to the Vermont Legislature, January 1, 2004-December 31, 2004, pp. 5.

²¹ Each year thousands of landlords fail to file an EMP affidavit as required by law. Because VDH has mailed thousands of "reminders" yet still received relatively few affidavits, most landlords seem to be blatantly ignoring the law, year after year.

voluntarily by corresponding with and/or visiting with landlords to set forth the steps necessary to obtain EMP compliance. The Vermont Housing and Conservation Board is also enlisted to guide landlords back into after-the-fact compliance.

3. AODs are rarely used; direct court action is never used and penalties are never assessed.

Here, the committee attempts to summarize VDH's historical use of formal measures, such as AODs, direct court action, and penalty assessments, to resolve serious cases of EMP noncompliance and deter future EMP violations. The committee considers formal enforcement and, in serious cases, the assessment of penalties, to be essential elements in preventing lead poisoning through deterrence.

Outlining a history of formal enforcement action is difficult due to the lack of information available to the committee. VDH provided the chair with a copy of four AODs issued in 1994.²² These AODs predate the EMP law and were, therefore, of little use in determining under what circumstances and how often AODs were used to enforce the EMP law over the last 12 years. VDH indicated that "few AODs" may have been used post-1995, but was unable to locate these AODs for the committee to review. Thus, the committee does not know how often AODs have been used, what triggered the issuance of any AOD, or what was typically required in AODs.

Some members of the committee are familiar with the historical enforcement of the EMP law, and from that collective memory, the committee provides the following summary:

- AODs:
 - In recent history, AODs were not used to resolve EMP violations; resolutions were accomplished informally through correspondence.
 - On occasion, VDH has entered into AODs with noncompliant landlords. VDH used AODs more frequently, though not regularly, in the mid-1990s. It is not clear why VDH halted its AOD practice.
 - AODs typically would require the landlord to come into after-the-fact compliance, although there was a period of time when VDH would require some noncompliant landlords to go above-and-beyond basic EMP compliance, *e.g.*, achieve some level of lead hazard abatement. However, this has not been the case for several years.
 - VDH has never assessed and collected a penalty for EMP violations through an AOD.
- Other formal enforcement:
 - VDH has never sued a landlord over an EMP violation in superior court or filed criminal charges for an EMP violation.
 - VDH has never assessed and collected a fine for an EMP violation.²³

²² They are attached to this report at Appendix E.

²³ As this report is being finalized, the chair was informed that VDH recently assessed a penalty against a landlord for failure to comply with an AOD compliance schedule.

4. Compliance and enforcement summary.

In sum, continued high noncompliance levels will guarantee hundreds of childhood lead poisonings each year. Better EMP compliance will reduce (but not eliminate) the risk of childhood lead exposure as the law intended. Satisfactory compliance rates can be achieved if VDH is adequately staffed with inspectors and incorporates more traditional enforcement measures, including penalty assessments, consistent use of AODs, and targeted legal action, in its prevention and deterrence efforts.

IV. Recommendations

A. Summary of Recommendations

The recommendations have four main aims: (1) full compliance with the existing EMP law; (2) reducing lead poisonings associated with owner-occupied housing, specifically those associated with renovations and remodeling; (3) increasing long-term lead poisoning prevention, *e.g.*, abatement; and (4) increasing public awareness of lead dangers. The committee also makes several other recommendations to (5) improve the EMP law and Vermont's lead safety efforts, generally. In making all of these recommendations, the committee recognizes the importance of maintaining adequate affordable housing in the state.

B. Recommendations

1. Increase compliance with the existing EMP law.

Attaining full compliance with the state's existing EMP law was the strongest theme to emerge from the housing committee's work. While VDH has the general *statutory* authority to achieve full compliance on a case-by-case basis, the State does not have the personnel, data, and other *resources* to enforce the law's basic requirements on a case-by-case basis. In order to achieve full EMP compliance, the following recommendations should be adopted:

i. Establish a comprehensive pre-1978 housing database.

VDH does not have a complete rental target housing list, making it difficult to assure full EMP compliance and to target education to all covered landlords and tenants. VDH should construct and maintain a comprehensive database of all pre-1978 dwellings in Vermont that identifies: location of dwelling, owner name and address, date of construction, whether the dwelling is owner-occupied or rental, the number of dwelling units, current and historical EMP affidavit compliance, basic enforcement history, and any EBL history associated with the dwelling. The database should include pre-1978 owner-occupied housing, as well target rental housing.

The database should be constructed from grand list data and other sources available to VDH. Information should, to the extent allowed by law, be made accessible to the inquiring public through telephonic or electronic inquiry. VDH, in its discretion, may decide to make information from the database available to the public directly on-line.

The database would allow, among other things, the VDH to more accurately track affidavit/EMP compliance, assess fines for noncompliance, and target resources. The database would also allow prospective tenants or buyers to access information important to their housing choices.

ii. Automatic fine for failure to complete EMP and/or file EMP affidavit.

Currently, few landlords voluntarily comply with the EMP law's basic requirements, such as performing an annual inspection and submitting an affidavit of compliance. This situation has persisted since the law's inception despite VDH's efforts to seek voluntary compliance.

The committee recommends that VDH automatically impose a fine on noncompliant landlords. A statutory amendment will be required. At the close of each calendar month, VDH should identify properties for which an EMP affidavit is past-due and send the owner a citation identifying the violation, the fine, other potential consequences for continued noncompliance, and notification of rights of appeal.

Fines should be structured such that noncompliance with the EMP law is more expensive than basic compliance. In other words, noncompliant landlords should no longer enjoy an economic advantage over landlords that adhere to the law. Funds derived from the citations should fund VDH lead law enforcement and abatement funding efforts.

Automatic fines are warranted for the following reasons:

- Administrative feasibility: there are an estimated 7,000-9,000 noncompliant target housing owners making case-by-case enforcement unfairly narrow and inefficient.
- Fairness: across-the-board treatment for all non-compliant target housing owners is more fair than singling out a few and seeking a large civil penalty. An automatic fine set at or above the cost of compliance also eliminates any economic advantage gained by noncompliant landlords.
- Effectiveness: the certainty of a fine for noncompliance is more motivating than the low odds of being singled out for enforcement under current scheme.

The committee recommends the following fine structure for basic, first-time, EMP noncompliance:

- Penalties should be assessed on a per unit basis
- Fine of \$250 for failure to file EMP affidavit
- Fine for failure to fully complete EMPs and file affidavit: \$800 or estimated cost of compliance, whichever is greater, per unit.
- Assessment of \$100 per day per unit fine that is avoidable if compliance is obtained within 30 days of notice of violation (see below for additional enforcement/penalty recommendations).

iii. Adopt an effective EMP/lead hazard enforcement policy that does not rely on voluntary compliance.

