

Appendices

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Appendix A Glossary

Abatement - any measure or set of measures designed to *permanently eliminate* lead-based paint or lead-based paint hazards.

Case Management - systematic monitoring and quality assurance of diagnosis, treatment, control and prevention strategies performed by public health employees, including, but not limited to, public health officers and their designees.

Elevated Blood Lead Level - a concentration of lead in whole blood of ten micrograms of lead per deciliter of whole blood. Currently documented by CDC as the “level of concern.”

Interim Controls - a set of measures designed to *temporarily reduce human exposure* or likely exposure to lead-based paint hazards. It includes specialized cleaning, scraping and repainting, and temporary containment.

Lead-Based Paint - paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-Based Paint Hazard - any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead-Based Paint Inspection - a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Lead Poisoning - a confirmed concentration of lead in whole blood of twenty (20) micrograms of lead per deciliter of whole blood (ug/dL) for one (1) venous test or two (2) consecutive tests of fifteen (15) to nineteen (19) micrograms of lead per deciliter of whole blood taken at least three (3) months apart

Lead Safe Work Practices - a general term for a set of procedures that will reduce the potential for lead exposure during a broad range of activities, including the prohibition of certain methods, measures for occupant protection and worksite preparation and specialized cleaning methods. Key goals are to use removal techniques that will create a minimum of dust or release of lead particles to the air and to clean up remaining lead dust after the activities are completed. Activities to avoid include:

- open flame burning or torching;
- machine sanding or grinding without high efficiency particulate air local exhaust control;
- abrasive blasting or sandblasting without high efficiency particulate air local exhaust control;
- use of a heat gun that operates above 1,100 F or chars the paint;
- dry scraping under most circumstances; or
- dry sanding under most circumstances.

Primary Prevention - an approach to preventing childhood lead poisoning that focuses on proactively identifying and eliminating the sources of lead poisoning prior to a child being exposed, rather than responding once a child has been identified as lead poisoned.

Remediation - actions that constitute either abatement of a lead hazard or interim control of a lead hazard.

Renovation - the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces unless the job is intended to eliminate lead. If the intent is to eliminate lead, the job is called “lead abatement” and not “renovation” and as such different regulations apply.

Risk Assessment - an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and the provision of a report explaining the results of the investigation and options for reducing lead-based paint hazards.

Target Housing - housing constructed before January 1, 1978, except: (1) housing for the elderly or individuals with disabilities that is not occupied by or expected to be occupied by a child six years of age or younger and (2) zero-bedroom dwellings.

Appendix B

Key Laws and Regulations

Citations and Key Provisions¹

Key Federal Statutes

Lead-Based Paint Poisoning Prevention Act of 1971, [42 U.S.C. 4801 et seq.](#)

- Included the first ban on lead in residential paint
- Encouraged local government to begin screening for elevated blood lead levels and pursue treatment, environmental investigation and abatement
- Later amended to require inspections and abatement of lead paint in public housing

Residential Lead-Based Paint Hazard Act of 1992, [42 U.S.C. 4851 et seq.](#) (also known as Title X)

- Established grants for reduction of lead hazards in target housing
- Required establishment of occupational safety for workers exposed to lead
- Included further requirements to address lead-based paint in federally assisted housing
- Required disclosure of lead-based paint to renters or buyers pre-lease or pre-sale

Lead-Based Paint Exposure Reduction Act of 1992, [15 U.S.C. 2681 et seq.](#) (also known as Title IV of the Toxic Substances Control Act)

- Required EPA to establish training and certification program for contractors and others doing abatement activities
- Required EPA to develop informational pamphlet and for contractors doing renovations in target housing to provide pamphlet to owners and occupants
- Set standards for laboratories
- Established program for study of the extent of childhood lead poisoning

¹ Most of the statutes and rules listed below contain many more provisions than those listed here. Our intent is to identify the most pertinent and important provision, but we also urge review of the statutes and rules in their entirety.

