

Lead in Consumer Products Law
Vermont Attorney General's Guidance for Businesses (2/3/09)

Background. Vermont's new Lead in Consumer Products Law, Act 193, is intended to phase out most lead from children's products and from some non-children's items, as well as to provide warnings to consumers about lead. It recognizes that lead is highly toxic to people, particularly young children; can cause neurological damage such as decreases in I.Q.; and has no safe level in the human body. The text of Act 193 can be accessed at <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT193.HTM>. Parts of the law, relating to lead in children's products, have been supplanted (or "preempted") by the federal Consumer Product Safety Improvement Act of 2008, which was signed into law on August 14, 2008, available at <http://www.govtrack.us/congress/bill.xpd?bill=h110-4040>.

Limits on lead. Act 193 sets a limit of 600 parts per million (ppm) of lead in certain products sold in or into the State of Vermont as of October 1, 2008. This limit will drop to 300 ppm on July 1, 2009, and to 100 ppm on January 1, 2010. The federal law sets similar limits for *most children's products*, but according to a different schedule: 600 ppm on February 12, 2009; 300 ppm on August 14, 2009; and 100 ppm on August 14, 2011.¹

If you sell any of these items, the following limits apply to you:

- **Children's products.** The *federal* limits on lead described above apply to any part of a product designed for use by children 12 and under, with some exceptions. The exceptions include food, food packaging, and supplements marketed for use by children under 12, which are subject to the *state* limits described above. Exempt from both sets of limits are:
 - *Parts that are not accessible to a child* through normal and reasonably foreseeable use/abuse of the product. A part is considered inaccessible if it is not accessible by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use/abuse of the product (such as swallowing, mouthing, breaking, or other children's activities, or aging of the product). By law, paint, coatings and electroplating do *not* make lead underneath inaccessible.

- **Non-children's products—federal phase-in dates apply:**
 - ***Jewelry or similar items (such as ornaments) that are "small parts"*² and that contain more than the federal³ limit of lead** must be:
 1. Prominently advertised as adult jewelry;
 2. Accompanied by a prescribed point-of-sale disclosure about lead⁴; and
 3. Not commonly understood to be for use by a child under 12.

¹ The federal 100 ppm limit will apply unless and until the federal Consumer Product Safety Commission finds that that limit is not "technologically feasible," in which case the Commission must set the lowest feasible limit.

² A "small part" as defined by the federal government is any object that fits into a special cylinder about the size of the throat of a child under three years old. See <http://www.cpsc.gov/businfo/regsumsmallparts.pdf>.

³ Although Act 193 applies the *state* phase-in dates to *adult* jewelry (but the *federal* dates to *children's* jewelry), to avoid confusion about products the age of whose intended buyers may often not be clear, for enforcement purposes the *federal* phase-in dates will be applied to adult jewelry.

⁴ For the content and placement of these disclosures, see "Requirement of warnings and handouts," below.

- ***Non-children’s products—state phase-in dates apply:***
 - ***Wheel weights on new motor vehicles*** sold on or after September 1, 2011, or on vehicles in the Vermont state fleet on or after January 1, 2010.
 - ***Plumbing fixtures and solder for plumbing.*** As of January 1, 2010, these products will have a separate limit on lead patterned on California law: a “weighted average” of 0.25 percent for fixtures and 0.20 percent for solder or flux for plumbing. “Plumbing fixtures” means pipes, fittings and fixtures used to convey or dispense water for human consumption.
 - ***Nonresidential paints and primers*** sold on or after January 1, 2011, or used on or after January 1, 2012.

Requirement of disclosures and handouts. In addition to complying with the limits on lead described above, sellers of the following products—if they do or may contain lead in excess of the stated limits—are required to post disclosures and hand out information on the risks of lead exposure, as prescribed by the Attorney General:

- ***Non-children’s jewelry that is a “small part,”*** beginning January 1, 2009 (disclosures only).
- ***Plumbing fixtures,*** beginning January 1, 2009, and ending December 31, 2009 (but there is no outer time limit with respect to leaded solder).
- ***Nonresidential paints and primers,*** beginning January 1, 2009, and ending December 31, 2010.
- ***Salvage building materials,*** beginning January 1, 2009 (with no outer time limit).

