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**TO: City and County Building Officials
Interested Parties (SHL)
Division Staff**

SUBJECT: Enforcing Lead-Based Paint/Lead Hazards After Senate Bill (SB) 460

This Information Bulletin provides additional information regarding the impact of SB 460 on local building and housing code enforcement departments and how to work closely with and coordinate with local health or environmental health departments when identifying and addressing specific lead hazards in residential units.

Do SB 460's amendments impose new duties on, or authority for, building officials?

SB 460 imposes no new mandatory duties because under the current "substandard housing" definition in Health & Safety Code ("H&SC") section 17920.3, subdivision (c) lists "any nuisance" as a violation. Many jurisdictions already treat disturbed or deteriorated lead-based paint or lead dust, arising either as a consequence of poor maintenance or unsafe work practices, as a "nuisance" under the State Housing Law ("SHL") because it "endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof."

However, SB 460 grants new authority to local building or housing departments because HSC section 105251 includes building and housing departments among "local enforcement agencies", along with local health departments and the state Department of Health Services (DHS) with enforcement authority to address violations under HSC sections 105252 through 105256. Sections 105255 and 105256 are most critical for construction inspectors who regularly approve construction work, as well as those responding to complaints.

If lead hazards already were a SHL violation, why was this bill necessary?

Previously, when a building official identified a lead hazard in a residential structure as a nuisance, prosecution under the SHL was difficult because it involved a two-step process: first, the prosecutor had to prove that the lead is a nuisance, and then he/she had to prove the underlying case of lead presence in hazardous amounts. Most prosecutors were unwilling to undertake this process. SB 460 simplifies this process for prosecutors.

Also, some building officials mistakenly believe that lead hazards are only a “health issue” and not a “housing code issue.” The SB 460 amendments clarify that it is a housing code issue, and then provide specific standards rather than leaving them ambiguous and requiring building officials to check various federal (HUD and/or EPA) or State (DHS) standards. Also, the SB 460 amendments provide local health/environmental departments clear concurrent authority to use SHL authority, remedies and penalties to abate lead hazards.

Does SB 460’s amendments preempt existing or future local ordinances?

The SHL expressly preempts local government authority in the area of housing construction and maintenance and use standards, and, along with 25 CCR sections 1-72, must be adopted by local governments as the applicable “housing maintenance and use” standards. For the purposes of declaring a residential structure in violation of the SHL and using the remedies in the SHL in H&SC sections 17980, et seq., the new law (and any future HCD regulations) preempt and preclude local ordinances. However, a number of jurisdictions have enacted lead hazard or lead-based paint ordinances under current health authority. If these merely declare a certain level or location of lead dust or deteriorated lead-based paint to be a “health hazard” (rather than a “housing hazard”), and prosecution and/or remediation occur as it would for any other lead health hazard, SB 460’s amendments in the SHL do not preempt or prohibit this type of enforcement.

Are building officials expected to become lead experts?

No, because there is concurrent jurisdiction with local health departments, many of whom have received financing for equipment (e.g., X-Ray Florescent (“XRF”) devices to identify lead and levels) and/or training from DHS. Also, some building departments and/or code enforcement departments may obtain funding for XRF devices from HCD’s Code Enforcement Grant Program. What is expected is that building officials investigating either housing condition complaints or performing alteration inspections would be able to recognize potential hazards: deteriorated old paint in pre-1979 homes, exposed old paint (resulting in settling dust) in pre-1979 homes, or unsafe lead work practices. These hazards can be cited directly or referred to the local health/environmental departments for appropriate action. Either agency can seek local prosecutors’ assistance under the new laws.

We believe that this will not increase workload because most resident complaints already deal with a “laundry list” of items causing a unit to be allegedly substandard. Rarely will only deteriorated paint result in a building department complaint, because most renters see this as a health issue, not a building issue. If there is an increase in complaints about unsafe lead work practices to or by inspectors, these are complaints which already should have been made under current work and safety laws.

How can building departments improve their lead hazard knowledge and coordination?

DHS has limited funding to provide training to local building department staff. However, significant written material and support are available. General specific information and materials can be obtained by calling the Lead-Related Construction Information Line at 1-800-597-LEAD (5323) or access the DHS website at: <http://www.dhs.ca.gov/childlead/> and <http://www.dhs.ca.gov/childlead/html/materials.html>. In addition, Proposition 46 included \$5 million to fund HCD's Code Enforcement Grant Program, to acquire "capital assets", including XRF devices; information for the February-March 2003 applications can be obtained from the HCD website or by calling Teresa Grossi at 916-445-9471.

