

ATTACHMENT

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2011 NOV 23 AM 11:43

In the Matter of:)
)
) Docket No. TSCA-05-2006-0012
)
Willie P. Burrell,)
)
The Willie P. Burrell Trust,)
)
Dudley B. Burrell, and)
)
The Dudley B. Burrell Trust,)
)
)
Respondents.)
_____)

ORDER OF DISMISSAL and
DEFAULT ORDER AND INITIAL DECISION

I. Background

This is a proceeding under section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) codified at 40 C.F.R. Part 22. Complainant filed this action on June 22, 2006, alleging that each of the four respondents, Willie P. Burrell, the Willie P. Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust, as the lessors of certain apartment buildings located in Kankakee, Illinois, violated TSCA regulations known as the “Lead-Based Paint Disclosure Rule” (or “Disclosure Rule”). Complainant seeks a penalty of \$89,430.

Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852(d) (“the Act”), requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The Administrator promulgated regulations at 40 C.F.R. Part 746, Subpart F, on March 6, 1996. Subpart F (also known as the “Disclosure Rule”) imposes certain requirements on sellers and lessors of “target housing” including the requirement to disclose to purchasers or lessees the presence of any known lead-based paint and/or lead-based paint hazards, provide available records and reports, provide a lead hazard information pamphlet, and attach specific disclosure and warning language to leasing contracts before the lessee is obligated under a contract to purchase or lease “target housing.” 40 C.F.R. § 745.113.

II. Procedural History

No answer or other pleading was filed in this matter until Complainant filed a motion for default order on December 17, 2010. Respondents then filed several motions and other pleadings in opposition to Complainant’s motion. In an Order on Motions issued July 26, 2011, the

Presiding Officer denied Respondents' motions to dismiss for defective proof of service and granted Mr. Burrell's motion to quash service of process. In addition, the Presiding Officer held that Mrs. Burrell did not demonstrate good cause to deny the entry of the default order against her and the Willie P. Burrell Trust. The Presiding Officer ordered additional briefing on the effect of the invalid service of process on Mr. Burrell and the Dudley B. Burrell Trust and the appropriate penalty against remaining respondents should the Complaint against Mr. Burrell and the Trust be dismissed. The parties have filed supplemental briefs on those issues.

III. Resolution of Remaining Motions

Complainant states that it will no longer pursue Dudley B. Burrell or the Dudley B. Burrell Trust in this matter. Pursuant to 40 C.F.R. § 22.20(a), because of Complainant's failure to effect service of process as to these respondents and the operation of the five-year statute of limitations applicable to these claims, the motion to dismiss filed by Dudley B. Burrell and the Dudley B. Burrell Trust is hereby GRANTED.

For the reasons discussed below, Complainant's motion for default is GRANTED as to respondents Willie P. Burrell and the Willie P. Burrell Trust. These respondents¹ are found to be in default pursuant to Section 22.17(a) of the Consolidated Rules. They have failed to demonstrate good cause why a default order should not be assessed against them. Default by these respondents constitutes an admission of all facts alleged in the complaint concerning the pending proceeding and a waiver of their right to contest those factual allegations. 40 C.F.R. § 22.17(a).

Accordingly, based upon the Complaint and the documents of record, I make the following Findings of Fact and Conclusions of Law:

IV. Findings of Fact and Conclusions of Law

1. "Target housing" is defined by 40 C.F.R. § 745.103 as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or an 0-bedroom dwelling.
2. "Lessor" is defined by 40 C.F.R. § 745.103 as any entity that offers target housing for lease, rent or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes and nonprofit organizations.
3. "Lessee" is defined by 40 C.F.R. § 745.103 as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

¹ Going forward in this opinion, the terms "respondent" and "respondents" shall refer only to Willie P. Burrell and/or the Willie P. Burrell Trust.

4. The Disclosure Rule, at 40 C.F.R. § 745.113(b), requires, among other things, that each contract to lease target housing must include: (1) a lead warning statement; (2) a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards of lack of knowledge of such presence; (3) a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; (4) a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) and the Lead Hazard Information Pamphlet; and (5) signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

5. Failing to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to EPA administrative civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f) and 42 U.S.C. § 4852d(b)(5).

6. Between at least December 4, 2001, and April 1, 2003, Willie P. Burrell, either directly or through an agent, offered for lease residential units in apartment buildings located at 1393 E. Chestnut, 257 N. Chicago, 575 E. Oak, 1975 Erzinger and 993 N. Schuyler in Kankakee, Illinois (the Apartment Buildings).

7. Between December of 2001 and April of 2003, the Willie P. Burrell Trust, either directly or through its agent, offered for lease residential units in apartment buildings located at 1393 E. Chestnut, 257 N. Chicago, 575 E. Oak, 1975 Erzinger and 993 N. Schuyler in Kankakee, Illinois (the Apartment Buildings).

8. The Apartment Buildings were constructed before 1978.

9. The Apartment Buildings and each residential dwelling unit within these buildings are “target housing” as defined in 40 C.F.R. § 745.103.

10. On the dates indicated, Willie P. Burrell or the Willie P. Burrell Trust, either directly or through an agent, entered into six written lease agreements with individuals for the lease of units in the Apartment Buildings:

1. 1393 E. Chestnut	12/4/2001
2. 257 N. Chicago Apt. 1	09/20/2002
3. 257 N. Chicago Apt. 5	04/01/2003
4. 575 E. Oak Apt. 5	02/07/2003
5. 1975 Erzinger	02/22/2003
6. 993 N. Schuyler Apt. 2	11/22/2002

11. Each of these six leases covered a term of occupancy greater than 100 days.

12. Willie P. Burrell and the Willie P. Burrell Trust are “lessors,” as defined by 40 C.F.R. §

745.103, since they offered the target housing referenced in paragraph 10 for lease.

13. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment thereto, a Lead Warning Statement before the lessee was obligated under the contract, with regard to each of the properties referenced in paragraph 10.

14. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment thereto, a Lead Warning Statement before the lessee was obligated under the contract, with regard to the each of the properties referenced in paragraph 10.

15. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

16. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

17. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records were available before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

18. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records were available before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

19. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

20. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the

lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

21. Respondent Willie P. Burrell, as lessor, failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying to the accuracy of their statements and the date of such signatures before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

22. Respondent Willie P. Burrell Trust, as lessor, failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying to the accuracy of their statements and the date of such signatures before the lessee was obligated under the contract with regard to each of the properties referenced in paragraph 10.

23. Respondent Willie P. Burrell violated 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) as alleged in Counts 1 – 89 of the Complaint.

24. Respondent Willie P. Burrell Trust violated 40 C.F.R. § 745.113(b)(1), (b)(2), (b)(3), (b)(4), and (b)(6) as alleged in Counts 1 – 89 of the Complaint.

25. Respondents Willie P. Burrell and Willie P. Burrell Trust have failed to demonstrate good cause to deny the entry of the default order against them.

V. Penalty Criteria

The Consolidated Rules of Practice provide in pertinent part that, upon default:

The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.

40 C.F.R. § 22.17(c).

In addition, as to penalty determination, the Consolidated Rules provide that:

If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based upon the evidence in the record and in accordance with any civil penalty criteria in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act.

As indicated above, Respondents have been found to have violated the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. §§ 4851-56. Section 1018 of the Act provides that a violation of any of its requirements “shall be a prohibited act under section

409 of the Toxic Substances Control Act (TSCA) [15 U.S.C. § 2689] . . . [and] the penalty for each violation under section 16 of that Act [15 U.S.C. § 2615] shall not be more than \$10,000.”² 42 U.S.C. § 4852(b)(5). The applicable statutory criteria for the assessment of a penalty are, therefore, delineated in TSCA.

Section 16 of TSCA provides that “in determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of such prior violations, the degree of culpability, and such other matters as justice may require.” 15 U.S.C. § 2615(a)(2)(B).

In February 2000, EPA’s Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Toxics and Pesticides Enforcement Division, issued a Section 1018 – Disclosure Rule Enforcement Response Policy (“ERP”).³ The ERP sets forth a two stage process for calculating a proposed civil penalty for a violation of the Act’s Disclosure Rule by a responsible party. The first step is the determination of a “gravity-based penalty,” referring to the overall seriousness of the violation, taking into account the “nature” of the violation, the “circumstances” of the violation, and the “extent” of harm that may result from a given violation. ERP at 9. These factors are incorporated into a penalty matrix that specifies the appropriate gravity-based penalty. Once the gravity-based penalty has been determined, upward or downward adjustments may be made to that penalty in consideration of the violator’s ability to pay/continue in business, history of prior violations, degree of culpability, voluntary disclosure, and “such other factors as justice may require.” ERP at 9.

The ERP further provides that the requirements of the Disclosure Rule are most apparently characterized as “hazard assessment” in nature, *i.e.*, designed to provide potential purchasers and lessees of target housing with information that will permit them to weigh and assess the risks presented by the actual or possible presence of lead-based paint or lead-based hazards in the target housing they might purchase or lease. ERP at 9. The “nature” of the violation has a direct effect on the measure used to determine which “circumstances” and “extent” categories are selected on the gravity-based penalty matrix. The ERP sets out six levels of

² Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. note, each federal agency must issue regulations adjusting for inflation the statutory civil penalties that can be imposed under the laws administered by that agency, and thereafter periodically review and adjust the penalty provisions at least once every four years. EPA’s adjusted penalty provisions appear at 40 C.F.R. Part 19. For violations of the Act occurring after January 30, 1997 and through March 15, 2004, the adjusted statutory maximum is \$11,000. 40 C.F.R. § 19.4.

³ The ERP is Attachment 26 to Complainant’s Memorandum in Support of Motion for Default Order. In December 2007, the Office of Enforcement and Compliance Assurance issued a revised ERP that was “immediately applicable” and “should be used to inform the appropriate enforcement response and to guide the calculation of any proposed penalties in administrative enforcement actions concerning violations of the Disclosure Rule.” The penalty in this matter was originally calculated sometime before the filing of the Complaint on June 22, 2006, and thus was based on the 2000 ERP. That penalty has been more recently reviewed by Agency personnel who concluded that the penalty amount would be same whether the 2000 or 2007 policy was applied. *See* Declaration of Joana Bezerra, Attachment 25 to Complainant’s Memorandum in Support of Motion for Default Order, ¶ 49 (“Att. 25”).

“circumstances” reflecting the probability of impairing a purchase’s or lessee’s ability to assess the information required to be disclosed. Those violations which have a “high” probability of causing such impairment are classified as “Level 1 or 2 violations;” violations having a medium probability of impairment are “Level 3 or 4 violations;” and violations having a low probability of impairment are “Level 5 or 6 violations.” ERP at 10.

The “extent” of the violation considers the degree, range or scope of the violation, focusing on the overall intent of the rule, which is to prevent childhood lead poisoning. The extent of a violation is considered “major” if there is potential for “serious” damage to human health or for major damage to the environment; “significant” if the potential is for “significant” damage to human health or the environment; and “minor” if the potential is for a “lesser” amount of damage to human health or the environment. ERP at 10. Under the ERP, the “extent” factor is based upon two measurable facts: (1) the age of any children who live in target housing; and (2) whether a pregnant woman lives in the target housing. ERP at 11, B-4.

As to the second stage of the process, the ERP sets forth specific circumstances under which the Agency will adjust the gravity based penalty downward or upward in consideration of the violator’s ability to pay/continue in business, history of prior violations, degree of culpability, and “other factors as justice may require.” ERP at 14-18.

VI. Complainant’s Penalty Proposal

In the Complaint, EPA seeks a total penalty of \$89,430, and submits the Declaration of Joana Bezerra, an Environmental Engineer with the Pesticides and Toxics Compliance Section, Land and Chemicals Division in Region 5, in support of that proposed penalty. Att. 25. In accordance with the ERP, Ms. Bezerra assigned “circumstance levels” and “extent categories” to each of the five violation types that occurred with respect to each of the six leases at issue. Ms. Bezerra’s application of the facts of each violation to the penalty matrices in the ERP produced the following penalties:

Count 1: Failure to Include Lead Warning Statement (40 C.F.R. § 745.113(b)(1))
(Level 2 Circumstance)

\$8,800 for 257 N. Chicago Apt. 1 (child under 6)

\$8,800 for 1393 East Chestnut (child under 6)

\$8,800 for 257 N. Chicago Apt. 5 (child under 6)

\$5,500 for 993 N. Schuyler (child 6-18)

\$1,320 for 575 East Oak

\$1,320 for 1975 Erzinger

\$34,540

Count 2: Failure to include Statement Disclosing Presence or Lack of Knowledge of Lead-Based Paint (40 C.F.R. § 746.113(b)(2)) (Level 3 Circumstance)

\$6,600 for 257 N. Chicago Apt. 1 (child under 6)
 \$6,600 for 1393 East Chestnut (child under 6)
 \$6,600 for 257 N. Chicago Apt. 5 (child under 6)
 \$4,400 for 993 N. Schuyler (child 6-18)
 \$660 for 575 East Oak
\$660 for 1975 Erzinger
 \$25,520

Count 3: Failure to Include a List of Records or Reports (40 C.F.R. § 746.113(b)(3)) (Level 5 Circumstance)

\$2,200 for 257 N. Chicago Apt. 1 (child under 6)
 \$2,200 for 1393 East Chestnut (child under 6)
 \$2,200 for 257 N. Chicago Apt. 5 (child under 6)
 \$1,430 for 993 N. Schuyler (child 6-18)
 \$220 for 575 East Oak
\$220 for 1975 Erzinger
 \$8,470

Count 4: Failure to Include Lessee's Affirmation of Receipt (40 C.F.R. § 745.114(b)(4)) (Level 4 Circumstance)

\$4,400 for 257 N. Chicago Apt. 1 (child under 6)
 \$4,400 for 1393 East Chestnut (child under 6)
 \$4,400 for 257 N. Chicago Apt. 5 (child under 6)
 \$2,750 for 993 N. Schuyler (child 6-18)
 \$440 for 575 East Oak
\$440 for 1975 Erzinger
 \$16,830

Count 5: Failure to Include Certifying Signatures (40 C.F.R. § 745.113(b)(6)) (Level 6 Circumstance)

\$1,100 for 257 N. Chicago Apt. 1 (child under 6)
 \$1,100 for 1393 East Chestnut (child under 6)
 \$1,100 for 257 N. Chicago Apt. 5 (child under 6)
 \$550 for 993 N. Schuyler (child 6-18)
 \$110 for 575 East Oak
\$110 for 1975 Erzinger
 \$4,070

The total gravity-based penalty for the violations alleged in the Complaint is \$89,430.

The Agency next considered the so-called “adjustment factors” set forth in the statute and the ERP to arrive at a proposed penalty amount. Ms. Bezerra considered Respondents’ history of prior violations of the Disclosure Rule, and finding none, made no adjustment for that factor. Att. 25 ¶ 51. Similarly, no adjustment was made for culpability, attitude, or risk of exposure. ERP at 15-16, Att. 25 ¶¶ 52-54. Furthermore, no adjustments were made for Supplemental Environmental Projects, the Audit Policy, voluntary disclosure or the size of the business, owning or leasing only one target housing unit, or the economic benefit of noncompliance, as these factors were found to be not applicable to Respondents. ERP at 16-18, Att. 25 ¶¶ 55-57. Finally, the Agency considered Respondents’ ability to pay but concluded that no adjustment was warranted because Respondents had not claimed an inability to pay and had not submitted any documentation to support such a claim. ERP at 14, Att. 25 ¶ 50.

Respondents’ first claim of inability to pay in this proceeding came when they belatedly filed their answer on January 14, 2011, but they submitted no documentation to substantiate their claim. In their memorandum opposing Complainant’s default motion,⁴ they reiterated their claim of inability to pay and submitted certain financial information consisting of copies of federal and state income tax returns for the years 2007, 2008, and 2009 (all but one of which were unsigned by the taxpayer). Respondents also completed a Form 4506-T “Request for Transcript” and an Individual Ability to Pay Claim Financial Data Request Form upon request by the Agency. EPA uses the Form 4506-T to obtain verification from the Internal Revenue Service that the tax information submitted by a party matches the information provided to the IRS and has not been amended.⁵ The IRS was, however, “unable to provide the requested information” to EPA.⁶ On May 11, 2011, EPA followed up with letter to Derek Burrell, Respondents’ representative, seeking additional information regarding Respondents’ finances, including a complete list of properties owned, their current market value and amount owed.⁷ EPA’s financial analyst states that, without the information requested in this letter, she is unable to make an accurate determination of Respondents’ ability to pay.⁸ In addition, EPA has sought, but not received, copies of any tax returns filed by the Willie P. Burrell Trust.⁹ In response to the Presiding Officer’s Order on Motions of July 26, 2011, Respondents provided some additional information to bolster their inability to pay claim, including a new Form 4501-T, a corrected Individual Inability to Pay Form, and other evidence of indebtedness.¹⁰

⁴ Filed March 7, 2011.

⁵ Declaration of Cynthia Mack-Smeltzer, ¶ 16, Attachment 2 to Memorandum in Support of Complainant’s Supplement, filed August 16, 2011.

⁶ Attachment 5 to Memorandum in Support of Complainant’s Supplement.

⁷ Attachment 6 to Memorandum in Support of Complainant’s Supplement.

⁸ Declaration of Cynthia Mack-Smetzer, ¶ 30.

⁹ Declaration of Cynthia Mack-Smeltzer, ¶ 13.

¹⁰ Respondent’s Joint Supplemental Memorandum Pursuant to July 26, 2011 Order on Motions, Attachments A, B, and C.

As the Environmental Appeals Board has noted, “the law pertaining to the burdens of proof and other matters pertaining to [the ability to pay] penalty factor is well settled.” *In re Donald Cutler*, 11 E.A.D. 622, 631 (EAB 2004). In regard to meeting its burdens on penalty, EPA can make a prima facie case of appropriateness of the relief sought by demonstrating that it considered each of the statutory penalty factors and that the recommended penalty is supported by analyses of those factors. *Cutler*, 11 E.A.D. at 631-32. “If ability to pay is contested, a complainant must establish a prima facie case that a proposed penalty is nonetheless ‘appropriate’ by presenting . . . ‘some evidence to show that it considered the respondent’s ability to pay a penalty.’” *Cutler*, 11 E.A.D. at 632, quoting *In re New Waterbury, Ltd.*, 5 E.A.D. 529, 542 (EAB 1994). Complainant need not present any specific evidence to show that respondent can pay, “but can simply rely on some *general* financial information regarding the respondent’s financial status which can support the *inference* that the penalty assessment need not be reduced.” *New Waterbury*, 5 E.A.D. at 543. “Once the respondent has presented specific evidence to show that despite its . . . apparent insolvency it cannot pay any penalty, the Region as part of its burden of proof in demonstrating the ‘appropriateness’ of the penalty must respond either with the introduction of additional evidence to rebut the respondent’s claim or through cross examination it must discredit the respondent’s contentions.” *Id.*

In this case, Complainant presented some general financial information to support the inference that the gravity-based penalty assessment need not be reduced, including a statement of Ms. Burrell’s annual income and bank account information. While Respondents have attempted to rebut such evidence with some specific information, they have failed to provide the additional information necessary to successfully rebut Complainant’s prima facie case. Of particular note, the Agency was unable to verify the information contained in Respondent’s tax returns. In addition, while Respondents’ did, quite belatedly, provide some of the additional information EPA requested, they still have not produced a complete list of properties owned by Mrs. Burrell and the Trust, their market value and amounts owed on those properties, information that is essential in making a fair evaluation of Respondents’ ability to pay the penalty EPA has proposed.

Finally, with regard to penalty, Respondents argue that, assuming they have an ability to pay a penalty, that penalty should not exceed \$63,580, because neither Mrs. Burrell nor the Trust owned the properties on Chestnut or Erzinger and never offered or executed the leases for those properties. Rather, they argue, it was Mr. Burrell who offered these properties for lease, but he has now been dismissed from this action. By virtue of their default, however, Mrs. Burrell and the Trust are deemed to have admitted all the facts alleged in the Complaint and have waived their right to contest the factual allegations contained therein. 40 C.F.R. § 22.17(a). Complainant clearly alleged that Respondents, as lessors, offered the target housing at issue for lease and violated the relevant provisions of the Disclosure Rule. See Complaint ¶¶ 38, 53, 62, 71, 80 and 89. Those allegations can no longer be contested in this matter.

Accordingly, I conclude that the \$89,430 penalty EPA has proposed is consistent with the evidence in the record and in accord with the penalty criteria set forth in TSCA and the Section 1018 Disclosure Rule Enforcement Response and Penalty Policy.

DEFAULT ORDER

It is hereby ORDERED as follows:

1. Respondents Willie P. Burrell and the Willie P. Burrell Trust are assessed a civil penalty in the amount of \$89,430.

2. Respondents Willie P. Burrell and the Willie P. Burrell Trust shall, within thirty calendar days after this Default Order has become final, forward a cashier's or certified check payable to "Treasurer, United States of America," and shall deliver the check to:

U.S. EPA Region 5
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In addition, Respondents shall mail a copy of the check to:

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard (E-19J)
Chicago, IL 60604

and to:

Julie Morris (LC-8J)
Pesticides and Toxics Compliance Section
Land and Chemicals Division
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

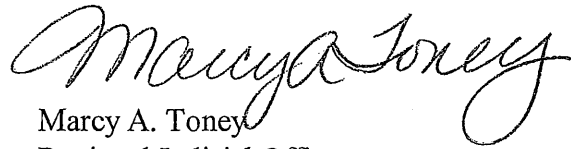
A transmittal letter identifying the case name and docket number should accompany both the remittance and copies of the check.

3. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. § 22.17(c). This Initial Decision shall become a final order unless: (1) an appeal to the Environmental Appeals Board is taken from it by any party to the proceedings within thirty (30) days from the date of service provided in the certificate of service accompanying this order; (2) a party moves

to set aside the Default Order; or (3) the Environmental Appeals Board elects, *sua sponte*, to review the Initial Decision within forty-five (45) days after its service upon the parties.

IT IS SO ORDERED.

Dated: November 23, 2011

A handwritten signature in cursive script that reads "Marcy A. Toney". The signature is written in black ink and is positioned above the printed name and title.

Marcy A. Toney
Regional Judicial Officer

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5

NOV 23 AM 11:42

In the Matter of Willie P. Burrell, the Willie P. Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust, Docket No. TSCA-05-2006-0012

CERTIFICATE OF SERVICE

I certify that the foregoing Order, dated November 23, 2011, was sent this day in the following manner:

Original hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy hand delivered to
Attorney for Complainant:

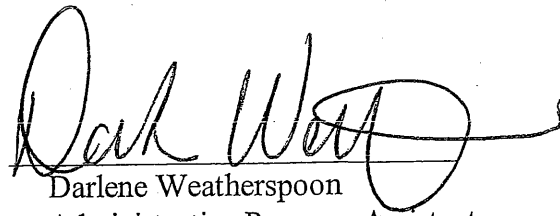
Maria Gonzalez
U. S. Environmental Protection
Agency, Region 5
Office of Regional Counsel
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy by U.S. Mail First Class to:

Willie P. Burrell
The Willie P. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

Dudley B. Burrell
The Dudley B. Burrell Trust
649 North Rosewood
Kankakee, IL 60901

Dated: 11/23/11

By: 
Darlene Weatherspoon
Administrative Program Assistant

ATTACHMENT

2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 22 2006

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 1562 2535

Willie Burrell
300 North Indiana Avenue
Kankakee, IL 60901

Dear Mrs. Burrell:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

As provided in the complaint, if you would like to request a hearing to contest the facts alleged in the Complaint or the amount of the penalty, you must do so in your answer to the complaint. If you choose to request a hearing, you must file your answer with the Regional Hearing Clerk (E-13J), U.S. EPA - Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within 30 days following service of this Complaint. A copy of your Answer and Request for Hearing should be sent to Maria Gonzalez, Associate Regional Counsel (C-14J), at the above address. If you have any questions about this matter you may phone Ms. Gonzalez at (312) 886-6630.

Failure to respond to this Complaint and Notice of Opportunity for Hearing by specific answer within 30 days of your receipt of this Complaint constitutes your admission of the allegations in the Complaint. Failure to respond to this Complaint may result in the issuance of a Default Order imposing the proposed penalties.

Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you wish to request an informal conference for the purpose of settlement, please write to Joana Bezerra, (DT-8J), at the above address, or you may phone her at (312) 886-6004.

Sincerely,

Anthony L. Restani
Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 2041

Dudley B. Burrell
300 North Indiana Avenue
Kankakee, IL 60901

Dear Mr. Burrell:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 et seq.

I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

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Sincerely,

for Anthony Restaino
Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 2027

The Dudley B. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

Dear Trustee:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

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Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you wish to request an informal conference for the purpose of settlement, please write to Joana Bezerra, (DT-8J), at the above address, or you may phone her at (312) 886-6004.

Sincerely,

Anthony Restaino

Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 2010

The Willie P. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

Dear Trustee:

A Complaint and Notice of Opportunity for Hearing is enclosed. In the Complaint, the United States Environmental Protection Agency (U.S. EPA) alleges that Willie Burrell, Dudley Burrell, The Willie P. Burrell Trust, and the Dudley B. Burrell Trust have violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*


I recommend that you carefully read and analyze the Complaint and the enclosed Rules of Practice, 40 C.F.R. Part 22, to determine the alternatives available in responding to the alleged violations, proposed penalties and opportunity for a hearing. Please note that each day that the violation continues constitutes a new violation for which additional penalties may be imposed.