Key Federal Regulations

HUD Regulations: Residential Lead-Based Poisoning Prevention in Certain Residential Structures, [24 CFR 35](#)

- Notice and pamphlet requirements
- Intervention requirements for child with elevated blood lead level
- Requirements for inspection and abatement or interim controls in various types of federally assisted housing

EPA Regulations: Lead-Based Paint Poisoning Prevention in Certain Residential Structures, [40 CFR 745](#)

- Training and licensing requirements
- Work practice standards for abatement activities
- Notice requirements for renovation activities

Key Indiana Laws

Indiana Lead-Based Paint Activities, [IC 13-17-14](#)

- Establishes training and licensing program for abatement contractors and others so that Indiana can implement federal program
- Prohibits contractors from using certain high-risk techniques when disturbing lead-based paint in pre-1960 target housing

Lead Poisoning, Senate Enrolled Act 538 (2005), [IC 12-15-12-20](#) and [IC 16-41-39.4](#)

- Requires a system be established to evaluate performance of Medicaid managed care organizations in complying with Medicaid lead testing requirements
- Requires ISDH to adopt rules for case management
- Requires ISDH to establish reporting, monitoring and preventive procedures to protect from lead poisoning
- Requires ISDH to report annually data concerning the number of lead poisoned children in Indiana and other information

Key Indiana Rules

ISDH Rules: [410 IAC 1-2.3-47](#), [410 IAC 1-2.3-48](#), [410 IAC 1-2.3-87](#)

- Requires physicians to report elevated blood lead levels
- Requires laboratories to report elevated blood lead levels
- Requires monitoring, case management, environmental intervention and followup blood testing by local health Departments

IDEM Rules: [326 IAC 23](#)

- Establishes licensing and training program
- Establishes work practice standards for abatement activities
- Prohibits use of certain paint removal techniques in pre-1960 target housing

Appendix C

Selected Federal and State Laws

Federal:

- C-1:** Lead-Based Paint Poisoning Prevention Act of 1971
[42 U.S.C. 4821 et seq.](#) (8)
- C-2:** Residential Lead-Based Paint Hazard Reduction Act of 1992
[42 U.S.C. 4851 et seq.](#) (9)
- C-3:** The Lead-Based Paint Exposure Reduction Act of 1992
(Title IV of the Toxic Substances Control Act)
[15 U.S.C. 2681 et seq.](#) (13)
- C-4:** Resource Conservation and Recovery Act
[42 U.S.C. 6901 et seq.](#) (16)

State:

- C-5:** [SENATE ENROLLED ACT No. 538](#) (19)
- C-6:** IDEM's General Emergency Procedures
[IC 13-14-10](#) (22)
- C-7:** Lead-Based Paint Activities
[IC 13-17-14](#) (23)
- C-8:** Landlord Tenant Law
[IC 32-31-8](#) (31)
- C-9:** Health, Sanitation and Safety: Dwellings Unfit for Human Habitation
[Indiana Code 16-41-20](#) (33)
- C-10:** Local Health Departments - selected sections on authorities
[IC 16-20-23 and 25](#) (36)
- C-11:** Enforcement of Municipal Ordinances
[IC 36-1-6-4](#) (37)
- C-12:** Indiana Unsafe Building Law – selected sections
[IC 36-7-9](#) (38)

C-1
Lead-Based Paint Poisoning Prevention Act of 1971
42 U.S.C. 4821 et seq.

List of Sections

- 4821. Development of program; consultation; nature of program; safe level of lead; report to Congress.
- 4822. Requirements for housing receiving Federal assistance.
- 4831. Use of lead-based paint.
- 4841. Definitions.
- 4842. Consultation by Secretary with other departments and agencies.
- 4843. Authorization of appropriations.
- 4844, 4845. Repealed.
- 4846. State laws superseded, and null and void.

Selected Sections

Sec. 4821. Development of program; consultation; nature of program; safe level of lead; report to Congress

(a) The Secretary of Housing and Urban Development, in consultation with the Secretary of Health and Human Services, shall develop and carry out a demonstration and research program to determine the nature and extent of the problem of lead based paint poisoning in the United States, particularly in urban areas, including the methods by which the lead based paint hazard can most effectively be removed from interior surfaces, porches, and exterior surfaces of residential housing to which children may be exposed.