The committee strongly believes that VDH should replace the current "voluntary compliance" EMP enforcement scheme with a more traditional enforcement regime. Under the existing enforcement system, which relies heavily, if not exclusively, on voluntary compliance, (*see 18*

V.S.A. §124²⁴), and which delegates responsibility to untrained local town health officers, the State has achieved low (and recently declining) EMP compliance levels. The committee concludes that voluntary compliance has proven itself an inappropriate enforcement paradigm.²⁵ The State should overhaul its EMP enforcement system in at least two major ways.

First, VDH should adopt a traditional enforcement policy. Mandatory EMP compliance should replace voluntary compliance. This new policy should have the following aspects:

- (1) noncompliance with the EMP law will regularly cost landlords more than compliance;
- (2) administrative efficiency, consistency, effectiveness, and fairness;
- (3) deterrence by raising the EMP law's profile and by assessing penalties; and,
- (4) a greater use of abatement and permanent lead hazard controls.

These aspects can be accomplished by instituting the following changes:

- (1) VDH should regularly penalize landlords for violations such that EMP compliance is cheaper than noncompliance;
- (2) VDH should regularly seek to recoup the government expenditures made in investigating and resolving noncompliance, unless doing so would necessarily thwart compliance or abatement;
- (3) VDH should regularly issue press releases to publicize enforcement actions/resolutions and raise lead safety awareness;
- (4) VDH should regularly require partial or full abatement or additional lead hazard controls above and beyond basic EMP compliance in cases of gross EMP noncompliance, especially those involving a lead poisoned child or children;
- (5) For EMP violations resulting in a lead poisoning, the legislature should mandate a minimum fine of \$1,000.
- (6) VDH should adopt a formal protocol for screening and referring cases to the Attorney General's Office for legal enforcement to ensure that the worst cases of noncompliance/violation, repeat violations, and willful violations regularly result in a civil and/or criminal penalty; and,
- (7) The legislature should provide the Attorney General's Office with a window of opportunity to review and object to any Assurance of Discontinuance accepted by the VDH in settlement of a lead hazard or EMP violation, before the court enters the AOD as an order. This would allow a court to vacate an AOD on the grounds that it is insufficient to carry out the purposes of 18 V.S.A. ch. 38 or fails to sufficiently protect the public health or the health of any tenant child. A similar regime currently exists with respect to all AODs issued by the Agency of Natural Resources. *See* 10 V.S.A. § 8007 (c) ("The assurance of discontinuance shall be simultaneously filed with the attorney general and the environmental court.")

²⁴ The relevant statute provides that "[w]hen appropriate, the health officer shall make all practicable efforts to secure voluntary compliance." 18 V.S.A. §124(a).

²⁵ In making this recommendation, the committee specifically considered VDH's attempts to secure voluntary compliance from 7,000 to 9,000 noncompliant property owners. Among other efforts, in 2005, VDH mailed thousands of professionally designed post-cards to advise landlords of their obligations; the vast majority of landlords still failed to comply.

Second, the legislature should establish, fund, and fully staff a state-wide housing inspection program. The committee also finds that full or even satisfactory compliance with the EMP law will never be achieved as long as the state continues to rely on town health officers for compliance checks and enforcement. Generally, town health officers do not have the necessary training, resources, or accountability to fully enforce the EMP law in the stead of VDH.

Therefore, in addition to other measures recommended elsewhere by the committee, the committee recommends that the State take important short and long-term steps:

- (1) Long-term: Establish, fund, and staff (12-15 full time employees) a statewide housing inspection system that will inspect target rental housing for EMP compliance;
- (2) Short-term: until a state housing inspection system is running, VDH should issue written protocols for town health officers to follow to facilitate lead hazard inspection, identification, and abatement.

2. Reduce lead poisonings associated with owner-occupied housing.

In the committee's view, the first step in lead poisoning prevention in owner-occupied housing should be eliminating unsafe renovation/repainting practices. Renovation and re-painting in pre-1978 housing generate considerable amounts of hazardous lead dust. Research shows that, in some Northeast states, unsafe renovation practices account for up to 60% of severe lead poisonings.²⁶

Currently, in Vermont, unsafe renovation practices, such as power sanding lead painted surfaces, are banned in target rental housing (18 V.S.A. §1759(a)(1)) yet nonsensically remain legal in owner occupied housing. Basic awareness of renovation-mediated lead paint hazards is fairly widespread among the renovation and painting trades. In fact, some of the state's well-established and responsible painting companies voluntarily follow lead safe painting practices in owner-occupied housing—often bidding themselves out of jobs that other outfits can do cheaper by ignoring lead safety measures. In addition to contractors who use unsafe work practices by choice, many “do-it-yourself” homeowners unknowingly create serious lead hazards by renovating or repainting in an unsafe manner. In order to end all lead hazard producing renovations, the committee makes the following two recommendations:

i. License and train contractors, renovators, and painters.

All persons working for hire on pre-1978 housing on projects that are presumed to disturb lead based paint should be either licensed or directly supervised by a licensed professional. The employing company should also be licensed.

- Training should consist of the 8-hour EPA/HUD lead safe practices contractor training. The courses should be free. Refresher courses should be required every 3 years.

²⁶ Research from Maine's CLPP programs demonstrates that 60% of known severely lead poisoned children, *i.e.*, EBL > 20 or persistent 15-19 $\mu\text{g}/\text{dL}$, come from homes with recent (within 6 months) or ongoing renovations. In New Hampshire, one in three childhood lead poisoning cases are linked to home renovation projects.

- There should be two levels of licensing: (1) Company licensed for lead safe renovation/painting/construction, and (2) Individual supervisor licensing.
- VDH should establish a licensing fee that is fair to large and small companies, alike, and that provides an incentive to have more versus fewer workers trained. The committee suggests a fee structure that is tiered by range of employees, *e.g.*, 1-5 employees at \$50 total, then an additional \$50 for the next five workers, and so on.
- A licensed supervisor must be on-site for any project that will potentially disturb lead paint. Only licensed supervisors and workers supervised by licensed supervisors may conduct lead paint disturbing work for hire on a pre-1978 dwelling or pre-1978 public building. All covered projects must be conducted using lead safe practices. The VDH should establish a system for enforcing these requirements and revoking or suspending licenses for non-compliance.
- A licensed supervisor or licensed company shall, prior to commencement of any lead paint disturbing project, provide owner (and tenant, if any) with a VDH-approved lead paint hazard pamphlet stating: (1) the presumption of lead paint existing in the building; (2) the presumption that the project will disturb lead paint and create lead dust; (3) the fact that lead dust is a significant health hazard, especially for children under six; and (4) that all contractors are required to follow lead safe work practices. The licensed company shall obtain and keep a record of written acknowledgment from the owner (and tenant, if any) of receipt of the pamphlet.

ii. Ban unsafe work practices.