Generally, as discussed above, identification of a possible lead hazard by a building official during a complaint or building permit inspection will be referred to the local health agency for the jurisdiction (which sometimes is the county environmental health department performing these services for a city). Most jurisdictions have Childhood Lead Poisoning Prevention Program ("CLPPP") coordinators; a building or code enforcement official can obtain information about local CLPP coordinators at the following web link: <http://www.dhs.ca.gov/childlead/html/POclpppC.html#clpppC>. For other questions regarding lead-based paint, other lead hazards, and lead safe work practices, contact the DHS CLPP office at 510-622-5000 or by facsimile at 510-622-5002.

Give examples of how to identify and deal with lead hazards.

An inspector, in response to a complaint or as part of a periodic construction inspection, enters a home or unit. The inspector may consider the possibility of a potential hazard involving lead-based paint or lead dust if: (1) the residential dwelling were constructed before January 1, 1979, and (2) there is deteriorated paint such as peeling or worn-out painted surfaces, or there is exposed wood on window sills or doors jambs or sanding is being performed which disturbs existing paint. Only if the paint or dust is tested and found to exceed the amounts of lead established in Chapter 8 (commencing with Section 35001) of Division 1 of Title 17 of the California Code of Regulations, or pursuant to new regulations adopted by the Department of Health Services, will it be considered lead-based paint or lead dust. The next step is to determine whether it is a "lead hazard" subject to abatement. While the examples below use the two-square-foot test, the other criteria in HSC section 17920.10 allow for orders to abate and/or prosecution for much smaller amounts, especially on components such as window sills or where there is a child present with an elevated lead blood level.

With respect to the peeling and deteriorated paint, HSC section 17920.10 states that deteriorated lead-based paint or lead-contaminated dust are considered hazards under subdivision (a) if (1) there are at least two square feet in an interior room or alternative exposures described in the statute (unless new DHS regulations are promulgated); and (2) the peeling and deteriorated paint are "likely to endanger the health of the public or occupants thereof as a result of their proximity to the public or occupants." The peeling or deteriorated lead-based paint may also violate state DHS statutory or regulatory standards, and may be subject to abatement under H&SC sections 105255 and 105256. The age of the house (e.g., pre-1979) or the paint, nearby and recent testing in similar units resulting in lead findings, and other criteria are indicators of possible lead content, but lead presence and its level can be confirmed only with an XRF or other tests. There is no requirement

before ordering abatement that the residential unit be occupied by children (who are more susceptible to permanent damage from lead products) or that the disturbed lead-based paint be within reaching distance of children.

If, in the same house, an inspector walks in and sees a person dry sanding walls, or sanding without containment, the inspector can make the same type of analysis and assessment of danger. The SHL definition for residential structures and authority to use SHL remedies includes “disturbing” lead-based paint, and the DHS statutes (H&SC section 105251 and following) expressly address unsafe work practices as well as the condition of the structure. An order to abate is always available, without regard to the statute violation; however, the additional remedies and prosecution under the SHL depend upon whether or not the SHL is violated. Again, there is no requirement prior to an abatement order that the residential unit be occupied by children or that the disturbed lead-based paint be within reaching distance of children.

Generally the best practice is to call for an environmental health department evaluation. However, the totality of the facts (greater than two square feet, pre-1979 home, multiple peeled paint layers, prior lead testing in nearby housing positive for lead-based paint, etc.), may be equivalent in the inspector’s experience and expertise to identifying a hazard characterized by, for example, a charred electrical receptacle or a “mushy” bathroom floor under linoleum near a toilet. On this basis, the inspector can cite the owner to abate the lead hazard (e.g., starting with an order to abate, pending an assessment at the owner’s expense) if the inspector also determines that the paint, if lead, is in an area which its proximity would endanger the residents or public. Note that the focus of the second part of the test is general “proximity” (e.g., not in the attic), not whether there is “enough lead” in the disturbed paint or dust to endanger the residents or public.

For More Information: The HCD State Housing Law website will include additional information as it becomes available. See www.hcd.ca.gov/codes/shl/.

This summary of SB 460 is not represented to be a complete digest of that law. The complete text of SB 460 (2002) can be reviewed through the Official California Legislative Information website at: www.leginfo.ca.gov. You should consult your jurisdiction’s attorneys for additional guidance and you may contact our State Housing Law Program at (916) 445-9471.

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