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Whether or not you request a hearing, you may request an informal conference to discuss the facts of this case and to arrive at a settlement. If you wish to request an informal conference for the purpose of settlement, please write to Joana Bezerra, (DT-8J), at the above address, or you may phone her at (312) 886-6004.

Sincerely,

for 
Mardi Klevs, Chief
Pesticides and Toxics Branch

Enclosures

cc: Edward Lee
Mr. Edward Lee, Esq.
507 South Harrison Avenue
Kankakee, IL 60901

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
6 JUN 22 10:55 AM
RECEIVED

IN THE MATTER OF:)
)
Willie P. Burrell)
The Willie P. Burrell Trust)
Dudley B. Burrell, and)
The Dudley B. Burrell Trust)
300 N. Indiana Avenue)
Kankakee, IL 60901)
)
Respondents.)

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING
UNDER SECTION 16 (a) OF
THE TOXIC SUBSTANCES CONTROL ACT**

DOCKET NO. TSCA-05-2006-0012

Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 United States Code § 2615(a).

2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency, (U.S.EPA), Region 5.

3. Respondents are Willie P. Burrell, Dudley B. Burrell, the Willie P. Burrell Trust, and the Dudley B. Burrell trust.

4. Respondents lease residential units in apartment buildings from an office located at 300 North Indiana Avenue, Kankakee, Illinois.

Statutory and Regulatory Background

5. In promulgating Section 1018 of Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. 4851, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements that must be made as part of residential rentals and sales. 42 U.S.C. § 4852d (Section 1018) requires the Administrator to

promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

6. On March 6, 1996, U.S. EPA promulgated regulations at 40 C. F. R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property (Disclosure Rule) pursuant to 42 U.S.C. § 4852d. Owners of more than four residential dwellings must comply with Subpart F by September 6, 1996, pursuant to 40 C.F.R. § 745.102(a).

7. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d which impose certain requirements on the sale or lease of target housing.

8. 40 C. F. R. § 745.103 defines "target housing" as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

9. 40 C. F. R. § 745.103 defines "lessor" as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

10. 40 C. F. R. § 745.103 defines "lessee" as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

11. 40 C. F. R. § 745.103 defines "owner" as any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and non-profit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgager.

12. 40 C. F. R. § 745.103 defines "agent" as any party who enters into a contract with a seller or a lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing.

13. 40 C. F. R. § 745.100 requires, among other things, that the seller or lessor complete the disclosure activities specified in paragraph 14 below, before a lessee is obligated under any contract to lease target housing.

14. 40 C. F. R. § 745.113(b) of the Disclosure Rule requires that each contract to lease target housing must include as an attachment or within the contract a lead warning statement; a statement by the lessor disclosing the presence of any known lead-based paint and/or lead-based paint hazards or lack of knowledge of such presence; a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist; a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet; and signatures and dates of signatures of the lessor and lessee certifying the accuracy of their statements.

15. Under 42 U.S.C. § 4852d(b)(5) and 40 C. F. R. § 745.118(e), failing to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to EPA administrative civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C. F. R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5)

General Allegations

16. Paragraphs 1 through 15 are re-alleged and incorporated here by reference.

17. Between at least December 4, 2001 and April 1, 2003, Respondents leased residential units in apartment buildings located at 1393 E. Chestnut, 257 N. Chicago, 575 E. Oak, 1975 Erzinger, and 993 N. Schuyle in Kankakee, Illinois. (the Apartment Buildings).

18. The Apartment Buildings were constructed before 1978.

19. The Apartment Buildings and each residential dwelling unit within these buildings are “target housing” as defined in 40 C. F. R. § 745.103.

20. At all times relevant to the Complaint, the Dudley Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 1393 E. Chestnut in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-33-323-020.

21. At all times relevant to the Complaint, the Dudley Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 1975 Erzinger in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-17-04-128-017.

22. At all times relevant to the Complaint, the Willie P. Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 257 N. Chicago, in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-32-421-012.

23. At all times relevant to the Complaint, the Willie P. Burrell Trust was the owner, as defined by 40 C.F.R. § 745.103, of the apartment building located at 993 N. Shuyler, in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-32-203-008.

24. Publicly available documents identify the Willie P. Burrell Trust as the taxpayer for the apartment building located at 575 E. Oak, in Kankakee, Illinois, and identified for property county tax purposes by PIN # 16-09-32-421-015.

25. Dudley B. Burrell is the trustee of the Dudley Burrell Trust.

26. Willie P. Burrell is the trustee of the Willie P. Burrell Trust.

27. Publicly available documents indicate that Willie P. Burrell has been the creditor in eviction proceedings for all of the apartments.

28. On May 28, 2003, a representative of the U.S. EPA conducted an inspection at Respondents' office at 300 N. Indiana Avenue in Kankakee, Illinois to monitor compliance with Section 1018 and its implementing regulations found at 40 C. F. R. Part 745, Subpart F.

29. During the May 28, 2003 inspection, Willie P. Burrell indicated that she and her husband owned and managed 149 properties with 200 residential units.

30. On the following dates, Respondents, either directly or through Respondents' authorized agent, entered into the following six written lease agreements (contracts) with individuals for the lease of units in the Apartment Buildings:

	Address	Apt Number	Date of Lease
1	1393 E. Chestnut	N/A	12-04-01
2	257 N. Chicago	#1	09-20-02
3	257 N. Chicago	#5	04-01-03
4	575 E. Oak	#5	02-07-03
5	1975 Erzinger	S/F	02-22-03
6	993 N. Schuyler	#2	11-22-02

31. Each of the six contracts referenced in paragraphs 30, above, covered a term of occupancy greater than 100-days.

32. Each of the six contracts referenced in paragraph 30, above, included letterhead referencing B& D Management Corporation, 300 N. Indiana Avenue, Kankakee, Illinois 60901.

33. According to public records, B&D Management Corporation is an Illinois Corporation involuntarily dissolved on October 1, 2001, whose President was Willie P. Burrell.

34. Between December of 2001 and April of 2003, Willie P. Burrell or her agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.

35. Between December of 2001 and April of 2003, the Willie P. Burrell trust or its agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.

36. Between December of 2001 and April of 2003, Dudley B. Burrell or his agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.

37. Between December of 2001 and April of 2003, the Dudley B. Burrell trust or its agent offered for lease the units listed in paragraph 30 and individuals entered into agreements on the dates listed in paragraph 30 to lease those units.

38. Respondents are "lessors," as defined by 40 C. F. R. § 745.103, since they offered the target housing referenced in paragraph 30 for lease.

39. Each individual who signed a lease to pay rent in exchange for occupancy of a unit in the Apartment Buildings, referenced in paragraph 30, became a "lessee" as defined in 40 C. F. R. § 745.103, since he or she entered into an agreement to lease target housing.

40. Based on publicly available information, the total fair market value of the Apartment Buildings exceeds \$300,000.

41. By letter dated March 25, 2005, U.S. EPA advised Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes the U.S. EPA to assess a civil administrative penalty. The complaint would seek a civil penalty. U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint. If

Respondents believed there were financial factors which bore on Respondents' ability to pay a penalty, U.S. EPA asked Respondents to submit specific financial documents.

42. Willie P. Burrell responded, by letter dated September 16, 2005, but did not claim an inability to pay a penalty and did not provide facts or other information concerning any of the Respondents' ability to pay a penalty.

43. None of the Respondents have claimed an inability to pay the proposed, approximate civil penalty or have provided facts or other information concerning their ability to pay the proposed, approximate civil penalty.

44. The Chief of the Pesticides and Toxics Branch has determined that Respondents have violated the Federal regulations regarding the disclosure of lead-based paint and/or lead based paint hazards, 40 C. F. R. Part 745, as described below, and thereby violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 1

45. Complainant incorporates paragraphs 1 through 44 of this Complaint as though set forth fully in this paragraph.

46. 40 C. F. R. § 745.113(b)(1) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, a Lead Warning Statement before a lessee is obligated under the contract to lease target housing.

47. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

48. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 257 N. Chicago #1, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

49. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 257 N. Chicago #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

50. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 575 E. Oak #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

51. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 1975 Erzinger, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

52. Respondents failed to include, either within the contract or as an attachment to the contract, a Lead Warning Statement before the lessee at 993 N. Schuyler #2, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

53. Respondents' failure to include, either within each contract or as an attachment to each contract, a Lead Warning Statement before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes six violations of 40 C.F.R. § 113(b)(1), of U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 2

54. Complainant incorporates paragraphs 1 through 53 of this Complaint as though set forth fully in this paragraph.

55. 40 C. F. R. § 745.113(b)(2) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before a lessee is obligated under the contract to lease target housing.

56. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

57. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 257 N. Chicago, #1, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

58. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-

based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 257 N. Chicago #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

59. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 575 E. Oak #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

60. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 1975 Erzinger, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

61. Respondents failed to include, either within the contract or as an attachment to the contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessee at 993 N. Schuyler #2, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

62. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement disclosing either the presence of any known lead-based paints and/or lead-based paint hazards in the target housing or a lack of knowledge of such presence before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes 6 violations of 40 C. F. R. § 745.113(b)(2), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 3

63. Complainant incorporates paragraphs 1 through 62 of this Complaint as though set forth fully in this paragraph.

64. 40 C. F. R. § 745.113(b)(3) requires a lessor to include, either within each contract or as an attachment to each contract to lease target housing, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or

a statement that no such records exist before a lessee is obligated under the contract to lease target housing.

65. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

66. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 257 N. Chicago #1, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

67. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 257 N. Chicago #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

68. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 575 E. Oak #5, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

69. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessee at 1975 Erzinger, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

70. Respondents failed to include, either within the contract or as an attachment to the contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the

lessee at 993 N. Schuyler #2, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

71. Respondents' failure to include, either within each contract or as an attachment to each contract, a list of any records or reports available to the lessor regarding lead-based paints and/or lead-based paint hazards in the target housing or a statement that no such records exist before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes 6 violations of 40 C. F. R. § 745.113(b)(3), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 4

72. Complainant incorporates paragraphs 1 through 71 of this Complaint as though set forth fully in this paragraph

73. 40 C. F. R. § 745.113(b)(4) requires the lessor to include, either within each contract or as an attachment to each contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

74. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 1393 E. Chestnut, Kankakee, Illinois was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

75. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 257 N. Chicago #1 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

76. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 257 N. Chicago #5 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

77. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 575 E. Oak #5 was obligated under the contract for the leasing transaction referenced in paragraph 30 above.

78. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 1975 Erzinger was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

79. Respondents failed to include, either within the contract or as an attachment to the contract, a statement by the lessee affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessee at 993 N. Schuyler #2 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

80. Respondents' failure to include, either within each contract or as an attachment to each contract, a statement by the lessees affirming receipt of the information set out in 40 C. F. R. §§ 745.113(b)(2) and (3) and the Lead Hazard Information Pamphlet before the lessees were obligated under the contracts for each of the leasing transactions referenced in paragraph 30, above, constitutes 6 violations of 40 C.F.R § 745.113(b)(4), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Count 5

81. Complainant incorporates paragraphs 1 through 80 of this Complaint as though set forth fully in this paragraph

82. 40 C. F. R. § 745.113(b)(6) requires the lessor to include, either within each contract or as an attachment to each contract to lease target housing, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the date of signatures before a lessee is obligated under the contract to lease target housing.

83. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their

statements or the date of such signatures before the lessee at 1393 E. Chestnut was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

84. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 257 N. Chicago #1 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

85. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 257 N. Chicago #5 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

86. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 575 E. Oak #5 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

87. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 1975 Erzinger was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

88. Respondents failed to include, either within the contract or as an attachment to the contract, a signed and dated certification by the lessee and lessor certifying the accuracy of their statements or the date of such signatures before the lessee at 993 N. Schuyler #2 was obligated under the contract for the leasing transaction referenced in paragraph 30, above.

89. Respondents' failure to include, either within each contract or as an attachment to each contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements or the date of such signature before the lessees were obligated under each contract for each leasing transaction referenced in paragraph 30, above, constitutes six violations of 40 C. F. R. § 745.113(b)(6), of 42 U.S.C. § 4852(b)(5), and of Section 409 of TSCA.

Proposed Civil Penalty

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C. F. R. Part 745 Subpart F, authorize the Administrator of

U.S. EPA to assess a civil penalty under Section 16 of TSCA of up to \$10,000 for each violation of TSCA Section 409. U.S. EPA increased the maximum penalty amount to \$11,000 for each violation occurring after July 28, 1997 under the Civil Monetary Penalty Inflation Adjustment Act and Rule, 40 C. F. R. Part 19 (62 Fed. Reg. 35039 (1997)). In determining the amount of any civil penalty, Section 16 of TSCA requires U.S. EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

The U.S. EPA calculates penalties by applying its Section 1018 - Disclosure Rule Enforcement Response Policy dated February 2000 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the severity of each violation alleged in the complaint is based on the extent to which each violation impairs the ability of the lessee to assess information regarding hazards associated with lead-based paint, and precludes the lessee from making a fully informed decision whether or not to lease the housing or take appropriate measures to protect against lead-based paint hazards. Factors relevant to assessing an appropriate penalty include information pertaining to a Respondent's ability to pay a penalty, any evidence showing that no lead-based paint exists in the cited housing, and any evidence that Respondents have taken steps to discover the presence of and/or have taken steps to abate lead-based paint and its hazards in subject housing.

As stated in paragraph 41, above, by letter dated March 25, 2005, the U.S. EPA advised Respondents that U.S. EPA was planning to file a civil administrative complaint against Respondents for alleged violations of Section 1018 and that Section 1018 authorizes the assessment of a civil administrative penalty. The U.S. EPA asked Respondents to identify any factors Respondents thought U.S. EPA should consider before issuing the complaint, and if Respondents believed there were financial factors which bore on Respondents' ability to pay a civil penalty, the U.S. EPA asked Respondents to submit specific financial documents. Respondents did not claim an inability to pay a penalty and have provided no facts or information which would indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

Based upon an evaluation of the facts alleged in this complaint, the statutory factors enumerated above, and the Response Policy, Complainant proposes that the Administrator assess the following civil penalties against Respondent for the violations alleged in this complaint:

Count 1

42 U.S.C. § 4852d
 40 C. F. R. § 745.113(b)(1)..... \$34,540

Count 2

42 U.S.C. § 4852d
 40 C. F. R. § 745.113(b)(2).....\$25,520

Count 3

42 U.S.C. § 4852d
 40 C. F. R. § 745.113 (b)(3).....\$8,470

Count 4

42 U.S.C. § 4852d
 40 C. F. R. § 745.113(b)(4).....\$16,830

Count 5

42 U.S.C. § 4852d
 40 C. F. R. § 745.113(b)(6).....\$4,070

Proposed Gravity-Based Civil Penalty..... \$89,430

In considering the effect of the proposed \$ 89,430 penalty on Respondent, Complainant has considered the Respondents' ability to pay the penalty amount. This consideration is based upon publicly available information. However, should Respondents make available to Complainant probative financial information concerning the Respondents' financial condition, Complainant will consider this probative financial information in determining whether the proposed penalty amount should be adjusted based upon the Respondents' ability to pay the currently proposed penalty.

Rules Governing This Proceeding

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination

or Suspension of Permits” (Consolidated Rules) at 40 C. F. R. Part 22 govern this civil administrative penalty proceeding. Enclosed with the complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondents must file with the Regional Hearing Clerk the original and one copy of each document Respondents intend to include as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Respondents must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Maria Gonzalez to receive any answer and subsequent legal documents that Respondents serve in this proceeding. You may telephone Ms. Gonzalez at (312) 886-6630. Her address is:

Maria Gonzalez (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

Respondents may resolve this proceeding at any time by paying the proposed penalty by certified or cashier’s check payable to “Treasurer, United States of America” and by delivering the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

Respondents must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Maria Gonzalez and to:

Joana Bezerra, (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Opportunity to Request a Hearing

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Respondents have the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondents must specifically make the request in her answer, as described below.

Answer

Respondents must file a written answer to this complaint if Respondents contest any material fact of the complaint; contend that the proposed penalty is inappropriate; or contend that they are entitled to judgment as a matter of law. To file an answer, Respondents must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written answer on the other parties. If Respondents choose to file a written answer to the complaint, they must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

Respondents' written answers must clearly and directly admit, deny, or explain each of the factual allegations in the complaint or must state clearly that Respondents have no knowledge of a particular factual allegation. Where Respondents state that they have no knowledge of a particular factual allegation, the allegation is deemed denied. Respondents' failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation. Respondents' answer must also state:

- A. the circumstances or arguments which Respondents allege constitute grounds of defense;
- B. the facts that Respondents dispute;
- C. the basis for opposing the proposed penalty; and
- D. whether Respondents request a hearing.

If Respondents do not file a written answer within 30 calendar days after receiving this complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of

the Consolidated Rules. Default by Respondents constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondents must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondents requests a hearing, Respondents may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondents may contact Ms. Gonzalez at the address provided above. Her telephone number is (312) 886-6630.

Respondents' request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondents may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. The U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondents' continuing obligation to comply with the TSCA and any other applicable federal, state, or local law.

Consent Agreement and Final Order

The U.S. EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with you in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order.

By: Anthony L. Restaino
for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

6/22/06
Dated

US E.P.A. RECEIVED
JUN 22 2:55 PM '06

TSCA-05-2006-0012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Complaint and Opportunity for Hearing in resolution of the civil administrative action involving Willie Burrell, The Willie Burrell Trust, Dudley B. Burrell and the Dudley B. Burrell Trust, Kankakee, Illinois, was filed on June 22, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, a copy of the original to the Respondent:

CERTIFIED MAIL NO. 7001 0320 0005 8933 2027

The Dudley B. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

CERTIFIED MAIL NO. 7001 0320 0005 8933 2041

Dudley B. Burrell
300 North Indiana Avenue
Kankakee, IL 60901

CERTIFIED MAIL NO. 7001 0320 0005 8933 2010

The Willie P. Burrell Trust
300 North Indiana Avenue
Kankakee, IL 60901

CERTIFIED MAIL NO. 7001 0320 0006 1562 2535

Willie Burrell
300 North Indiana Avenue
Kankakee, IL 60901



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

US
POST
REGION 5
6 JUN 22 P2:55
REC:

Docket No. TSCA-05-2006-0012

ATTACHMENT

3

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Willie P. Burrell
300 N. Indiana Avenue
Kankakee, IL 60901

A. Received by (Please Print Clearly) B. Date of Delivery

Willie P. Burrell
C. Signature

x Willie P. Burrell
D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below: Yes No

TSCA-05-2006-0012

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

July 17, 2006 stamped

2. Article Number

(Transfer from service label)

7001 0320 0006 1562 2535

PS Form 3811, March 2001

Domestic Return Receipt

102595-01-M-1424

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box

Sonja Brooks-Woodard, RHC/E-13J
U.S. EPA - Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590



**U.S. Postal Service
CERTIFIED MAIL RECEIPT**

Sonja Brooks-Woodard B-13J

TSCA-05-2006-0012

5552 295T 9000 0220 1001

Postage	\$ 2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80



Sent To

Willie P. Burrell
300 N. Indiana Avenue
Kankakee, IL 60901

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4, if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Received by (Please Print Clearly) <i>Willie P. Burrell</i></p> <p>B. Date of Delivery <i>7/18/06</i></p> <p>C. Signature <i>Willie P. Burrell</i></p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p><i>The Willie P. Burrell Trust</i> <i>300 North Indiana Ave</i> <i>Kankakee IL 60901</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>TSCA-05-2006-0012</p> <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p><i>July 18, 2006 stamped</i></p> <p>7001 0320 0005 8933 2010</p>
<p>PS Form 3811, March 2001</p>	<p>Domestic Return Receipt 102585-01-M-1424</p>

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Sonja Brooks-Woodard E-13J
U.S. EPA Region 5
Chicago IL 60604-3590

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Sent To: *Sonja Brooks-Woodard E-13J*

Postage	\$ <i>2.55</i>
Certified Fee	<i>2.40</i>
Return Receipt Fee (Endorsement Required)	<i>1.85</i>
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ <i>6.80</i>

Sent To: *The Willie P. Burrell Trust*
Street, Apt. No., or PO Box No.: *300 North Indiana Ave*
City, State, ZIP+4: *Kankakee, IL 60901*

CHICAGO IL LOOP 60604
JUL 18 2006

ATTACHMENT

4

FILE NUMBER: 03TL295

PESTICIDES AND TOXICS ENFORCEMENT SECTION

INSPECTION REPORT

for

SECTION 1018 OF THE RESIDENTIAL LEAD-BASED PAINT HAZARD
REDUCTION ACT OF 1992

I. PURPOSE OF INSPECTION

To determine compliance with Section 1018 of Title X: The Lead Disclosure Rule, codified at 40 CFR Part 745. This was a neutral scheme inspection.

II. DATE OF INSPECTION

Inspection Date: May 28, 2003

Date of First Contact: April 10, 2003

(See Record of Telephone Conversation - Attachment E)

III. EPA INSPECTOR(S)

James O'Neil, Lead Inspector (312-353-0966)

IV. FACILITY NAME/ADDRESS

B & D Management Corporation

300 N. Indiana Ave.

Kankakee, Illinois 60901

Property Telephone: (815) ~~939-7220~~

933 6087

V. RESPONSIBLE FACILITY OFFICIAL

Mrs. Burrell, Owner/Manager

VI. OTHER FACILITY PARTICIPANT(S)

None

*Guestview Village
815 939 7220*

VII. INSPECTION SUMMARY

Opening Conference

On May 28, 2003 at 9:30 AM , I meet with Willie Pearl Burrell at the office of B&D Management located at 300 N. Indiana Avenue, Kankakee, Illinois 60901. Mrs. Burrell was present during the entire inspection. I explained the purpose of the inspection and how it would be conducted. I then issued the Notice of Inspection (Attachment A) and the TSCA Inspection Confidentiality Notice (Attachment B) both of which were signed by Mrs. Burrell. Mrs. Burrell was also given a copy of Protect Your Family from Lead in Your Home ("Pamphlet"); the March 6, 1996 Federal Register; the Interpretive Guidance for the Real Estate Community Parts I, II, and III; and the U.S. EPA model format for the disclosure of lead based paint and lead based paint hazard information. A verbal overview of the materials and requirements was also provided.

Facility Background

Mrs. Burrell said she and her husband owned and managed 149 properties with 200 residential units. Only 69 of the units were built before 1978. The properties consist of a mixture of single family homes, duplex homes, and multi family apartments. According to Mrs. Burrell the Kankakee County Health Department inspected the housing units they own for lead based paint and lead based paint hazards and issued "Lead Safe Home Certificates"(Attachment F). She said she would contact the Kankakee County Health Department and have copies of "Lead Safe Home Certificates" sent for the properties the U.S. EPA selected for inspection. Mrs. Burrell said she did not receive any copies of the lead based paint or lead based paint hazards testing. Mrs. Burrell said no abatement orders or mitigation notices were received from the Kankakee Health Department. Mrs. Burrell showed me copies of the U.S. EPA approved "Protect Your Family From Lead in Your Home" pamphlet she was passing out to tenants.

On July 15, I called the Kankakee County Health Department and talked to Linda Coffre who said the "Lead Safe Home Certificates" were based on a visual inspection and did not include lead testing. According to Linda Coffre the owners and managers of the properties that receive the "Lead Safe Home Certificates" are told that lead may be present in the housing unit.

Lease documents for seven units owned and managed by B & D Management Corporation in Kankakee, Illinois were reviewed and the results of the review are summarized in the chart below.

Complete Address	Date Lease Signed	Disclosure Form Present? (Y or N)	745.107(a)(1) (Y or N)	745.113(b)(1) (Y or N)	745.113(b)(2) (Y or N)	745.113(b)(3) (Y or N)	745.113(b)(4) (Y or N)	745.113(b)(5) (Y or N)	745.113(b)(6) (Y or N)	Date of Birth of Child <6	Date of Abatement Order
1393 E. Chesnut	12-04-01	N	Y	N	N	N	N	-	N	None	None
257 N. Chicago, 1	09-20-02	N	Y	N	N	N	N	-	N	11-25-97	None
257 N. Chicago, 5	04-01-03	N	Y	N	N	N	N	-	N	3-11-03	None
275 E. Hawkins, 4	09-03-91	N	Y	N	N	N	N	-	N	None	None
575 E. Oak, 5	02-07-03	N	Y	N	N	N	N	-	N	None	None
1975 Erzinger	02-23-02	N	Y	N	N	N	N	-	N	None	None
993 N. Schuyler, 2	11-22-02	N	Y	N	N	N	N	-	N	None ^{144/} ₁₉₁₃	None

745.107(a)(1) - EPA pamphlet provided
 745.113(b)(1) - Lead Warning Statement included
 745.113(b)(2) - Lessor Disclosure Statement
 745.113(b)(3) - Included list of reports
 745.113(b)(4) - Lessee Statement re: receipt of 1) disclosure 2) reports and 3) EPA pamphlet
 745.113(b)(5) - Agent statement included
 745.113(b)(6) - Includes signatures/dates of Lessor/Lessee
 N/A = Not Available

Facility Summary

Lease documents from seven residential units were reviewed . The documents did not appeared not to be in compliance with Section 1018. I made photocopies of the seven lease documents and took them with me to EPA Region 5 offices for further review (Attachment C). The lease documents indicated that two children less than six years of age are residing in the housing units.

I described three possible determinations of the inspection, and indicated that the final compliance determination would be made by the U.S. EPA, Region 5 office. A Receipt for Documents form (Attachment D) was submitted and signed by the Mrs. Burrell. A copy was left with the property.