Unsafe work practices, such as power sanding lead painted surfaces, should be prohibited in all pre-1978 housing. Currently, such practices are banned in target rental housing. The above-motivated licensing system should end unsafe “for-hire” work practices. In order to close the regulatory loop, bring do-it-yourselfers into a lead safe mode, and to increase the profile of lead safe practices, the state should ban the following paint preparation/removal practices in pre-1978 housing, except where permitted or allowed by VDH rule:

- Open flame burning
- Use of heat guns at temperatures above 1,100 degrees F.
- Dry scraping except as permitted by VDH regulation and only where wet scraping poses a greater health risk or is otherwise impracticable. Any dry scraping allowed by VDH rule must consider wet scraping as the first alternative, and, in any event, require strict safety practices, *e.g.*, wet scraping, proper ground cover, closing windows, etc.
- Power sanding lead painting surfaces except with a VDH approved HEPA attachment.
- Uncontrolled hydro blasting.
- Sandblasting and equivalent blasting practices.
- Chemical paint stripping using methylene chloride based products.

A violation of these bans should be punishable as civil and/or criminal violations of Title 18. See 18 V.S.A. §§ 130 and 131.

The legislature should require that notice of this law be prominently posted in all stores that sell building paint supplies and/or tools that could be used in contravention of the ban, *e.g.*, stores that sell power sanders, heat guns, etc.

3. Increase long-term lead poisoning prevention.

Even full compliance with the EMP law will never get the lead *out* of Vermont. In order to achieve the goal of eliminating childhood lead paint poisoning hazards, the State must encourage, and, in some cases, mandate the permanent abatement of lead hazards. There are three steps the State can take towards long-term lead poisoning prevention.

First, with no legislative or rulemaking changes, the VDH and the Attorney General can make significant strides towards eliminating the State's worst known lead hazards by seeking court-ordered permanent lead hazard controls in cases involving serious EMP violations. *See above*, Recommendation 1. b, and c.

Second, the Legislature should establish financial incentives and resources for lead hazard abatement projects. Since the Resources Committee is presenting recommendations in this regard, the Housing Committee provides only this brief recommendation: (a) the legislature should provide owners of pre-1978 houses and EMP compliant target housing owners with income tax-incentives reflecting the reasonable cost of voluntary window and door replacement done pursuant to the lead abatement rules and statutes; and, (b) the legislature should establish a need-based grant and loan fund to finance voluntary lead abatement projects.

Third, the State should aggressively pursue all available means of funding for lead hazard abatement, including seeking a fair contribution from industries that played a significant role in putting lead into our homes and the environment. The committee strongly recommends that the Attorney General and VDH seek the best means of requiring other absent responsible parties (*e.g.*, lead pigment industry, petroleum industry, etc.) to participate in the abatement of the lead hazards they have helped create. Without this action, the committee believes that it is highly doubtful that Vermont will fully get the lead out of Vermont.

4. Increase public awareness of lead hazards.

Public awareness of the dangers posed by lead paint is essential to getting the lead out of Vermont. In addition to publicizing EMP enforcement cases, the committee presents two recommendations.

i. Raise housing-buyer awareness of lead hazards and create a bias toward lead hazard inspections.

The committee believes that real estate transactions present an excellent opportunity to both raise awareness of lead paint hazards, generally, and to identify and deal with actual lead hazards. Under current federal law, a prospective buyer receives a federal lead paint disclosure and may exercise a 10-day option to have the house lead inspected. Few buyers exercise this right to inspect and the committee perceives the current notification materials as inadequate.

The housing committee recommends both (1) more prominent disclosure requirements in real estate transactions that are enforceable under state law, modeled on Maine's lead paint disclosure

law; (2) a mandatory pre-sale lead hazard inspection aimed at identifying and correcting acute lead paint hazards; and (3) specific disclosure to buyers of target rental housing outlining their EMP obligations.

The committee recommends that sales of pre-1978 housing be regulated as follows:

- VDH should work together with the standing Lead Hazard Commission to revise and/or create effective, plain language (1) purchase and sale agreement disclosure language, (2) lead hazard brochure and (3) VDH lead safe renovation practices packet.
- VDH shall prepare a lead paint hazard disclosure. The form should be modeled on Maine's document (attached at Appendix F), except that the disclosure form should state in bold, prominent language that the building is *presumed* to contain lead paint and that lead paint can present a serious health hazard, especially to children.
- Real estate agents and sellers must provide buyer with a VDH approved lead paint hazard brochure/disclosure at the time a contract for sale is signed.
- The disclosure form shall include a provision requiring a lead hazard inspection as a condition of the sale. This condition may be waived by the buyer in writing.
- A lead hazard inspection shall identify and assess all visible lead hazards in the dwelling (interior and exterior), garages, sheds, and outbuildings. The inspection shall also assess lead hazard risks in or on bare soil on all building perimeters. The inspection shall also assess lead hazard risks in drinking water.
- A closing of the title of sale on a pre-1978 dwelling may not occur unless both the buyer and seller have received and reviewed a copy of the inspection report.
- Real estate agents and/or sellers must provide buyer with a VDH lead safe renovation practices packet at closing.
- Real estate agents and/or seller must provide rental target housing buyer with VDH approved pamphlet outlining EMP obligations at closing.
- No closing of the title of sale of a target rental housing building or unit may occur if the building or unit is currently the subject of an AOD, unless the AOD is amended in writing to transfer to the buyer all remaining obligations under the AOD.
- Within 45 days of the closing, the buyer of target rental housing unit or building must come into full EMP compliance. Failure to do so shall result in a mandatory civil penalty. Within the 45-day period, the buyer may seek in writing an extension of time for EMP compliance, which VDH may grant in writing for a stated period of time for good cause only.

ii. Establish a permanent lead hazard education and outreach campaign.

