

Summary of Symposium Discussion

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The fourth environmental symposium, sponsored by HUD's Office of Policy Development and Research (PD&R) and the National Center for Lead-Safe Housing and hosted by the National Wildlife Federation, focussed on the issue of lead-based paint.

Background

As HUD Deputy Assistant Secretary Margery Austin Turner noted in her introductory remarks, lead-based paint and childhood lead poisoning, unlike other environmental issues, have consistently been regarded as housing and community development concerns. Continuing collaboration on these topics by housing and environmental groups has made possible significant progress in lead hazard control, but many difficult implementation issues remain. The June 1995 report of the Lead-Based Paint Hazard Reduction and Financing Task Force, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*, recommended a number of specific lead hazard control strategies for Federal, State, and local governments and the private sector. The symposium focussed on promoting the understanding, acceptance, and application of the recommendations at the State and local levels.

David Jacobs, director of HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention, described the Department's lead-based paint poisoning control program and the relevance of the Task Force report to this work. According to Jacobs, the crux of the debate among housing, health, and environmental communities is whether or not implementation of the Task Force recommendations is feasible, given the shrinking of government programs and the Nation's antiregulatory mood. He argued that, despite the present political environment, efforts should continue apace to address this preventable but widespread childhood health problem. Both of the major political parties recognize childhood lead poisoning as a serious health concern. Practical experience has yielded effective information about ways to address the problem, and the Task Force has issued a useful set of lead hazard control recommendations. Furthermore, lead hazard control clearly benefits children, creates jobs, and yields societal benefits.

The data are compelling, Jacobs continued. According to the National Health and Nutrition Examination Survey, childhood lead poisoning, although diminishing, remains a serious health threat.¹ More than 1.7 million children in the United States have elevated blood lead levels, compared with 4.5 million only a few decades ago. Affected children are likely to suffer diminished intellectual capacity and thus an impaired future. Factors contributing to elevated blood lead levels include lead in dust or soil, the lead content of paint, and the condition of the interior of the housing unit.

Jacobs urged that the removal or containment of lead-based paint hazards be viewed as another form of investment in housing. Without such an investment, the presence of such paint hazards may lead to abandonment of housing and to private-sector disinvestment in central cities. HUD, he said, is fully engaged in implementing its lead-based paint abatement programs and is pursuing the following activities:

- Seeking ways to integrate the abatement programs into the Department's new block grant programs.
- Providing technical assistance to HUD program offices and field staff, private developers, realtors, and others to ensure that abatement activities and inspections are properly carried out.
- Conducting scientific research to support proposed abatement standards and regulations.
- Seeking abatement funds through a grant program to include \$65 million for abatement in private housing.
- Concluding work on EPA's training and certification regulations, to be issued late in 1996.

Because the number of contractors and inspectors with knowledge of lead-based paint control programs is very small, Jacobs added, there is a very real need for additional expertise. The U.S. Environmental Protection Agency (EPA) has created training centers and encourages private training, but still more is needed. He concluded by observing that ordinary rehabilitation activity has been exempted from lead-based paint regulations and by calling for abatement activities to be incorporated into mainstream housing work.

Nick Farr, executive director of the National Center for Lead-Safe Housing and moderator of the symposium, noted that the next presentation would be an overview paper summarizing the Task Force recommendations. A number of State and local representatives would then be invited to discuss their States' lead control activities and their reactions to the Task Force recommendations.

Overview of the Problem

Don Ryan, director of the Alliance to End Childhood Lead Poisoning and chairman of the Task Force's committee on benchmark standards, presented an overview of "the fragmented lead landscape." He described lead's harmful effects on human organs and systems, particularly those of children under age 6, whose nervous systems are still developing. Almost 9 percent of all preschoolers are known to have lead in their blood. Because a high proportion live in substandard inner-city housing, low-income black children are especially at risk. The full extent of the risk is not known because, even in the Medicaid system, only about one-third of the children are tested. Lead-based paint is considered the major source of childhood lead poisoning and lead dust the major pathway.

Lead-based paint is widespread. More than one-half of the housing stock in the United States contains some lead-based paint, although the mere existence of lead-based paint is not necessarily a hazard. Paint surfaces that are in poor condition, as well as renovation, remodeling, or repainting pursued without proper precautions, can produce contaminated dust or paint flakes. The worst hazards occur in poorly maintained, low-rent units occupied by families that spend more than one-half of their income on rent. The total estimated cost of abating existing lead hazards is about \$500 billion.

Ryan observed that various States have taken differing approaches to management of the lead-based paint problem. Early approaches tended to be absolute, all-or-nothing responses, reactive rather than preventive, and focussed on the home itself rather than on the children living in it. Most strategies addressed lead-based paint and ignored the more toxic lead dust. The enactment of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), said Ryan, shifted the emphasis toward management of actual lead hazards, such as lead dust and soil contamination. Current approaches include long-term abatement strategies coupled with interim controls to manage lead-based paint in place. Strategies pursued under Title X include evaluation tools such as hazard inspections and risk assessment protocols and quality controls such as training, worker protection, contractor certification, and health-based standards.

Title X also established a grant program for HUD² and requirements for lead abatement in federally assisted housing. For private housing, Title X's real estate notification disclosure requirements require that sellers disclose known hazards. It also educates buyers and encourages them to obtain a risk assessment inspection of the home at their own expense. Ryan characterized current State and local laws and regulations governing lead-based paint in private housing as "outdated and illogical—a disaster." Many of the laws ignore lead-based paint, all ignore lead dust, and some prescribe unsafe practices. In addition, he cautioned, the legal system does not send clear signals regarding actions that are needed and does not properly compensate victims. He noted that, although an occasional "jackpot" settlement terrifies property owners and insurers, fewer than 1 percent of lead-poisoned children receive assistance from the legal system.