VIII. ATTACHMENTS

- A. Notice of Inspection
- B. TSCA CBI Form
- C. Copies of ten (7) lease documents
- D. Receipt for Documents
- E. Record of Telephone Conversation
- F. Lead Safe Home Certificate

Inspector's Signature: _____

James O'Neil

Date of Report: _____

7-18-03

*****ENFORCEMENT SENSITIVE*****

EXEMPT FROM FOIA

SUMMARY OF REPORT OF SECTION 1018 COMPLIANCE INSPECTION

FACILITY

Property Name: B & D Management Corporation
Property Address: 300 N Indiana Ave
Kankakee, IL 60901
815-939-7220
Property Owner: Mr. & Mrs Burrell
Representative: Mrs. Burrell

INSPECTOR(S)

James O'Neil, 312-353-0966

DATE OF INSPECTION

April 28, 2003

FILE#

03TL295

SUMMARY OF POTENTIAL VIOLATIONS/NON-COMPLIANCE

Seven violations of 40CFR 745.113(b)(1) Failure to include within or as an attachment to the contract to lease target housing the "Lead Warning Statement"

Seven violations of 40CFR 745.113(b)(2) Failure to include as an attachment or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and /or lead-based paint hazards or indicating no knowledge of the presence of lead-based paint and /or lead based paint hazards.

Seven violations of 40CFR745.113(b)(3) Failure to include as an attachment or within the contract a list of any records or reports available to the Lessor that pertain to lead hazard information or the failure to indicate no such list exists.

*****ENFORCEMENT SENSITIVE*****

EXEMPT FROM FOIA

SUMMARY OF REPORT OF SECTION 1018 COMPLIANCE INSPECTION

Seven violations of 40CFR745.113(b)(4) Failure to include in the contract for lease a statement by the Lessee affirming receipt of the information required by 40CFR745.113(b)(2)and (b)(3) and the lead hazard pamphlet required under 15 USC 2696

Seven violations of 40CFR745.113(b)(6) Failure to include in the contract for lease signatures of the Lessor, Agent and Lessee certifying to the accuracy of their statements, as well as dates.

Inspector's Signature: James O'Neil

Date: 7-18-03



ATTACHMENT A

US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

TOXIC SUBSTANCES CONTROL ACT

LEAD PAINT -- NOTICE OF INSPECTION

1. INVESTIGATION IDENTIFICATION			2. TIME 9:00AM	3. COMPANY NAME B & D Management
DATE 5-28-03	INSPECTION NO.	DAILY SEQ. NO. 1		
4. INSPECTOR'S ADDRESS U.S. Environmental Protection Agency (Region 5) 77 W. Jackson Blvd (DT-8J) Chicago, IL 60604			5. FACILITY'S ADDRESS 300 N. Indiana Ave Kankakee, IL 60901	

For internal EPA use. Copies of this form may be provided to recipient as acknowledgment of this notice.

REASON FOR INSPECTION

This inspection involves the review of records, files, papers, and shall include copies of Title X, Section 1018 Disclosure Rule documents for residential real estate and/or lease transactions.

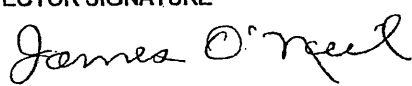

In addition, this inspection extends to (Check appropriate blocks):

- A. Financial data
- B. Sales data
- C. Pricing data
- D. Personal data
- E. Research data
- F. Lease data

The nature and extent of the inspection of such data specified in A through F is to determine compliance with Title X, Section 1018.

I acknowledge voluntary consent to allow the representatives of EPA named below to review real estate notification and disclosure forms and any other documents to determine compliance with Title X, Section 1018 and to allow the EPA representative to copy any of these documents.


 Signature 5/28/03
 Date

INSPECTOR SIGNATURE 		CLAIMANT SIGNATURE 	
NAME James O'Neil		NAME Willie Pearl Burrell	
TITLE Lead Inspector	DATE SIGNED 5-28-03	TITLE Office Manager	DATE SIGNED 5/28/03



US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
TOXIC SUBSTANCES CONTROL ACT
TSCA INSPECTION CONFIDENTIALITY NOTICE

1. INVESTIGATION IDENTIFICATION			4. FACILITY NAME B & D Management
DATE 5-28-03	INSPECTION NO. -	DAILY SEQ. NO. 1	
2. INSPECTOR'S NAME James O'Neil			5. ADDRESS 300 N. Indiana Ave Kankakee, IL 60901
3. INSPECTOR'S ADDRESS U.S. Environmental Protection Agency (Region 5) 77 W. Jackson Blvd. (DT-83) Chicago, IL 60604			6. NAME OF CHIEF EXECUTIVE OFFICER
			7. TITLE

For internal EPA use. Copies may be provided to recipient as acknowledgment of this notice.

TO ASSERT A TSCA CONFIDENTIAL BUSINESS INFORMATION CLAIM

It is possible that EPA will receive public requests for release of the information obtained during the inspection of the facility cited above. Such requests will be handled by EPA in accordance with provisions of the Freedom of Information Act (FOIA), 5 USC 552; EPA regulations issued thereunder, 40 CFR, Part 2; and the Toxic Substances Control Act (TSCA), Section 14. EPA is required to make inspection data available in response to FOIA requests unless the EPA Administrator determines that the data is entitled to confidential treatment, or may be withheld from release under other exceptions of FOIA.

Any or all information collected by EPA during the inspection may be claimed as confidential if it relates to trade secrets, commercial, or financial matters that you consider to be confidential business information (CBI). If you assert a CBI claim, EPA will disclose the information only to the extent, and by means of the procedures set forth in the regulations (cited above) governing EPA's treatment of CBI. Among other things, the regulations require that EPA notify you in advance of publicly disclosing any information claimed as CBI.

A CBI claim may be asserted at any time prior to or during the inspection. If a CBI claim is received after the inspection, EPA will make such efforts as are administratively practicable to protect the information. However, EPA cannot assure that such efforts will be effective in light of the possibility of prior disclosure. If it is more convenient for you to assert a CBI claim on your own stationary or by making the individual documents or samples "TSCA confidential business information," it is not necessary for you to use this notice. The inspector will be glad to answer any questions you may have regarding EPA's CBI procedures.

While you may claim any collected information or sample as CBI, such claims are not likely to be upheld if they are challenged unless the information meets the following criteria:

- Your company has taken measures to protect the confidentiality of the information and it intends to continue to take such measures.

- The information is not, and has not been, reasonably obtainable without your company's consent by other persons (other than governmental bodies), or by use of legitimate means (other than discovery based on showing of special need in a judicial or quasi-judicial proceeding).
- The information is not publicly available elsewhere.
- Disclosure of the information would cause substantial harm to your company's competitive position.

At the completion of the inspection, you will be given a receipt for all documents, samples, and other materials collected. At that time, you may make claims that some or all of the information is CBI.

If you are not authorized by your company to assert a CBI claim, this notice will be sent by certified mail, along with the receipt for documents, samples, and other materials to the Chief Executive Officer of your company within 2 days of this date. The Chief Executive Officer must return a statement specifying any information which should receive CBI treatment.

The statement from the Chief Executive Officer should be addressed to:

MR. TOM CROSETTO DCO, (DT-8J)
U.S. EPA REGION 5
77 W. JACKSON BLVD
CHICAGO, IL 60604

and mailed by registered, return-receipt requested mail within 7 calendar days of receipt of this notice. Claims may be made at any time after the inspection, but the inspection data will not be entered into the TSCA/CBI security system until an official confidentiality claim is made. The data will be handled under EPA's routine security system unless and until a claim is made. If no confidentiality claim accompanies the information when it is received by EPA, the information may be made available to the public without further notice to the business.

TO BE COMPLETED BY FACILITY OFFICIAL RECEIVING THIS NOTICE
I acknowledge receipt of this notice:

If there is no one on the premise who is authorized to make CBI claims for this facility, a copy of this notice and other inspection materials will be sent to the company's Chief Executive Officer. If there is another official who should also receive this information, please designate below.

SIGNATURE <i>Willie Pearl Burke</i>	NAME
NAME <i>Willie Pearl Burke</i>	TITLE
TITLE <i>Office Manager</i>	DATE SIGNED <i>5/28/03</i>
ADDRESS	

ATTACHMENT "R"

PROPERTIES ADDRESS

- ① 993 N. SCHUYLER — #2 — 1974 — 4 FLAT —
 733 N. INDIANA
- ① 360 E. MULBERRY — 11/75 — 2 Flat — (360) + 370 —
 735 N. HARRISON HUD
 706 N. HARRISON HA
- ② 671 N. CHICAGO — After 1978
 620 N. CHICAGO → Lead Safe — lease —
 705 N. ROSEWOOD
 624 N. ROSEWOOD HA
 622 N. ROSEWOOD HUD
 604 N. ROSEWOOD
 838 N. WILDWOOD — 4 UNIT — VACANT
 291-293 E. LOCUST
 395-397 N. DEARBORN — (395) VACANT S
 377 N. INDIANA — HUD
 311 N. HARRISON
 321 N. HARRISON — HUD
 335 N. HARRISON
 341 N. HARRISON
 359 N. HARRISON
 371 N. HARRISON
 385 N. HARRISON
 393 N. HARRISON
- ② 689 N. HAMMES Section 8
 749 N. HAMMES
- ② 275 E. HAWKINS — 1972 — 4 UNIT — (#4)
 617 N. ROSEWOOD
- ③ 1975 ERZINGER — House — occupied — year —
 purchased in question —

CONT. PROPERTIES ADDRESS
PAGE 2

- 4/ 575 E. OAK → #5 - 1974 -
- 206 N. CHICAGO - Section 48
- 247 N. CHICAGO - HUD after 1277 - 1984
- 52/ 257 N. CHICAGO - 8 APT - # KCHA - # ~~1~~ # ~~1~~ 1 & 5
- 265 N. CHICAGO - HUD
- 560 E. CHESTNUT - 4 APT - KCHA
- 560A E. CHESTNUT - HUD
- 238 N. GREENWOOD - HUD
- 215 N. ROSEWOOD - VACANT
- 281 N. ROSEWOOD - HUD
- 184 N. EVERGREEN - HUD
- 195 N. MYRTLE - HUD
- 1320 E. CHESTNUT - 1983
- 7/ 1393 E. CHESTNUT - SF - ~~1978~~ * Before 1978
- 1395 E. CHESTNUT - 1980 + EARLY 80
- 1725 E. CEDAR - Section 8
- 1775 E. CEDAR - HUD
- 352 N. ILLINOIS - VACANT
- 480 S. INDIANA - KCHA

Application * Occupan

1975 Enginger Martha Eggleston - No children
Called
→ Dudley Burrowell



ATTACHMENT D

US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

TOXIC SUBSTANCES CONTROL ACT

LEAD PAINT - RECEIPT FOR DOCUMENTS

1. INVESTIGATION IDENTIFICATION			2. COMPANY NAME
DATE 5-28-03	INSPECTION NO.	DAILY SEQ. NO. 1	B & D Management
3. INSPECTOR ADDRESS U.S. Environmental Protection Agency (Region 5) 77 W. Jackson Blvd. (DT-8J) Chicago, IL 60604			4. COMPANY ADDRESS 300 N. Indiana Ave Kankakee, IL 60901

For internal EPA use. Copies of this form may be provided to recipient as acknowledgment of the documents mixtures described below collected in connection with the administration and enforcement of the Title X, Section 1018 Disclosure Rule.

RECEIPT OF DOCUMENT(S) DESCRIBED IS HEREBY ACKNOWLEDGED:

NO.	DESCRIPTION
	<p>Lease document for the following properties located in Kankakee, IL:</p> <ul style="list-style-type: none"> 1393 E. Chestnut - 257 N. Chicago - Apt. #1 257 N. Chicago - Apt #5 275 E. Hawkins - Apt #4 575 E. Oak - Apt #5 1975 Erzinger - SF 993 N. Schuyler, Apt. #2

OPTIONAL:

DUPLICATE COPIES: REQUESTED AND PROVIDED

NOT REQUESTED

INSPECTOR SIGNATURE

James O'Neil

CLAIMANT SIGNATURE

Willie Pearl Jurrell

NAME

James O'Neil

NAME

Willie Pearl Jurrell

TITLE

Lead Inspector

DATE SIGNED

5-28-03

TITLE

Office Manager

DATE SIGNED

5/28/03

ATTACHMENT E
RECORD OF TELEPHONE CONVERSATION

On April 10, 2003, I telephoned B & D Management Corporation and talked to Mrs. Burrell. I identified myself and explained to her that the US EPA was doing random inspections for compliance with Section #1018 of Title X, the lead base paint disclosure rule on rental properties built prior to 1978. I said that the US EPA wanted to do an inspection of the properties owned and managed by B & D Management Corporation. Mrs. Burrell agreed to do the inspection on April 28, 2003 after returning from Court in Atlanta Georgia. The inspection was later rescheduled to May 7th 2003 because Mrs. Burrell's daughter had a baby.

Attachment F

Kankakee County Health Department

**Lead Safe Home
Awards This Certificate To**

Billie Burrell - 195 North Myrtle Avenue, Kankakee, IL
Owner(s)

November 17, 2000

Date of Inspection

Shirley L. Burrell
Administrator

Richard D. Ogilvie
Lead Inspector

© Goes 45512

LITHO IN U.S.A.

ATTACHMENT

5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MAR 25 2005

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 9028 1031

B&D Management Corporation
Willie Burrell, Registered Agent
300 N. Indiana Ave.
Kankakee, IL 60901

Dudley & Willie P. Burrell
300 N. Indiana Ave.
Kankakee, IL 60901

Willie Burrell
377 N. Indiana,
Kankakee, IL 60901-2471

Willie Pearl Burrell Trust
c/o Willie Burrell
377 N. Indiana
Kankakee, IL 60901-2471

Dudley Burrell
5945 Muriel Lane,
Saint Anne, IL 60964

Dudley Burrell Trust
c/o Dudley Burrell
5945 Muriel Lane
Saint Anne, IL 60964

Zinia Burrell
256 E. Locust Street
Kankakee, IL 60901

Notice of Intent to File Civil Administrative Complaint Against B&D Management Corporation, the Willie Pearl Burrell Trust, the Dudley Burrell Trust, Willie Burrell, Dudley Burrell and/or Zinia Burrell

The United States Environmental Protection Agency (U.S. EPA) plans to file an administrative complaint for civil penalties against you. It is our understanding that you are a lessor, owner, trustee and/or trust beneficiary of the properties identified below. We will allege that you violated the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*, in the rental of that housing by failing to provide the lessee (renter), either within the rental contract or as an attachment to that rental contract, with: a) a lead warning statement, b) an accurate lead disclosure statement, c) a list of any records or reports available to you pertaining to lead-based paint in that housing, d) a statement by the renter affirming receipt of the information, and e) signatures of the lessor and renter certifying to the accuracy of their statements, prior to entering into each of the following rental contracts:

	Address	Apt Number	Date of Lease
1	1393 E. Chestnut		12-04-01
2	257 N. Chicago	# 1	09-20-02
3	257 N. Chicago	# 5	04-01-03
4	575 E. Oak	# 5	02-07-03
5	1975 Erzinger	S/F	02-22-03
6	993 N. Schuyler	# 2	11-22-02

The Residential Lead-Based Paint Hazard Reduction Act is also known as Section 1018 of Title X of the Housing and Community Development Act of 1992 and/or the Real Estate Notification and Disclosure Rule. In passing this legislation, Congress found that:

- Low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of 6
- Even at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems
- The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children

To address the dangers in approximately 3,800,000 American homes, Congress directed the federal government to ensure that the public was educated concerning the hazards and sources of lead-based paint poisoning and to take steps to reduce and eliminate the hazards.

Key components of the national strategy to reduce and eliminate the threat of childhood lead poisoning are mandatory disclosure and notification requirements that must be made as part of rentals and sales of residential housing built prior to 1978.

For the health and safety reasons stated above, these violations are considered to be very serious, and U.S. EPA is authorized to seek penalties up to \$11,000 per violation. In developing the penalty proposed in a complaint, we consider the particular facts and circumstances of the case as well as our penalty policy. Based on information currently available to us, we plan to propose a penalty of \$89,430 in the complaint. This letter is not a demand to pay a penalty. We will not ask you to pay a penalty until we file the complaint or a final order.

Before issuing the complaint, we are giving you the opportunity to provide any facts and other information that you believe we should consider. Examples of relevant facts and information

might include: whether or not the property was constructed prior to 1978; the existence of written disclosures to the renter regarding lead-based paint (including disclosures prior to renewal of a lease); the existence of records regarding lead-based paint on the properties; whether we have identified the proper parties; trust documents indicating the entity to pursue or the scope of liability; ownership documents indicating the owners and the interests owned; corporate dissolution documents indicating the status of a corporation and the transfer of assets; evidence that you did not violate the law; evidence that you relied on compliance assistance from U.S. EPA or a state agency; financial information bearing on your ability to pay a penalty; and any other information that you believe we should consider.

If you believe that you will be unable to pay a \$89,430 penalty because of financial reasons, please submit financial statements, including balance sheets, income statements, and tax returns for the past five years. (Please note that financial information is *only* required if you contend that you cannot pay the penalty.) Also attached is an information sheet entitled *Office of Enforcement and Compliance Assurance Information Sheet: U.S. EPA Small Business Resources*, which may be helpful if you qualify as a small business.

You may assert a claim of business confidentiality (CBI) under 40 C.F.R. part 2, subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. part 2, subpart B. If you fail to assert a CBI claim, U.S. EPA may make all submitted information available, without further notice, to any member of the public who requests it.

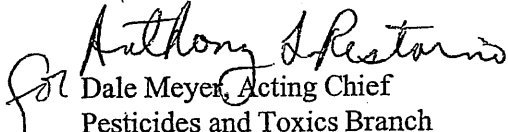
We may use any information you submit in support of an administrative, civil, or criminal action. Within ten calendar days after you receive this letter, please send any response to:

Joana Bezerra (DT-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

We intend to file the complaint against you 14 calendar days after you receive this letter, unless you give us information that the complaint is not substantially justified.

Thank you for your prompt attention to this matter. If you have any questions, please telephone Ms. Bezerra at (312) 886-6004.

Sincerely,


for Dale Meyer, Acting Chief
Pesticides and Toxics Branch

Enclosure

ATTACHMENT

6



Jurisconsultus

Edward Lee

Attorney

507 South Harrison
Kankakee, Illinois 60901.
(815) 939-3533

September 16, 2005

Joana Bezerra
(DT-8J)
U.S. EPA- Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: Notice of Intent to file Civil Action
Letter dated March 25, 2005

Dear Ms.: Bezerra

I am writing on behalf of my clients the Burrell Family, there seems to be an issue of possible lead in the buildings named in your letter to Mrs. Burrell, dated March 25, 2005, attached is a copy.

I have enclosed a Lead Safe Home Certificate for each of the addresses listed except Erzinger. For the Erzinger property, I have enclosed a letter from the Kankakee County Health Department, which indicates all surfaces except one windowsill that faces an auto body shop are negative for lead. The Health Department has re inspected the Erzinger Property, after it was thoroughly cleaned and painted; we expect a negative result from that inspection.

Additionally, the properties located at 257 North Chicago Apt. #1, 1975 Erzinger and 993 North Schuyler Avenue #2 were vacant prior to a negative result for lead.

If you need further information, please contact me.

Sincerely,

Edward Lee
EL: mp

KANKAKEE COUNTY HEALTH DEPARTMENT

2390 West Station Street
Kankakee, Illinois 60901

**Lead Safe Home
Awards This Certificate To**

Willie P. Burrell Declaration of Trust Re: 275 East Hawkins Units 2, 4,

Willie P. Burrell
Administrator

Andrew S. Coffey, R.H.
Inspector

April 7, 2005
Date of Final Inspection

KANKAKEE COUNTY HEALTH DEPARTMENT

2390 West Station Street
Kankakee, Illinois 60901

**Lead Safe Home
Awards This Certificate To**

Willie P. Burrell Declaration of Trust Re: 575 East Oak Units 4, 5

Ernie Schegmiller
Administrator

Frank A. Coffey, II
Inspector

April 7, 2005
Date of Final Inspection

KANKAKEE COUNTY HEALTH DEPARTMENT

2390 West Station Street
Kankakee, Illinois 60901

**Lead Safe Home
Awards This Certificate To**

Willie P. Burrell Declaration of Trust Re: 993 North Schuyler Units 4, 5

Willie P. Burrell

Administrator

Annita S. Coffey, AIA

Inspector

April 7, 2005
Date of Final Inspection

KANKAKEE COUNTY HEALTH DEPARTMENT

2390 West Station Street
Kankakee, Illinois 60901

**Lead Safe Home
Awards This Certificate To**

Willie P. Burrell Declaration of Trust Re: 257 No Chicago Units 1,4,5

Francis S. ...
Administrator

... D. Coffey, R.R.
Inspector

April 7, 2005
Date of Final Inspection



KANKAKEE COUNTY
HEALTH
DEPARTMENT

2390 West Station Street
Kankakee, Illinois 60901
phone 815-937-3560
tty 815-937-8520
fax 815-937-3568

1995 Erzinger
Re: Mr. Dudley Burrell Declaration of Trust

April 13, 2005

Areas To Be Mitigated

House Interior

Window - South West Bedroom
Trough only

House Exterior

Field Notes

This is a single family dwelling unit. All areas in the unit tested negative for lead bearing surfaces with the exception on one window in the south west bedroom. This window faces an auto body shop.

04/13/05

lc

Kankakee County Health Department

2390 West Station Street
Kankakee, Illinois 60901

LEAD SAFE HOME
Awards This Certificate To

Willie P. Burrell-DOT - 1393 East Chestnut
Owner(s)

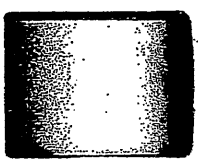
Bonnie Schaefer
Administrator

6/3/03
Date of Final Inspection

Brenda J. Pfeiffer
Lead Inspector

#4

C



ATTACHMENT

7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

Mr. Edward Lee, Esq.
507 South Harrison Avenue
Kankakee, IL 60901

2 R DEC 2005

Re: Lead Free Demonstrations

Dear Mr. Lee:

On our call with you and Mrs. Burrell on December 14, 2005, you indicated that it was your understanding that the properties referenced in our March 25, 2005 pre-filing notice letter are lead free, and asked us for a written statement of what we would require to demonstrate the properties were lead free. We indicated to you that the Kankakee health department "lead safe" certificates you provided in your response dated September 16, 2005 did not demonstrate that the units were free of lead. To do so, you need a Lead-based Paint inspection Report based on the *Guidelines for the Evaluation and Control of Lead-Based Paint in Housing* (HUD 1539-LBP, 1995, revised November 1997). I am enclosing a copy of those guidelines. The report should demonstrate that the target housing is lead free. As defined at 40 C.F.R. § 745.103, Lead-Based paint free housing means housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. As stated on our call, the Kankakee lead safe certificates would not relieve a seller or lessor from the disclosures requirements for units that might contain lead.

Please provide documentation that the apartments in question are lead free by January 31, 2006.

I am also enclosing copies of our Section 1018 Disclosure Rule Enforcement Response Policy and the Supplemental Environmental Projects Policy.

Please do not hesitate to call me at (312) 886-6630, if you have any questions or comments regarding this matter.

Sincerely yours,

Maria Gonzalez
Associate Regional Counsel

Enclosure

cc: Willie Burrell



U.S. Department of Housing and Urban Development

**Guidelines for the
Evaluation and Control
of Lead-Based Paint
Hazards in Housing**

**Chapter 7:
Lead-Based Paint Inspection**

1997 Revision

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Step-by-Step Summary

Lead-Based Paint Inspection: How to Do It

Note: This 1997 Revision replaces Chapter 7 of the 1995 *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*

1. See Chapters 3, 5 and 16 for guidance on when a lead-based paint inspection is appropriate. A lead-based paint inspection will determine:
 - Whether lead-based paint is present in a house, dwelling unit, residential building, or housing development, including common areas and exterior surfaces; and
 - If present, which building components contain lead-based paint.

The U.S. Department of Housing and Urban Development (HUD) and the U.S. Environmental Protection Agency (EPA) define an inspection as a surface-by-surface investigation to determine the presence of lead-based paint (see 40 CFR part 745 and Title X of the 1992 Housing and Community Development Act). The sampling protocols in this chapter fulfill that definition.

2. The client should hire a certified (licensed) lead-based paint inspector or risk assessor (see 40 CFR part 745). Lists of inspectors and laboratories can be obtained by calling 1-888-LEADLIST or through the Internet at www.leadlisting.org. Lists are also available through State agencies (call 1-800-LEAD-FYI for the appropriate local contact). More than half of all States now require a license or certification to perform a lead-based paint inspection. If the State does not yet have a certification law, an inspector or risk assessor certified under another State's law should be used. By the fall of 1999, all lead-based paint inspections must be performed by a certified lead-based paint inspector or risk assessor in accordance with 40 CFR part 745, section 227.
3. The inspector should use the HUD/EPA standard for lead-based paint of 1.0 mg/cm² or 0.5% by weight, as defined by Title X of the 1992 Housing and Community Development Act. If the applicable standard in the jurisdiction is different, the procedures in this chapter will need to be modified. For the purposes of the HUD/EPA lead-based paint disclosure rule, 1.0 milligrams per square centimeter (mg/cm²) or 0.5% by weight are the standards that must be used.
4. Obtain the *XRF Performance Characteristic Sheet* for the X-Ray Fluorescence (XRF) lead paint analyzer to be used in the inspection. It will specify the ranges where XRF results are positive, negative or inconclusive, the calibration check tolerances, and other important information. Contact the National Lead Information Center Clearinghouse (1-800-424-LEAD) to obtain the appropriate *XRF Performance Characteristic Sheet*, or download it from the Internet at www.hud.gov/lea/leahome.html. *XRF Performance Characteristic Sheets* have been developed by HUD and EPA for most commercially available XRFs (see Addendum 3 of this chapter).
5. Report lead paint amounts in mg/cm² because this unit of measurement does not depend on the number of layers of non-lead-based paint and can usually be obtained without damaging the painted surface. All measurements of

lead in paint should be in mg/cm², unless the surface area cannot be measured or if all paint cannot be removed from the measured surface area. In such cases, concentrations may be reported in weight percent (%) or parts per million by weight (ppm).

