

On January 10, 2006, following a public hearing at which any and all citizens appearing to comment thereon were heard, the Polk County Board of Health adopted, and the Polk County Board of Supervisors approved, an amendment of the Polk County Local Board of Health Rules and Regulations adding a new Chapter VIII, Control of Lead-Based Paint Hazards, to be effective the later of January 23, 2006 or the date of this publication, as follows:

CHAPTER VIII - CONTROL OF LEAD-BASED PAINT HAZARDS

8-1. Definitions. As used in this Regulation:

Advisory Committee means the Polk County Local Board of Health Advisory Committee.

Abatement means lead hazard reduction as described in subsections 8-5(a) through (d).

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms.

Clearance testing means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation to determine that the hazard reduction activities are complete. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation of sampling results, and the preparation of a report.

Department means the Iowa Department of Public Health.

Deteriorated paint means any interior or exterior paint or other coating that is cracking, flaking, chipping, peeling or chalking, or any paint or coating located on an interior or exterior surface that is otherwise damaged or separated from the substrate of a building component.

Dripline means the area within three feet surrounding the perimeter of a building.

Dust-lead hazard means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility

when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard shall be deemed present on unsampled floors, interior windowsills or window troughs in a common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills or window troughs, respectively, in at least one sampled common area contiguous to the unsampled common area on the property.

Elevated blood lead child or EBL child means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

Elevated blood lead inspection or EBL inspection means an inspection to determine the sources of lead exposure for an EBL child and the provision of a written report explaining the results of the investigation to the property owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the EBL child. An EBL Inspector shall not determine that a residential dwelling is free of lead-based paint as a result of an EBL inspection.

EBL inspector means a person who has met the requirements of Iowa Administrative Code 641—70.5(135) for certification or interim certification and who has been certified by the Department as an elevated blood lead inspector.

Friction surface means an interior or exterior surface that is subject to abrasion or friction including, but not limited to, window, windowsill, window trough, floor, and stair surfaces.

Hazardous lead-based paint means lead-based paint that is present on a friction surface where there is evidence of abrasion or where surface dust on the nearest horizontal surface underneath the friction surface (e.g., a windowsill or floor) is a dust-lead hazard, lead-based paint that is present on an impact surface that is damaged or otherwise deteriorated from impact, lead-based paint that is present on a chewable surface, or any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of a residential building or child-occupied facility.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force (e.g., parts of doorframes).

Lead-based paint means any paint or other surface coating that contains lead equal to or in excess of 1.0 milligram of lead per square centimeter or more than 0.5 percent by weight. Lead-based paint shall be deemed present on any surface that is tested and found to contain lead equal to or in excess of 1.0 milligram per square centimeter or more than

0.5 percent by weight and on any surface in the same room or common area that has a similar painting history.

Lead-based paint hazard means a paint-lead hazard, a dust-lead hazard, or a soil-lead hazard.

Local Board means the Polk County Local Board of Health.

Mid-yard means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

Occupant means any person living, sleeping, cooking or eating in, or having any actual possession of, a dwelling or dwelling unit.

Owner means any person who, alone or jointly with others: (1) has legal or equitable title to any dwelling, with or without accompanying actual possession thereof, or (2) has charge, care or control of any dwelling by acting as the agent of the owner or as the executor, administrator, trustee, or guardian of the estate of the owner. In the case of any rental property, a person to whom rent is paid or payable may be deemed an owner.

Paint-lead hazard means the presence of hazardous lead-based paint in a residential dwelling or a child-occupied facility.

Play area means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, factors including the following: the presence of play equipment (such as sandboxes, swing sets or sliding boards), toys or other children's possessions; observations of play patterns; or information provided by parents, residents, caregivers or property owners.

Residential building means a building containing one or more residential dwellings.

Residential dwelling means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences; or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit; which in either case is used or occupied or is intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

Retaliation means harassment, termination of the tenancy, discontinuation of utilities or other services, or any other adverse or unfavorable action taken against a lessee.

Soil-lead hazard means bare soil on residential real property or on the property of a child-occupied facility that contains total lead greater than or equal to 400 parts per million for the dripline, mid-yard, or play areas. A soil-lead hazard is present in a dripline, mid-yard, or play area when the soil-lead concentration from a composite sample of bare soil is greater than or equal to 400 parts per million.

8-2. Elevated Blood Lead Inspections Required. The Local Board may appoint an EBL inspector to conduct elevated blood lead inspections in residential dwellings and child-occupied facilities where an EBL child lives, visits, or has recently lived. Any such dwelling or child-occupied facility is deemed to constitute an imminent hazard to the health and safety of that child or other children. All owners and occupants shall allow access to any residential dwelling or child-occupied facility that the EBL inspector reasonably desires to inspect.

8-3. Refusal of Admittance. If the EBL inspector is refused entry to a property described in section 8-2, then the EBL Inspector may make a complaint under oath to any judge (including associate judge) or magistrate for Polk County. The judge or magistrate may issue a warrant or order directing the owner and any occupant of the property to allow the EBL inspector entry to conduct an elevated blood lead inspection, and directing a peace officer to accompany the EBL inspector during the EBL inspection.

8-4. Lead Hazard Reduction Required. If, following an EBL inspection and receipt of any laboratory results, the EBL inspector determines that hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard is present in or on the exterior premises of a residential dwelling unit or child-occupied facility where an EBL child lives, frequently visits, or has recently resided, the EBL inspector shall issue a written order to the owner of the property. The written order shall require the owner to complete lead hazard reduction within a reasonable time period as determined by the EBL inspector. The owner shall complete the lead hazard reduction within the time period specified in the order. If the occupant or occupants of a residential dwelling at the time this written order is issued vacate the residential dwelling, the residential dwelling shall not be leased to or occupied by any other person until the EBL inspector issues a written notice that the lead hazard reduction has been completed.