(b) The Chairman of the Consumer Product Safety Commission shall conduct appropriate research on multiple layers of dried paint film, containing the various lead compounds commonly used, in order to ascertain the safe level of lead in residential paint products. No later than December 31, 1974, the Chairman shall submit to Congress a full and complete report of his findings and recommendations as developed pursuant to such programs, together with a statement of any legislation which should be enacted or any changes in existing law which should be made in order to carry out such recommendations.

Sec. 4831. Use of lead-based paint

(c) Prohibition by Secretary of Health and Human Services in application to cooking, drinking, or eating utensils

The Secretary of Health and Human Services shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any cooking utensil, drinking utensil, or eating utensil manufactured and distributed after January 13, 1971.

(b) Prohibition by Secretary of Housing and Urban Development of use in residential structures constructed or rehabilitated by Federal Government or with Federal assistance

The Secretary of Housing and Urban Development shall take steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government, or with Federal assistance in any form after January 13, 1971.

© Prohibition by Consumer Product Safety Commission in application to toys or furniture articles

The Consumer Product Safety Commission shall take such steps and impose such conditions as may be necessary or appropriate to prohibit the application of lead-based paint to any toy or furniture article.

C-2
Residential Lead-Based Paint Hazard Reduction Act of 1992
[42 U.S.C. 4851 et seq.](#)

List of Sections

- 4851. Findings.
- 4851a. Purposes.
- 4851b. Definitions.
- SUBCHAPTER I - LEAD-BASED PAINT HAZARD REDUCTION
- 4852. Grants for lead-based paint hazard reduction in target housing.
- 4852a. Task force on lead-based paint hazard reduction and financing.
- 4852b. National consultation on lead-based paint hazard reduction.
- 4852c. Guidelines for lead-based paint hazard evaluation and reduction activities.
- 4852d. Disclosure of information concerning lead upon transfer of residential property.
- SUBCHAPTER II - WORKER PROTECTION
- 4853. Worker protection.
- 4853a. Coordination between Environmental Protection Agency and Department of Labor.
- SUBCHAPTER III - RESEARCH AND DEVELOPMENT
- PART 1 - HUD RESEARCH
- 4854. Research on lead exposure from other sources.
- 4854a. Testing technologies.
- 4854b. Authorization.
- PART 2 - GAO REPORT
- 4855. Federal implementation and insurance study.
- SUBCHAPTER IV - REPORTS
- 4856. Reports of Secretary of Housing and Urban Development.

Selected Sections

Sec. 4851. Findings

The Congress finds that -

- (1) low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under age 6, with minority and low-income communities disproportionately affected;
- (2) at low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems;
- (3) pre-1980 American housing stock contains more than 3,000,000 tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint;
- (4) the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children;
- (5) the health and development of children living in as many as 3,800,000 American homes is endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes;
- (6) the danger posed by lead-based paint hazards can be reduced by abating lead-based paint or by taking interim measures to prevent paint deterioration and limit children's exposure to lead dust and chips;

(7) despite the enactment of laws in the early 1970's requiring the Federal Government to eliminate as far as practicable lead-based paint hazards in federally owned, assisted, and insured housing, the federal response to this national crisis remains severely limited; and

(8) the Federal Government must take a leadership role in building the infrastructure - including an informed public, State and local delivery systems, certified inspectors, contractors, and laboratories, trained workers, and available financing and insurance - necessary to ensure that the national goal of eliminating lead-based paint hazards in housing can be achieved as expeditiously as possible.

Sec. 4851a. Purposes

The purposes of this chapter are -

(1) to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible;

(2) to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock;

(3) to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care;

(4) to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments;

(5) to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards;

(6) to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government; and

(7) to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

Sec. 4852c. Guidelines for lead-based paint hazard evaluation and reduction activities

Not later than 12 months after October 28, 1992, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Secretary of Health and Human Services (acting through the Director of the Centers for Disease Control), shall issue guidelines for the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. Such guidelines shall be based upon criteria that measure the condition of the housing (and the presence of children under age 6 for the purposes of risk assessments) and shall not be based upon criteria that measure the health of the residents of the housing.