The committee recommends a permanent lead hazard and lead poisoning prevention education and outreach campaign. The committee recommends that the VDH hire a professional consultant to design and help implement an effective campaign. At a minimum, VDH should consider:

- A well-publicized annual lead hazard awareness week
- Annual PSA by high profile politicians (governor, health commissioner, AG, etc.)

- Partnership(s) with UVM's extension program to do statewide lead education and outreach (Some states, including Connecticut and New Jersey do this)
- A dedicated VDH info hotline on lead safe practices, etc.
- Preparation and free distribution of a lead safe practices DVD
- Co-sponsoring with the Vermont Bar Association a continuing legal education course on EMP requirements and building/defending an EMP case
- Targeted information to youth groups/step-up programs doing summer volunteer painting projects
- Target publications in town clerks' offices

5. Other general recommendations.

The committee recommends several other measures to improve the existing EMP law and to facilitate getting the lead out of Vermont.

i. Substantive EMP law amendments

The committee recommends several additional changes to the EMP law in order to improve education and information exchange, to broaden its scope (soil), to make EMP compliance less burdensome on landlords without sacrificing children's safety and health, and to better define lead abatement activities.

a. Copy of EMP affidavit to tenant

The committee recommends a statutory amendment that requires landlords to provide to tenants a copy of each EMP affidavit associated with the tenancy (e.g., a copy of the lease at inception, a copy at the completion of annual EMPs, etc.) This will serve as both a check on the accuracy of the affidavit and a further notice to the tenant to be aware of potential lead paint hazards.

b. EMPs should address access to contaminated soil.

Soil around the perimeter of pre-1978 housing is typically a highly lead contaminated area that should be rendered inaccessible to children. Thus, the committee recommends that EMPs be amended to include: (1) the annual removal of all visible paint chips from the ground and (2) a requirement to cover or otherwise make physically inaccessible any bare soil within 4 feet of the perimeter of the building. This could include planting grass, applying mulch or other cover, planting shrubs, or installing fencing.

c. Eliminate EMP notarization requirement.

The committee recommends that the EMP affidavit notarization requirement be eliminated. The affidavit form should be changed to reflect that the landlord signs under the pains and penalty of perjury, and that submitting a false material on the affidavit violates, among other laws, 13 V.S.A. § 3016, carrying a potential penalty of imprisonment for not more than five years, or fine of not more than \$10,000.00, or both. The existing notary requirement is seen as a burdensome step with no corresponding health benefit.

d. Eliminate annual window well/sill cleaning requirement.

While routine window well and sill cleaning can reduce the risk of lead poisoning, the annual window well/sill cleaning requirement does little if anything to protect children's health. The

landlord's time is better spent focusing on the other EMP requirements. The committee recommends that the landlord's annual window well/sill cleaning requirement in 18 V.S.A. § 1759(a)(3) be eliminated. The statute should be amended to read as follows:

(3) At each change of tenant clean all window wells and window-sills within the unit and in all areas of the building to which access by tenants is not restricted by the rental agreement. The cleaning shall be accomplished by using cleaning methods, products and devices that are effective in the removal of lead contaminated dust and recommended by the department.

e. Define lead hazard control/abatement terms.

The committee suggests that 18 V.S.A. § 1751 be amended to add the following definitions:

“Full Abatement of All Lead-Based Paint” – means either complete removal of all architectural components with lead-based paint or covering such components in a manner that ensures the lead-based paint will not be accessible under normal conditions for at least 20 years. Any such work would not be considered complete until a final cleaning has been conducted and a certified lead inspector or risk assessor completes a clearance examination and determines the property to be safe.

Note: This work would have to be completed by certified lead abatement contractors and would result in housing that would remain safe without any additional measures required. Achieving this standard could be very expensive.

“Lead Safe Housing” – means a housing unit has undergone measures to address all immediate hazards from lead-based paint, including repairing any deteriorated or defective paint surfaces; repairing any underlying conditions that may lead to further paint deterioration (roof leaks, etc.); removal of all paint from or replacement of friction or impact surfaces such as windows, doors, and floors or elimination of the friction or impact on these surfaces. Any such work would not be considered complete until a final cleaning has been conducted and a certified lead inspector or risk assessor completes a clearance examination and determines the property to be safe.

Note: This work would also have to be completed by certified lead abatement contractors. Because lead paint would still be present, the property would require ongoing maintenance to remain lead safe. In theory the annual completion of EMP's should keep these properties safe, but federal standards require an independent reevaluation by a certified inspector or risk assessor every 2-3 years to maintain the 'lead-safe' designation.

“Essential Maintenance Practices or EMPs” – means maintenance, remodeling and cleaning practices to reduce the likelihood that young children would be exposed to lead hazards as currently laid out in the statute and as it might be amended by the Legislature.

Note: Depending on the nature of the work, it could be completed either by EMP trained owners/workers (4-hour EMP training) or under the supervision of a licensed supervisor (8-hour lead safe-construction practices training).

ii. Establish standing lead hazard commission.

Establish a volunteer/appointed lead commission with multiple stakeholder representatives, to see how changes work, to give direction to VDH, to revise affidavit forms, etc. This will be modeled on the Model Lead Paint Law.

C. Measures considered, but not adopted.

In its dozen or so meetings, the housing committee considered a number of proposals that were either rejected or not adopted. Some of these include the following:

- Intensifying “voluntary compliance” efforts in lieu of automatic fines was rejected because, since the EMP law was enacted in 1993, significant voluntary compliance efforts have proven ineffective at achieving an acceptable level of compliance.
- Licensing for all workers was rejected. The committee wants the state to encourage the training of as many workers as possible, by offering free-training, but leaves it to licensed companies to best determine which workers (and how many per company) should be trained to meet work demands. By requiring that a trained/licensed individual be on-site to ensure workers follow lead safe practices, public health concerns are addressed.
- The committee rejected a permitting scheme for renovation/repainting work because the licensing system should achieve the same results.
- The committee considered and rejected several insurance-related proposals, including a requirement that the EMP affidavit form require identification of the landlord’s insurance carrier and policy number and prohibiting issuance/renewal of policies for which there is no EMP affidavit of file. The insurance industry was actively represented in these discussions and consistently rejected playing any part in improving EMP compliance. The committee ultimately lacked a consensus to adopt any insurance-related proposal; it takes no position on the ultimate merits of similar proposals. Instead, the committee decided to have the state enforce the EMP law directly against the landlords by requiring an automatic fine for failure to file EMP affidavits as required.
- Mandatory abatement of all lead paint hazards in all housing was rejected because, so long as the lead pigment and gasoline industries remain absent responsible parties, this remedy would be unfairly shouldered by Vermont tenants, homeowners, and landlords. The committee *does* recommend that abatement in target rental housing be triggered by serious EMP violations.
- The committee considered, but ultimately did not recommend that EMP compliance be an express requirement in the Rental Housing Health Code. The committee did not adopt the recommendation because EMP compliance is already part of the warranty of habitability. *See 9 V.S.A. § 4457 (a) (emphasis supplied): “Warranty of habitability. In any residential rental agreement, the landlord shall be deemed to covenant and warrant to deliver over and maintain, throughout the*

period of the tenancy, *premises* that are safe, clean and fit for human habitation and *which comply with* the requirements of applicable building, housing and *health regulations*.”