If lead content complies with the stated limits for all products, then (1) no disclosure or handout is required from Vermont retailers, and (2) no disclosure or handout is required to be supplied to retailers by manufacturers, importers or wholesalers selling products in or into Vermont.

Form and location of disclosures. These disclosures must state, in plain English, (1) that the products in question do or may contain lead (as the case may be), and (2) that lead is harmful to humans, especially children. Acceptable text would be, for example, “Some plumbing fixtures in this store may contain lead. Lead is harmful to humans, especially young children.” Or, “Some jewelry in this case may contain lead above legal limits. Lead is harmful to humans, especially young children.” This leaves stores some limited leeway to craft their disclosures; but *a disclosure that does not communicate these two points is not in compliance with the law.*

Disclosures should also be printed in easy-to-read type and displayed either in an easily-seen place near the products in question or near the check-out or cash register.

For internet sales into Vermont, the same disclosures should appear on the checkout or order screen, or on a separate screen accessible by a prominent link labeled “Vermont residents click here” or the equivalent. In addition, the online advertising of small-part jewelry as “adult” jewelry should be positioned so as to clearly identify such items as “adult,” such as by placement of the word “adult” at the top of each page that displays such items.

For *catalog sales* into Vermont, the same disclosures should appear on the checkout or order page, with prominence equal to other items on that page.

For *person-to-person sales with no fixed “point of sale”* (e.g., a manufacturer’s rep selling to a contractor, or a plumber to a consumer), provision of the handout alone is sufficient.

Form and location of handouts. The handouts required by Act 193 must contain substantially the same language as the following. The first handout is for plumbers; the second is for stores that sell plumbing fixtures, solder, and/or non-residential paints or primers; and the third is for stores that sell salvage building materials. These handouts should be printed in easy-to-read type and be available for consumers to pick up either in a conspicuous place near the products in question or near the check-out or cash register.

LEAD IN PLUMBING SUPPLIES

Some plumbing supplies (including faucets, fittings, pipes and solder) may contain lead above specified limits, which may in turn leach lead into drinking water.

Lead is very dangerous to humans, especially to young children.

To reduce the risk of lead exposure from drinking water, you should:

- Use cold water for cooking, drinking, and making formula. Run the water until it is as cold as it gets if you have not used the tap for six hours or more.
- The Vermont Department of Health Laboratory sells test kits for lead in water for \$12. You can order a kit by calling (800) 660-9997 (Vermont only) or (802) 863-7335.

Other sources of lead exposure include lead-based paint, soil, some consumer products, and certain types of work done by a family member. Exposure to small amounts of lead—often by hand-to-mouth or product-to-mouth contact—can cause permanent damage to the brain and result in lower IQ scores, among other effects. Lead exposure may also increase the risk of school failure and behavior problems.

A blood test is the only way to tell if a person has been exposed to lead. All children ages one and two should be tested for lead. If you live in a house or apartment built before 1978—especially before 1960—it may well contain lead paint; be sure to maintain older homes in good condition, clean them in a lead-safe way, and use lead-safe practices when making repairs.

For more information, call the Vermont Department of Health at (800) 439-8550 (Vermont only) or (802) 863-7220, or log onto <http://healthvermont.gov/enviro/lead/lead.aspx>. To learn which plumbing supplies do or may contain lead above specified limits, ask your plumber.

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LEAD IN PLUMBING SUPPLIES AND NON-RESIDENTIAL PAINTS

Some plumbing supplies (including solder) and/or non-residential paints and primers (such as for automotive or marine uses) in this store do or may contain lead above specified limits.