6. Follow the radiation safety procedures explained in this chapter, and as required by the U.S. Nuclear Regulatory Commission and applicable State and local regulations when using XRF instruments.
7. Take at least three calibration check readings before beginning the inspection. Additional calibration check readings should be made every 4 hours or after inspection work has been completed for the day, or according to the manufacturer's instructions, whichever is most frequent. Calibration checks should always be done before the instrument is turned off and again after it has been warmed up (calibration checks do not need to be done each time an instrument enters an automatic "sleep" state while still powered on).
8. When conducting an inspection in a multifamily housing development or building, obtain a complete list of all housing units, common areas, and exterior site areas. Determine which can be grouped together for inspection purposes based on similarity of construction materials and common painting histories. In each group of similar units, similar common areas, and similar exterior sites, determine the minimum number of each to be inspected from the tables in this chapter. Random selection procedures are explained in this chapter.
9. For each unit, common area, and exterior site to be inspected, identify all testing combinations in each room equivalent. A testing combination is characterized by the room equivalent, the component type, and the substrate. A room equivalent is an identifiable part of a residence (e.g., room, house exterior, foyer, etc.). Painted surfaces include any surface coated with paint, shellac, varnish, stain, paint covered by wallpaper, or any other coating. Wallpaper should be assumed to cover paint unless building records or physical evidence indicates no paint is present.
10. Take at least one individual XRF reading on each testing combination in each room equivalent. For walls, take at least four readings (one reading on each wall) in each room equivalent. A different visible color does not by itself result in a separate testing combination. It is not necessary to take multiple XRF readings on the same spot, as was recommended in the 1990 Interim Guidelines for Public and Indian Housing.
11. Determine whether to correct the XRF readings for substrate interference by consulting the *XRF Performance Characteristic Sheet*. If test results for a given substrate fall within the substrate correction range, take readings on that bare substrate scraped completely clean of paint, as explained in this chapter.
12. Classify XRF results for each testing combination. Readings above the upper limit of the inconclusive range are considered positive, while readings below the lower limit of the inconclusive range are considered negative. Readings within the inconclusive range (including its boundary values) are classified as inconclusive. Some instruments have a threshold value separating ranges of readings considered positive from readings considered negative for a given substrate. Readings at or above the threshold are considered positive, while readings below the threshold are considered negative.
13. In single-family housing inspections, all inconclusive readings must be confirmed in the laboratory, unless the client wishes to assume that all inconclusive results are positive. Such an assumption may reduce the cost of an inspection, but it will probably increase subsequent abatement, interim control, and maintenance costs, because laboratory analysis often shows that testing combinations with inconclusive readings do not in fact contain lead-based paint. Inconclusive readings cannot be assumed to be negative.

14. In multifamily dwelling inspections, XRF readings are aggregated across units and room equivalents by component type. Use the flowchart provided in this chapter (Figure 7.1) to make classifications of all testing combinations or component types in the development as a whole, based on the percentages of positive, negative, and inconclusive readings.
15. If the inspector collected paint-chip samples for analysis, they should be analyzed by a laboratory recognized under the EPA's National Lead Laboratory Accreditation Program (NLLAP). Paint-chip samples are collected when the overall results for a component type are inconclusive. They may be collected by a properly trained and certified inspector, client, or third party, if permitted by State law. Paint-chip samples should contain all layers of paint (not just peeled layers) and must always include the bottom layer. If results will be reported in mg/cm², including a small amount of substrate with the sample will not significantly bias results. Substrate material should not, however, be included in samples reported in weight percent. Paint from 4 square inches (25 square centimeters) should provide a sufficient quantity for laboratory analysis. Smaller surface areas may be used, if the laboratory indicates that a smaller sample is acceptable. In all cases, the surface area sampled must be recorded.
16. The client or client's representative should evaluate the quality of the inspection using the procedures in this chapter.
17. The inspector should write an inspection report indicating if and where lead-based paint is located in the unit or the housing development (or building). The report should include a statement that the presence of lead-based paint must be disclosed to potential new buyers (purchasers) and renters (lessees) prior to obligation under a sales contract or lease, based on Federal law (see 24 CFR part 35, subpart H or 40 CFR part 745, subpart F). The suggested language below may be used. The inspection report should contain detailed information on the following:
 - Who performed the inspection;
 - Date(s);
 - Inspector's certification number;
 - All XRF readings;
 - Classification of all surfaces into positive or negative (but not inconclusive) categories, based on XRF and laboratory analyses;
 - Specific information on the XRF and laboratory methodologies;
 - Housing unit and sampling location identifiers;
 - Results of any laboratory analyses; and
 - Additional information described in Section IV of this chapter.

This chapter also contains language that may be used in an inspection report in the case where no lead-based paint has been identified (see the suggested language below).

Recommended Report Language On Disclosure For Use In Lead-Based Paint Inspections

"A copy of this summary must be provided to new lessees (tenants) and purchasers of this property under Federal law (24 CFR part 35 and 40 CFR part 745) before they become obligated under a lease or sales contract. The complete report must also be provided to new purchasers and it must be made available to new tenants. Landlords (lessors) and sellers are also required to distribute an educational pamphlet approved by the U.S. Environmental Protection Agency and include standard warning language in their leases or sales contracts to ensure that parents have the information they need to protect their children from lead-based paint hazards."

(See Section IV of Chapter 7 of the HUD *Guidelines* for further details)

Recommended Report Language for Inspections Where No Lead-Based Paint Was Identified

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm² in paint was found on any building components, using the inspection protocol in Chapter 7 of the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997 Revision)*. Therefore, this dwelling qualifies for the exemption in 24 CFR part 35 and 40 CFR part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm², which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the inspector and should also be kept by the owner and all future owners for the life of the dwelling."

(See Section IV of Chapter 7 of the HUD *Guidelines* for further details)

Chapter 7: Lead-Based Paint Inspection

Note: This 1997 Revision replaces Chapter 7 of the 1995 *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*

I. Introduction

A. Purpose

This chapter explains methods for performing lead-based paint inspections in housing to determine:

- Whether lead-based paint is present in a house, dwelling unit, residential building, or housing development, including common areas and exterior surfaces; and
- If present, which building components contain lead-based paint.

The information presented here is intended for both inspectors and persons who purchase inspection services (clients). Both an inspection protocol and methods for determining the quality of an inspection are provided. Means for locating certified lead inspectors are also described.

1. Disclosure of Inspections

Federal law now requires that the results of lead-based paint inspections and risk assessments be disclosed to prospective renters (lessees, tenants) entering into a new lease and renters renewing an old lease, and to prospective purchasers prior to obligation under a sales contract, if lead-based paint is found. If the inspection described in this chapter finds that lead-based paint is not present in units which are to be leased, the dwelling unit and, for multifamily housing, all other dwelling units characterized by the inspection are exempt from disclosure requirements. However, for dwelling units which are being sold (not leased), the owner still has certain legal responsibilities to fulfill under Federal

law even if no lead-based paint is identified. See the HUD and EPA regulations in 24 CFR part 35 or 40 CFR part 745, respectively, for additional details.

You may contact the National Lead Information Center Clearinghouse (1-800-424-LEAD) to obtain HUD and EPA brochures, question-and-answer booklets, the regulations mentioned above (and the descriptive preamble to those regulations), and other information on lead-based paint disclosure. See Section IV for recommended inspection report language regarding these disclosure requirements.

2. Limitation of this Inspection Protocol

The protocol described here is not intended for investigating housing units where children with elevated blood lead levels are currently residing. Such a protocol can be found in Chapter 16 or may be available from a State or local health department.

3. Documentation of Results

The complete set of forms provided at the end of this chapter may be used in single-family and multifamily housing. Equivalent forms or computerized reports may also be used to document the results of inspections.

B. Qualifications of Inspectors and Laboratories

1. Where to Find Inspectors and Laboratories

Lists of State-licensed (certified) inspectors and accredited laboratories recognized under the U.S. Environmental Protection Agency (EPA) National Lead Laboratory Accreditation Program (NLLAP) are often available from State or local agencies. Call the National Lead Information Center Clearinghouse (1-800-424-LEAD) to locate the appropriate local contact.

A nationwide listing of certified inspectors, risk assessors, and accredited laboratories is also available on the Internet at www.leadlisting.org. The lists are

also available through an automated telephone system by calling 1-888-LEADLIST (1-888-532-3547).

2. Qualifications of Inspectors

The inspector must be certified (licensed) in lead-based paint inspection by the State where the testing is to be done if it has an inspection certification program; if the State does not have such a program, the inspector should be certified by another State. Currently, more than half of all States have such licensing laws. By the fall of 1999, all lead-based paint inspections must be performed only by a certified lead-based paint inspector or risk assessor in accordance with the work practices of 40 CFR part 745, section 227 (see the regulation for specific effective dates for States and Indian Tribes).

C. Other Sources of Information Required to Use This Protocol

The other sources of information and materials needed for using this protocol include an *XRF Performance Characteristic Sheet*, U.S. Nuclear Regulatory Commission and State radiation protection regulations, and standards issued by the American Society for Testing and Materials (ASTM). The National Institute of Standards and Technology (NIST) produces Standard Reference Materials (SRMs) and provides supporting documentation for these materials.

1. XRF Performance Characteristic Sheet

An *XRF Performance Characteristic Sheet* defines acceptable operating specifications and procedures for each model of X-Ray Fluorescence (XRF) lead-based paint analyzer. An inspector should follow the *XRF Performance Characteristic Sheet* for all inspection activities. For most commercially available XRFs, *XRF Performance Characteristic Sheets* are available from the National Lead Information Center Clearinghouse or through the Internet at www.hud.gov/lea/leahome.html. They are also included in a new, easy-to-use format in Addendum 3 to this chapter.

2. XRF Radiation Protection Regulations

Regulations that govern radioactive sources used in XRFs are available from State radiation protection agencies, and the Nuclear Regulatory Commission (301-415-7000).

3. ASTM and NIST Standards

Other helpful information and standards are available from ASTM (610-832-9585), including:

- ASTM E 1583 on evaluating laboratories used to determine lead levels
- ASTM E 1605 on terminology
- ASTM E 1613 on determining lead by atomic emission or atomic absorption spectroscopy
- ASTM E 1645 on laboratory preparation of paint-chip samples
- ASTM E 1729 on collecting paint-chip samples
- ASTM E 1775 on-site extraction and field-portable stripping voltammetry analysis for lead
- ASTM PS 53 on identifying and managing lead in facilities
- ASTM PS 87 on ultrasonic extraction for later analysis for lead
- ASTM PS 88 on determining lead by portable electroanalysis

NIST (301-975-6776) has developed series of paint films that have known amounts of lead-based paint and can be used for calibration check purposes. NIST Standard Reference Material 2579 is available as of mid-1997; NIST is planning to release additional series of paint films in late 1997 or early 1998 (see Section IV.D, below).

D. Paint Testing for Inspections and Risk Assessments

Risk assessments determine the presence of lead-based paint *hazards*, while inspections determine the presence of lead-based paint. The paint-chip sampling and measurement techniques used for paint inspections are similar to the techniques used for risk assessment. However, the number of paint measurements or samples taken for a paint inspection is considerably greater than the number of paint samples required for a risk assessment, because risk assessments measure lead only in deteriorated paint (risk assessments also measure lead in dust and soil). Inspections measure lead in both deteriorated and

intact paint, which involves many more surfaces. Risk assessments always note the condition of paint films; inspections may not. For dwellings in good condition, a full risk assessment may be unnecessary, and a lead hazard screen risk assessment may be conducted. In a lead hazard screen or risk assessment, the certified risk assessor tests only painted surfaces in "deteriorated" condition for their lead content, either by XRF or laboratory analysis. See Chapter 5 for methods to determine the condition of paint films when conducting a risk assessment.

E. Most Common Inspection Method

Portable XRF lead-based paint analyzers are the most common primary analytical method for inspections in housing because of their demonstrated abilities to determine if lead-based paint is present on many surfaces and to measure the paint without destructive sampling or paint removal, as well as their high speed and low cost per sample. Portable XRF instruments expose a building component to X rays or gamma radiation, which causes lead to emit X rays with a characteristic frequency or energy. The intensity of this radiation is measured by the instrument; the inspector must then compare this displayed value (reading) with the inconclusive range or threshold specified in the *XRF Performance Characteristic Sheet* for the specific XRF instrument being used, and the specific substrate beneath the painted surface (see Section IV.G, below). If the reading is less than the lower boundary of the inconclusive range, or less than the threshold, then the reading is considered negative. If the reading is greater than the upper boundary of the inconclusive range, or greater than or equal to the threshold, then the reading is considered positive. Readings within the inconclusive range, including its boundary values, are considered inconclusive. Because the inconclusive ranges and/or thresholds shown in the Performance Characteristic Sheet are based on 1.0 mg/cm², positive and negative readings are consistent with the HUD definition of lead-based paint for identification and disclosure purposes.

F. XRF Performance Characteristic Sheets and Manufacturer's Instructions

Only XRF instruments that have a HUD/EPA-issued or equivalent *XRF Performance Characteristic Sheet* should be used. XRFs must be used in accordance with the manufacturer's instructions and the *XRF Performance Characteristic Sheet*. The *XRF*

Performance Characteristic Sheet contains information about XRF readings taken on specific substrates, calibration check tolerances, interpretation of XRF readings (see section I.E, above), and other aspects of the model's performance. If discrepancies exist between the *XRF Performance Characteristic Sheet*, the HUD *Guidelines* and the manufacturer's instructions, the most stringent guidelines should be followed. For example, if the *XRF Performance Characteristic Sheet* has a lower (more stringent) calibration check tolerance than the manufacturer's instructions, the *XRF Performance Characteristic Sheet* should be followed. These *Guidelines* and the *XRF Performance Characteristic Sheets* are applicable to all XRF instruments that detect K X rays, L X rays, or both.¹

G. Inspection by Paint Chip Analysis

Performing inspections by the sole use of laboratory paint chip analysis is not recommended because it is time-consuming, costly, and requires extensive repair of painted surfaces. Laboratory analysis of paint-chip samples is recommended for inaccessible areas or building components with irregular (non-flat) surfaces that cannot be tested using XRF instrumentation. Laboratory analysis is also recommended to confirm inconclusive XRF results, as specified on the applicable *XRF Performance Characteristic Sheet*. Some newer laboratory analytical methods can provide results within minutes (see section I.H, below). Only laboratories recognized under the EPA NLLAP should be used. Laboratory analysis is more accurate and precise than XRF but only if great care is used to collect and analyze the paint-chip sample. Laboratory results should be reported as mg/cm². Appendix 1 of these *Guidelines* explains why units of mg/cm² are not dependent on the number of overcoats of lead-free paint and why such units of measure are therefore more reliable than weight percent. The dimensions of the area from which a paint-chip sample is removed must be measured as accurately as possible (to the nearest millimeter or 1/16th of an inch).

Although laboratory results can also be reported as a percentage of lead by weight of the paint sample, percents should only be used when it is not feasible to use mg/cm². These two units of measure are not interchangeable. Laboratory results should be reported as mg/cm² if the surface area can be accurately measured and if all paint within that area is collected.

In mg/cm² measurements, collecting small amounts of substrate material with the sample does not bias the results significantly, although having any amount of substrate in the sample can result in less precise results. In weight percent measurements, however, no substrate may be included because the substrate will "dilute" the amount of lead reported. Regardless of the units of measurement selected, the bottom layer of paint must always be included in the sample. If a visual examination shows that the bottom layer of paint appears to have "bled" into the substrate, a very thin upper portion of the substrate should be included in the sample to ensure that all lead within the sample area has been included in the sample. In cases where significant amounts of substrate are included in the sample, the results should always be reported in mg/cm².

See Section VI for additional information on laboratory analysis.

H. Additional Means of Analyzing Paint

Methods of analyzing lead in paint are available in addition to XRF and laboratory paint chip analysis, including transportable instruments and chemical test kits. Because these methods involve paint removal or disturbance, repair is needed after sampling, unless the substrate will be removed, encapsulated, enclosed, or repainted before occupancy (see Section VI), or if analysis shows that the paint is not lead-based paint, and leaving the damage is acceptable to the client and/or the owner.

1. Mobile Laboratories

Portable instruments that employ anodic stripping voltammetry and potentiometric stripping voltammetry are now available. Their use is described in ASTM Provisional Standard Practice PS 88. Also, ASTM Standard Guide E 1775 may be used as a basis for evaluating the performance of on-site extraction and electrochemical and spectrophotometric analyses. If the organization using a portable instrument is recognized under the EPA NLLAP and used that type of instrument to obtain the laboratory's recognition, they can be used in the same way as any other NLLAP-recognized laboratory. In short, both fixed-site and mobile laboratories may be used, provided they are recognized under NLLAP.

2. Chemical Test Kits

Chemical test kits are intended to show a color change when a part of the kit makes contact with the lead in lead-based paint. One type of chemical test kit is based on the formation of lead sulfide, which is black, when lead in paint reacts with sodium sulfide. Another is based on the formation of a red or pink color when lead in paint reacts with sodium rhodizonate.

EPA did not find that chemical spot test kits are sufficiently reliable for use in lead-based paint inspection, and recommended that they not be used (EPA 1995). HUD and EPA may recommend them in the future for inspections if chemical test kit technology is demonstrated to be equivalent to XRF or laboratory paint chip analysis in its ability to properly classify painted surfaces into positive, negative, and inconclusive categories, with appropriate estimates of the magnitude of sampling and analytical error. *XRF Performance Characteristic Sheets* currently provide such estimates for XRFs, and analytical error is well-described for laboratory analysis. HUD is currently funding the National Institute for Standards and Technology (NIST) and other researchers to evaluate commercially available chemical test kits and provide the basis for improved chemical test kits. Information on test kits or other new technologies for testing for lead in paint can be obtained from the National Lead Information Center Clearinghouse (1-800-424-LEAD).

II. Summary of XRF Radiation Safety Issues

Radiation hazards associated with the use of XRFs are covered in detail in Section VII. The shutter of an XRF must never be pointed at anyone, even if the shutter is closed. Inspectors should wear radiation dosimeters to measure their exposure, although excessive exposures are highly unlikely if the instruments are used in accordance with the manufacturer's instructions. If feasible, persons should not be near the other side of a wall, floor, ceiling, or other surface being tested.

III. Definitions

Definitions of several key terms used in this chapter are provided here. Some additional definitions may be found in ASTM Standard E 1605, Standard Terminology Relating to Abatement of Hazards from Lead-based Paint on Buildings and Related Structures, and in other standard chemical, statistical, architectural and engineering dictionaries and texts. For terms discussed both here and in the ASTM document, the definitions and descriptions in this chapter should be used.

Lead-based paint - Lead-based paint means paint or other surface coatings that contain lead equal to or greater than 1.0 mg/cm² or 0.5 percent by weight (equivalent units are: 5,000 µg/g, 5,000 mg/kg, or 5,000 ppm by weight). Surface coatings include paint, shellac, varnish, or any other coating, including wallpaper which covers painted surfaces.

Lead loading - The mass of lead in a given surface area on a substrate. Lead loading is typically measured in units of milligrams per square centimeter (mg/cm²). It is also called area concentration.

Room equivalent - A room equivalent is an identifiable part of a residence, such as a room, a house exterior, a foyer, staircase, hallway, or an exterior area (exterior areas contain items such as play areas, painted swing sets, painted sandboxes, etc.). Closets or other similar areas adjoining rooms should not be considered as separate room equivalents unless they are obviously dissimilar from the adjoining room equivalent. Most closets are not separate room equivalents. Exteriors should be included in all inspections. An individual side of an exterior is not considered to be a separate room equivalent, unless there is visual or other evidence that its paint history is different from that of the other sides. All sides of a building (typically two for row houses or four for freestanding houses) are generally treated as a single room equivalent if the paint history appears to be similar. For multifamily developments or apartment buildings, common areas and exterior sites are treated as separate types of units, not as room equivalents (see section V.C.1 for further guidance).

Substrate - The substrate is the material underneath the paint. Substrates should be classified into one of six types: brick, concrete, drywall, metal, plaster, or wood. These substrates cover almost all building

materials that are painted and are linked to those used in the *XRF Performance Characteristic Sheets*. For example, the concrete substrate type includes poured concrete, precast concrete, and concrete block.

If a painted substrate is encountered that is different from the substrate categories shown on the *XRF Performance Characteristic Sheet*, select the substrate type that is most similar in density and composition to the substrate being tested. For example, for painted glass substrates, an inspector should select the concrete substrate, because it has about the same density (2.5 g/cm³) and because the major element in both is silicon.

For components that have layers of different substrates, such as plaster over concrete, the substrate immediately adjacent to (underneath) the painted surface should be used. For example, plaster over concrete block is recorded as plaster.

Testing Combination - A testing combination is a unique combination of room equivalent, building component type, and substrate. Visible color may not be an accurate predictor of painting history and is not included in the definition of a testing combination. Table 7.1 lists common building component types that could make up distinct testing combinations within room equivalents. The list is not intended to be complete. Unlisted components that are coated with paint, varnish, shellac, wallpaper, stain, or other coating should also be considered as a separate testing combination.

Certain building components that are adjacent to each other and not likely to have different painting histories can be grouped together into a single testing combination, as follows:

- Window casings, stops, jambs and aprons are a single testing combination
- Interior window mullions and window sashes are a single testing combination--do not group interior mullions and sashes with exterior mullions and sashes
- Exterior window mullions and window sashes are a single testing combination
- Door jambs, stops, transoms, casings and other door frame parts are a single testing combination
- Door stiles, rails, panels, mullions and other door parts are a single testing combination

- Baseboards and associated trim (such as quarter-round or other caps) are a single testing combination (do not group chair rails, crown molding or walls with baseboards)
- Painted electrical sockets, switches or plates can be grouped with walls

Each of these building parts should be tested separately if there is some specific reason to believe that they have a different painting history. In most cases, separate testing will not be necessary.

Table 7.1: Examples of Interior and Exterior Building Component Types

Commonly Encountered Interior Painted Components That Should Be Tested Include:	
Air Conditioners	Fireplaces
Balustrades	Floors
Baseboards	Handrails
Bathroom Vanities	Newel Posts
Beams	Other Heating Units
Cabinets	Radiators
Ceilings	Shelf Supports
Chair Rails	Shelves
Columns	Stair Stringers
Counter Tops	Stair Treads and Risers
Crown Molding	Stools and Aprons
Doors and Trims	Walls
Painted Electrical Fixtures	Window Sashes and Trim

Exterior Painted Components That Should Be Tested Include:	
Air Conditioners	Handrails
Balustrades	Lattice Work
Bulkheads	Mailboxes
Ceilings	Painted Roofing
Chimneys	Railing Caps
Columns	Rake Boards
Corner boards	Sashes
Doors and Trim	Siding
Fascias	Soffits
Floors	Stair Risers and Treads
Gutters and Downspouts	Stair Stringers
Joists	Window and Trim

Other Exterior Painted Components Include:	
Fences	Storage Sheds & Garages
Laundry Line Posts	Swing sets and Other Play Equipment

Table 7.2 provides six examples of different testing combinations. The first example is a wooden bedroom door. This is a testing combination because it is described by a room equivalent (bedroom), component (door), and substrate (wood). If one of these variables is different for another component, that component is a different testing combination. For example, if a second door in the room equivalent is metal, two testing combinations, not one, would be present.

For doors separating rooms, each side of the door is assigned to the room equivalent it faces and is tested separately. The same is true of door casings. For prefabricated metal doors where it is apparent that both sides of the door have the same painting history, only one side needs to be tested.

Table 7.2: Examples of Distinct Testing Combinations

Room Equivalent	Building Component	Substrate
Master Bedroom (Room 5)	Door	Wood
Master Bedroom (Room 5)	Door	Metal
Kitchen (Room 3)	Wall	Plaster
Garage (Room 10)	Floor	Concrete
Exterior	Siding	Wood
Exterior	Swing set	Metal

Building Component Types - A building component type consists of doors, windows, walls, and so on that are repeated in more than one room equivalent in a unit and have a common substrate. If a unique building component is present in only one room, it is considered to be a testing combination. Each testing combination may be composed of more than one building component (such as two similar windows within a room equivalent). Component types can be located inside or outside the dwelling. For example, typical component types in a bedroom would be the ceiling, walls, a door and its casing, the window sash, window casings, and any other distinct surface, such as baseboards, crown molding, and chair rails. If trends or patterns of lead-based paint classifications are found among building component types in different room equivalents, an inspection report may summarize results by building component type, as long as all measurements are included in the report. For example, the inspection may find that all doors and door casings in a dwelling unit are positive.