- The committee ultimately did not recommend an amendment to Vermont’s landlord-tenant law that would make EMP compliance an essential element in an action for eviction.
- The committee considered recommending an anti-retaliation provision but decided not to because 9 V.S.A. Ch. 137 already prohibits retaliatory conduct by landlords.
- The committee rejected a proposal to require private lead inspection reports to be automatically filed with VDH, primarily on the grounds that such a reporting requirement may provide private parties with a disincentive for buying a lead inspection. The committee notes, however, that VDH, which regulates lead inspection companies, has the authority to request such reports.

Housing Committee Recommendations

1. Increase compliance with the existing EMP law.
 - i. Establish a comprehensive pre-1978 housing database
 - ii. Automatic fine for failure to complete EMP and/or file EMP affidavit.
 - iii. Adopt an effective EMP/lead hazard enforcement policy that does not rely on voluntary compliance.
2. Reduce lead poisonings associated with owner-occupied housing.
 - i. License and train contractors and renovators and painters.
 - ii. Ban unsafe work practices
3. Increase long-term lead poisoning prevention.
 - seek court-ordered permanent lead hazard controls in cases involving serious EMP violations.
 - establish financial incentives and resources for lead hazard abatement projects.
 - pursue all available means of funding for lead hazard abatement, including a fair contribution and participation from industries that played a significant role in putting lead into our homes and the environment (*e.g.*, lead pigment industry, petroleum industry, etc.).
4. Increase public awareness of lead hazards
 - i. Raise home-buyer awareness of lead hazards and create a bias toward lead hazard inspections
 - ii. Establish a permanent lead hazard education and outreach campaign
5. Other general recommendations
 - i. Substantive EMP law amendments
 - a. Require copy of EMP affidavit to tenant
 - b. EMPs should eliminate access to contaminated soil.
 - c. Eliminate EMP notarization requirement
 - d. Eliminate annual window well/sill cleaning requirement
 - e. Define lead hazard control/abatement terms.
 - ii. Establish standing lead hazard commission

Housing Committee Participants List (*=participated via e-mail)

No assumption of endorsement of the proposals in the report can be made by the appearance of a name on this list. The following persons participated in the initiative in a variety of manners: by regularly or occasionally attending committee meetings, by participating in discussions by email, by monitoring the work of a committee by email, by providing information or expertise, or by expressing opposition to proposals.

Bard, Michael	USDA Rural Development
Bennett, Stuart	Vermont Apartment Owners Association, LLC
Bland, Richard	Vermont Association of Domestic Property and Casualty Insurance Companies
Burgess, Beth	Children's Forum
Carlson, Charlotte*	Dartmouth Medical School
Cragin, Lori*	Vermont Department of Health, Health Surveillance
Curley, Kathy	Vermont Housing Finance Agency
Destakasi, Graham*	City of Burlington Lead Program
Doering, Kevin	Vermont Department of Health, Environmental Health
Feng, You-Shan	Dartmouth
Finn, Carlen	Children's Forum
Fleishman, Beth	Dartmouth Toxic Metals Research Program
Fox, Priscilla	Vermont Law School
Gilley, Charles	Painting and Decorating Contractors of America (PDCA)
Hobson, Todd	Clay Point
Hollar, John	Downs Rachlin Martin
Holub, Erica	Vermont Department of Health, Childhood Lead Poisoning Prevention Program
Kashkin Groller, Muffy	Vermont Child Care Providers Association
Keller, Phil	Vermont Department of Banking, Insurance, Securities and Health Care Administration
Lafayette, Paul	Lafayette Painting, Burlington
Langevin, Brenda	Louis Marineau & Sons, Inc.
Lucente, Liz	Vermont Law School/Attorney General's Office
Lux, Harry	Painting and Decorating Contractors of America (PDCA)
Mahnke, Erhard	Vermont Affordable Housing Coalition
Mallory, Sharon	Vermont Department of Health, Community Public Health
Manna, Christina	Vermont Department of Children and Families, Child Care Licensing
Marineau, Brian	Louis Marineau & Sons, Inc.; Painting and Decorating Contractors of America (PDCA)
Marineau, Lorelle	Louis Marineau & Sons, Inc.
McClurg, Don	Dartmouth Medical School
McLeod, Robert	VOSHA
McNamara, Jim	Lead Safe Bellows Falls
Meyer, Scott	Vermont Department of Labor and Industry
Morgan, Wendy	Vermont Attorney General's Office

Nelson, Vernon	Vermont Department of Health, Lead and Asbestos Regulatory Program
Pierson, JT	Heritage Environmental Projects, Inc.
Pine, Brian	City of Burlington Community and Economic Development Office
Plank, Ann-Marie	Vermont Housing Finance Agency
Rupp, Ronald	Vermont Housing and Conservation Board
Samuelson, Jenney	Vermont Department of Health, Childhood Lead Poisoning Prevention Program
Sciarrotta, Mark	Vermont Attorney General's Office
Serrell, Nancy	Dartmouth Toxic Metals Research Program
Sharp, Emily	Dartmouth Toxic Metals Research Program
Simoos, Steve	Vermont ANR, Hazardous Waste Program
Skidmore, Kendy*	Bennington Coalition for the Homeless
Sullivan, Michael	Vermont Department of Health, Childhood Lead Poisoning Prevention Program
Sumner, Meredith	Legislative Council
Sweeney, Kevin	Painting and Decorating Contractors of America (PDCA)
Tanguay, Jeff	City of Burlington Lead Program
Ternes, Barbara	Parks Place Community Resource Center
Trummel, John	Dartmouth Medical School
Weiss-Tisman, Howard	Brattleboro Reformer
Wimpey, Ted	Champlain Valley Office of Economic Opportunity
Zaikowski, Angela	Vermont Apartment Owners Association, LLC
Znamierowski, Stephen	ATC Associates, Inc.