The various members of the real estate industry are not effectively involved in a system for managing lead hazards, Ryan continued. The property and casualty insurance industry generally refuses to provide coverage for lead-poisoning claims, which it regards as unpredictable, open-ended, and uninsurable. Lead-based paint also makes lenders wary of older properties. In addition, the appraisal industry rarely recognizes the added value of an owner's investment in making his or her property lead safe. Yet, since few people expect a diminution of the Federal laws governing lead-based paint, the States are challenged to discover or develop effective strategies for dealing with the issue.

The Task Force

Cushing Dolbeare, a Washington, D.C.-based housing consultant who chaired the Task Force, described its origins and deliberations. As Title X was being drafted by the Senate housing subcommittee, she explained, its members realized that there was consensus for this approach.³ They also learned that most lead-contaminated housing is in the private sector. But, not knowing how to set requirements for private-sector housing, the subcommittee did not include any in the legislation, electing instead to direct a Task Force to deal with that and other implementation issues not addressed by the legislation.

The Task Force was composed of 42 people (39 of whom actually participated) representing many public and private perspectives. At their first meeting, the group agreed to aim for a consensus report, with provision for dissenting or supplemental views. Ultimately, 90 percent of the Task Force members signed the report, which presents a cohesive approach to lead-based paint hazards and sets forth specific actions for the various players. Dolbeare cautioned that the recommendations were intended to create an operational framework, not a menu from which one can pick and choose.

A recurring issue during the Task Force's deliberations was how to fund the reduction of lead-based paint hazards in economically distressed rental housing in the absence of substantial subsidies. The Task Force suggested certain steps, such as essential maintenance, that could be taken to reduce hazards and indicated that the steps should be prioritized.

Pierre Erville, assistant director of the Alliance to End Childhood Lead Poisoning, presented the Task Force's key recommendations. Recognizing that no quick fix is possible, the Task Force recommended a variety of reinforcing strategies. Members focussed particular attention on rental housing, since renters have less ability than owner-occupants to control the condition of their housing. In addition, the Task Force considered the special needs of economically distressed housing, whether occupied by owners or by renters.

The Task Force presented nonbinding recommendations in the following four areas: benchmark standards of maintenance and hazard control, changes to the legislative system, private-sector strategies, and supportive governmental strategies.

Benchmark Standards

Recommendations regarding benchmark standards are intended to guide State and local governments in the reform of laws and codes.⁴ The Task Force outlined the minimum steps necessary to control and prevent lead hazards while attempting to maximize cost effectiveness for owners, with a special focus on repairing deteriorated paint and removing dust. The standards address two segments of the housing stock: Housing built before 1978, for which the Task Force recommends six essential maintenance practices designed to prevent lead hazards in housing that is in good condition; and higher priority housing, as a subset of pre-1978 housing. The latter category includes housing built before 1950, which is more likely to contain lead hazards and therefore will require additional control measures, as well as housing targeted by local jurisdictions on the basis of data on lead poisoning incidence or other indicators of local needs and conditions.

The Task Force suggested two options for dealing with lead-based paint hazards in higher priority housing: (1) hire risk assessors and control all identified lead-based paint hazards immediately or, in the case of multifamily housing owners, according to an approved schedule contained in a lead hazard control plan; or (2) skip the hazard evaluation step and implement a prescribed set of standard treatments. The Task Force recommended that housing units be evaluated and treated at the time occupancy changes. If a home passed two consecutive risk assessments, it would be eliminated from the high-priority list and be subject only to ongoing essential maintenance practices.

While the recommendations for benchmark standards focus primarily on preventive measures, they also call for a response when childhood lead poisoning is discovered. Owners who are notified that a child with an elevated blood lead level is living in one of their properties would have to perform a risk assessment and control the hazards or, if the hazards were not controlled, would have to relocate the family to safer housing.

Legislative Approaches

Changes in the legal requirements are also needed, Erville continued, because a clear set of standards would not be sufficient in itself to motivate many owners of rental property to comply with the recommendations. To encourage landlords to implement the requirements and activities described in the benchmark standards, the Task Force called for State legislation to change the legal liability rules, enact stronger sanctions for noncompliance, and provide incentives such as liability relief to trigger compliance.

To compel the compliance of reluctant landlords, the Task Force recommended establishing a right of injunctive relief for households that include a young child or a pregnant woman. Another way to induce compliance would be to establish rebuttable presumptions, thereby shifting the burden of proof to the defendant and making it more difficult for property owners to defend themselves in court.

At the same time, the Task Force recommended that States reward landlords who can document compliance with benchmark standards by establishing a rebuttable presumption of due care, implementing a damage cap, or prohibiting punitive damages.

Private-Sector Strategies

The Task Force's guidance for the private sector included harnessing the insurance and financing sectors.⁵ Declining availability of insurance is a serious problem that affects both property owners and tenants. Insurance is a major source of compensation for lead-contaminated children. Property owners may be sued even though they have complied with lead hazard control requirements, and they need insurance coverage to pay defense costs or damages incurred. Thus, insurance can be used as an incentive to induce action. For example, meeting the benchmark standards is likely to become far more important to private property owners if insurance companies include those standards in their underwriting criteria.