Test Location - The test location is a specific area on a testing combination where either an XRF reading or a paint-chip sample will be taken.

IV. Inspections in Single-Family Housing

Single-family housing inspections should be conducted by a State- or EPA-certified (licensed) lead-based paint inspector using the following seven steps, some of which may be done at the same time:

- List all testing combinations, including those that are painted, stained, shellacked, varnished, coated, or wallpaper which covers painted surfaces.
- Select testing combinations.
- Perform XRF testing (including the calibration check readings).
- Collect and analyze paint-chip samples for testing combinations that cannot be tested with XRF or that had inconclusive XRF results.
- Classify XRF and paint-chip results.
- Evaluate the work and results to ensure the quality of the paint inspection.
- Document all findings in a plain language summary and a complete report; include language in both the summary and the report indicating that the information must be disclosed to tenants and prospective purchasers in accordance with Federal law (24 CFR part 35 or 40 CFR part 745).

A. Listing Testing Combinations

Develop a list of all testing combinations in all interior rooms, on all exterior building surfaces, and on surfaces in other exterior areas, such as fences, playground equipment, and garages. The "Single-Family Housing LBP Testing Data Sheet" (see Form 7.1 at the end of this chapter) or a comparable data collection instrument may be used for this purpose. An inventory of a house may be completed either before any testing or on a room-by-room basis during testing.

1. Number of Room Equivalents to Inspect

Test all room equivalents inside and outside the dwelling unit. The final report must include a final determination of the presence or absence of lead-based paint on each testing combination in each room equivalent.

For varnished, stained, or similar clear-coated floors, measurements in only one room equivalent are permissible if it appears that the floors in the other room equivalents have the same coating.

2. Number of Testing Combinations to Inspect

Inspect each testing combination in each room equivalent, unless similar building component types with identical substrates (such as windows) are all found to contain lead-based paint in the first five interior room equivalents. In that case, testing of that component type in the remaining room equivalents may be discontinued, *if and only if* the purchaser of the inspection services agrees beforehand to such a discontinuation. The inspector should then conclude that similar building component types in the rest of the dwelling unit also contain lead-based paint. See item 6 entitled, "Conditions for Abbreviation of Testing," later in this section for additional details.

Because it is highly unlikely that testing combinations *known* (and not just presumed) to have been replaced or added to the building after 1977 will contain lead-based paint, they need not be tested. If the age of the testing combination is in doubt, it should be tested.

Some testing combinations have multiple parts. For example, a window testing combination could theoretically be broken down into the interior sill (stool), exterior sill, trough, sash, apron, parting bead, stop bead, casing, and so on. Because it is highly unlikely that all these parts will have different painting histories, they should not usually be considered separate testing combinations. (Inspectors should regard parts of building components as separate testing combinations if they have evidence that different parts have separate, distinct painting histories). See the definition of testing combination (Section III, above) for guidance on which building component parts may and which may not be grouped together.

3. Painted Furniture

Painted furniture that is physically attached to the unit (for example, a desk or dresser that is built-in) should be included in the inspection as a testing combination. Other painted furniture may also be tested, depending on the client's wishes. Children's furniture (such as cribs or playpens), especially if built before 1978, may contain lead-based paint and can be tested, subject to the client's wishes.

4. Building Component Types

Results of an inspection may be summarized by classifying component types across room equivalents if patterns or trends are supported by the data.

5. Substrates

All substrates across all room equivalents should be grouped into one of the six substrate categories (brick, concrete, drywall, metal, plaster, or wood) shown on the *XRF Performance Characteristic Sheet* for the instrument being used. Substrate correction procedures can then be applied for all building component types with the same substrate. For example, the substrate correction procedure for wooden doors and wooden baseboards can use the same substrate correction value (see Section IV.E, below).

6. Conditions for Abbreviation of Testing

If lead-based paint is determined to be present (a "positive" finding) for a building component type with

the same substrate in all of the first five room equivalents inspected, further testing of that component type may be discontinued in the remaining room equivalents within that dwelling unit, *if and only if* the purchaser of inspection services agrees beforehand to such a discontinuation. The inspector should then conclude that the similar building component types in the rest of the dwelling unit also contain lead-based paint. For example, if an inspector finds that baseboards in the first five room equivalents are all positive, the inspector -- with the client's permission -- may conclude that all remaining room equivalents in the unit contain positive baseboards.

B. Number and Location of XRF Readings

1. Number of XRF Readings for Each Testing Combination

XRF testing is required for at least one location per testing combination, except for interior and exterior walls, where four readings should be taken, one on each wall. Previous editions of this chapter stated that three readings for each testing combination were needed to control for spatial variation and other sources of error. Recent analysis² of EPA data show a median difference in spatial variation of only 0.1 mg/cm² and a change in classification (positive, negative, or inconclusive) occurs less than 5 percent of the time as a result of different test locations on the same testing combination. Multiple readings on the same testing combination or testing location are, therefore, unnecessary, except for interior and exterior walls.

Because of the large surface areas and quantities of paint involved, and the possibility of increased spatial variation, take at least four readings (one reading on each wall) in each room equivalent. (For room equivalents with fewer than four walls, test each wall.) For each set of walls with the same painting history in a room equivalent, test the four largest walls. Classify each wall based on its individual XRF reading. If a room equivalent has more than four walls, calculate the average of the readings, round the result to the same number of decimal places as the XRF instrument displays, and classify the remaining walls with the same painting history as the tested walls, based on this rounded average. When the remaining walls in a room equivalent clearly do not have the same painting history as that of the tested walls, test and classify the remaining walls individually. For exterior walls, select

at least four sides and average the readings (rounding the result as described above) to obtain a result for any remaining sides. If there are more than four walls and the results of the tested walls do not follow a classification pattern (for example, one is positive and the other three are negative), test each wall individually.

2. Location of XRF Readings

The selection of the test location for a specific testing combination should be representative of the paint over the areas which are most likely to be coated with old paint or other lead-based coatings. Thus, locations where the paint appears to be thickest should be selected. Locations where paint has worn away or been scraped off should not be selected. Areas over pipes, electrical surfaces, nails, and other possible interferences should also be avoided if possible. All layers of paint should be included and the XRF probe faceplate should be able to lie flat against the surface of the test location.

If no acceptable location for XRF testing exists for a given testing combination, a paint-chip sample should be collected. The sample should include all paint layers and should be taken as unobtrusively as possible. Because paint chip sampling is destructive, a single sample may be collected from a wall and used to characterize the other walls in a room equivalent (see section VI for additional details on paint chip sampling).

3. Documentation of XRF Reading Locations

Descriptions of testing combinations should be sufficiently detailed to permit another individual to find them. While it is not necessary to document the *exact* spot or the *exact* building component on which the reading was taken, it is necessary to record the *exact* testing combination measured. Current room uses or colors can change and should not be the only way of identifying them. A numbering system, floor plan, sketch or other system may be used to document which testing combinations were tested. While HUD does not require a standard identification system, one that could be used is as follows:

a. Side identification

Identify perimeter wall sides with letters A, B, C, and D (or numbers or Roman numerals). Side A for single-family housing is the street side for the address. Side A in multifamily housing is the apartment entry door side.

Side B, C, and D are identified clockwise from Side A as one faces the dwelling; thus Wall B is to the left, Wall C is across from Side A, and Side D is to the right of Side A.

Each room equivalent's side identification follows the scheme for the whole housing unit. Because a room can have two or more entries, sides should not be allocated based on the entry point. For example, giving a closet a side allocation based on how the room is entered would make it difficult for another person to make an easy identification, especially if the room had two closets and two entryways.

b. Room Equivalent Identification

Room equivalents should be identified by both a number and a use pattern (for example, Room 5-Kitchen). Room 1 can always be the first room, at the A-D junction at the entryway, or it can be the exterior. Rooms are consecutively numbered clockwise. If multiple closets exist, they are given the side allocation: for example, Room 3, Side C Closet. The exterior is always assigned a separate room equivalent identifier.

c. Sides in a Room

Sides in an interior room equivalent follow the overall housing unit side allocation. Therefore, when standing in any four-sided room facing Side C, the room's Side A will always be to the rear, Side B will be to the left, and Side D will be to the right.

d. Building Component Identification

Individual building components are first identified by their room number and side allocation (for example, the radiator in Room 1, Side B is easily identified). If multiple similar component types are in a room (for example, three windows), they are differentiated from

each other by side allocation. If multiple components are on the same wall side, they are differentiated by being numbered left to right when facing the components. For example, three windows on Wall D are identified as windows D1, D2, and D3, left to right. If window D3 has the only old original sash, it is considered a separate testing combination from the other two windows.

A sketch of the dwelling unit's floor plan is often helpful, but is not required by this protocol. Whatever documentation is used, a description of the room equivalent and testing combination identification system must be included in the final inspection report.

C. XRF Instrument Reading Time

The recommended time to open an XRF instrument's shutter to obtain a single XRF result for a testing location depends on the specific XRF instrument model and the mode in which the instrument is operating. The *XRF Performance Characteristic Sheet* provides information on this issue.

To ensure that a constant amount of radiation is delivered to the painted surface, the open-shutter time must be increased as the source ages and the radiation source weakens. Almost all commercially available XRF instruments automatically adjust for the age of the source. (Some instruments adjust for source decay in some but not all modes; operators should check with the manufacturers of their instruments to determine whether these differences need to be accommodated). The following formula should be employed for instruments requiring manual adjustment of the open-shutter time:

$$\text{Open-Shutter Time} = 2^{(\text{Age}/\text{Half-life})} \times \text{Nominal Time}$$

where:

Age is the age (in days) of the radioactive source, starting from the date the manufacturer says the source had its full radiation strength;

Half-life is the time (in days) it takes for the radioactive material's activity to decrease to one-half its initial level; and

Nominal Time is the recommended nominal number of seconds for open-shutter time,

when the source is at its full radiation strength, and is obtained from the *XRF Performance Characteristic Sheet*.

For example, if the age of the source is equal to its half-life, the open-shutter time should be twice the nominal time. Thus, if the recommended nominal time is 15 seconds, the open-shutter time should be doubled to 30 seconds.

XRFs typically use Cobalt-57 (with a half life of 270 days) or Cadmium-109 (with a half life of 464 days).

XRF Performance Characteristic Sheets typically report different inconclusive ranges or thresholds (see section IV.G, below) for different nominal times and different substrates. This may affect the number of paint-chip samples that must be collected as well as the length of time required for the inspection. Some XRF devices have different modes of operation with different nominal reading times. Inspectors must use the appropriate inconclusive ranges and other criteria specified on the *XRF Performance Characteristic Sheet* for each XRF model, mode of operation and substrate. For example, inconclusive ranges specified for a 30-second nominal reading cannot be used for a 5-second nominal reading, even for the same instrument and the same substrate.

D. XRF Calibration Check Readings

In addition to the manufacturer's recommended warm up and quality control procedures, the XRF operator should take the quality control readings recommended below, unless these are less stringent than the manufacturer's instructions. Quality control for XRF instruments involves readings to check calibration. Most XRFs cannot be calibrated on-site; actual calibration can only be accomplished in the factory.

1. Frequency and Number of Calibration Checks

For each XRF instrument, two sets of XRF calibration check readings are recommended at least every 4 hours. The first is a set of three nominal-time XRF calibration check readings to be taken before the inspection begins. The second occurs either after the day's inspection work has been completed, or at least every 4 hours, whichever occurs first. To reduce the amount of data that would be lost if the instrument

were to go out of calibration between checks, and/or if the manufacturer recommends more frequent calibration checks, the calibration check can be repeated more frequently than every 4 hours. If the XRF manufacturer recommends more frequent calibration checks, the manufacturer's instructions should be followed. Calibration should also be checked before the XRF is turned off (for example, to replace a battery or before a lunch break) and after it is turned on again. For example, if an inspection of a large house took 6 hours, there would be three calibration checks: one at the beginning of the inspection, another after 4 hours, and a third at the end of the inspection.

If the XRF is not turned off as the inspector travels from one dwelling unit to the next, calibration checks do not need to be done after each dwelling unit is completed. For example, in multifamily housing, calibration checks do not need to be done after each dwelling unit is inspected; once every 4 hours is usually adequate.

Some instruments automatically enter a "sleep" or "off" state when not being used continually to prolong battery life. It is not necessary to perform a calibration check before and after each "sleep" state episode, unless the manufacturer recommends otherwise.

2. Calibration Check Standard Materials

XRF calibration check readings are taken on the Standard Reference Material (SRM) paint film nearest to 1.0 mg/cm² within the National Institute of Standards and Technology (NIST) SRM used. These films can be obtained by calling (301) 975-6776 and referencing SRM 2579 (NIST is planning to release additional series of paint films in late 1997 or early 1998; the film nearest to 1.0 mg/cm² should be used for XRF calibration checks). The cost as of September 26, 1997, for the SRM 2579 set of five films, was \$320, including 2-day delivery. Calibration checks should be taken through the SRM paint film with the film positioned at least 1 foot (0.3 meters) away from any potential source of lead. The NIST SRM film should not be placed on a tool box, suitcase, or surface coated with paint, shellac, or any other coating to take calibration check readings. Rather, the NIST SRM film should be attached to a solid (not plywood) wooden board or other nonmetal rigid

substrate such as drywall, or attached directly to the XRF probe. The SRM should be positioned so that readings of it are taken when it is more than 1 foot (0.3 meters) away from a potential source of error. For example, the NIST SRM film can be placed on top of a 1 foot (0.3 meter) thick piece of Styrofoam or other lead-free material, as recommended by the manufacturer before taking readings.

3. Recording and Interpreting Calibration Check Readings

Each time calibration check readings are made, three readings should be taken. These readings should be taken using the nominal time which will be used during the inspection, selected from among those specified in the XRF's Performance Characteristic Sheet. The open shutter time should be adjusted, if necessary, to reflect the age of the radioactive source (see section IV.C, above). The readings can be recorded on the "Calibration Check Test Results" form (Form 7.2), on a comparable form, or stored in the instrument's memory, and printed out or transferred to a computer later. The average of the three calibration check readings should be calculated, rounded to the same number of decimal places as the XRF instrument displays, and recorded on the form.

Large deviations from the NIST SRM value will alert the inspector to problems in the instrument's performance. If the observed calibration check average is outside of the acceptable calibration check tolerance range specified in the instrument's *XRF Performance Characteristic Sheet*, the manufacturer's instructions should be followed to bring the instrument back into control. A successful calibration check should be obtained before additional XRF testing is conducted. Readings not accompanied by successful calibration checks at the beginning and end of the testing period are unreliable and should be repeated after a successful calibration check has been made. If a backup XRF instrument is used as a replacement, it must successfully pass the initial calibration check test before retesting the affected test locations.

This procedure assumes that the HUD/EPA lead-based paint standard of 1.0 mg/cm² is being used. If a different standard is being used, other NIST SRMs should be used to determine instrument performance against the different standard. At this time, however, no method for determining performance characteristics using different standards has been developed.

E. Substrate Correction

XRF readings are sometimes subject to systematic biases as a result of interference from substrate material beneath the paint. The magnitude and direction of bias depends on the substrate, the specific XRF instrument being used, and other factors such as temperature and humidity. Results can be biased in either the positive or negative direction and may be quite high.

1. When Substrate Correction Is Not Required

Some XRF instruments do not need to have their readings corrected for substrate bias. Other instruments may only need to apply substrate correction procedures on specific substrates and/or when XRF results are below a specific value. The *XRF Performance Characteristic Sheet* should be consulted to determine the requirements for a specific instrument and each mode of operation (e.g., nominal time, or time required for intended precision). XRF instruments which do not require correction for any substrate, or require corrections on only a few substrates, have an advantage in that they simplify and shorten the inspection process.

2. Substrate Correction Procedure

XRF results are corrected for substrate bias by subtracting a correction value determined separately in each house for each type of substrate where lead paint values are in the substrate correction range indicated on the *XRF Performance Characteristic Sheet*. In single-family housing, the substrate correction value is determined using the specific instrument(s) used in that house. The correction value (formerly called "Substrate Equivalent Lead" or "SEL") is an average of six XRF readings, with three taken from each of two test locations that have been scraped visually clean of their paint coating. The locations selected for removal of paint should have an initial XRF reading on the painted surface of less than 2.5 mg/cm², if possible. If all initial readings on a substrate type are greater than 2.5 mg/cm², the locations with the lowest initial reading should be chosen. Because available data indicate that surfaces with XRF readings in excess of about 3.0 mg/cm² or 4.0 mg/cm² are almost always coated with lead-based paint, and since bleed-through of lead into the substrate may occur, or pipes and similarly interfering building components may be behind the material being evaluated, locations with such high readings should be avoided for substrate correction.

After all XRF testing has been completed but before the final calibration check test has been conducted, XRF results for each substrate type should be reviewed. If any readings fall within the range for substrate correction for a particular substrate, obtain the substrate correction value.

On each selected substrate requiring correction, two different testing combinations must be chosen for paint removal and testing. For example, if the readings are inconclusive for some wooden baseboards, select two baseboards, each from a different room. If some wooden doors also require substrate correction, the inspector should take substrate correction readings on one door and one baseboard. Selecting the precise location of substrate correction should be based on the inspector's ability to remove paint thoroughly from the substrates, the similarity of the substrates, and their accessibility. The XRF probe faceplate must be able to be placed over the scraped area, which should be completely free of paint or other coatings.

The size of the area from which paint is taken depends on the size of the analytical area of the XRF probe faceplate; normally, the area is specified by the manufacturer. To ensure that no paint is included in the bare substrate measurement, the bare area on the substrate should be slightly larger than the analytical area on the XRF probe faceplate.

In all, six readings must be taken for each substrate type that requires correction. All six must be averaged together. Take three readings on the first *bare* substrate area. Record the substrate and XRF readings on the "Substrate Correction Values" form (Form 7.3) or a comparable form. Repeat this procedure for the second *bare* substrate area and record the three readings on the same form. Substrate correction values should be determined using the same instrument used to take readings on the painted surfaces. If more than one XRF model was used to take readings, apply the substrate correction values as specified on each instrument's *XRF Performance Characteristic Sheet*.

Compute the correction value for each substrate type that requires correction by computing the average of all six readings as shown below and recording the results on the "Substrate Correction Values" form. The formula given below should be used to compute the substrate bias correction value for XRF readings taken on a bare substrate that is not covered with NIST SRM film. A different formula should be used when SRM film must be placed over the bare substrate. The *XRF Performance Characteristic Sheet* specifies when this correction is necessary and provides the formula for computing the correction value.

For each substrate type requiring substrate correction, transfer the correction values to the "Single-Family Housing LBP Testing Data Sheet" (Form 7.1). Correct XRF readings for substrate interference by subtracting the correction value from each XRF reading.

Example: Suppose that a house has 50 testing combinations with wood substrates. The *XRF Performance Characteristic Sheet* states that a correction value for XRF results taken on those wood testing combinations that have values less than 4.0 mg/cm² must be computed. Select two test locations from the testing combinations that had uncorrected XRF results of less than 2.5 mg/cm².

Completely remove the paint from these two test locations and take three nominal-time XRF readings

on the bare substrate at each location. The six XRF readings at the two random locations are:

Selected Location	Reading (mg/cm ²)		
	First	Second	Third
Wood Master Bedroom Door	1.32	0.91	1.14
Kitchen Wood Baseboard (Room 4)	1.21	1.03	1.43

The correction value is the average of the six values:

$$\text{Correction value} = (1.32 + 0.91 + 1.14 + 1.21 + 1.03 + 1.43) \text{ mg/cm}^2 / 6 = 1.17 \text{ mg/cm}^2$$

In this same house, three different wood testing combinations were inspected for lead-based paint and the XRF results are: 1.63 mg/cm², 3.19 mg/cm², and 1.14 mg/cm². Correcting these three XRF measurements for substrate bias produces the following results:

$$\text{First corrected measurement} = 1.63 \text{ mg/cm}^2 - 1.17 \text{ mg/cm}^2 = 0.46 \text{ mg/cm}^2$$

$$\text{Second corrected measurement} = 3.19 \text{ mg/cm}^2 - 1.17 \text{ mg/cm}^2 = 2.02 \text{ mg/cm}^2$$

$$\text{Third corrected measurement} = 1.14 \text{ mg/cm}^2 - 1.17 \text{ mg/cm}^2 = -0.03 \text{ mg/cm}^2$$

The third corrected result shown above is an example of how random error in XRF measurements can cause the corrected result to be less than zero. (Random measurement error is present whenever measurements are taken). Note that correction values can be either positive or negative. In short, negative corrected XRF values should be reported if supported by the data.

Finally, suppose an XRF result of 1.24 mg/cm² has a correction value of negative 0.41 mg/cm². Subtracting a negative number is the same as adding its positive value. Therefore, the corrected measurement would be:

$$\text{Corrected result} = 1.24 \text{ mg/cm}^2 - (-0.41 \text{ mg/cm}^2) = 1.24 \text{ mg/cm}^2 + 0.41 \text{ mg/cm}^2 = 1.65 \text{ mg/cm}^2$$

3. Negative Values

If more than 20 percent of the corrected values are negative, the instrument's lead paint readings and/or the substrate readings are probably in error. Calibration should be checked and substrate measurements should be repeated.

F. Discarding Readings

If the manufacturer's instructions call for the deletion of readings at specific times, *only* readings taken at those specific times should be deleted. Similarly, readings between a successful calibration check and a subsequent unsuccessful calibration check must be

discarded. Readings should not be deleted based on any criteria other than what is specified by the manufacturer's instructions or the *HUD Guidelines*. For example, a manufacturer may instruct operators to discard the first XRF reading after a substrate change. If so, *only* the first reading should be discarded after a substrate change.

G. Classification of XRF Results

XRF results are classified as positive, negative, or inconclusive.

A *positive* classification indicates that lead is present on the testing combination at or above the HUD/EPA standard of 1.0 mg/cm². A positive XRF result is any

value greater than the upper bound of the inconclusive range, or greater than or equal to the threshold, as specified on the applicable *XRF Performance Characteristic Sheet*.

A *negative* classification indicates that lead is not present on the testing combination at or above the HUD/EPA standard. A negative XRF result is any value less than the lower bound of the inconclusive range, or less than the threshold, specified on the performance characteristic sheet.

An *inconclusive* classification indicates that the XRF cannot determine with reasonable certainty whether lead is present on the testing combination at or above the HUD/EPA standard. An inconclusive XRF result is any value falling within the inconclusive range on the performance characteristic sheet (including the boundary values defining the range). In single-family housing, all inconclusive results should be confirmed by laboratory analysis, unless the client wishes to assume that all inconclusive results are positive.

Positive, negative, and inconclusive results apply to the actual testing combination and to any repetitions of the testing combination that were not tested in the room equivalents. Positive results also apply to similar component types in room equivalents that were not tested. For example, suppose that one baseboard in a room equivalent is tested, and that the inspector decided that all four baseboards are a single testing combination. The single XRF result applies to all four baseboards in that room equivalent.

When an inconclusive range is specified on the *XRF Performance Characteristic Sheet*, XRF results are classified as positive if they are greater than the upper boundary of the inconclusive range, negative if they are less than the lower boundary of the inconclusive range, or inconclusive if in between. The inconclusive range on the *XRF Performance Characteristic Sheets* in Addendum 3 of these *Guidelines* includes its upper and lower bounds. Earlier editions of this guide and earlier *XRF Performance Characteristic Sheets* did not include the bounds of the inconclusive range as "inconclusive." This 1997 edition of Chapter 7 of the HUD *Guidelines* changes that system, but the specific XRF readings that are considered positive, negative, or inconclusive for a given XRF model and substrate remain unchanged, so previous inspection results are not affected.

For example, if the inconclusive range given in the *XRF Performance Characteristic Sheet* is 0.51 mg/cm² to 1.49 mg/cm², an XRF result of 0.50 mg/cm² is considered negative, because it is less than 0.51; a result of 0.6 mg/cm² is inconclusive; and a result of 1.5 mg/cm² is positive. A result of 0.51 mg/cm², 1.00 mg/cm², or 1.49 mg/cm² would be inconclusive.

Different XRF models have different inconclusive ranges, depending on the specific XRF model and the mode of operation. The inconclusive range may also be substrate-specific.

In some cases, the upper and lower limits of the inconclusive range are equal; that value is called the *threshold*. If the reading is less than the threshold, then the reading is considered negative. If the reading is equal to or greater than the threshold, then the reading is considered positive.

Use of the inconclusive range and threshold is detailed in the performance characteristic sheet. The categories include substrate-corrected results, if substrate correction is indicated. XRF's with *only* threshold values listed on the *XRF Performance Characteristic Sheet* are advantageous in that classifications of results are either positive or negative (no XRF readings are inconclusive).

H. Evaluation of the Quality of the Inspection

The person responsible for purchasing inspection services – the homeowner, property owner, housing authority, prospective buyer, occupant, etc.; also known as the client – should evaluate the quality of the work using one or more of the methods listed below. Evaluation methods include direct observation, immediate provision of results, repeated testing, and time-and-motion analysis. Direct observation of the inspection should be used whenever possible. The inspection contract should outline the financial penalties that will occur if an inspector fails to perform as contracted during any visit.

1. Direct Observation

An evaluation of a lead-based paint inspection is best made if a knowledgeable observer is present for as much of the XRF testing as possible. This is the only way to ensure that all painted, varnished, shellacked, wallpapered, stained, or other coated testing combinations are actually tested, and that all XRF

readings are recorded correctly. If possible, employ as the observer someone who is trained in lead-based paint inspection and who is independent of the inspection firm.