Lead is very dangerous to humans, especially to young children.

To reduce the risk of lead exposure from drinking water, you should:

- Use cold water for cooking, drinking, and making formula. Run the water until it is as cold as it gets if you have not used the tap for six hours or more.
- The Vermont Department of Health Laboratory sells test kits for lead in water for \$12. You can order a kit by calling (800) 660-9997 (Vermont only) or (802) 863-7335.

You should also wash your hands after touching any lead-containing object or surface, and wash work clothing separately after exposure to lead on the job.

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A blood test is the only way to tell if a person has been exposed to lead. All children ages one and two should be tested for lead. If you live in a house or apartment built before 1978—especially before 1960—it may well contain lead paint; be sure to maintain older homes in good condition, clean them in a lead-safe way, and use lead-safe practices when making repairs.

For more information, call the Vermont Department of Health at (800) 439-8550 (Vermont only) or (802) 863-7220, or log onto <http://healthvermont.gov/enviro/lead/lead.aspx>. For information on which plumbing supplies or non-residential paints in this store do or may contain lead above specified limits, ask the store staff.

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LEAD IN SALVAGE BUILDING MATERIALS

Reusing or recycling architectural materials from old buildings is a good way to reduce the waste stream, but you could be bringing a source of lead into your home.

Why is there lead in salvaged materials?

Before 1978, lead was used in paint and, to a lesser degree, in varnishes and other finishes.

Do all salvaged materials contain lead?

No, but as a general rule, the older the material, the more likely it will contain lead.

What is the risk?

There have been several cases of children and workers being poisoned by lead from salvaged building materials. In most of these cases, the poisonings have occurred through inhalation or ingestion of lead dust. Lead poisoning in children is especially dangerous because it can cause serious neurological and developmental problems. Children and adults with elevated blood lead levels often exhibit no outward symptoms. A blood test is the only way to tell if a person has been exposed to lead. (All children ages one and two should be routinely tested for lead.)

How can I tell if a material might contain lead?

You can have the material tested with a special machine called an XRF analyzer, operated by a trained inspector, or have a laboratory analyze a paint chip. Instant lead test chemical swabs can also be used, but the swab should be applied to an area where all of the paint layers are exposed, because the older lead paint may be covered by a newer non-lead paint layer. When in doubt, assume there is lead.

Does stripping the paint off make the material safe?

No. Chemical stripping liquefies paint layers, which allows lead to absorb deeply into the pores of the wood. A material with no visible paint may still contain lead.

Does repainting the material make it safe?

Generally, repainted material is safer as long as the paint is kept intact. However, friction surfaces like windows, doors and drawers are more likely to release lead as the friction grinds the paint off.

What should I do to be safe?

- Always assume salvaged materials contain lead until testing proves otherwise.
- Remember that while chemical stripping may remove the paint, a significant amount of lead may remain in the wood even if no paint is visible.
- Always use lead-safe work practices that minimize the spread of dust and contamination.
- Avoid cutting, sanding, grinding or burning, or any other activity that might create airborne dust.
- Keep children away from any material with visible paint deterioration or that has been chemically stripped.

For more information, contact:

- The Vermont Housing & Conservation Board at 1-800-290-0527.
- The Vermont Department of Health at 1-800-439-8550 or <http://healthvermont.gov/enviro/lead/lead.aspx>.

Prohibition on removal of labels. Act 193 prohibits businesses from removing any government warning label relating to lead from any consumer product.

Liability. Under Act 193, manufacturers, importers, wholesalers and retailers are all liable for their own sales of products in or into Vermont that violate applicable lead standards, whether those standards are state or federal, and for any related disclosures or handouts that may be required. More specifically:

- Manufacturers, importers and wholesalers are liable for any sales to Vermont retailers, and for providing those retailers with the required disclosures and/or handouts.
- Vermont retailers are liable for any sales to consumers, and for providing those consumers with the required disclosures and/or handouts.