EMP Cost Estimates

	Good Condition	Fair Condition	Poor Condition
Typical Requirements to Achieve Compliance	<ul style="list-style-type: none"> • attend training • inspect property • purchase HEPA vac • line window wells • annual cleaning • turnover cleaning • disclosure 	<ul style="list-style-type: none"> • attend training • inspect property • purchase HEPA vac • line window wells • annual cleaning • turnover cleaning • minor paint stabilization • window stabilization • door adjustments • exterior stabilization • disclosure 	<ul style="list-style-type: none"> • attend training • inspect property • purchase HEPA vac • line window wells • annual cleaning • turnover cleaning • major paint stabilization • window repairs or replacement • door stabilization and repairs • major exterior stabilization • disclosure
Time Required to Achieve Initial Compliance	<ul style="list-style-type: none"> • training 4 hours • inspection 1 hour • windows 4 hours • cleaning 2 hours <p style="text-align: center;">11 hours</p>	<ul style="list-style-type: none"> • training 4 hours • inspection 1 hour • windows 6 hours • stabilization 4 hours • cleaning 2 hours • exterior 8 hours <p style="text-align: center;">27 hours</p>	<ul style="list-style-type: none"> • training 4 hours • inspection 1 hour • windows 8 hours • stabilization 12 hours • cleaning 3 hours • exterior 40 hours <p style="text-align: center;">70 hours</p>
Estimated Materials Cost to Achieve Initial Compliance	HEPA Vacuum \$300 Coil stock \$100 Supplies \$100 \$500 <i>drop down lines</i>	HEPA Vacuum \$300 Coil stock \$100 Supplies \$100 Paint \$50 \$550	HEPA Vacuum \$300 Coil Stock \$100 Supplies \$100 Paint \$400 \$900
Estimated Labor & Material Cost to hire someone to Achieve Initial Compliance	Materials \$200 Labor \$220 (11 hr x \$20/hr) \$420	Materials \$250 Labor \$540 (27 hr x \$20/hr) \$790	Materials \$900 Labor \$1400 (70 hr x \$20/hr) \$2300
Estimated Time Required per year to Maintain Compliance	<ul style="list-style-type: none"> • inspection 1 hour • cleaning 2 hours • exterior 2 hours <p style="text-align: center;">5 hours</p>	<ul style="list-style-type: none"> • inspection 1 hour • cleaning 2 hours • exterior 4 hours <p style="text-align: center;">7 hours</p>	<ul style="list-style-type: none"> • inspection 1 hour • cleaning 2 hours • exterior 8 hours <p style="text-align: center;">11 hours</p>
Estimated Materials Costs per year to Maintain Compliance	Cleaning Supplies Tools Paint (little) \$100	Cleaning Supplies Tools Paint (more) \$200	Cleaning Supplies Tools Paint (much) \$300
Estimated Labor & Material Costs per year to hire someone to Maintain Compliance	Materials \$100 Labor \$100 (5 hr x \$20/hr) \$200	Materials \$200 Labor \$140 (7 hr x \$20/hr) \$350	Materials \$300 Labor \$220 (11 hr x \$20/hr) \$520

Lead Poisoned Children Rules (from http://healthvermont.gov/enviro/lead/lead_child_rule.aspx#Anchor-17151)

I. Purpose and Authority

These rules are adopted to assure that prompt action will be taken to confirm a lead poisoning diagnosis, to inspect the possible sources of lead poisoning, and to secure voluntary compliance or to take necessary enforcement action towards abatement and/or interim controls in target housing which is rented or leased

These rules are adopted under authority of Section 1757 of Title 18 of the Vermont Statutes Annotated, and under the authority of the Secretary of the Agency of Human Services to promulgate such rules as are necessary to administer Title 18

II Definitions

Words and phrases used in these rules and not defined herein shall have the meanings given to them in Chapter 38, Title 18 of the Vermont Statutes Annotated or in the Federal Residential Lead Based Paint Hazard Reduction Act of 1992. In the event of inconsistency between meanings given in such federal act and meanings given in Chapter 38, the federal act shall apply except where meanings given in Chapter 38 serve to narrow, limit or restrict the applicability of a word or phrase, in which cases the narrower meaning shall apply

For purposes of these rules

(1) Abatement - any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate state and federal agencies. The term includes

(a) tile removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil, and

(b) all preparation, cleanup, disposal and post abatement clearance testing activities associated with such measures

(2) Commissioner - the Commissioner of the Department of Health

(3) Comprehensive environmental lead inspection or inspection - a surface by-surface investigation to determine the presence of lead based paint and the provision of a report explaining the results of the investigation

(4) Department - the Department of Health

(5) Dwelling

(a) a single-family dwelling, including attached structures such as porches and stoops, or

(b) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons

(6) Interim Controls - a set of measures designed to reduce temporarily human exposure or likely exposure to lead based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs

(7) Lead-based paint - paint or other surface coatings that contain lead in excess of limits established under section 302(c) of the Federal Lead-Based Paint Poisoning Prevention Act

(8) Lead-based paint hazard - any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency

(9) Lead poisoning - for purposes of these rules, a confirmed blood lead level in a child less than six years of age greater than or equal to ten micrograms of lead per deciliter of whole blood

(10) Licensed Private Inspector - a private person licensed to carry out inspections in accordance with Section 1752(d) of Title 18 of the Vermont Statutes Annotated

(11) Occupant - any person who resides in or regularly uses, a dwelling, dwelling unit, or structure

(12) Owner - any person who, alone or jointly or severally with others

(a) Has legal title to any dwelling or dwelling unit or day care facility with or without accompanying actual possession thereof, or

(b) Has charge, care or control of any dwelling or dwelling unit or day care facility as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any person representing the actual owner shall comply with provisions of Chapter 38 of Title 18 and the rules adopted pursuant to Chapter 38 to the same extent as if that person were the owner. An agent of the owner does not include real estate and property management functions where the agent is only responsible for the property management and does not have authority to fund capital or major property rehabilitation on behalf of the owner

(c) For purposes of publicly-owned property only, the owner shall be the chief executive officer of the municipal or state agency which owns, leases or controls the use of the property

(d) A mortgagee or other secured lender or lienholder shall not be considered an owner unless such person has foreclosed or taken actual physical possession pursuant to applicable law

(13) Risk assessment - an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including

(a) information gathering regarding the age and history of the housing and occupancy by children under age six,

(b) visual inspection,

(c) limited wipe sampling or other environmental sampling techniques,

(d) other activities as may be appropriate, and

(e) provision of a report explaining the results of the investigation

(14) Severely lead poisoned a confirmed blood lead level in a child under age six or greater than or equal to twenty micrograms of lead per deciliter of whole blood