Banks, too, can motivate landlords, Erville continued, by requiring that they meet benchmark standards as a precondition for obtaining loans. Yet banks are often reluctant to make loans for older properties because of liability concerns. To encourage such lending, the Task Force recommended that lenders have relief from liability under specific circumstances. Adoption of the benchmark standards and the recommended liability and insurance changes should help make lenders feel more comfortable about making loans available to compliant landlords.

Supportive Government Strategies

The primary Task Force recommendation in the category of government strategies was the provision of subsidies, especially for the economically distressed housing sector, where subsidies are essential if action is to occur. Other recommendations included development of screening programs to establish housing registries, funding of research on low-cost measures for making housing lead safe, and enactment and enforcement of benchmark standards.

Only HUD can incorporate the benchmark standards throughout its programs and through Federal housing block grants. However, as Erville pointed out, only State and local governments can enact the benchmark standards and implement them through new regulations and housing code changes. He emphasized that, ultimately, proceeding with the Task Force's recommendations is in the best interest of all parties, because doing so will result in healthier children.

Responses to the Task Force Recommendations

Nick Farr challenged conference participants to consider whether the Task Force's recommendations might work in their own States and noted a concern that States might pick and choose among the recommendations rather than adopting them as a comprehensive framework for addressing lead-based paint hazards.

Effectiveness of Standards

The group first discussed whether the benchmark standards would, in fact, be effective in protecting children. Larrie Lance, of the California Department of Health Services, pointed out that in order to determine whether the standards achieve their goals, it is necessary to screen children's blood lead levels, not just examine their homes. In response, Nick Farr described activities now under way that show the standards are effective. A HUD demonstration grant to the city of Baltimore gives property owners funds to clean up 100 houses with standard treatments. The properties will be tested to ensure that the homes are clean when work is completed and will be retested 1 year later and 2 years later.

There has also been a considerable screening of children in Baltimore, and HUD hopes to link the screening results with addresses so that the blood lead levels of children living in housing that has been treated can be compared with those of children living in untreated housing. Similar HUD-sponsored work is under way in Milwaukee.

Robert Schlag, of the California Department of Health Services in Emeryville, where environmental investigators have tested children after cleanup and control of lead hazards, added that lower blood lead levels were observed 75 to 80 percent of the time, although it is not clear how the lower blood lead levels can be sustained.

Maintenance

Karen Florini, an attorney with the Environmental Defense Fund, raised the issue of sustaining maintenance once homes have met benchmark standards, wondering how often homes must be treated to control flaking paint or accumulated lead dust. In response, David Jacobs indicated that the Task Force had based the standards on scientific studies undertaken to determine whether combining treatments can lower blood lead levels. EPA and HUD will also be looking at new data on the length of time the effect of dust removal lasts and how quickly dust reaccumulates. Early estimates indicate that dust levels tend to stay low for an appreciable period of time, although some reaccumulation does occur.

William Connolly, director of the Division of Codes and Standards of the New Jersey Department of Community Affairs and chairman of New Jersey's Lead Task Force, mentioned that the cleanup of one-half of dust-laden furnishings—especially carpets—was not addressed in the report. Nick Farr responded that carpets from which lead contamination cannot be removed efficiently or those that are badly contaminated should be discarded.

The topic of maintenance responsibility generated considerable discussion. Darrell Zaslow, of the Homeowner's Association of Pennsylvania, questioned whether tenants should bear any responsibility for ongoing maintenance. He noted that tenant-generated problems such as failure to keep the home clean or moving in dust-laden furniture might contribute to lead contamination, yet it is the landlord who is liable for the removal of any lead from the property. David Jacobs recommended that the landlord document the condition of the property before a tenant moves in. Susan Guyaux, of Maryland's Department of the Environment, added that the landlord must also ensure that the property is in good enough condition that the tenant will be able to maintain it properly. Karen Florini emphasized that paint failure remains the responsibility of the landlord.

Full Abatement Requirements Versus Benchmark Standards

Participants next discussed full lead abatement as an alternative to benchmark standards. Vincent Colluccio of ATC, an environmental consulting firm, commented that the full abatement requirement is not feasible because owners (and governments) have neither the

resources nor the effective industry to facilitate compliance. Despite this caution, Guyaux argued that minimum prevention standards are not adequate when dealing with lead-poisoned children.

James Keck, president of LeadTech Services, Inc., and chairman of the Maryland Lead Poisoning Prevention Commission, described Baltimore's experience with full abatement requirements during the 1980s. The program had limited success, with the city issuing 500 to 600 violation notices each year and achieving full abatement in about 200 homes. The successes could be attributed to a committed administration and funding relief for property owners. When the local commitment faltered and less money was available, the number of abatements dropped to zero. The key to regulating lead hazard control, according to Ken Peters of Freddie Mac, is balance. If nothing is regulated, an unacceptable health hazard exists. If regulations are absolute, a housing problem is created because the requirements often cannot be met. Regulations should be realistic and should balance societal values.

Karen Garbarino, program manager for the Childhood Lead Paint Prevention Program of the Vermont Department of Health, recommended combining interim controls and long-term abatement to achieve lower blood lead levels. Vermont's program focuses on educating owners and tenants about lead hazards, encouraging regular home cleaning, and teaching abatement techniques that owners can do themselves at minimum cost. Since the program has been in place only 3 years, the State does not have enough data to assess its effectiveness.