If it is not feasible for the client or the client's representative to be present throughout the inspection, that person should conduct unannounced and unpredictable visits to observe the inspection process. The number of unannounced visits will depend on the results of prior visits. When observing ongoing XRF testing, review the test results for the room equivalent currently being tested and for the previously inspected room equivalent. Even if the first visit is fully satisfactory, follow-up visits should be conducted throughout the inspection.

2. Immediate Provision of Results

The client, or a representative, should ask the inspector to provide copies or printouts of results on completed data forms immediately following the completion of the inspection or on a daily basis. Alternatively, visually review the inspector's written results to ensure that they are properly recorded for all surfaces that require XRF testing. If surfaces have been overlooked or recorded incorrectly, the inspection process should be stopped and considered deficient. Clients should retain daily results to ensure that the data in the final report are the same as the data collected in the home.

3. Repeated Testing of 10 Surfaces

Data from HUD's private housing lead-based paint hazard control program show that it is possible to successfully retest painted surfaces without knowing the exact spot which was tested.

Select 10 testing combinations at random from the already compiled list in the "Single-Family Housing LBP Testing Data Sheet" for retesting (see forms in Addendum 2 of this chapter). Observe the inspector during the retesting. If possible, the same XRF instrument used in the original inspection should be used in the retesting. If the XRF instrument used in the original inspection is not available and cannot be returned to the site, use an XRF of the same model for retesting. Use the same procedures to retest the 10 testing combinations. The 10 repeat XRF results should be compared with the 10 XRF results previously made on the same testing combinations.

The repeat readings and the original readings should not be corrected for substrate bias for the purpose of this comparison. The average of the 10 repeat XRF results should not differ from the 10 original XRF results by more than the retest tolerance limit. The procedure for calculating the retest tolerance limit is specified in the *XRF Performance Characteristic Sheet*. If the limit is exceeded, the procedure should be repeated using 10 different testing combinations. If the retest tolerance limit is exceeded again, the original inspection is considered deficient.

4. Time-and-Motion Analysis

Anyone who contracts for a lead-based paint inspection can also perform a simple check to determine if the inspector had sufficient time to complete the number of housing units reported as being tested in the time allotted. Usually, inspections require at least 1 to 2 hours per unit using existing technology. If the inspector's on-site time is significantly less than that, further investigation should be conducted to determine if the inspector actually completed the work in the report.

I. Documentation in Single-Family Housing

1. Data Forms

Data can be recorded on hand written forms, electronically, or by a combination of these two methods. XRF readings can be entered on handwritten forms, such as the set of forms (7.1, 7.1A, 7.2, and 7.3) provided at the end of this chapter (or comparable forms). Because handwriting can result in transcription errors, handwritten forms should be examined for missing data and copying errors.

2. Electronic Data Storage

Electronic data storage is recommended only if the data recorded are sufficient to allow another person to find the testing combination that corresponds to each XRF reading. Electronically stored data should be printed in hard copy either daily or at the completion of the inspection. The printout should be examined for extraneous symbols or missing data, including missing test location identification. In most cases, electronic data storage is supplemented by manual data recording of sampling location, operator name, and other information.

3. Final Report

The final report must include both a summary and complete information about the site, the inspector, the inspection firm, the inspection process, and the inspection results. The full report should include a complete data set, including:

- Housing unit identifiers;
- Date of the inspection;
- Identity of the inspector and the inspection firm and any relevant certifications or licenses held by the inspector and/or the firm;
- Building component and room equivalent identification or numbering system or sketches;
- All XRF readings (including calibration check readings);
- All paint chip analyses;
- Testing protocol used;
- Instrument manufacturer, model, serial number, mode(s) of operation and age of radioactive source;
- Information on the owner's legal obligation to disclose the inspection results to tenants and/or purchasers before obligation under 24 CFR part 35 and 40 CFR part 745 (published in the *Federal Register*, Volume 61, Number 45, March 6, 1996, starting on p. 9064; copies of the regulations and related materials can be obtained from the National Lead Information Center Clearinghouse, 1-800-424-LEAD); and
- Final classification of all testing combinations into positive or negative categories, including a list of testing combinations, or building component types and their substrates, that were classified but not individually tested. *(Note that the final report should not list inconclusive readings as a third category. If the client wishes to assume all inconclusive readings are positive, the report should state that assumption and present all readings and testing combinations for which the readings were inconclusive. It is not permissible to assume all inconclusive readings are negative. The report should include the actual readings for any testing combinations for which readings were inconclusive, but were classified as*

positive. Also note that final classifications are needed for building component types and their substrates that were not actually tested. For example, if the client wants to suspend testing on testing combinations that were found to be positive in the first five room equivalents and are assumed to be positive in the remaining rooms, the final report should list those testing combinations that are assumed to be positive).

The report should also contain a summary that answers two questions:

- (1) Is there lead-based paint in the house? *and*
- (2) if lead-based paint is present, where is it located?

The summary report should also include the house address where the inspection was performed, the date(s) of the inspection, the name, address and phone numbers of the inspector and inspection firm, any appropriate license or certification numbers, and the starting and ending times for each day when XRF testing was done. The summary should also contain language regarding disclosure, such as:

"A copy of this summary must be provided to new lessees (tenants) and purchasers of this property under Federal law (24 CFR part 35 and 40 CFR part 745) before they become obligated under a lease or sales contract. The complete report must also be provided to new purchasers and it must be made available to new tenants. Landlords (lessors) and sellers are also required to distribute an educational pamphlet and include standard warning language in their leases or sales contracts to ensure that parents have the information they need to protect their children from lead-based paint hazards."

Although 24 CFR part 35 and 40 CFR part 745 do not require that inspectors and owners keep copies of inspection reports for any specified period of time, future buyers are entitled to all available inspection reports, should the property be re-sold.

If no lead-based paint has been detected in the house, the summary should say so. The following language may be used:

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm² in paint was found on any building components, using the inspection protocol in Chapter 7 of the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997)*. Therefore, this dwelling qualifies for the exemption in 24 CFR part 35 and 40 CFR part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm², which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the inspector and should also be kept by the owner and all future owners for the life of the dwelling."

Detailed documentation of the XRF testing should also be provided in the full report, including the raw data upon which it was based. The single-family housing forms provided at the end of this chapter or comparable forms would serve this purpose.

For a leased home, where no lead-based paint is identified during an inspection, the building owner is exempt from the requirements of the disclosure rule. However, when a housing unit with no lead-based paint is being sold, the owner still has responsibilities under the disclosure rule (e.g., providing a lead hazard information pamphlet to potential buyers). For selling and leasing properties where no lead-based paint is identified, it is strongly recommended that owners and inspectors retain inspection reports for the life of the building.

V. Inspections in Multifamily Housing

This section emphasizes the differences between single-family and multifamily housing paint inspections. The protocols mentioned in earlier sections are not repeated here. It will be necessary to read Section IV on single-family housing to implement the protocol for multifamily housing.

Use of the multifamily protocol is less time-consuming and more cost effective than inspecting all units in a given housing development or

building because in most instances a pattern can be determined after inspecting a fraction of the units. The number of units tested is based on the date of construction and the number of units in the housing development.

For purposes of this chapter only, multifamily housing is defined as any group of units that are similar in construction from unit to unit, with:

- 21 or more units, if any were built before 1960 or are of unknown age, or
- 10 or more units, if they were all built from 1960 through 1977.

Developments with fewer units should be treated as a series of single-family housing units.

A. Statistical Confidence in Dwelling Unit Sampling

The number of similar units, similar common areas or exterior sites to be tested (the sample size) is based on the total number units, similar common areas or exterior sites in the building(s), as specified in Table 7.3. Use the table for sampling each set of similar units; each set of similar common areas and each set of exterior sites. For pre-1960 or unknown-age buildings or developments with 1,040 or more similar units, similar common areas or exterior sites, test 5.8 percent of them, and round up any fraction to the next whole number. For 1960-77 buildings or developments with 1,000 or more units, test 2.9 percent of the units, and round up any fraction to the next whole number. For reference, the table shows entries from 1500 to 4000 in steps of 500. For example, in a development built in 1962, with 200 similar units, 20 similar common areas, and 9 similar exterior sites, sample 27 units, 16 common areas, and all 9 exterior sites.

If lead levels in *all* units, common areas or exterior sites tested are found to be below the 1.0 mg/cm² standard, these sample sizes provide 95 percent confidence that:

- For pre-1960 housing units, less than 5 percent or fewer than 50 (whichever is less) units, common areas or exterior sites, have lead at or above the standard; and
- For 1960 to 1977 housing units, less than 10 percent or fewer than 50 (whichever is less) units, common areas or exterior sites, have lead at or above the standard.

Refer to Appendix 12 of these Guidelines for the statistical rationale for this table. The Appendix shows the details of the calculation for pre-1960 housing; the calculation is the same for 1960-1977

housing, except for using the 10 percent criterion for 1960-1977 housing, rather than the 5 percent used for older housing.³

Table 7.3: Number of Units to be Tested in Multifamily Developments

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-Age Building or Development: Number to Test	1960-1977 Building or Development: Number to Test
1-9	All	All
10-13	All	10
14	All	11
15	All	12
16-17	All	13
18	All	14
19	All	15
20	All	16
21-26	20	16
27	21	17
28	22	18
29	23	18
30	23	19
31	24	19
32	25	19
33-34	26	19
35	27	19
36	28	19
37	29	19
38-39	30	20
40-48	31	21
49-50	31	22
51	32	22
52-53	33	22
54	34	22
55-56	35	22

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-Age Building or Development: Number to Test	1960-1977 Building or Development: Number to Test
57-58	36	22
59	37	23
60-69	38	23
70-73	38	24
74-75	39	24
76-77	40	24
78-79	41	24
80-88	42	24
89-95	42	25
96-97	43	25
98-99	44	25
100-109	45	25
110-117	45	26
118-119	46	26
120-138	47	26
139-157	48	26
158-159	49	26
160-177	49	27
178-197	50	27
198-218	51	27
219-258	52	27
259-279	53	27
280-299	53	28
300-279	54	28
380-499	55	28
500-776	56	28
777-939	57	28

Number of Similar Units, Similar Common Areas or Exterior Sites in a Building or Development	Pre-1960 or Unknown-Age Building or Development: Number to Test	1960-1977 Building or Development: Number to Test
940-1004	57	29
1005-1022	58	29
1023-1032	59	29
1033-1039	59	30
1500	87	44
2000	116	58
2500	145	73
3000	174	87
3500	203	102
4000	232	116

Although the data set used to develop sample sizes in multifamily housing⁴ was not randomly selected from all multifamily housing developments in the nation (no such data set is available), analyses drawn from the data are likely to err on the side of safety and public health for at least two reasons: First, the prevalence and amounts of lead-based paint are highest in pre-1960 housing developments. The sampling approach used here focuses inspection efforts on buildings where a greater chance of lead-based paint hazards exist.

Second, and perhaps more important, none of the 65 developments had lead-based paint in 5 to 10 percent of the units. That indicates lead-based paint in this range is likely to be quite rare and that plausible increases in sampling to improve detection in this range will fail to improve confidence in the results significantly. Most painting follows a pattern: Property owners or managers often paint all surfaces, all components within a room, or similar components in all rooms in a unit when there is tenant turnover. It is unlikely that lead-based paint distributions are completely random, as assumed in the 1995 edition of the *Guidelines*. From the available data, there appears to be no significant benefit to increasing the number of units to be sampled to detect a prevalence

rate of 5 to 10 percent, because few developments are likely to be in that range. In short, the sampling design presented here will yield a more targeted, cost-effective approach to identifying lead-based paint where it is most likely to exist.

B. Selection of Housing Units

The first step in selecting housing units is to identify buildings in the development with a common construction based on written documentation or visual evidence of construction type. Such buildings can be grouped together for sampling purposes. For example, if two buildings in the development were built at the same time by the same builder and appear to be of similar construction, all of the units in the two buildings can be grouped for sampling purposes. Units can have different sizes, floor plans, and number of bedrooms and still be grouped.

The specific units to be tested should be chosen *randomly* from a list of all units in each building or buildings. The "Selection of Units" form (Form 7.4) or a comparable form may be used to aid in the selection process. A complete list of all units in each group should be used and a separate identifying sequential number must be assigned to each unit. For

example, if apartment addresses are shown as 1A, 1B, 2A, 2B etc., they must be given a sequence number (1, 2, 3, 4, etc.).

Obviously, units without identifiers could not be selected for inspection and would thus bias the sampling scheme. The list of units should be complete and verified by consulting building plans or by a physical inspection of the development.

Specific units to be tested should be selected randomly using the formula below, and a table of random numbers or the random number function on a calculator. Tables of random numbers are often included in statistics books. Calculators with a random number function key can be obtained for less than \$20 and are easier to use than tables. Inspectors are, therefore, advised to use them to obtain the random numbers, which can then be used to select the specific numbered units. A unit number is selected by rounding up the product of the random number times the total number of units in the development to the *next* whole number. That is:

Housing Unit number = Random number *times* Total number, rounded *up*,

where:

Housing Unit number = the identification number for a unit in a list;

Random number = a random number between 0 and 1;
and

Total number = the total number of units in a list of units.

The same unit may be selected more than once by this procedure. Because each unit should be tested only once, duplicate selection should be documented and then discarded. The procedure should be continued until an adequate number of units has been selected.

The "Selection of Units" form (Form 7.4) is completed by filling in as many random numbers as are needed in the appropriate column. Numbers for the third column are obtained by multiplying the total development size by each random number. Numbers for the fourth column are obtained by rounding up from the previous calculation to the next whole number. If the whole

number in the fourth column has already been selected, that selection should not be entered again. The notation "DUP" should be entered to show that the selection was a duplicate. This process should continue until the required number of distinct sample numbers have been selected. Common areas and exterior room equivalents should be identified at this time, but they are not considered to be separate units.

C. Listing Testing Combinations

The "Multifamily Housing LBP Testing Data Sheet" form (Form 7.5) -- or a comparable form -- should be used to list the testing combinations in each unit, common area and exterior site that was selected for inspection. In multifamily housing, the inventory of testing combinations often will be similar for units that have the same number of bedrooms. The inspector should, however, list testing combinations that are unique to each tested unit. For example, some units may contain built-in cabinets while others do not. The selection of testing combinations should, therefore, be carried out independently in each inspected unit.

As in single family housing, take readings on all testing combinations in all room equivalents in each unit selected for testing.

1. Common Areas

Similar common areas and similar exterior sites must always be tested, but in some cases they can be sampled in much the same way that dwelling units are. Common areas and building exteriors typically have a similar painting history from one building to the next. In multifamily housing, each common area (such as a building lobby, laundry room, or hallway) can be treated like a dwelling unit. If there are multiple similar common areas, they may be grouped for sampling purposes in exactly the same way as regular dwelling units are. However, dwelling units, common areas and exterior sites cannot all be mixed together in a single group.

All testing combinations within each common area or on building exteriors selected for testing must be inspected. This includes playground equipment, benches and miscellaneous testing combinations located throughout the development. The specific

common areas and building exteriors to test should be randomly selected, in much the same way as specific units are selected using random numbers. (See Section IV.B, above).

The number of common areas to test should be taken from Table 7.3. In this instance, common areas and building exteriors can be treated in the same way as housing units (although they are not to be confused with true housing units).

D. Number of Readings on Each Testing Combination

The method for collecting XRF readings is identical for multifamily and single-family housing (see Section IV).

E. XRF Calibration Check Readings

The method for collecting and evaluating XRF calibration check readings is identical for multifamily and single-family housing (see Section IV.D).

F. Substrate Correction in Multifamily Housing

The method for correcting XRF readings for substrate bias is identical for multifamily and single-family housing (see Section IV.E) with one exception: For multifamily housing, randomly select two housing units to be used to collect substrate measurements for all substrates within the development that need correction, and use the results from those two units to perform substrate correction calculations in all tested units within the development or building. If substrates exist in common areas or on exterior sites that do not exist in residential areas, select two locations from these areas for substrate correction. Otherwise, the same substrate correction readings can be applied to dwelling units, common areas and exterior sites.

G. Classification of XRF Results in Multifamily Housing

The inspector should record each XRF reading for each testing combination on the "Multifamily Housing LBP Testing Data Sheet," (Form 7.5) or a comparable form, and indicate whether that testing combination was

classified as positive, negative, or inconclusive as described previously for single-family housing.

When the inspection is completed in all of the selected units and the classification rules have been applied to all XRF results, the "Multifamily Housing: Component Type Report" form (Form 7.6) or a comparable form should be completed. Building component types -- groups of like components constructed of the same substrate in the multifamily housing development -- are aggregated on this form. For example, grouping all interior walls would create an appropriate component type if all walls are plaster. Grouping all doors would not be appropriate, however, if some doors are metal and some are wood. At least 40 testing combinations of a given component type in a multifamily housing development must be tested to obtain the desired level of confidence in the results. (Refer to Appendix 12 of these *Guidelines* for the statistical rationale for this minimum number of component types to test.) If fewer than 40 testing combinations of a given component type were tested, test additional combinations of that component type. If less than 40 components of a given type exist in the units to be tested, test all of the components that do exist.

In some cases additional sampling of the specific component may not be necessary. If no lead at or above the standard is found on that component type, additional measurements should be taken in other units to increase the sample size to 40. However, if all or most of the sampled component types are positive, no further sampling is needed, provided that the building owner agrees with this reduction of testing. For example, if 20 out of 60 doors are tested, and the majority are positive for lead-based paint, all similar doors in the buildings may be presumed positive. Note, however, that all required XRF testing and laboratory analysis, if necessary, must be completed to conclude that all components included in a given component type are negative.

On the "Multifamily Housing: Component Type Report" form, the substrate, and component for each component type should be recorded under the heading "Description" (for example, wooden interior doors) as well as the total number of testing combinations included in the component type. In addition, for each component type, the aggregated positive, negative, and inconclusive classifications should be recorded as

described below. Record the number and percentage of testing combinations classified as:

- Positive for lead-based paint. This is based upon a positive XRF reading in accordance with the XRF's Performance Characteristic Sheet;
- Inconclusive and having XRF readings less than the midpoint of the XRF's inconclusive range ("low inconclusive");
- Inconclusive and having XRF readings equal to or greater than the midpoint of the XRF's inconclusive range ("high inconclusive"); and
- Negative for lead-based paint.

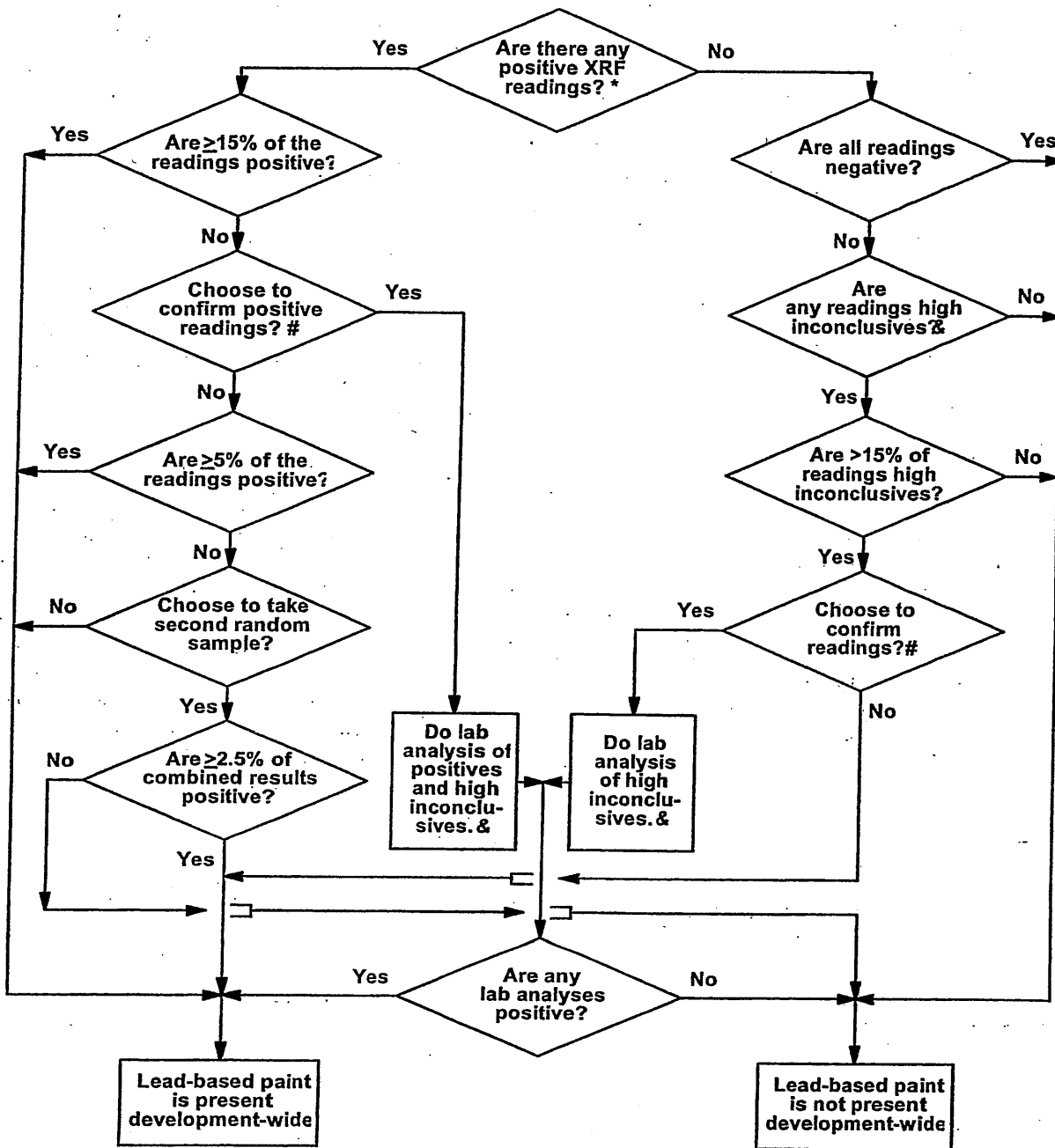
The "Multifamily Decision Flowchart" (Figure 7.1) should be used to interpret the aggregated XRF testing results in the "Multifamily Housing: Component Type Report" form. The flowchart is applied separately to each component/substrate type (wood doors, metal window casings, etc.) and shows one of the following results:

- **Positive:** Lead based-paint is present on one or more of the components.
- **Negative:** Lead based-paint is not present on the components throughout the development. (Lead may still be present at lower loadings and hazardous leaded dust may be generated during modernization, renovation, remodeling, maintenance, or other disturbances of painted surfaces.)

These results are obtained by following the flowchart. The decision that lead-based paint is present is reached with 99 percent confidence if 15 percent or more of the components are positive. (Refer to Appendix 12 for the statistical rationale for this percentage.) The decision that lead-based paint is not present throughout the development is reached if: (1) 100 percent of the

tested component types are negative, or (2) 100 percent of the tested component types are classified as either negative or inconclusive *and* all of the inconclusive classifications have XRF readings less than the midpoint of the inconclusive range for the XRF in use. Note that the midpoint of the inconclusive range is *not* a threshold; it is used only for classifying XRF readings in multifamily housing in conjunction with information about other XRF readings as described here. (See section 2 below for guidance on what to do when the percentage of positive readings is less than 5%). For cases with greater than or equal to 5% positives *and* less than 15% positives, as well as no positives but greater than 15% high inconclusives, some confirmatory laboratory testing may be needed to reach a final conclusion, unless the client wishes to assume the validity of the XRF results and that all inconclusives are positive. For each testing combination with an inconclusive XRF reading at or above the midpoint of the inconclusive range, a paint-chip sample should be analyzed by a laboratory recognized by the EPA National Lead Laboratory Accreditation Program. If all the laboratory-analyzed samples are negative, it is not necessary to test inconclusive XRF results below the midpoint of the inconclusive range. If, however, *any* laboratory results are positive on a component type, all inconclusives equal to or above the midpoint of the inconclusive range should be analyzed. Once all laboratory results have been reported, the "Multifamily Housing: Component Type Report" form should be updated to include the laboratory results and classifications (either positive or negative).

The "Multifamily Decision Flowchart" is based on data collected by EPA in a large field study of XRF instruments (EPA 1995). Percentages were chosen so that, for each component type, there is a 98 percent chance of correctly concluding that lead-based paint is either absent on all components or present on at least one component of a given



* "Positive," "negative," and "inconclusive" XRF readings are determined in accordance with the XRF instrument's Performance Characteristics Sheet as described in the HUD Guidelines for the Evaluation and Control of Lead Hazards in Housing, chapter 7.

& A high inconclusive reading is an XRF reading at or above the midpoint of the inconclusive range. For example, if the inconclusive range is 0.41 to 1.39, its midpoint (average) is 0.90; a reading in the range from 0.90 to 1.39 would be a high inconclusive reading.

Any paint or coating may be assumed to be lead-based paint, even without XRF or laboratory analysis. Similarly, any XRF reading may be confirmed by laboratory analysis.

Figure 7.1 Multifamily Decision Flowchart

type. Thus, the probability that a tested component type will be correctly classified is very high.

Percentages of positive or inconclusive results are computed by dividing the number in each classification group by the total number of testing combinations of the component type that were tested. For example, if 245 wooden doors in a multifamily housing development were tested and 69 were classified as inconclusive with XRF readings less than the midpoint of the inconclusive range, 28 percent $[(69 / 245) \times 100 \text{ percent} = 28.2 \text{ percent}]$ should be recorded on the form in the "<1.0 percent" columns under the heading "Inconclusive."