(15) State inspector the Commissioner or any person who is authorized in writing by the Commissioner to conduct inspections for the Department

(16) Target housing any housing constructed prior to 1978 except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling

III Protocol

1 **Confirmation of Report** Upon receiving a report that a child under age six has been diagnosed by a qualified physician to have lead poisoning, the Commissioner of Health or the Commissioner's designee shall take prompt action to confirm the diagnosis

2 **Inspection/ Risk Assessments** - If the child is severely lead-poisoned, the Commissioner or the Commissioner's designee shall provide for the inspection/risk assessment of the dwelling unit occupied by the child and other locations where the child is known to spend 10 or more hours per week, by a State Inspector/Risk Assessor or Licensed Private Inspector/Risk Assessor

3 **Development of Plan** - The Commissioner or the Commissioner's designee shall work with the parents, owner, physician, and others involved with a severely lead-poisoned child to develop a plan to minimize exposure of the child to lead hazards

In some cases, a lead-poisoned child may require temporary or permanent relocation to allow for the implementation of lead-based paint hazard controls. The Commissioner will work with the Department of Housing and Community Affairs to evaluate the possible resources available for this purpose. At least twice a year, the Department of Housing and Community Affairs will provide the Commissioner with a list of the owners of housing units that have received public funding and have also followed the applicable lead paint policies

IV. Voluntary Compliance and Enforcement

Abatement and/or interim controls will be required when a child under age six who is severely lead poisoned resides in target housing which is rented or leased, and a lead-based paint hazard has been identified by an inspection/risk assessment of the dwelling unit in which the child resides. The following procedure will be followed to assure abatement and/or interim controls in such cases

- 1 The owner will be given immediate written notice fully describing the lead-based paint hazards in the dwelling
- 2 A specific and reasonable time period for abatement and/or interim controls will be required. This time period will depend on factors such as the extent of the abatement and/or interim controls required, and will be documented by the owner's agreement with the time period established
- 3 If the time period established for abatement and/or interim controls is not adhered to, voluntary compliance will be sought by asking the owner to enter into a written Assurance of Discontinuance in accordance with 18 VSA 125. This Assurance will include a description of the abatement and/or interim controls required and a time period for abatement and/or interim controls. The signed Assurance will be filed with the Superior Court and become an Order of the Court
- 4 If an owner refuses to enter into an Assurance of Discontinuance, the Commissioner will immediately institute an action or proceeding under 18 VSA 126 (health orders), 18 VSA 127 (emergency health orders), 18 VSA 130 (civil enforcement), or 18 VSA 131 (criminal penalty) or will work with local health officials to institute such an action or proceeding
- 5 Any enforcement action will include providing the child's parents or guardians and the owner with appropriate educational materials on lead poisoning prevention. The child's parents or guardians will also be provided with information obtained from the Department of Housing and Community Affairs regarding temporary or permanent relocation resources

- 3 Seed the entire front yard area
- 4 Fence off the soil area by the left side of the house (between the barn and 25 Oak Street) to make it inaccessible to the children
- 5 This work will all be completed on or before July 17, 1994
- 6 I will contact Karen Garbarino at the Department of Health (865-7786) to arrange for a re-assessment immediately after the work has been completed

Dated 7/11/94

Chal Jarras
Charles Jarras

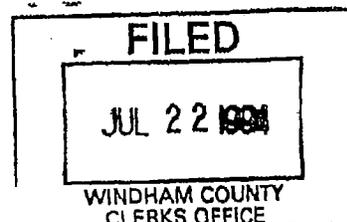
ACCEPTED this 13 day of July, 1994

Jan K. Carney
Jan K. Carney, MD, MPH
Commissioner of Health

ORDER

SO ORDERED in accordance with 18 VSA § 125(b) on this 21st day of July, 1994

Richard W. Norton
Hon. Richard W Norton



STATE OF VERMONT
COUNTY OF WINDHAM, SS

JUN 15 1994

In re:)
Keith E. Wilder) Windham Superior Court
Docket No _____)
)
)
)

ASSURANCE OF DISCONTINUANCE

In accordance with Section 125 of Title 18 of the Vermont Statutes Annotated (VSA), the Commissioner of Health hereby accepts this assurance in lieu of instituting an action or proceeding under Title 18 of the VSA

This assurance is accepted from Keith E Wilder who state(s) and agree(s) as follows:

- 1 I own(s) property located at 175 Elliot Street, Apartment 2 in Brattleboro, Vermont
2. Paint, soil, and water samples have been collected and analyzed by the Department of Health from this property with the following test results.

Kitchen Floor	0.6%
Porch Floor	1.0%
Porch Railing	6.5%
Sam's Window Sill	19.1%
Jame's Room Door Casing	22.5%
Living Room Window Sill	22.5%
Jame's Room Window Sill	25.5%
Porch Balluster	37.7%

Soil - beside home 403 mg/kg

3. Paint with a lead level greater than 0.5% is considered a potential health hazard to young children. The "safe level" of lead in soil is 300 mg/kg (milligrams of lead per kilogram of soil)

4. The following work will be done in order to eliminate the public health risk created by the lead hazards described above:

1. Porch balusters will be removed and replaced with new components.
2. Lead paint on porch railings, window sills and

door casings will be removed using acceptable methods for lead paint removed.

3. Lead painted floors in the kitchen and porch will be covered with new flooring or will have the paint removed using acceptable paint removal methods

4 Contaminated bare soil will be covered with mulch, grass or other ground cover

5 The precautions outlined on the enclosed information sheets will be followed in completing this work

6 This work will be completed on or before July ³⁰~~15~~, 1994

7. I will contact Karen Garbarino at the Department of Health (865-7786) to arrange for a re-assessment immediately after the work has been completed

By Keith E. Alder
Date JUNE 9, 1994

ACCEPTANCE

This assurance is accepted by the Commissioner of Health
on 9/20/94.