Cost to Property Owners

Regarding the question of whether or not owners can afford the recommended abatement activities, Steven Gladman, of the Ohio Apartment Association, pointed out that property owners are a diverse group and their ability to comply with lead abatement requirements and other regulatory burdens varies accordingly. One-half of the rental property in the United States belongs to owners who have 10 or fewer units. In addition, a significant amount of rental property is owned by nonprofit organizations. Owners that fall into these two categories often are unable to afford abatement measures. Thus, Gladman continued, it is important to make compliance as easy and affordable as possible. Requirements should be structured so that they can be integrated into the normal course of doing business. And the State must set an example for the private sector by its willingness to commit resources and conduct the necessary testing and administration.

Darrell Zaslow, an attorney who represents owners of 100,000 units of rental property in the city of Philadelphia that includes many older units occupied by low-income tenants, argued that small-scale property owners cannot afford to meet lead abatement requirements, because the profits their properties generate are small. If pressed, he said, the owners—frightened of both the liability and the enforcement—may simply abandon their properties. Money, if available, might begin to solve the problem, Zaslow commented. He recommended creation of a dedicated funding source, such as a tax on paint, to fund abatement activities for owners of low-income housing.

Marcheta Gillam, an attorney for the Legal Aid Society of Cincinnati, represents the low-income, lead-poisoned families that live in economically distressed rental housing. She argued that making needed repairs and investments is part of the cost of doing business and that units which cannot be kept safe and in good repair probably should be shut down. James Keck agreed, adding that thousands of housing units in the city of Baltimore that contain lead paint are badly deteriorated and not cost-effective to repair. These houses, he said, should be condemned and torn down, and the city should turn its attention to preventing further deterioration of the remaining housing stock.

Small property owners must “pay now or pay later,” either by investing in lead hazard control or risking lawsuits that could put them out of business, noted Ruth Ann Norton, of the Council for a Lead-Safe Environment. She pointed out that the initial abatement investment is generally between \$500 and \$1,000, and that is followed by the cost of maintenance. According to David Jacobs, the Task Force estimated the average annual incremental cost of standard treatment in high-risk properties to be about \$250 per year.

Joe Schirmer, of the Madison, Wisconsin, Bureau of Public Health, called for additional resources to facilitate intervention before children’s blood lead levels reach the severely poisoned level. Lead poisoning is not measured by one absolute number, but is instead a continuum of exposure measured in numbers up to and beyond 25—the blood level measurement that formerly triggered action. Schirmer cited the 1991 report of the U.S. Centers for Disease Control and Prevention (CDC), which recommended taking more aggressive action to lower blood lead levels if resources were available. Earlier action may also mean that the properties would require less-costly abatement activity.

An important point to remember, added Patrick Connor of Connor Environmental Services, Inc., of Towson, Maryland, is that not all property owners must invest in lead hazard control. A large proportion of rental units are well-maintained, pass risk assessments, and meet code requirements.

Limitations on Liability

Nick Farr posed the question of whether or not it is appropriate to limit full access to the court tort system for property owners who have abided by government requirements. Liability is a big issue in her city, said Diana Kiel, of the New York City Department of Health. The enormous, and growing, volume of lawsuits has consumed public agency time that could have been used to deal with cases of lead poisoning. In addition, the very real threat of litigation makes abatement more difficult, because owners are afraid to admit that there is lead in their properties and automatically challenge the results of assessments.

A discussion of liability relief is premature, argued Joe Schirmer, because education to promote the benefits of low-cost treatments should precede consideration of a cap on liability. Gil Copley, deputy health commissioner of the St. Louis Health Services Administration, agreed, adding that the efficacy of standard treatments and essential maintenance practices must be established before legal remedies are removed. Karen Florini noted that a prerequisite for any change in liability is the availability of an alternate compensation system to pay for unreimbursed medical expenses and possibly for special education for lead-poisoned children.

Limitations on liability would certainly encourage property owner compliance, according to Steven Gladman. But he cautioned that, in practice, compliance would be complicated by such factors as the inclusion of interim controls and the possibility of tenant-induced damage. Marcheta Gillam added that this Task Force recommendation was not implemented in Ohio because of concerns regarding the constitutionality of precluding a child’s right to bring a later damage action and because no one was actually requesting massive tort reform. Thus, Ohio chose to implement rebuttable assumptions rather than an alternate compensation system.

To clarify the Task Force’s intent, Cushing Dolbeare explained that its concern was to broaden the availability of compensation through an insurance scheme and an alternate compensation system. The parents of a poisoned child could choose either to accept the alternative compensation—a likely option, because the award process would be fairly

quick and certain—or to seek compensation through the court system. The Task Force included the rebuttable presumption issue as an incentive to landlords. But this approach, Steven Gladman asserted, actually increases an owner's liability.

From the insurance industry's viewpoint, indicated Vermont Mutual Insurance Company's Richard Bland, landlord compliance would become part of the underwriting criteria for insurance. He also noted that, from the apartment owners' perspective, this issue represents a moving target. Governments base public policy decisions and requirements on the best available health-based information, he said. Therefore, if landlords implement the procedures required by governments, they should enjoy some relief from liability. Trial lawyers will likely oppose any changes to the present legal requirements, cautioned Robert Schlag, even those that sound fair and logical.

As moderator Nick Farr mentioned at the beginning of the symposium, State and local representatives were invited to discuss lead control activities in their States and cities.