8-5. Methods of Lead Hazard Reduction. The following methods shall be used for lead hazard reduction. This Regulation does not require that lead hazard reduction be performed by a lead abatement contractor certified in accordance with Iowa Administrative Code 641—70.5(135), however other local, state, or federal regulations may require the use of a contractor who has completed an eight-hour lead-safe work practices course, or use of a lead abatement contractor or lead abatement worker certified in accordance with Iowa Administrative Code 641—70.5(135):

(a) On a surface that contains hazardous lead-based paint, but is not chewable and does not have evidence of impact or friction, the lead-based paint hazard shall be reduced by removing all loose and deteriorated paint from the surface, preparing the surface for repainting, and repainting the surface with a lead-free coating.

(b) On a surface that contains hazardous lead-based paint and is chewable or has evidence of impact or friction, the lead-based paint hazard shall be reduced by treating the surface one inch back from the edge or corner through one of the following methods:

(1) All lead-based paint on the treatment area shall be removed to the bare

substrate. The surface shall be prepared for repainting and repainted with a lead-free coating.

- (2) The treatment area shall be covered with a permanently affixed lead-free material such as plastic, wood, or vinyl. Carpet may be used on floors and stair treads.
- (c) Dust-lead hazards shall be reduced by thoroughly cleaning the affected surface.
- (d) Soil-lead hazards shall be reduced by planting grass or groundcover, applying sod, or covering the affected area with six inches of bark, gravel, or other material.
- (e) Lead hazard reduction shall be conducted using lead-safe work practices to protect the safety of the occupants and workers. Occupants shall not enter the work area while work is underway. The following are prohibited methods of lead hazard reduction:
- (1) Open-flame burning or torching of lead-based paint.
 - (2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with high-efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.
 - (3) Uncontained water blasting of lead-based paint.
 - (4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.
 - (5) Operating a heat gun at a temperature above 1100 degrees Fahrenheit.

8-6. Post-Reduction Inspection. The EBL inspector shall inspect all areas previously identified as hazards after lead hazard reduction is complete. The EBL inspector may conduct clearance testing pursuant to Iowa Administrative Code 641—Chapter 70 to determine if dust-lead hazards appear to exist after the work is complete. After verifying that all lead hazard reduction appears to have been completed as required, the EBL inspector shall issue a written notice to the owner and occupant stating that the lead hazard reduction appears to have been completed as required and that the repaired surfaces must be maintained in good condition. This notice does not constitute certification by the EBL inspector or the County that the dwelling unit or child-occupied facility is free from the previously-determined, or any other, lead-based paint hazard.

8-7. Retaliation prohibited. The lessor of a dwelling or facility, the employees of the lessor, and agents or persons acting on behalf of the lessor shall not retaliate against lessees of residential dwellings or child-occupied facilities whose occupants or visitors have been tested for venous blood lead level and shall not discourage the occupants or visitors from being tested for venous blood lead level. An action taken against a lessee shall not be considered retaliation if it is supported by reasonable cause unrelated to

venous blood lead level testing of an occupant or visitor or if it is shown to have occurred as a result of an accident or mistake and not to be the intentional act of the lessor of the dwelling or facility, the employees of the lessor, or agents or persons acting on behalf of the lessor. With respect to properties located within the city limits of Des Moines, the provisions of this section may be enforced by the city or the city local board of health acting, if necessary, in the name of the Polk County local board of health.

8-8. Variances. The EBL inspector may determine that a chewable surface that would otherwise be identified as a hazard pursuant to this chapter is not causing or does not have reasonable potential to cause lead exposure and is not required to be corrected through lead hazard reduction at that time. The EBL inspector shall document the reason for this determination in the inspection report. The EBL inspector shall not determine that any other surface meeting the definition of lead-based paint hazard does not need to be corrected through lead hazard reduction. Any variance provided for in this section may be withdrawn by the EBL inspector at any time.

8-9. Hearings. In the event any person is aggrieved by any order of an EBL inspector, the person may appeal to the Advisory Committee in writing within ten days of the date of such order. The appeal shall state the reasons for requesting such order be rescinded or modified. The Advisory Committee shall review the order of the EBL inspector and may direct compliance with said order or may modify or withdraw said order. The action of the Advisory Committee is a final administrative action at the County level.

8-10. Abatement. Upon failure of any person to complete lead hazard reduction within the time specified in the written order of the EBL inspector or in any written decision of the Advisory Committee, the lead-based paint hazard may be abated.

(a) If the property on which the hazard is located is outside the city limits of Des Moines, abatement shall be by the County. All expenses incurred thereby may be recovered by assessment against the property on which the lead-based paint hazard was abated and may be collected in the same manner as a property tax upon certification to the Polk County Treasurer.

(b) If the property on which the hazard is located is within the city limits of Des Moines, the EBL inspector shall report the failure to complete lead hazard reduction to the city, which may cause abatement, and assess the costs thereof against the property, in accordance with procedures established by the city or the city board of health.

8-11. Enforcement. The EBL inspector shall enforce this Chapter. Enforcement methods are not mutually exclusive and may include, but are not limited to, abatement of a lead-based paint hazard pursuant to section 8-10 of this regulation; issuance of a citation for civil infraction as provided in Chapter 2 of the Polk County Code of Ordinances, §54-32 of the Municipal Code of the City of Des Moines or Iowa Code §364.22; and initiation of a complaint for enforcement pursuant to Iowa Code §137.21. A lead-based paint hazard is also deemed a health nuisance for purposes of Chapter II of these rules and regulations.