Jan K. Carney
Jan K. Carney, MD, MPH
Commissioner of Health

ORDER

So-ordered in accordance with 18 VSA § 125(b) this 27th day of September, 1994

Richard W. Norton
Hon Richard W Norton
Presiding Judge

FILED
SEP 28 1994
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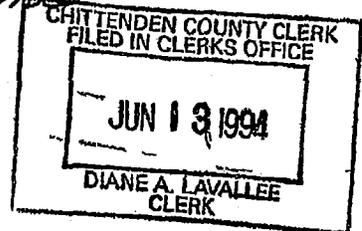
STATE OF VERMONT
COUNTY OF CHITTENDEN, SS

JUN - 6 1994

In re

Robert J Hudson
PO Box 127
Underhill Center, VT
05490

Chittenden Superior Court
Docket No *815-94 CMC*



ASSURANCE OF DISCONTINUANCE

In accordance with 18 VSA § 125 (copy attached), the Commissioner of the Department of Health hereby accepts this assurance from Robert J Hudson

Robert J Hudson hereby states and agrees as follows

1 I am the owner of record of a property located at 103 North Winooski Avenue, Burlington, Vermont

2 I have been informed by the Department of Health that the following results were obtained after analysis of paint samples at this apartment

<u>Paint Sample Location</u>	<u>Result (% of Lead)</u>
Paint/exterior brown	5 0
Paint/kitchen window sill	8 0
Soil/around porch of Apt 1	1484 mg/kg

3 The Department of Health has informed me that paint with a lead level greater than 0.5%, or soil with a lead level greater than 300 mg/kg are considered a potential health hazard to young children

4 The following work needs to be done at the above property

- 1 Kitchen window sill of Apartment 4 This sill will be replaced with a lead free sill

- 2 Bare soil around Apartment 1 A barrier of at least stakes and ropes will be constructed to prevent contact with bare soil and tenants Grass will be seeded with hay mulch to prevent contact with contaminated soil
- 3 Brown paint located on and around porch of Apartment 1 Once weather permits, the paint condition will be made safe by preventing further chipping through further painting

5 The precautions outlined on the enclosed information sheets will be followed in completing the work

6 This work will all be completed on or before June 15, 1994

7 I will contact Karen Garbarino at the Department of Health (865-7786) to arrange for a re-assessment immediately after the work has been completed

Dated 5/27/94

Robert J. Hudson
Robert J Hudson

ACCEPTED this 6 day of June, 1994

Jan K. Carney
Jan K. Carney, MD, MPH
Commissioner of Health

ORDER

SO ORDERED in accordance with 18 VSA § 125(b) on
this 13th day of June, 1994.

CHITTENDEN COUNTY CLERK
FILED IN CLERKS OFFICE
JUN 13 1994
DIANE A. LAVALLEE
CLERK

Matthew I. Katz
Hon Matthew I Katz
Superior Judge

Reduce hazards by a method or interim control approved by the Childhood Lead Poisoning Prevention Program

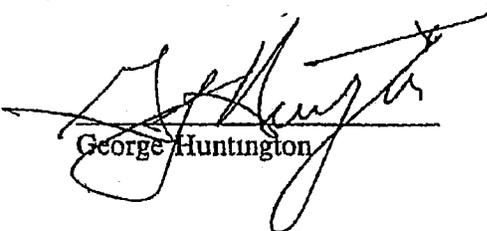
5 The precautions outlined on the enclosed information sheets will be followed
A plan outlining the work to be done will be submitted to our office by July 22, 1994

6 This work will all be completed on or before August 8, 1994

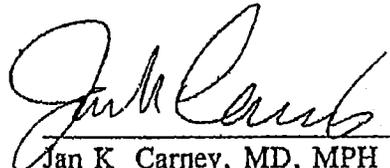
7 I will contact Karen Garbarino at the Department of Health (865-7786) to arrange for a re-assessment immediately after the work has been completed

Dated

7/12/94

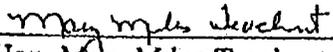

George Huntington

ACCEPTED this 15 day of July, 1994


Jan K. Carney, MD, MPH
Commissioner of Health

ORDER

ORDERED in accordance with 18 VSA § 125(b) this 19th day of July, 1994


Hon Mary Miles Teachout
Presiding Judge

Residential Real Property Disclosure Statement

MAINE WARNING LEAD-BASED PAINT HAZARDS

Any residence built before 1978 may contain lead sufficient to poison children and sometimes adults. Lead poisoning poses a particular risk if you are pregnant or may become pregnant. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, a reduced intelligence quotient (IQ), impaired memory and behavioral problems such as attention deficit hyperactive disorder and a propensity for violence.

Every tenant or lessor of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. The landlord or other lessor of any interest in real property is required to provide the tenant or lessee with any information on lead-based paint hazards from risk assessments or inspections in the landlord's or lessor's possession and notify the tenant or lessee of any known lead-based paint hazards.

The only way to know with certainty whether lead-based paint hazards are present on the property is to test the property for the presence of lead.

Acknowledgement of State Disclosure Statement

The signature below acknowledges that the lessor or potential lessor has disclosed to me information about lead-based paint hazards as required by 22 M.R.S.A. Section 1328. This acknowledgement does not constitute a waiver of any rights.

Lessor Signature Date

Lessee Signature Date

Lessor Name printed

Lessee Name printed

Lessor Signature Date

Lessee Signature Date

Lessor Name printed

Lessee Name printed

**Acknowledgement of federal disclosure of information
on Lead-Based Paint and/or Lead-Based Paint Hazards**

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below)

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain)

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing

(b) Records and reports available to the lessor (check (i) or (ii) below)

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below)

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing

Lessee's Acknowledgement (initial)

(c) Lessee has received copies of all information listed above

(d) Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*

Agent's Acknowledgement (initial)

(e) Agent has informed the lessor of the lessor's obligations under 42 U S C 4852(d) and is aware of his/her responsibility to ensure compliance

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate

_____	Date	_____	Date
Lessor		Lessor	
_____	Date	_____	Date
Lessee		Lessee	
_____	Date	_____	Date
Agent		Agent	

Residential Real Property Disclosure Statement

MAINE WARNING LEAD-BASED PAINT HAZARDS

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Every tenant or lessor of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. The landlord or other lessor of any interest in real property is required to provide the tenant or lessee with any information on lead-based paint hazards from risk assessments or inspections in the landlord's or lessor's possession and notify the tenant or lessee of any known lead-based paint hazards.

The only way to know with certainty whether lead-based paint hazards are present on the property is to test the property for the presence of lead.

Acknowledgement of State Disclosure Statement

The signature below acknowledges that the lessor or potential lessor has disclosed to me information about lead-based paint hazards as required by 22 M.R.S.A. Section 1328. This acknowledgement does not constitute a waiver of any rights.

Lessor Signature Date

Lessee Signature Date

Lessor Name printed

Lessee Name printed

Lessor Signature Date

Lessee Signature Date

Lessor Name printed

Lessee Name printed