State Experiences

Maryland

The Honorable Sandy Rosenberg, a Maryland State legislator who has had 12 years of experience with the lead issue, sponsored legislation in early 1994 to deal with lead-based paint poisoning prevention. He related Maryland's experience—and his frustration—in enacting lead hazard control legislation. A State program of loans or grants to landlords for lead-based paint abatement had been enacted in the mid-1980s but was little used, largely because landlords denied that there was a problem. Therefore State legislators met with the landlords and proposed instead a worker's compensation model, funded by a fee on rental properties and a tax on the sale of paint. The legislature rejected the proposal and amended it to create a commission, which, in turn, tabled a model based on the workers compensation system and called for limitations on liability if landlords took steps to reduce lead hazards. Governor William Donald Schaefer proposed a scaled-down version of the bill that was more favorable to the landlords. At every step in the process, including subsequent amendments by the State senate, changes were made that favored landlords. After some compromise, with Rosenberg seeking to moderate the advantages sought by the landlords, the bill was enacted.

In crafting the regulations to implement the law, the two sides resumed their battle. Meanwhile, newly elected Governor Parris Glendening asked that the relevant cabinet secretary meet with the advocates to work out a compromise. In revised regulations submitted last summer, key issues included were the size of affected surfaces that would be governed by the legislation and whether units with no children under age 6 would be exempt from regulation. Federal civil rights laws prevent the childless household exemption, but Maryland has decided to exempt up to 25 square feet of surface area per room from the work practices and accreditation requirements.

A review committee is considering the regulations. If any member of the committee objects to the revised regulations, hearings will be held. In Rosenberg's opinion, the consensus is to proceed with the regulations and observe their effects. The lesson to be learned, he said, is that in almost any State landlords will be far more powerful than tenant advocacy groups, and the first proposal submitted will be the "high water mark" of tenant protection.

Commenting on the legislative process, James Keck added that "how you do things matters," and the situation has regressed. He described regulations passed in Maryland in 1988 to ensure that abatement would be performed correctly. The regulations included

three provisions for quality control: training the people who would be doing the work, designing work practices that would minimize contamination, and checking the levels of contamination when the work has been completed. With the recent reductions in legislation described by Mr. Rosenberg, these quality controls have been eliminated.

Speaking for advocacy organizations, Ruth Ann Norton said that she supported the bill because she wanted to break the impasse. Maryland law differs from the Title X Task Force recommendations, in that no dust testing is required. But dust testing is even more critical when 25 square feet of space per room is exempted. Without dust testing, children are at greater risk, investment in the property is less likely, and insurance becomes more difficult to obtain. Also, no mandatory screening or random inspection is required in high-risk areas. She indicated that the State had missed an opportunity to create a working partnership between owners and tenants and, perhaps more troubling, had regressed from what had been a progressive approach to lead hazard control.

Jeanne Gorman, of the National Multihousing Council, which represents property owners, recalled Maryland's experience differently. First, she declared that property owners were not as powerful as described—or as they would like to be—and noted that it was the work of the Duron Paint lobbyist which killed the proposed paint tax. She also stated that landlords are not a monolithic group and that 99 percent of all properties have lead dust levels tenfold below the standard. Solutions should focus on the housing that is most at risk, and the major barrier to those solutions is funding.

Vermont

Jeffrey Francis, deputy director of the Vermont Housing Finance Agency and chairman of the Vermont Lead Paint Hazard Commission, described his State's recent experience with lead. Since its establishment in 1993, the commission has completed a report and enacted a law that authorizes the health department to become involved in lead hazard issues and instructs the health commissioner to act when a lead-poisoned child is identified. The legislation also includes a provision for mandatory blood lead level screening by 1997.

Legislation has been proposed that would require essential maintenance practices in rental units and childcare facilities constructed before 1978 and would authorize the creation of a mandatory training program for rental property owners. The training program would teach the owners essential maintenance practices and a higher level of intervention techniques and would provide them with ongoing information about changes in regulatory requirements. The essential maintenance practices would go into effect at once, but the higher level techniques would be deferred until the year 2000. However, the health commissioner would keep statistics on children's blood lead levels and would have the power to require the higher level of maintenance practices if needed. Thus this approach would adapt to the evolution of scientific information and technology.

The proposed law would also create a committee to study possible tax credits or other financial assistance. The law would establish negligence as a duty of reasonable care, provide equitable relief for children with blood lead levels of 20 or less, and provide damages only for children who are severely poisoned.⁶ It also would provide protections for secured lenders and fiduciaries. Because Vermont has not experienced a crisis in the insurance industry, Francis continued, the bill recommends an affidavit system to provide insurers with some level of assurance that the property owner is acting responsibly. The commissioner of banking, insurance, and securities would be able to take action if insurance coverage for lead hazards declined from its current level. Landlords who took additional steps to make their properties lead safe would enjoy liability relief. Although the

legislation would not mandate proactive enforcement, property owners who did not undertake essential maintenance practices would not be insurable if lead poisoning occurred.

Francis expects to go to the legislature with support for the bill from both advocates and property owners. Because Governor Howard Dean, a physician, has made addressing the needs of children and women a priority, it is unlikely that the legislation will further favor property owners.⁷ Richard Bland added that, although the proposed program is modest, it is also sound and is likely to lead to additional legislation. Property owners have not opposed the program, because it mandates only that they perform essential maintenance practices. These requirements are less draconian than those of surrounding States.

Ohio

The lead-based paint problem in Ohio is serious, Marcheta Gillam declared. Much of the housing stock is older and contains lead, and many children have lead poisoning. Even without mandatory screening and reporting, 18 percent of Ohio's preschoolers were reported to have blood lead levels above 10 in 1994. As a result, Ohio was an early and frequent recipient of HUD grant money. The State commission required by the terms of the grant agreement has disbanded without publishing a report or proposing legislation.