1. Unsampled Housing Units

If a particular component type in the sampled units is classified as positive, that same component type in the unsampled units is also classified as positive. For those cases where the number of positive components is small, further analysis may determine if there is a systematic reason for the specific mixture of positive and negative results.

For example, suppose that a few porch railings tested negative, but most tested positive. Examination of the sample results in conjunction with the building records showed that the porch railings classified as positive were all original and the railings classified as negative were all recent replacements. The records did not reveal which units had replaced railings, and due to historic preservation requirements, the replacement railings were identical in appearance to the old railings. Thus, all unsampled original porch railings could be classified as positive, and all unsampled recently replaced porch railings could be classified as negative if at least 40 of the replaced porch railings had been tested.

2. Fewer than 5% Positive Results

Where a small fraction of XRF readings, less than 5 percent, of a particular component type are positive, several choices are available:

- First, the inspector may confirm the results by laboratory analysis, which is considered definitive when performed as described in Section VI, below; a laboratory lead result of

1.0 mg/cm² or greater (or 0.5 percent by weight or greater) is considered positive.

- Second, the inspector may select a second random sample (using unsampled units only) and test the component type in those units. If less than 2.5% of the combined set of results is positive, the component type may be considered as not having lead-based paint development-wide, but, rather, having lead-based paint in isolated locations, with a reasonable degree of confidence. Individual components that are classified positive should be considered as being lead-based painted and managed or abated appropriately.
- Finally, if the client chooses not to confirm the results by laboratory analysis and not to take a second set of measurements, then the component type should be considered as having lead-based painted development-wide.

The inspector may wish to advise the client that the cost of additional XRF testing or laboratory analysis is usually much less than the cost of lead abatement or interim control projects, and that this is of particular interest in the situation where few results are positive, because there is a significant chance that the paint, development-wide, may not be lead-based.

Whatever approaches are used, all painted individual surfaces found to be positive for lead must be included in the inspection report, regardless of development-wide conclusions.

H. Evaluation of the Inspection

The methods for evaluating inspection services in multifamily housing are identical to those described for single-family housing (see Section IV.H) except for the retesting option: In multifamily housing, a total of 10 testing combinations should be selected for retesting in two units.

I. Documentation in Multifamily Housing

The method for documentation is identical for multifamily and single-family housing (see Section IV.I), with the following exception: Use forms 7.2

through 7.6 for multifamily housing (see Addendum 2) or comparable forms, not the single-family housing forms.

When lead-based paint has been found in some units it must be managed or treated as such in those units, even if the inspection indicates that it is not present development wide.

VI. Laboratory Testing for Lead in Paint

For inconclusive XRF results and areas that cannot be tested using an XRF instrument, a paint-chip sample should be collected using the protocol outlined here and in Appendix 13.2 of these *Guidelines*. The sample should be analyzed by a laboratory recognized under the EPA National Lead Laboratory Accreditation Program (NLLAP) using the analytical method(s) it used to obtain the laboratory's recognition. If a paint chip sample cannot be collected, the inspection report should include a list of surfaces where paint chip samples were needed but not taken (in this case, the client would assume that inconclusives requiring confirmation by laboratory analysis are positive).

A. Number of Samples

Only one paint-chip needs to be taken for each testing combination. Additional samples can be collected as a quality control measure, if desired.

B. Size of Samples

The paint-chip sample should be taken from a 4-square-inch (25-square-centimeter) area that is representative of the paint on the testing combination, as close as possible to any XRF reading location and, if possible, unobtrusive. This area may be a 2 by 2 inch (5 by 5 centimeter) square, or a 1 by 4 inch (2½ by 10 centimeter) rectangle, or have any other dimensions that equal at least 4 square inches (25 square centimeters). Regardless of shape, the dimensions of the surface area must be accurately measured (to the nearest millimeter or 1/16th of an inch) so that laboratory results can be reported in mg/cm². Results should be reported as percent by weight if the dimensions of the surface area cannot be accurately measured or if all paint within the sampled area cannot be removed. In these cases, lead should be reported in ppm or percent by weight, *not* in

mg/cm². Smaller surface areas can be used if acceptable to the laboratory.

The 4-square-inch (25-square-centimeter) area practically guarantees that a sufficient amount of paint will be collected for laboratory analysis. As a result, samples will sometimes weigh more than required for some laboratory analysis methods. Smaller-sized paint chips may be collected if permitted by the laboratory. (See ASTM E 1729). In all cases, the inspector should consult with the NLLAP recognized laboratory selected regarding specific requirements for the submission of samples for lead-based paint analysis.

C. Inclusion of Substrate Material

Inclusion of small amounts of substrate material in the paint-chip sample will result in minimal error if results are reported in mg/cm², but including any amount of substrate can result in less precise results, with worse effect as the amount of substrate increases. Substrate material may not be included if results are to be reported in weight percent (or ppm).

D. Repair of Sampled Locations

Areas from which paint-chip samples are collected should be repaired and cleaned, unless the area will be removed, encapsulated, enclosed, or repainted before occupancy. Repairs can be completed by repainting, spackling, or any other method of covering that renders the bare surface inaccessible. Cleanup should be done with wet wiping and rinsing, and it should be done on both the surface and the floor underneath the surface sampled. The new covering or coating should have the same expected longevity as new paint or primer. Repair is not necessary if analysis shows that the paint is not lead-based paint and leaving the damage is acceptable to the client and/or the owner.

E. Classification of Paint-Chip Sample Results

Any paint inspections may be carried out using only paint-chip sampling and laboratory analysis at the option of the purchaser of the inspection services. This option is not recommended because it is time consuming, costly, and requires extensive repairs. Paint-chip sampling also has opportunities for errors,

such as inclusion of substrate material (for results in weight percent), failure to remove all paint from an area (including paint that has bled into a substrate) and laboratory error. Nevertheless, paint-chip sampling generally has a smaller error than does XRF and is, therefore, appropriate as a final decisionmaking tool. Laboratory results of 1.0 mg/cm² or greater, or 0.5 percent or greater, are to be considered positive. If the laboratory reports both mg/cm² and weight percent for a sample, use whichever result is positive (if any) for final classification. In the rare situation where more than one paint-chip sample from a single testing combination is analyzed, the combination is considered positive if any of those samples is positive. All other results are negative. No inconclusive range is reported for laboratory measurements.

F. Units of Measure

Results should be reported in mg/cm², the primary unit of measure for lead-based paint analyses of surface coatings. Results should be reported as percent by weight only if the dimensions of the surface area cannot be accurately measured or if not all paint within the sampled area can be removed. In these cases, results should not be reported in mg/cm², but in weight percent.

Weight measurements are usually reported as micrograms per gram ($\mu\text{g/g}$), milligrams per kilogram (mg/kg), or parts per million (ppm) by weight. For example, a sample with 0.2 percent lead may also be reported as 2,000 $\mu\text{g/g}$ lead, 2,000 mg/kg lead, or 2,000 ppm lead.

G. Sample Containers

Samples should be collected in sealable rigid containers such as screw-top plastic centrifuge tubes, rather than plastic bags which generate static electricity and make quantitative transfer of the entire paint sample in the laboratory impossible. Paint-chip collection should

$$\text{mg/cm}^2 = \frac{\text{weight of lead from subsample (in mg)} \times \frac{\text{total sample weight (in g)}}{\text{subsample weight (in g)}}}{\text{sample area (in cm}^2\text{)}}$$

To report results in weight percent, the following equation should be used:

include collection of all the paint layers from the substrate, but collection of actual substrate should be minimized. Refer to ASTM E 1729 and Appendix 13 of these *Guidelines* for further details on collection of paint-chip samples.

H. Laboratory Analysis Methods

Several standard laboratory technologies are useful in quantifying lead levels in paint-chip samples. These methods include, but are not limited to, Atomic Absorption Spectroscopy (AAS), Inductively Coupled Plasma-Atomic Emission Spectroscopy (ICP-AES), Anodic Stripping Voltammetry (ASV), and Potentiometric Stripping Voltammetry (PSV).

For analytical methods that require sample digestion, samples should be pulverized so that there is adequate surface area to dissolve the sample before laboratory instrument measurement. In some cases, the amount of paint collected from a 4-square-inch (25-square-centimeter) area may exceed the amount of paint that can be analyzed successfully. It is important that the actual sample mass analyzed not exceed the maximum mass the laboratory has successfully tested using the specified method. If subsampling is required to meet analytical method specifications, the laboratory must homogenize the paint-chip sample (unless the entire sample will eventually be analyzed and the results of the subsamples combined). Without homogenization, subsampling would likely result in biased, inaccurate lead results (see ASTM E 1645). See ASTM PS-87 for an ultrasonic extraction method for preparing paint samples for subsequent analysis for lead.

If the sample is properly homogenized and substrate inclusion is negligible, the result can be reported in either milligrams per square centimeter (mg/cm²; the preferred unit), percent by weight, or both. The following equation should be used to report the results in milligrams per square centimeter:

Weight percent = weight of lead in the subsample/weight of subsample x 100.

To report results in micrograms per gram ($\mu\text{g/g}$), the following equation should be used:

$$\mu\text{g/g} = \frac{\text{weight of lead from subsample (in } \mu\text{g)}}{\text{subsample weight (in g)}}$$

If the laboratory reports results in both mg/cm^2 and weight percent, and if one result is positive and the other negative, the sample is classified as positive.

Whatever the preparation techniques of paint-chip samples (including homogenization, grinding, and digestion), and instrument selection and operation selected, the inspector should verify, prior to the collection and submission of samples, that the laboratory is approved to perform the appropriate analytical methodologies. Methods should be applied to paint-chip materials of approximately the same mass and lead loading (also called area concentration, measured in mg/cm^2) as those samples anticipated from the field.

Because of the potential for sample mass to affect the precision of lead readings, laboratory analysis reference materials processed with field samples for quality assurance purposes should have close to the same mass as those used for paint-chip samples. Refer to ASTM E 1645 or equivalent methods for further details on laboratory preparation of paint-chip samples, and refer to ASTM E 1613, ASTM E 1775, ASTM PS 88, or equivalent methods on analysis of samples for lead.

I. Laboratory Selection

Only a laboratory recognized under EPA's National Lead Laboratory Accreditation Program (NLLAP) should be used for lead-based paint analysis. Such a laboratory is required to use the same analytical methods that it used to obtain accreditation. EPA established NLLAP to provide the public with laboratories that have a demonstrated capability for analyzing lead in paint chip, dust, and soil samples at the levels of concern stated in these *Guidelines*. In some states, an NLLAP laboratory *must* be used. To participate in NLLAP, a laboratory must:

- Participate successfully in the Environmental Lead Proficiency Analytical Testing Program (ELPAT). ELPAT is administered by the American Industrial Hygiene Association (AIHA) in cooperation with the Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), and EPA. The proficiency testing samples used in ELPAT consist of variable levels of lead in paint, dust, and soil matrices.
- Undergo a systems audit, including an on-site visit. The systems audit must be conducted by an accrediting organization with a program recognized by EPA through a Memorandum of Understanding (MOU). Laboratory accrediting organizations participating in NLLAP have accrediting program requirements that meet or exceed NLLAP laboratory quality system requirements stated in the MOU.

An up-to-date list of fixed-site and mobile laboratories recognized by the EPA NLLAP for analysis of paint-chip samples may be obtained from the National Lead Information Center Clearinghouse by calling 1-800-424-LEAD or from the Lead Listing at <http://www.leadlisting.org>. Since December 1993, the American Association for Laboratory Accreditation (A2LA) and AIHA have been recognized as laboratory-accrediting organizations participating in NLLAP. NLLAP specifies quality control and data reporting requirements, as described in "Laboratory Quality System Requirements," which can be found in Appendix A of the NLLAP Model MOU. The MOU can also be obtained by calling the National Lead Information Center Clearinghouse, at the number above. The evaluation approach in ASTM E 1583 may be considered in selecting laboratories to use

from among available NLLAP-recognized laboratories.

J. Laboratory Report

The laboratory report for analysis of paint samples for lead should include both identifying information and information about the analysis. At a minimum, this should include:

- Laboratory identifying information: including the laboratory's name, address, and phone number, and NLLAP and other applicable certification and accreditation information; similarly, the client and/or project's name and address should be provided.
- Analytical method information: including the information provided in accordance with NLLAP procedures, and ASTM E 1613, ASTM PS 88 or equivalent method(s) for analysis for lead.
- Sample information: including field sample number and any information (e.g., sample type and/or location) given to the laboratory about the sample, unique laboratory sample number, analytical method (including a description of any variations from the standard method), quality control/quality assurance results, date of analysis, operational or testing problems or unusual occurrences.

VII. Radiation Hazards

Portable XRF instruments used for lead-based paint inspections contain radioactive isotopes that emit X rays and gamma radiation. Proper training and handling of these instruments is required to protect the instrument operator and any other persons in the immediate vicinity during XRF usage. The XRF instrument should be in the operator's possession at all times. The operator should never defeat or override any safety mechanisms of XRF equipment.

A. XRF Use Licenses and Certification

In addition to training and certification in lead-based paint inspection, a person using a portable XRF

instrument for inspection must have valid licenses or permits from the appropriate Federal, State, and local regulatory bodies to operate XRF instruments because of radioactive materials they contain. All portable XRF instrument operators should be trained by the instrument's manufacturer (or equivalent). XRF operators should provide related training, licensing, permitting, and certification information to the person who has contracted for their services before an inspection begins. Depending on the State, operators may be required to hold three forms of proof of competency: manufacturer's training certificate (or equivalent), a radiation safety license, and a State lead-based paint inspection certificate or license. To help ensure competency and safety, HUD and EPA recommend that clients hire only those inspectors who hold all three.

The regulatory body responsible for oversight of the radioactive materials contained in portable XRF instruments depends on the type of material being handled. Some radioactive materials are Federally regulated by the U.S. Nuclear Regulatory Commission (NRC); others are regulated at the State level. States are generally categorized as "agreement" and "non-agreement" States. An agreement State has an agreement with NRC to regulate radioactive materials that are generally used for medical or industrial applications. (Most radioactive materials found in XRF instruments are regulated by agreement States). For non-agreement States, NRC retains this regulatory responsibility directly. At a minimum, however, most State agencies require prior notification that a specific XRF instrument is to be used within the State. Fees and other details regarding the use of portable XRF instruments vary from State to State. Contractors who provide inspection services must hold current licenses or permits for handling XRF instruments, and must meet any applicable State or local laws or notification requirements.

Requirements for radiation dosimetry by the XRF instrument operator (wearing dosimeter badges to monitor exposure to radiation) are generally specified by State regulations, and vary from State to State. In some cases, for some isotopes, no radiation dosimetry is required. Because the cost of dosimetry is low, it should be conducted, even when not required, for the following four reasons:

- XRF instrument operators have a right to know the level of radiation to which they are exposed during the performance of the job. In virtually all cases, the exposure will be far below applicable exposure limits.
- Long-term collection of radiation exposure information can aid both the operator (employee) and the employer. The employee benefits by knowing when to avoid a hazardous situation; the employer benefits by having an exposure record that can be used in deciding possible health claims.
- The public benefits by having exposure records available to them.
- The need for equipment repair can be identified more quickly.

B. Safe Operating Distance

XRF instruments used in accordance with manufacturer's instructions will not cause significant exposure to ionizing radiation. But the instrument's shutter should never be pointed at anyone, even if the shutter is closed.

The safe operating distance between an XRF instrument and a person during inspections depends on the radiation source type, radiation intensity, quantity of radioactive material, and the density of the materials being surveyed. As the radiation source quantity and intensity increases, the required safe distance also increases. Placing materials, such as a wall, in the direct line of fire, reduces the required safe distance. According to NRC rules, a radiation dose to an individual in any unrestricted area must not exceed 2 millirems per hour. One of the most intense sources currently used in XRF instruments is a 40-millicurie ⁵⁷Co (Cobalt-57) radiation source. Other radiation sources in current use for XRF testing of lead-based paint generally produce lower levels of radiation. Generally, an XRF operator conducting inspections according to manufacturer's instructions would be exposed to radiation well below the regulatory level (State of Wisconsin 1994). Typically, XRF instruments with lower gamma radiation intensities can use a shorter safe distance provided that the

potential exposure to an individual will not exceed the regulatory limit.

Persons should not be near the other side of a wall, floor, ceiling or other surface being tested. Verify that this is indeed the case prior to initiating XRF testing activities, and check on it during testing.

If these practices are observed, the risk of excessive exposure to ionizing radiation is extremely low and will not endanger any inspectors or occupants present in the dwelling.

VIII. REFERENCES

EPA 1995. "A Field Test of Lead-Based Paint Testing Technologies: Technical Report, EPA 747-R-95-002b, U.S. Environmental Protection Agency, Washington DC, May 1995.

EPA and HUD 1996. 24 CFR 35, subpart H, and 40 CFR 745, subpart F. Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing. Published, along with their preamble, in the *Federal Register*, volume 61, pp. 9064-9088, March 6, 1996. Implements Section 1018 of Title X.

EPA 1996. 40 CFR 745, subparts L and Q. Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities. Published, along with its preamble, in *Federal Register*, volume 61, pp. 45777-45830, August 29, 1996. Implements Sections 402 and 404 of the Toxic Substances Control Act.

State of Wisconsin 1994. Wisconsin Department of Health and Social Services, memo from Mark Chamberlain dated April 28, 1994. Measurements showed that exposures to radiation during operation of a Scitec MAP 3 XRF were 132 $\mu\text{rem}/\text{day}$, which can be compared to about 1,400 $\mu\text{rem}/\text{day}$ from natural background radiation.

Addendum 1

Examples of Lead-Based Paint Inspections

A. Example of a Single-Family Housing Inspection

The inspector completed the "Single-Family Housing LBP Testing Data Sheet," recording "bedroom (room 5)" as the room equivalent and listing "plaster" as the first substrate. The completed inventory of testing combinations in the bedroom indicated the presence of wood, plaster, metal, and drywall substrates. Brick and concrete substrates were not present in the bedroom. Descriptions of all testing combinations in the bedroom were recorded. Completed Form 7.1 shows the completed inventory for all testing combinations in the bedroom. (Completed Forms are found in Addendum 3, after the blank forms.)

Before any XRF testing, the inspector performed the manufacturer's recommended warm up procedures. The film was placed more than 12 inches (0.3 meters) away from a painted or other surface. The inspector then took three calibration check readings (1.18 mg/cm², 0.99 mg/cm², and 1.07 mg/cm²) on the NIST SRM with a lead level of 1.02 mg/cm². Results of the first calibration check readings were recorded on the "Calibration Check Test Results" form (see Completed Form 7.2).

The inspector then averaged the three readings (1.08 mg/cm²), and computed the calibration difference (1.08 mg/cm² - 1.02 mg/cm² = 0.06 mg/cm²) and compared this to the calibration check tolerance shown in the *XRF Performance Characteristic Sheet* (see Completed Form 7.2). The calibration difference was not greater than the 0.20 calibration check limits around the NIST SRM standard of 1.02 mg/cm², that is, the difference was within the range of 0.82 mg/cm² to 1.22 mg/cm², inclusive. The instrument was considered in calibration, and XRF testing could begin.

The inspector recorded the results from the XRF testing in the bedroom on the "Single-Family Housing LBP Testing Data Sheet." At that point, the inspector was able to complete this form only through the XRF Reading column (see Completed Form 7.1). The remainder of the form was completed after the testing combinations in the house were inspected and correction values for substrate bias were computed. The inspector then moved on to inspect the next room equivalent.

The other bedroom, the kitchen, a living room, and a bathroom were also inspected. Three substrates -- wood, drywall, and plaster -- were found in these room equivalents. XRF testing for lead-based paint was conducted, using the same methodology employed in the first bedroom (room 5). After these five room equivalents were tested, the inspector noticed that all baseboards and all crown molding of the same substrate had XRF values of more than 5.0 mg/cm². The client had agreed earlier that testing could be abbreviated in this situation, so no further baseboard and crown molding testing combinations were tested in the remaining room equivalents. All similar remaining untested baseboard and crown molding with identical substrates were classified as positive in the final report based on the results of those tested. The raw data for the tested baseboards and crown moldings were also included in the final report.

Four hours after the initial calibration check readings, the inspector took another set of three calibration check readings. (If the inspection had taken less than 4 hours, as is common, the second calibration check test would have been conducted at the end of the inspection.) The readings were 1.45 mg/cm², 1.21 mg/cm², and 1.10 mg/cm²; the inspector recorded the results on the "Calibration Check Test Results" form (Completed Form 7.2). The inspector then averaged the three readings (1.25 mg/cm²), and computed the calibration difference (1.25 mg/cm² - 1.02 mg/cm² = 0.23 mg/cm²) and compared this to the calibration check tolerance shown in the *XRF Performance Characteristic Sheet* on Completed Form 7.2. The calibration difference exceeded the 0.20 calibration check tolerance. The inspector then marked "Failed calibration check" on the data sheets for those room equivalents that had been inspected since the last

successful calibration check test, and consulted the manufacturer's recommendations. After trying, the instrument could not be brought back into control. Consequently, the inspector began using a backup instrument, after performing a calibration check and manufacturer's warm up and quality control procedure. The calibration check test showed that the backup instrument was operating acceptably. The inspector used the backup instrument to reinspect the room equivalents checked with the first instrument, and then all the other room equivalents in the home. Next, because substrate correction was required for all results on wood and metal below 4.0 mg/cm² as specified in the *XRF Performance Characteristic Sheet* for the XRF model in use, the inspector prepared to take readings for use in the substrate correction computations. Using the random number function on a calculator and the list of sample location numbers, the inspector randomly selected two testing combinations each with wood and metal substrates where initial readings were less than 2.5 mg/cm², removed the paint from an area on each selected testing combination slightly larger than the faceplate of the XRF instrument, took three readings on the bare substrates, and recorded the readings on the "Substrate Correction Values" form (Completed Form 7.3). The inspector calculated the correction values for each substrate by averaging the six readings from the two test locations, rounded the result to the 2 places after the decimal point that the XRF instrument displayed, and recorded the information in the Correction Value row. The inspector then transferred the correction values to the "Single-Family Housing LBP Testing Data Sheet" for each corresponding substrate.

After the inspector had finished taking the readings needed to compute the substrate correction values, the inspector took another set of three calibration check readings. The inspector recorded the results on the "Calibration Check Test Results" form, under Second Calibration Check, for readings taken by the backup XRF instrument (Completed Form 7.2). The second (and final) calibration check average did not exceed the 0.20 calibration check tolerance. The inspector, therefore, deemed the XRF testing to be complete.

The inspector then calculated the corrected readings by subtracting the substrate correction value from each XRF result taken on a wood or metal substrate. The substrate correction value was obtained by averaging readings on bare surfaces that had initially measured less than 2.5 mg/cm² with the paint still on the surface (Completed Form 7.3). The inspector also used the inconclusive ranges obtained from the XRF Performance Characteristic Sheet (0.41 mg/cm² to 1.39 mg/cm²) for all substrates except plaster (inconclusive range 1.01 mg/cm² to 1.09 mg/cm²). Based on the valid window sill XRF readings, including substrate corrections for wood, there were initially 10 positive results, 2 inconclusive results, and 3 negative results in the bedroom. The two inconclusive results required paint-chip sampling with laboratory confirmation; this resulted in one positive and one negative result. The inspector then filled out the "Single-Family Housing: Component Type Report" (Completed Form 7.1A). A description of each component type was recorded in the first column, the total number of each tested component type was entered in the second column, and the number of testing combinations classified as positive for each component type from the "Single-Family Housing LBP Testing Data Sheet" (Completed Form 7.1) was calculated and entered in the third column. The inspector then did the same for the testing combinations classified as negative. Based upon the XRF results as modified by the laboratory confirmation of the two inconclusive samples, Completed Form 7.1A shows 11 positive and 4 negative results for wood window sills. The remaining component types were entered in a similar fashion.

B. Example of Multifamily Housing Inspection

This section presents a simple example of a multifamily housing development inspection. An actual inspection would have many more testing combinations than are provided here.

The inspector's first step was a visual examination of the development to be tested. During this pretesting review, buildings with a common construction and painting history were identified and the date of construction -- 1948 -- was determined. The construction and painting history of all the units was found to be similar, so that units in the development could be grouped together for sampling purposes. The inspector determined that the development had 55 units, and by consulting Table 7.3, determined that 35 units should be inspected.

The inspector used the "Selection of Housing Units" form (Completed Form 7.4) to randomly select units to inspect. The total number of units, 55, was entered into the first column of the form. The random numbers generated from a calculator were entered into the second column. The first random number, 0.583, was multiplied by 55 (the total number of units), and the product, 32.065, was entered in the third column. The product was rounded up from 32.065 to 33, and 33 was written in the fourth column, indicating that the 33rd unit would be tested. Other units were selected using the same procedure. When a previously selected unit was chosen again, the inspector crossed out the repeated unit number and wrote "DUP" (for duplicate) in the last column. The inspector continued generating random numbers until 35 distinct units had been selected for inspection. (In this case, it would have been faster to randomly determine the 20 units that would *not* be inspected ($55 - 35 = 20$) and then to select the remaining 35 units for inspection).