Sec. 4852d. Disclosure of information concerning lead upon transfer of residential property

(a) Lead disclosure in purchase and sale or lease of target housing

(1) Lead-based paint hazards

Not later than 2 years after October 28, 1992, the Secretary and the Administrator of the Environmental Protection Agency shall promulgate regulations under this section for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The regulations shall require that, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall -

(A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act (15 U.S.C. 2686);

(B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and

(C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(2) Contract for purchase and sale

Regulations promulgated under this section shall provide that every contract for the purchase and sale of any interest in target housing shall contain a Lead Warning Statement and a statement signed by the purchaser that the purchaser has -

(A) read the Lead Warning Statement and understands its contents;

(B) received a lead hazard information pamphlet; and

(C) had a 10-day opportunity (unless the parties mutually agreed upon a different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(3) Contents of lead warning statement

The Lead Warning Statement shall contain the following text printed in large type on a separate sheet of paper attached to the contract:

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

(4) Compliance assurance

Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section.

(5) Promulgation

A suit may be brought against the Secretary of Housing and Urban Development and the Administrator of the Environmental Protection Agency under section 20 of the Toxic Substances Control Act (15 U.S.C. 2619) to compel promulgation of the regulations required under this section and the Federal district court shall have jurisdiction to order such promulgation.

(b) Penalties for violations

(1) Monetary penalty

Any person who knowingly violates any provision of this section shall be subject to civil money penalties in accordance with the provisions of section [3545](#) of this title.

(2) Action by Secretary

The Secretary is authorized to take such lawful action as may be necessary to enjoin any violation of this section.

(3) Civil liability

Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(4) Costs

In any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(5) Prohibited act

It shall be a prohibited act under section 409 of the Toxic Substances Control Act (15 U.S.C. 2689) for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the penalty for each violation applicable under section 16 of that Act (15 U.S.C. 2615) shall not be more than \$10,000.

(c) Validity of contracts and liens

Nothing in this section shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien

made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

(d) Effective date

The regulations under this section shall take effect 3 years after October 28, 1992.

C-3
The Lead-Based Paint Exposure Reduction Act of 1992
(Title IV of the Toxic Substances Control Act)
[15 U.S.C. 2681 et seq.](#)

List of Sections

[Sec. 2681. Definitions](#)
[Sec. 2682. Lead-based paint activities training and certification](#)
[Sec. 2683. Identification of dangerous levels of lead](#)
[Sec. 2684. Authorized State programs](#)
[Sec. 2685. Lead abatement and measurement](#)
[Sec. 2686. Lead hazard information pamphlet](#)
[Sec. 2687. Regulations](#)
[Sec. 2688. Control of lead-based paint hazards at Federal facilities](#)
[Sec. 2689. Prohibited acts](#)
[Sec. 2690. Relationship to other Federal law](#)
[Sec. 2691. General provisions relating to administrative proceedings](#)
[Sec. 2692. Authorization of appropriations](#)

Selected Sections

[Sec. 2682. Lead-based paint activities training and certification](#)

(a) Regulations

(1) In general

Not later than 18 months after October 28, 1992, the Administrator shall, in consultation with the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health), promulgate final regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Such regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. Such regulations shall require that all risk assessment, inspection, and abatement activities performed in target housing shall be performed by certified contractors, as such term is defined in [section 4851b of title 42](#). The provisions of this section shall supersede the provisions set forth under the heading "Lead Abatement Training and Certification" and under the heading "Training Grants" in title III of the Act entitled "An Act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes", Public Law 102-139 (105 Stat. 765, 42 U.S.C. 4822 note), and upon October 28, 1992, the provisions set forth in such public law under such headings shall cease to have any force and effect.