The commission, Gillam continued, sought essential maintenance practices along with standard treatment for all pre-1950 properties, including daycare centers. Failure to comply would result in civil penalties and, over time, criminal penalties. If essential maintenance practices had not been conducted by a given date, there would be a rebuttable presumption that any child in that unit had been poisoned. If standard treatments had been conducted, the rebuttable presumption would be just the opposite—the child had not been poisoned in that unit. The commission did not interject tort reform.

Although the commission had achieved consensus on its recommendations, prioritized the properties to be treated, and worked in partnership with property owners and advocates, State agencies refused to sign the report because the program required funding from the State. The director of health, who protested universal blood screening because of the cost, was the primary opponent of the recommendations.

The most important lesson to be learned from Ohio's experience, according to Gillam, was that the political process may have a negative effect on commission proposals. Because the commission worked in a consensus-building fashion, it did not assume, when adopting positions, that some level of retreat would be necessary. Underlying problems are the general lack of constituency pressure for action on the lead issue and enormous competition for funds. Gillam recommended involving legislators in a commission's work early in the process, in order to develop sponsors for the forthcoming legislation.

On the subject of constituency, David Jacobs pointed out that the parents of poisoned children can play an important role in generating support for cleaning up lead-contaminated properties. Cushing Dolbear advised that low-income housing advocates are another source of potential support and should be brought together with parents and environmentalists to work through the issues.

California

Since 1986, Robert Schlag explained, California has been debating the question, "Who pays when lead contamination occurs?" At that time, the legislature decided that those who were responsible for the contamination should pay, and assessed fees on various

industries. That decision is now being challenged, on the grounds that the beneficiaries of the fees are the children, not the fee-payers.

Two parallel activities are now under way:

- Lead Safe California has brought together people with differing perspectives to discuss the issues, and they have embraced most of the elements of the Task Force report.
- The Governor's office has organized an interagency team to create a strategic plan for eliminating lead poisoning.

Schlag commented that California's program is taking "baby steps" in its development. The State has established accreditation and certification programs and is working on abatement standards, while issues such as liability and financing are under consideration.⁸ He believes that it will be challenging to work with the State legislature and with a Governor who is "probably not kind toward new impositions and regulations on private property owners."

Connecticut

Four years ago, said Alex Knopp, a State representative from Norwalk, Connecticut established a commission to propose lead control legislation. Although the commission has produced a report, it must navigate a formidable political maze to proceed to legislation. As a result, progress is slow and cumbersome and is occurring in stages. Action has been taken on encapsulation to reduce the cost of abatement and on certification licensure. The House majority leader is trying to create a legislative Task Force, cochaired by Knopp, that will try to enact the Title X report legislation.⁹

Knopp suggested that four types of information be made available to facilitate actions by States:

- Better communication and sharing of experiences among States, for the education and benefit of all players. The Title X report, he noted, is particularly helpful because it represents a national political consensus that can be used at the State level to involve the same kinds of actors.
- Continued emphasis on the Federal role, especially concerning Title X disclosures at the time of real estate conveyances. Knopp indicated that if Connecticut Realtors realize that disclosure is a Federal requirement and potential buyers will want to have homes checked, they will support requirements for the training of additional licensed and certified workers.
- The cost impact and potential savings resulting from abatement and essential maintenance practices. This information is difficult to obtain on a State-by-State basis. However, documentation of the experiences of others can be persuasive when passage of a bill is at stake.
- The community benefits that will result from the required costs of abatement and maintenance practices. This information must go beyond stressing the health of children to include the tax and other economic benefits of returning distressed and foreclosed properties to the tax rolls and to the market. Such information can help engage the necessary players and inspire action. For example, the high rate of foreclosure in Connecticut in the recent past has made banks the owners of a large number of foreclosed properties. For that reason, the banks are keenly interested in learning about cleanup practices that will enable them to return these properties to the market.

Missouri

In 1993 Missouri passed a comprehensive lead control law to be implemented by the State's department of health. The law, as described by Gil Copley, classified lead poisoning as a disease at the highest level and required physicians and laboratories to report occurrences of the disease. The law required training, certification, and licensing of lead abatement workers and contractors. It also established a 23-member commission that met for 2 years and delivered its report in December 1995. Although St. Louis, Springfield, and St. Louis County have had strong lead control programs backed by local ordinances for several years, the commission needed to recognize the existence of lead problems in the rest of the State and the need for statewide action.

The commission—which includes a parent representative and representatives from real estate interests, insurance companies, banks, State agencies, State legislators, and elsewhere—identified key issues and prepared recommendations that would be implemented under the leadership of the department of health. The recommendations covered lead-safe housing, risk assessment, essential maintenance practices, and control procedures.

Implementation of the commission's recommendations, Copley continued, will require the Governor's support. The director of the department of health has been very supportive of childhood lead prevention efforts, as have the departments of natural resources and education, and Copley was optimistic that the State will build a stronger program.

New Jersey

William Connolly described New Jersey's program from the perspective of code enforcement rather than that of health or housing. As a code enforcer, he disparaged the 1970s approach of seeking to eliminate all lead from all housing units, commenting that the major barrier to effective lead hazard management has been a lack of consensus on measures short of full abatement.

The Title X Task Force embodies a significant change in the approach to lead hazard control, said Connolly. Because the Task Force represents a national political and technical consensus, he expressed hope that mainline code enforcement could be used to address the lead-based paint problem.¹⁰ The measures suggested by the Task Force are sufficiently moderate, he continued, that property owners can reasonably be expected to implement them. Therefore, these measures could be included in the language of existing codes and, Connolly argued, new laws would not be needed. Building and housing code programs operate under fairly broad enabling legislation tailored to specific hazards. The standard treatments and essential maintenance practices recommended by the Task Force could be added to housing codes and enforced in the same manner.