After identifying units to be inspected, the inspector conducted an inventory of all painted surfaces within the selected units. The inspector completed the "Multifamily Housing LBP Testing Data Sheet" for every testing combination found in each room equivalent within each unit. Completed Form 7.5 is an example of the completed inventory for the bedroom of the first unit to be inspected. The inventory showed that the bedroom was composed of four substrates and eight testing combinations of the following components: (1) one ceiling beam, (2) two doors, (3) four walls, (4) one window casing, (5) two door casings, (6) three shelves, (7) two support columns, and (8) one radiator. Where more than one of a particular component was present, except walls, one was randomly selected for XRF testing. Component location descriptions were recorded in the "Test Location" column. Drywall and brick substrates were not present in the bedroom.

Testing combinations not common to all units were added to the inventory list. The inspector also noted which types of common areas and exterior areas were associated with the selected units, identified each of these common and exterior areas as a room equivalent, and inventoried the corresponding testing combinations.

The inspector inventoried the remaining 34 units selected and their associated types of common areas and exterior areas before beginning XRF testing in the development. Alternatively, the inspector could have inventoried each room equivalent as XRF testing proceeded.

After completing the inventory, the inspector performed the XRF manufacturer's recommended warm up and quality control procedures successfully. Then the inspector took three calibration check readings on a 1.02 mg/cm² NIST SRM film. The calibration check was accomplished by attaching the film to a wooden board and placing the board on a flat wooden table. Readings were then taken with the probe at least 12 inches (0.3 meters) from any other potential source of lead. The following readings were obtained: 1.12, 1.00, and 1.08 mg/cm². These calibration check results were recorded on the "Calibration Check Test Results" form (Completed Form 7.2). The difference between the first calibration check average and 1.02 mg/cm² (NIST SRM) was not greater than the 0.3 mg/cm² calibration check tolerance limit obtained from the *XRF Performance Characteristic Sheet*, indicating that the XRF instrument was in calibration and that XRF testing could begin. (See the single-family housing example, in Section A, above, of this Addendum, for a description of what to do when the calibration check tolerance is exceeded).

The inspector began XRF testing in the bedroom by taking one reading on each testing combination listed on the inventory data sheet. XRF testing continued until all concrete, wood, and plaster component types were inspected in the bedroom. The XRF readings were recorded on the "Multifamily Housing LBP Testing Data Sheet" form (Completed Form 7.5). According to the *XRF Performance Characteristic Sheet*, the XRF instrument in use did not require correction for substrate bias for any of the substrates encountered in the development, so the XRF classification column was completed at that time. The inspector used single-family housing rules for classifying the XRF readings as positive, negative, or inconclusive. The inspector also used the inconclusive ranges obtained from the *XRF Performance Characteristic Sheet* (0.41 mg/cm² to 1.39 mg/cm²). The midpoint of the inconclusive range was then calculated to be 0.90 mg/cm² ($[0.41 \text{ mg/cm}^2 + 1.39 \text{ mg/cm}^2]/2 = 0.90 \text{ mg/cm}^2$). The results of the classifications were recorded in the Classification column of the "Multifamily Housing LBP Testing Data Sheet" form. Classifications for all testing combinations within the unit were computed in the same manner as for the bedroom.

Once inspections were completed in all of the 35 selected units of the development, the inspector completed the "Multifamily Housing: Component Type Report" form (Completed Form 7.6). A description of each component type was recorded in the first column, the total number of each tested component type was entered in the second column, and the number of testing combinations classified as positive for each component type from the "Multifamily Housing LBP Testing Data Sheet" (Completed Form 7.5) was calculated and entered in the third column. The inspector then did the same for the testing combinations classified as negative, that is, XRF readings up to and including 0.40 mg/cm², and for inconclusive classifications with XRF readings less than the midpoint of the inconclusive range, that is, XRF readings from 0.41 mg/cm² to 0.89 mg/cm², and for inconclusive classifications with XRF readings equal to or greater than the midpoint of the inconclusive range, that is 0.90 mg/cm² to 1.39 mg/cm². Using these readings and the total number of the component type sampled, the inspector computed and recorded the percentages of positive, negative, and inconclusive classifications for each component type.

After entering the number of testing combinations for each component type in the "Multifamily Housing Component Type Report" form, the inspector noticed that only 34 wood door casings had been inspected. Because it is necessary to test at least 40 testing combinations of each component type, the inspector arranged with the client to test six more previously untested door casings. Additional units were randomly selected from the list of unsampled units. An initial calibration check test was successfully completed and the six door casings were tested for lead-based paint. Another calibration check test indicated that the XRF instrument remained within acceptable limits. The inspector then updated the "Multifamily Housing: Component Type Report" form by crossing out with one line the row of the form that showed the original, insufficient number of component types for testing; the inspector then wrote the information on the full 40 wood door casings in a new row.

The inspector used the "Multifamily Decision Flowchart" (Figure 7.1) to evaluate the component type results. Because 100 percent of the plaster walls and metals baseboards tested negative for lead, the inspector concluded that no lead-based paint had been detected on any walls or baseboards in the development, including those in uninspected units, and entered "NEG" in the Overall Classification column. The inspector also observed that shelves, hall cabinets, and window casings had no positive results. For all of the other component types, 15% or more of the readings for each type were positive; after choosing *not* to perform additional XRF readings or laboratory analysis on those components, that is, to rely on the XRF readings, the inspector entered "POS" in the Overall Classification column for them. For the shelves, all the XRF results were negative or inconclusive and less than 0.90 mg/cm² ("low inconclusive") so the inspector, in accordance with the flowchart, entered "NEG" in the Overall Classification column. The hall cabinets and window casings were classified as inconclusive with some readings greater than or equal to 0.90 mg/cm² ("high inconclusive"). The inspector determined that over 15 percent of the readings taken on these component types were high inconclusives. The inspector chose to take additional samples for laboratory analysis, to see if any or all of the samples would be determined to be negative by laboratory analysis.

The inspector collected paint-chip samples from the inconclusive component types, but only from testing combinations where XRF readings were equal to or greater than 0.90 mg/cm², the midpoint of the inconclusive range. Paint-chip samples were taken from 32 sampling locations: 12 hall cabinets, 7 window casings and 13 metal radiators. The paint-chip samples were collected from a 4-square-inch (25-square-centimeter) surface area on each component. Each paint-chip sample was placed in a hard-shelled plastic container, sealed, given a uniquely-numbered label, and sent to the laboratory for analysis.

The laboratory returned the results to the inspector, who entered the laboratory results and classifications on the appropriate "Multifamily Housing LBP Testing Data Sheet" (Form 7.5). Laboratory results of all 5 paint-chip samples taken from the window casings were classified as negative. The laboratory results of 5 samples from the hall cabinets were classified as positive, and 7 as negative. The metal radiator results were classified as 9 positives and 4 negatives.

The "Multifamily Decision Flowchart" was applied to the results shown in the "Multifamily Housing: Component Type Report" to determine the appropriate classification for each component type. The inspector classified all shelves and

window casings as negative, based either on the XRF substrate-corrected readings or on laboratory confirmation analysis, respectively. Therefore, no further lead-based paint testing was required for the shelves and window casings. About 9.1 percent (none positive by XRF analysis and 5 positive by lab analysis of the 55 that were inspected) of all hall cabinets in the housing development had lead-based paint.

Final decisions made by the development client regarding the hall cabinets were based on various factors, including:

- The substantially lower cost of inspecting all hall cabinets in the development versus replacing all of those cabinets;
- Future plans, including renovating the buildings within three years; and
- The HUD/EPA disclosure rule requirements regarding the sale or rental of housing with lead-based paint.

In this case, the client arranged for testing hall cabinets in all of the unsampled units to determine which were positive, and which were negative. To verify the accuracy of the inspection services, the client asked the inspector to retest 10 testing combinations. The retest was performed according to instructions obtained from the *XRF Performance Characteristic Sheet*. The client appointed an employee to randomly select 10 testing combinations from the inventory list of 2 randomly selected units. The employee observed the inspector retesting the 10 selected testing combinations, using the same XRF instrument and procedures used for the initial inspection. A single XRF reading was taken from each of the 10 testing combinations. The average of the 10 repeat XRF results was calculated to be 0.674 mg/cm², and the average of the 10 previous XRF results was computed to be 0.872 mg/cm². The absolute difference between the two averages was computed to be 0.198 mg/cm² (0.872 mg/cm² minus 0.674 mg/cm²). The Retest Tolerance Limit, using the formula described in the *XRF Performance Characteristic Sheet*, was computed to be 0.231. Because 0.198 mg/cm² is less than 0.231 mg/cm², the inspector concluded that the inspection had been performed competently. The final summary report also included the address of the inspected units, the date(s) of inspection, the starting and ending times for each inspected unit, and other information described in Section V.I of Chapter 7.

At the end of the work shift, the inspector took a final set of three calibration check readings using the same procedure as for the initial calibration check. The following readings were obtained: 0.86, 1.07 and 0.94 mg/cm². The average of these readings is 0.97 mg/cm². The difference between 0.97 mg/cm² and the NIST SRM's 1.02 mg/cm² is -0.08 mg/cm², which is not greater in magnitude than the 0.30 mg/cm² calibration check tolerance for the instrument used. The inspector recorded that the XRF instrument was in calibration, and that the measurements taken between the first and second calibrations could be used.

Endnotes

1. Most XRF instruments detect K-shell fluorescence (X-ray energy), some L-shell fluorescence, and some K and L fluorescence. In general, L X rays released from greater depths of paint are less likely to reach the surface than are K X rays, which makes detection of lead in deeper paint layers by L X rays alone more difficult. However, L X rays are less likely to be influenced by substrate effects.
2. Westat, Inc. An Analysis and Discussion of the Single Family Inspection Protocol Under the 1995 HUD Guidelines: Draft Report. 1996.
3. Dixon, S., National Center for Lead-Safe Housing, Sample Size as a Function of Multifamily Development Size. 1997.
4. The statistical rationale and calculations used to develop sample sizes in multifamily housing is based on a data set which contains approximately 164,000 XRF readings from 23,000 room equivalents in 3,900 units located in 65 housing developments. Statistical and theoretical analyses completed for HUD are available through the Lead Clearinghouse and on HUD's World Wide Web Home Page.

Appendix 13.2

Paint Chip Sampling

Dust sampling must always be done **before** paint chip sampling in order to minimize the prospect of cross-sample contamination. Paint chip sampling is a destructive method that may release a small quantity of lead dust. Although paint chip samples are to be collected from inconspicuous areas, the occupant must always be notified that paint chip sampling may be necessary.

1. Paint Chip Sampling Tools and Materials

- a. Sharp stainless steel paint scraper (such as Proprep™ Scraper, \$7.50, 1-800-255-4535) available at many paint stores.
- b. Disposable wipes for cleaning paint scraper.
- c. Non-sterilized non-powdered disposable gloves.
- d. Hard-shelled containers (such as non-sterilized 50-ml polypropylene centrifuge tubes) that can be rinsed quantitatively for paint chip samples if results are to be reported in mg/cm². Ziplock baggies can be used only if results are to be reported in µg/g or percent by weight.
- e. Collection device (clean creased piece of paper or cleanable tray).
- f. Field sampling and laboratory submittal forms.
- g. Tape measure or ruler (if results are reported in mg/cm²).
- h. Ladder.
- i. Plastic trash bags.
- j. Flashlight.
- k. Adhesive tape.
- l. Heat Gun or other heat source operating below 1100°F to soften the paint before removal.

2. Containment

- a. Method One: Plastic Sheeting Underneath Sampling Area

A clean sheet of plastic measuring four feet by four feet should be placed under the area to be sampled to capture any paint chips that are not captured by the collection device or creased piece of paper. Any visible paint chips falling to the plastic should be included in the sample. Dispose of the plastic after each sample is collected by placing the sheeting in a trash bag. Do not throw away the plastic at the dwelling. Wet wipes may be used to clean the area.

- b. Method Two: "Glovebag" Approach

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If further containment is deemed necessary, a "glovebag" approach may be used. A durable sheet of plastic is loosely taped to the surface to be sampled, with a paint scraper, collection device, and shipment container housed inside the plastic. There should be enough "play" in the plastic to permit a scraping motion without dislodging the tape holding the plastic to the surface. Large plastic baggies can be used in lieu of the sheet of plastic if paint chips are to be shipped to the lab in plastic baggies. Properly conducted, this method completely seals the surface during the actual scraping operation. A four by four foot sheet of plastic is still required under the glove bag to capture any debris that falls to the ground during the glove bag removal. The tape should be slowly removed from the surface to avoid lifting any additional paint off of the surface.

3. Paint Sample Collection

The paint chip sample need not be more than 2-4 square inches in size (consult with the laboratory for the optional size). Persons collecting paint chips should wear new disposable gloves for each sample.

The most common paint sampling method is to scrape paint directly off the substrate. The goal is to remove all layers of paint equally, but none of the substrate. A heat gun should be used to soften the paint before removal to reduce the chances of including substrate with the sample and to help prevent sample loss. Including substrate in the sample will dilute the lead content if results are reported in $\mu\text{g/g}$ or weight percent. Hold the heat gun no closer than six inches from the surface. Do not scorch the paint. Discontinue heating as soon as softening or blistering is observed.

Use a razor-sharp scraper to remove paint from the substrate. Paint samples collected in this fashion are usually reported in $\mu\text{g/g}$ or % lead only. The sample may be placed in a baggie for shipment to the laboratory.

If the area sampled is measured exactly, and all the paint within that area can be removed and collected, it is possible to also report the results in mg/cm^2 . All of the sample must be placed in a hard-shelled container for shipment to the laboratory. The hard-shelled container is used since the laboratory will analyze the entire sample submitted. The exact dimensions of the area sampled must be recorded on the field sampling form. For mg/cm^2 , including a small amount of substrate in the sample is permitted.

4. Composite Paint Chip Sample Collection

Paint chip samples may be composited by collecting individual subsamples from different surfaces. If results are reported in mg/cm^2 , each subsample should be exactly the same size in surface area. If results are reported in weight percent or $\mu\text{g/g}$, each subsample should have about the same weight (weighing is done in a laboratory). The result is then compared to the standard for lead-based paint divided by the number of sub-samples (the composite standard). If the result is above this number, one or more of the samples may be above the standard. Each sub-sample should be reanalyzed individually in this case. If the result is below this number, none of the sub-samples can contain lead above the standard. No more than 5 subsamples should be included in the same sample container or ziplock baggie. If both single-surface and composite samples

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Appendix 13.2

are collected side-by-side, the individual samples can be submitted for analysis without returning to the dwelling if the composite result is above the composite standard. If the laboratory does not analyze the entire composite sample, it must use a validated homogenizing technique to ensure that all sub-samples are completely mixed together.

5. Cleanup and Repair

- a. All settled dust generated must be cleaned up using wet wipes.
- b. The surface can be resealed with new paint if necessary. If desired, apply spackling and/or new paint to repair the area where paint was removed.
- c. Personnel conducting paint sampling should avoid hand-to-mouth contact (specifically, smoking, eating, drinking, and applying cosmetics) and should wash their hands with running water immediately after sampling. The inspector should ask to use the resident's bathroom for this purpose. Wet wipes may be used if no running water is available or if the bathroom is not available.

6. Laboratory Submittal

The samples should be submitted to a laboratory recognized by the EPA National Lead Laboratory Accreditation Program. Appropriate sample submittal forms should be used. The field sample number should appear on the field sampling form, the laboratory submittal form, and the container label. The name of the laboratory, the date the samples were sent to the lab, and all personnel handling the sample from the time of collection to the time of arrival at the laboratory should be recorded on a chain of custody form, if appropriate.

See Appendix 14 for the laboratory analytical procedures to be used.

7. Qualifications of Paint Sampling Technicians

All individuals performing paint sampling should be certified. Where possible, field experience in environmental sampling is preferable.

8. Other Information

See ASTM ES 28-94 and ES 37-94 for additional information

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ATTACHMENT

8



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 24 2011

REPLY TO THE ATTENTION OF: C-14J

CONFIDENTIAL SETTLEMENT DISCUSSIONS

Dudley B. Burrell
Dudley B. Burrell Trust
649 N. Rosewood
Kankakee, Illinois 60901

Re: In the Matter of: Willie P. Burrell, the Willie P. Burrell Trust, Dudley B. Burrell, and the Dudley B. Burrell Trust, Docket No. TSCA-05-2006-0012
Request for Settlement Conference

Dear Mr. Burrell:

In your January 12, 2011, motion for extension of time, you included a requested for a settlement conference. Your motion indicated that you are seeking to retain new counsel. Please have your counsel contact me to arrange a settlement conference.

I have enclosed an information sheet titled U.S. EPA Small Business Resources which may be helpful if you or your trust qualifies as a small business, as well as the December 2007 Section 1018 Disclosure Rule Enforcement Response and Penalty Policy, and Supplemental Environmental Projects Policy, to facilitate settlement discussions. Any settlement reached would need to be consistent with EPA requirements and policies.

You will have the opportunity to present any information that you believe we should consider. Relevant information might include whether the property was constructed prior to 1978; the existence of a written disclosure to the lessee regarding lead paint; the existence of records regarding lead-based paint at the residential dwellings identified above; evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that we identified the wrong party; or financial information bearing on you and your trust's ability to pay a penalty. If you believe that you will be unable to pay a \$89,430 penalty because of financial reasons, please send us certified, complete financial statements including balance sheets, income statements and all notes to the financial statements, and signed income tax returns with all schedules and amendments for you and your trust for the past three years.

You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40

C.F.R. Part 2, Subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Even though EPA may determine, under the criteria provided by 40 C.F.R. § 2.208, that certain information may not be entitled to business confidentiality treatment, EPA may nevertheless decide that disclosure of this information may constitute an invasion of privacy and, on that basis, may withhold it from disclosure to the general public. Such personal privacy information may include tenant social security numbers, current addresses, or other personal information related to a tenant. It is not necessary for a business confidentiality claim to be made for EPA to withhold personal privacy information. Whether you choose to make a business confidentiality claim or not, please clearly indicate personal privacy information contained in your response so that EPA can evaluate whether the information constitutes an invasion of privacy.

We may use any information you submit in support of an administrative, civil, or criminal action.

Please note that Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to the Complaint. Respondent may pursue simultaneously the informal settlement conference and any adjudicatory hearing process. We encourage all parties facing civil penalties to pursue settlement through an informal conference. We will not reduce the penalty simply because the parties hold an informal settlement conference, however.

Please do not hesitate to have your counsel contact me at (312)886-6630, to arrange a conference or discuss this matter further.

Sincerely,



Maria E. Gonzalez
Associate Regional Counsel

Enclosures:

1. U.S. EPA Small Business Resources Information Sheet
2. December 2007, Section 1018 Disclosure Rule Enforcement Response and Penalty Policy
3. April 10, 1998, Supplemental Environmental Projects Policy
4. March 22, 2002, Memorandum on Supplemental Environmental Projects Policy
5. January 22, 2004, Memorandum on Treatment of Lead-Based Paint Abatement Work as a Supplemental Environmental Project in Administrative Settlements;
6. November 23, 2004, Memorandum on Supplemental Environmental Projects in Administrative Enforcement Matters Involving Section 1018 Lead-Based Paint Cases

cc: Julie Morris

ATTACHMENT

9

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. TSCA-05-2006-0012
)	
Willie P. Burrell,)	Proceeding to Assess a Civil Penalty under
The Willie P. Burrell Trust,)	Section 16(a) of the Toxic Substances
Dudley B. Burrell, and)	Control Act, 15 U.S.C. § 2615(a)
The Dudley B. Burrell Trust)	
Kankakee, Illinois,)	
Respondents.)	
_____)	

**DECLARATION OF LADAWN WHITEHEAD ON FILE STAMP DATES ON
CERTIFIED MAIL RECEIPTS**

I, LADAWN WHITEHEAD, declare and state as follows:

1. I currently am employed as the Regional Hearing Clerk (RHC) with Region 5 of the U.S. Environmental Protection Agency (EPA). I have been employed with EPA since September of 1988 and have held the position of RHC since April, 2009.

2. The general responsibilities of an RHC are set forth in 40 C.F.R. Part 22. As an RHC, I am responsible for maintaining the official files for all pleadings, including complaints and any documents filed subsequent to a complaint, in administrative cases initiated by EPA Region 5 for violations of, *inter alia*, the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.* As part of my duties, I receive, date-stamp and file pleadings served on the Region in TSCA administrative cases. Additionally, I am designated and required to create and maintain a docket or index of the administrative record. 40 C.F.R. § 24.03.

3. I also scan documents to save them as a PDF file for entry into the Regional Hearing Clerk Database. The Regional Hearing Clerk's Database (RHC Database) was established on January 1, 2007, as an electronic version of the principal pleadings for the

Agency's administrative cases that is maintained by the Washington, D.C. office. As the RHC Database developed and improved, it evolved into an electronic copy of the full administrative case docket, containing all of the pleadings filed in the case (except for the most voluminous attachments, confidential business information and privacy information). Since April 2009, I have been responsible for adding new documents to this Database that are filed in Region 5.

4. Documents, including certified mail receipts (green cards), are stamped with the Regional Hearing Clerk file stamp on the date they are filed in the Regional Hearing Clerk's office.

5. Because it is part of the administrative case record, green cards received by the RHC are scanned into the RHC Database.

6. The Regional Hearing Clerk's Office does not have a policy governing which side to file stamp a document.

7. Because the relevance of the green card to the case record is the signature side of the card, which shows the date of delivery and the name of the person who signed for the mailing package, it is my custom to stamp the filing date on the signature side of the card so that all of this information is available in a single image.

8. Other people, including previous RHCs, have sometimes stamped the filing date of the green card on the front side of the card where the mailing address of the Agency is written.

9. When I find that the filing date has been stamped on the front of the green card as I prepare to scan the green card into the RHC Database, my custom is to copy that filing date onto the signature side of the card.

10. I do not alter the dates of signature.

11. The green cards addressed to Dudley Burrell, the Dudley Burrell Trust, and the Willie P. Burrell Trust of the complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust* (TSCA-05-2006-0012) were stamped with the Regional Hearing Clerk's file stamp before I became RHC, and show a filing date of July 18, 2006.

12. The green card addressed to Willie P. Burrell of the complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust* (TSCA-05-2006-0012) was file stamped with the Regional Hearing Clerk's file stamp before I became RHC, and shows a filing date of July 17, 2006.

13. I wrote in the date of that Regional Hearing Clerk file stamp that I saw on the front side of the card on the back side of the cards, prior to scanning them.

14. On the green cards for Willie P. Burrell and the Willie P. Burrell Trust, I had initially written an incorrect filing date that did not match the filing date stamped on the front of the green card.

15. I used white out when I corrected the date I had entered on the back side of these the green cards so that each showed the true filing date stamped on the front side.

16. The filing dates I wrote on the back side on the green cards for Dudley B. Burrell and the Dudley B. Burrell Trust did not need correction.

17. I did not alter the original filing date stamped on the front of any green cards for the complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust*.

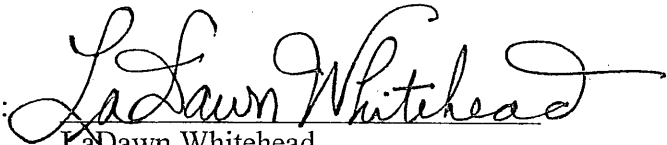
18. I made no other changes to the green cards.

19. I am attaching copies of both sides of the green cards showing service of the Complaint filed *In the matter of: Willie P. Burrell, The Willie P. Burrell Trust, Dudley B. Burrell, and The Dudley B. Burrell Trust.*

I declare under penalty of perjury that the foregoing is accurate and correct.

Executed on: March 11, 2011

By:



LaDawn Whitehead

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 5

Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
Print your name and address on the reverse so that we can return the card to you.
Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dudley B. Burrell
300 North Indiana Avenue
Kankakee, IL 60901

2. Article Number
 (Transfer from service label) **7001 0320 0005 8933 2041**

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

A. Received by (Please Print Clearly) **Loillie P. Ari Burrell**
 C. Signature **X William B. Burrell** Agent Addressee
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

TSCA-05-2006-0012

PS Form 3811, March 2001 Domestic Return Receipt 102585-01-M-1424

UNITED STATES POSTAL SERVICE

First-Class Mail
 Postage & Fees Paid
 US\$95
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Sonja Brooks-Woodard E-13J
US EPA Region 5
77 W. Jackson
Chicago IL 60604-3590

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

Sonja Brooks-Woodard E-13J

Postage	\$ 2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80

Sent To
 Street, Apt. or PO Box: **Dudley B. Burrell**
300 North Indiana Avenue
 City, State: **Kankakee, IL 60901**

9-5

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Received by (Please Print Clearly)	B. Date of Delivery <i>7/18/2006</i>
1. Article Addressed to: <i>The Dudley B. Burrell Trust 300 N. Indiana Ave Kankakee, Illinois 60901 July 18, 2006 stamped</i>	C. Signature <i>Willie Burrell</i>	<input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee
2. Article Number (Transfer from service label)	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	TSCA-05-2006-0012	
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	7001 0320 0005 8933 2027	

PS Form 3811, March 2001

Domestic Return Receipt

102595-01-M-1424

UNITED STATES POSTAL SERVICE



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

REG
 HFI
Sonja Brooks-Woodard E-13J
Region 5
Chicago IL 60604-3590
 JUL 18 11:40 AM
 US E
 PROTEC
 REGION V

US Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
<i>Sonja Brooks-Woodard E13J</i>	
Postage	\$ 2.55
Certified Fee	2.40
Return Receipt Fee (Endorsement Required)	1.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.80
Sent To <i>The Dudley B. Burrell Trust</i> Street, Apt. No. or PO Box No. <i>300 N-Indiana Avenue</i> City, State, ZIP+4 <i>Kankakee, IL 60901</i>	