(2) Accreditation of training programs

Final regulations promulgated under paragraph (1) shall contain specific requirements for the accreditation of lead-based paint activities training programs for workers, supervisors, inspectors and planners, and other individuals involved in lead-based paint activities, including, but not limited to, each of the following:

- (A) Minimum requirements for the accreditation of training providers.
- (B) Minimum training curriculum requirements.
- (C) Minimum training hour requirements.
- (D) Minimum hands-on training requirements.
- (E) Minimum trainee competency and proficiency requirements.
- (F) Minimum requirements for training program quality control.

(3) Accreditation and certification fees

The Administrator (or the State in the case of an authorized State program) shall impose a fee on -

- (A) persons operating training programs accredited under this subchapter; and
- (B) lead-based paint activities contractors certified in accordance with paragraph (1).

The fees shall be established at such level as is necessary to cover the costs of administering and enforcing the standards and regulations under this section which are applicable to such programs and contractors. The fee shall not be imposed on any State, local government, or nonprofit training program. The Administrator (or the State in the case of an authorized State program) may waive the fee for lead-based paint activities contractors under subparagraph (A) for the purpose of training their own employees.

(b) Lead-based paint activities

For purposes of this subchapter, the term "lead-based paint activities" means -

- (1) in the case of target housing, risk assessment, inspection, and abatement; and
- (2) in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

For purposes of paragraph (2), the term "deleading" means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities.

(c) Renovation and remodeling

(1) Guidelines

In order to reduce the risk of exposure to lead in connection with renovation and remodeling of target housing, public buildings constructed before 1978, and commercial buildings, the Administrator shall, within 18 months after October 28, 1992, promulgate guidelines for the conduct of such renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Administrator shall disseminate such guidelines to persons engaged in such renovation and remodeling through hardware and paint stores, employee organizations, trade groups, State and local agencies, and through other appropriate means.

(2) Study of certification

The Administrator shall conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular or occasional basis. The Administrator shall complete such study and publish the results thereof within 30 months after October 28, 1992.

(3) Certification determination

Within 4 years after October 28, 1992, the Administrator shall revise the regulations under subsection (a) of this section to apply the regulations to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. In determining which contractors are engaged in such activities, the Administrator shall utilize the results of the study under paragraph (2) and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in lead health effects, and others. If the Administrator determines that any category of contractors engaged in renovation or remodeling does not require certification, the Administrator shall publish an explanation of the basis for that determination.

Sec. 2683. Identification of dangerous levels of lead

Within 18 months after October 28, 1992, the Administrator shall promulgate regulations which shall identify, for purposes of this subchapter and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.), lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil.

Sec. 2686. Lead hazard information pamphlet

(a) Lead hazard information pamphlet

Not later than 2 years after October 28, 1992, after notice and opportunity for comment, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Housing and Urban Development and with the Secretary of Health and Human Services, shall publish, and from time to time revise, a lead hazard information pamphlet to be used in connection with this subchapter and [section 4852d of title 42](#). The pamphlet shall -

- (1) contain information regarding the health risks associated with exposure to lead;
- (2) provide information on the presence of lead-based paint hazards in federally assisted, federally owned, and target housing;
- (3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation, and others residing in a dwelling with lead-based paint hazards;
- (4) describe the risks of renovation in a dwelling with lead-based paint hazards;
- (5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards;
- (6) advise persons how to obtain a list of contractors certified pursuant to this subchapter in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used;
- (7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing;
- (8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and
- (9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

(b) Renovation of target housing

Within 2 years after October 28, 1992, the Administrator shall promulgate regulations under this subsection to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

Sec. 2689. Prohibited acts

It shall be unlawful for any person to fail or refuse to comply with a provision of this subchapter or with any rule or order issued under this subchapter.

C-4
Resource Conservation and Recovery Act
42 U.S.C. 6901 et seq.

Sec. 6972. Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf -

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section -

(A) prior to 60 days after the plaintiff has given notice of the violation to -

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to -

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment -

(i) has commenced and is diligently prosecuting an action under section [6973](#) of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9606),

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9604);

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9604) and is diligently proceeding with a remedial action under that Act (42 U.S.C. 9601 et seq.); or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9606) or section [6973](#) of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment -

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9604); or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9604) and is diligently proceeding with a remedial action under that Act (42 U.S.C. 9601 et seq.).