Ordinary rehabilitation activities are not addressed in the Task Force report, even though they can create lead problems. They are, however, included in building codes. Most codes require a building permit for most activities involving lead-based paint. Thus, according to Connolly, the legal authority exists to include reasonable requirements for maintenance or alteration work. The requirements would be enforceable through the ordinary building permit process.

New Jersey is coordinating its contractor licensing with the building code process and is including work practices in the building code. When the process is completed, the State will require a lead assessment as a condition for granting the building permit. When the property has been approved, the State will issue a certificate that documents exactly what was done. The certificate will be placed in the property file for the building and will enable

owners to document the fact that their buildings are lead-safe. Connolly also recommended the establishment of an alternate compensation scheme¹¹ and some degree of relief from liability.

City Experiences

New York City

New York State has mandatory screening and mandatory reporting and is developing certification and training legislation, reported Diana Kiel, of the New York City Department of Health. At the local level, health department regulations require the reporting of blood lead levels. The city also has passed a law requiring that any abatement ordered by the departments of health or housing preservation and production be “safely done” and specifying the accepted and prohibited methods of abatement. The law enumerates the actions to be taken and requires that the cleanup be reported to the health department.

Mitchell Posilkin, of the city’s housing preservation and production department, noted that several lead-related bills have been introduced in the New York City Council, but no legislative progress has been made.¹² He pointed out that New York City is unique in its scale and complexity, since it contains 7 million residents and about 2 million apartments. Tenants and property owners alike are well organized and politically active, and the relationship between the two groups is fragile. Moreover, the city has enacted a complex set of two-tiered rent regulations. The tier for pre-1947 housing is called *rent control*, while the tier for post-1947 housing is termed *rent stabilization*. Under these regulations, landlords cannot charge higher rents to cover their lead abatement costs, making the costs prohibitive.

Former Mayor David Dinkins appointed a commission that has produced a report on legal contamination, and the city has hired consultants to advise the commission on lead control legislation. At present, two legal standards apply: the health standard, which responds to a child’s poisoning, and the housing standard, which applies to peeling paint. The standards presume that lead-based paint exists in a pre-1960 building where a child under age 7 resides. Posilkin noted that the city has a conflict of interest on this issue, because it is both the enforcer of the city’s health and housing codes and the landlord for 50,000 housing units obtained through tax foreclosures.

New York City has an emergency repair program, under which it spends roughly \$10 million per year abating emergency housing conditions, some of which involve lead hazards. Thus, if landlords do not correct dangerous housing conditions, the city pays the bill. According to Posilkin, the city secures those expenditures through tax liens, which the landlords generally do not pay. Eventually, the city takes ownership of the property.

Various legislative proposals are being considered by the city, and Posilkin was uncertain what actions might be taken. Meanwhile, paint litigation and expert witnesses abound. Also, added Richard Bland, the insurance commissioner in New York has lifted the moratorium, and lead poisoning can again be excluded from insurance coverage.¹³

Philadelphia

Elizabeth Moy, director of Constituent Services for Philadelphia Councilwoman Happy Fernandez, outlined four areas of activity in her city:

- Philadelphia has a childhood lead poisoning prevention program within the department of health.

- The department of health and the office of housing have joined together to launch an educational campaign called “Get the Lead Out” and plan to provide one-half of the cost of lead abatement in some privately owned rental units.
- The city council has passed two bills: One is to protect tenants from eviction when they suffer from lead poisoning and sue their landlord; the other requires owners of pre-1978 properties to disclose that there may be lead-based paint in the home when the unit changes hands.
- The Mayor has appointed a Task Force, cochaired by the director of the office of housing and the commissioner of the health department, to develop strategies to prevent lead poisoning.

Moy, noting that the city has had trouble with enforcement of the legislation—particularly with regard to retaliation against tenants who bring suit—added that the laws may have to be strengthened. Another problem, not surprisingly, is finding sufficient funds to address all of the properties that need attention. Elaborating on Moy’s remarks, Cort Daspit, of Philadelphia’s office of housing and community development, added that reaching agreement on specific standards was the easy part. When lead hazards are part of a general problem of housing deterioration, it is difficult to define the strategies that are needed.

Richard Tobin, director of the Childhood Lead Poisoning Prevention Program in Philadelphia’s health department, commented that the city’s task force did not recommend implementing lead-safe standards through the use of enforcement procedures, but rather by offering incentives. He added, however, that he needed “more carrots” to use as inducements.

In addition to hearing about lead control in States and localities, symposium participants also heard the views of two individuals.

Individual Experiences

A Banker’s View

Three primary concerns are common to lenders, according to Kenneth Peters, of Freddie Mac, who contributed a banker’s perspective. The first is foreclosure, because lenders generally are not effective property owners. Second, lenders worry about the value of rental real estate, which is to a large extent determined by how much income it can generate. If widely applicable requirements for managing lead-based paint increase a property’s operating costs, the value of that property would decline. This concern is especially great if the property owner has a loan with a balloon payment and may not be able to refinance. The lenders’ third concern is that if the bank were to become the owner of that property, the additional operating costs would make the property more difficult to sell.

Upon considering the various recommendations for managing lead hazards, Peters added that he supports essential maintenance practices, which he believes borrowers should perform in any case. He does not consider standard treatments to be a problem either, and is more concerned with the issues of who should perform the testing and inspections and what those activities will cost.