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

(c) Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

(d) Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section [6976](#) of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management

of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

Sec. 6973. Imminent hazard

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or [chapter 7](#) of title 5.

Selected Indiana Statutes

C-5

SENATE ENROLLED ACT No. 538²

IC 12-15-12: MANAGED CARE

IC 12-15-12-20

Child lead poisoning screening

Sec. 20. The office shall develop the following:

(1) A measure to evaluate the performance of a Medicaid managed care organization in screening a child who is less than six (6) years of age for lead poisoning.

(2) A system to maintain the results of an evaluation under subdivision (1) in written form.

(3) A performance incentive program for Medicaid managed care organizations evaluated under subdivision (1).

As added by P.L.135-2005, SEC.1.

IC 16-41-39.4: CHILDHOOD LEAD POISONING

IC 16-41-39.4-1

Rules

Sec. 1. (a) The state department may adopt rules under IC 4-22-2 to implement this chapter.

(b) The state department shall adopt rules under IC 4-22-2 for the case management of a child with lead poisoning.

As added by P.L.123-1997, SEC.12. Amended by P.L.99-2002, SEC.8; P.L.135-2005, SEC.3.

IC 16-41-39.4-2

Powers of state department

Sec. 2. (a) The state department may do the following:

(1) Determine the magnitude of lead poisoning in Indiana's residents.

(2) Provide consultation and education to a medical provider network that screens for lead poisoning throughout Indiana.

(3) Receive and analyze blood samples or assist regional lab sites to receive and analyze blood samples for lead poisoning.

(4) Develop and maintain a data base of unduplicated children with lead poisoning.

(5) Provide consultation to local health departments regarding medical case follow-up and environmental inspections connected to reducing the incidence of lead poisoning.

(6) Coordinate lead exposure detection activities with local health departments.

(7) Coordinate with social service organizations for outreach programs regarding lead poisoning.

(8) Notify and update pediatricians and family practice physicians of lead hazards in

² Enacted in 2005, Senate Enrolled Act 538 made changes to several statutory sections that address childhood lead poisoning. The revised sections are reprinted here.

a timely fashion.

(9) Provide consumer alerts and consumer education regarding lead hazards.

(b) The state department shall establish reporting, monitoring, and preventive procedures to protect from lead poisoning.

As added by P.L.123-1997, SEC.12. Amended by P.L.59-2003, SEC.1; P.L.135-2005, SEC.4.

IC 16-41-39.4-3

Blood examinations; reports

Sec. 3. (a) A person that examines the blood of an individual described in section 2 of this chapter for the presence of lead must report to the state department the results of the examination not later than one (1) week after completing the examination. The report must include at least the following:

(1) With respect to the individual whose blood is examined:

(A) the name;

(B) the date of birth;

(C) the gender;

(D) the race; and

(E) any other information that is required to be included to qualify to receive federal funding.

(2) With respect to the examination:

(A) the date;

(B) the type of blood test performed;

(C) the person's normal limits for the test;

(D) the results of the test; and

(E) the person's interpretation of the results of the test.

(3) The names, addresses, and telephone numbers of:

(A) the person; and

(B) the attending physician, hospital, clinic, or other specimen submitter.

(b) If a person required to report under subsection (a) has submitted more than fifty (50) results in the previous calendar year, the person must submit subsequent reports in an electronic format determined by the state department.

As added by P.L.99-2002, SEC.9. Amended by P.L.59-2003, SEC.2; P.L.135-2005, SEC.5.

IC 16-41-39.4-4

Distribution of information

Sec. 4. (a) The state department, the office of the secretary of family and social services, and local health departments shall share among themselves and with the United States Department of Health and Human Services and the United States Department of Housing and Urban Development information, including a child's name, address, and demographic information, that is gathered after January 1, 1990, concerning the concentration of lead in the blood of a child less than seven (7) years of age to the extent necessary to determine the prevalence and distribution of lead poisoning in children less than seven (7) years of age.

(b) The state department, the office of the secretary of family and social services, and local health departments shall share information described in subsection (a) that is gathered after July 1, 2002, among themselves and with organizations that administer federal, state, and local programs covered by the United States Department of Housing and Urban Development regulations concerning lead-based paint poisoning prevention in certain residential structures under 24 CFR Subpart A, Part 35 to the extent necessary to ensure that children potentially affected by lead-based paint and lead hazards are adequately protected from lead poisoning.

(c) A person who shares data under this section is not liable for any damages caused by compliance with this section.

As added by P.L.99-2002, SEC.10. Amended by P.L.1-2003, SEC.63; P.L.135-2005, SEC.6.

IC 16-41-39.4-5

Annual report

Sec. 5. (a) The state department shall, in cooperation with other state agencies, collect data under this chapter and, before March 15 of each year, report the results to the general assembly for the previous calendar year. A copy of the report shall be transmitted in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

(b) The report transmitted under subsection (a) must include for each county the following information concerning children who are less than seven (7) years of age:

(1) The number of children who received a blood lead test.

(2) The number of children who had a blood test result of at least ten (10) micrograms of lead per deciliter of blood.

(3) The number of children identified under subdivision (2) who received a blood test to confirm that they had lead poisoning.

(4) The number of children identified under subdivision (3) who had lead poisoning.

(5) The number of children identified under subdivision (4) who had a blood test result of less than ten (10) micrograms of lead per deciliter of blood.

(6) The average number of days taken to confirm a blood lead test.

(7) The number of risk assessments performed for children identified under subdivision (4) and the average number of days taken to perform the risk assessment.

(8) The number of housing units in which risk assessments performed under subdivision (7) documented lead hazards as defined by 40 CFR 745.

(9) The number of housing units identified under subdivision (8) that were covered by orders issued under IC 13-14-10-2 or by another governmental authority to eliminate lead hazards.

(10) The number of housing units identified under subdivision (9) for which lead hazards have been eliminated within thirty (30) days, three (3) months, and six (6) months.

As added by P.L.135-2005, SEC.7.

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IC 13-14-10

IDEM's General Emergency Procedures

IC 13-14-10-2

Suit on behalf of state to restrain person contributing to pollution

Sec. 2. (a) Upon receipt of evidence that a pollution source or combination of sources, including an industrial user of a publicly owned treatment plant, is presenting an imminent and substantial endangerment to:

(1) the health of persons; or

(2) the welfare of persons whose livelihood is endangered;

the commissioner shall bring suit under subsection (b).

(b) Upon the receipt of evidence under subsection (a), the commissioner shall bring suit on behalf of the state in the appropriate court to:

(1) immediately restrain any person causing or contributing to the alleged pollution to stop the discharge or introduction of contaminants causing or contributing to the pollution; or

(2) take other necessary action.

(c) The duty of the commissioner to bring suit under subsection (a) is:

(1) in addition to the authority contained in section 1 of this chapter; and

(2) notwithstanding any other provision of this title.

As added by P.L.1-1996, SEC.4.

C-7
IC 13-17-14

Lead-Based Paint Activities

IC 13-17-14-1

Application of chapter

Sec. 1. (a) This chapter does not apply to the following:

- (1) A person making an inspection under the authority of IC 22-8-1.1.
- (2) A person who performs lead-based paint activities within a residential dwelling that the person owns, unless the residential dwelling is occupied by:
 - (A) a person, other than the owner or the owner's immediate family, while these activities are being performed; or
 - (B) a child who:
 - (i) is not more than six (6) years of age or an age specified in rules adopted by the board under section 5 of this chapter; and
 - (ii) resides in the building and has been identified as having an elevated blood lead level.