Peters added that rental properties in foreclosure are almost always distressed and have deferred maintenance, which often involves paint hazards. Banks are concerned about the financial expenditures needed to correct these maintenance deficits. Also, when a lender acquires a property in poor condition, claimants may suddenly appear, because the property now has a landlord who may not have contributed to the problem but who does have

money to pay claims. A possible solution, and one the Task Force recommended, is a specified grace period after foreclosure, during which the liability of the lender and the owner would be limited.

A Property Owner's View

An owner's perspective was offered by Charles Wilkins of the National Corporation for Housing Partnerships (NCHP). NCHP, a congressionally authorized investor in low- and moderate-income housing, is one of the two largest apartment owners in the country. One-half of its units are federally assisted and one-half are conventionally financed.

Wilkins began with a call for essential maintenance practices,¹⁴ noting that the pervasiveness of lead hazards indicates that the problem is broader than the mere presence of lead. Two components of essential maintenance practices are to work safely and to make repairs immediately. Following those practices, he asserted, would be relatively inexpensive and would constitute a significant step in controlling lead hazards.

Wilkins also suggested that the group view the housing stock in tranches, with the top tranche being housing that contains no lead. This housing needs to be addressed by adopting essential maintenance practices to prevent lead contamination. The second tranche is housing that needs a one-time, lead-specific cleaning, followed by essential maintenance practices to achieve and maintain a lead-safe condition. At the third level is housing that requires standard treatment with lead-safe cleanup, followed by essential maintenance practices. The bottom segment includes homes that need rehabilitation and essential maintenance practices. Viewing the housing stock in this way and determining the percentage of the stock in each category, Wilkins argued, stimulates sensible, cost-effective interventions.

It might be possible, he said, to offer a range of options tailored to various parts of the housing stock. Landlords would likely appreciate the flexibility to devise—within acceptable parameters—an approach that works best for them.

Wilkins also observed that a large percentage of rental households do not include small children or pregnant women. He suggested that it does not make sense to conduct expensive interventions in 100 percent of the units when, at any time, only 10 to 20 percent of the families are at risk.

Wilkins also reminded the group that, when housing is made lead safe, society reaps great benefits, such as a reduction in the need for special education and special health care, and more productive lives for many children. Calculating the benefits to society might help justify politically the expenditure of public money on some of the more extensive interventions needed.

Conclusion

Nick Farr closed the symposium with the observation that many people are working very hard on lead-based paint control, and they seem to be wrestling with similar issues and problems. Nonetheless, there is considerable momentum around the country, and real progress is being made.

Notes

1. The National Health and Nutritional Examination Survey (NHANES) is produced periodically by the National Center for Health Statistics of the U.S. Centers for Disease Control and Prevention. Two national surveys produced between 1976 and 1991 described trends in blood lead levels for the U.S. population and selected subgroups. The results of the third NHANES sampling round were published in July 1994.
2. The HUD competitive grant program provides funding to States and cities to undertake lead hazard evaluation and control activities in private housing through loans and outright grants to owner-occupants and rental property owners.
3. The “approach” was to create a task force that would address lead-based paint hazard control and financing issues affecting private housing. Key public- and private-sector representatives would be invited to participate and develop recommendations.
4. “Benchmark standards,” the term used in the Task Force report, refers to measures for the maintenance of lead-based paint and the control of lead-based paint hazards in housing.
5. “Harnessing” refers to creating incentives or other conditions in which the property and casualty insurance industry would be willing to offer lead liability insurance coverage to property owners, and banks and mortgage institutions would be willing to offer loan products for the evaluation and control of lead hazards. Additionally, insurers and lenders would incorporate “benchmark standards” into their insurance and loan underwriting guidelines, thereby reinforcing and encouraging compliance with such standards by property owners.
6. “Duty of reasonable care” refers to the requirement that one protect others from harm that might foreseeably arise out of one’s activities. “Equitable relief” refers to the redress or assistance rendered by a court to protect others from harm by requiring another to act or perform in some manner or to cease performing so as to avoid such harm. In this case, it might refer to the court ordering a landlord to abate a housing unit where a child with an elevated blood lead level resides.
7. The Vermont legislature passed a new lead poisoning prevention statute during the spring of 1996.
8. A bill was established in the California legislature in spring 1996 that would have established lead hazard control standards and some liability relief for complying rental property owners. However, it ultimately died in committee and was not voted on by the legislature.
9. Legislation was introduced in Connecticut in 1996, but it died in committee. It is expected that new legislation, based on the Federal Task Force recommendations, will be introduced in 1997.
10. Connolly is referring to the use of the task force “benchmark standards” measures in State and local housing codes as a means of enforcing property owner compliance with such standards.

11. "Alternate compensation scheme" refers to several task force recommendations that create an "offer of remedial compensation" system for children who still develop elevated blood levels even when living in housing units that have been brought into compliance with "benchmark standards" requirements. Remedial compensation would include the offer (by a landlord) to pay for costs to relocate a family with the poisoned child to lead-free or lead-safe housing, including a rent differential payment if rent is higher. It also includes payment of the family's out-of-pocket medical expenses not covered by public medical assistance or private medical insurance.
12. The city council is considering changes to its existing lead paint ordinance, and several new bills were introduced in 1996 that are still under consideration.
13. Lead poisoning lawsuits are on the rise in New York City and a number of very large jury verdicts have been returned, particularly in the Bronx. Insurers have, in fact, begun to introduce lead liability exclusions in their policies, by virtue of the insurance commissioner's action lifting the moratorium on such exclusions.
14. Essential maintenance practices are listed in "Childhood Lead Poisoning: Solving a Health and Housing Problem," in this issue.