(b) This chapter may not be construed as requiring the abatement of lead-based paint hazards in a child-occupied facility or target housing.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-2

Establishment and purpose of program

Sec. 2. The lead-based paint activities program is established. The purpose of the program is to ensure that a person conducting lead-based paint activities in target housing, child-occupied facilities, and any other type of building that the board specifies in rules adopted under section 5 of this chapter does so in a manner that safeguards the environment and protects the health of the building's occupants, especially children who are not more than six (6) years of age.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-3

Licenses

Sec. 3. (a) A person that engages in lead-based paint activities must obtain a license under this chapter and under rules adopted by the board under section 5 of this chapter. Lead-based paint activities licenses expire as follows:

- (1) On June 30, 2004, if issued before July 1, 2002.
 - (2) Three (3) years after the date of issuance, if issued after June 30, 2002.
- (b) A person may receive a lead-based paint activities license under this chapter for the following disciplines:
- (1) Inspector.
 - (2) Risk assessor.
 - (3) Project designer.

- (4) Supervisor.
- (5) Abatement worker.
- (6) Contractor.

(c) A person may receive a clearance examiner license under this chapter. A person that engages in the clearance of nonabatement activities under 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002, must obtain a clearance examiner license under this chapter and under rules adopted by the board under section 5 of this chapter. A clearance examiner license expires three (3) years after the date of issuance.

(d) A person that enters into a contract requiring the person to execute for compensation lead-based paint activities shall hold a lead-based paint activities contractor's license.

(e) A person must:

(1) take required training and pass an examination provided in a lead-based paint training course or clearance examiner training course, as appropriate, approved by the department;

(2) for a license in the discipline of:

- (A) inspector;
- (B) risk assessor;
- (C) project designer; or
- (D) supervisor;

pass an examination provided by the department or a third party as required by rules adopted by the board under section 5 of this chapter; and

(3) meet any requirements established by rules adopted by the board under section 5 of this chapter;

before a person may receive a lead-based paint activities license or clearance examiner license.

(f) The department may issue a license for a position listed under subsection (b) or (c) if the applicant submits proof to the department that the applicant satisfies the training, examination, and other requirements for the license under this chapter.

(g) A lead-based paint activities license or a clearance examiner license may be renewed for a period of three (3) years. To renew a license, a person who holds a license for a position listed in subsection (b) or (c) must complete refresher training and pass any re-examination required by rules adopted under section 5 of this chapter.

(h) A lead-based paint activities contractor licensed under this chapter may not allow an agent or employee of the contractor to:

- (1) exercise control over a lead-based paint activities project;
- (2) come into contact with lead-based paint; or
- (3) engage in lead-based paint activities;

unless the agent or employee is licensed under this chapter.

(i) A person engaging in lead-based paint activities shall comply with the work practice standards established in rules adopted by the board under section 5 of this chapter and the applicable work practice standards established in section 12 of this chapter for performing the appropriate lead-based paint activities. *As added by P.L.123-1997, SEC.11. Amended by P.L.99-2002, SEC.2.*

IC 13-17-14-4

Requirements for training programs

Sec. 4. (a) A lead-based paint activities training program must meet requirements specified in rules adopted by the board under section 5 of this chapter before providing initial or refresher

training to a person seeking a license listed in section 3(b) of this chapter.

(b) The department may approve a lead-based paint activities training course offered by a person that satisfies the requirements of subsection (a).

(c) A lead-based paint activities training course must be conducted by an instructor approved by the department as provided in the rules adopted by the board under section 5 of this chapter.
As added by P.L.123-1997, SEC.11.

IC 13-17-14-4.5

Clearance examiner training program

Sec. 4.5. (a) A clearance examiner training program must meet requirements specified in rules adopted by the board under section 5 of this chapter before providing initial or refresher training to a person seeking a license under section 3(c) of this chapter.

(b) The department may approve a clearance examiner training course offered as part of a program that satisfies the requirements of subsection (a).

(c) A clearance examiner training course must be conducted by an instructor approved by the department as provided in the rules adopted by the board under section 5 of this chapter.
As added by P.L.99-2002, SEC.3.

IC 13-17-14-5

Rules

Sec. 5. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 to implement this chapter. The rules must contain at least the elements required to receive program authorization under 40 CFR 745, Subpart L, as in effect July 1, 2002, and must do the following:

(1) Establish minimum requirements for the issuance of a license for:

(A) lead-based paint activities inspectors, risk assessors, project designers, supervisors, abatement workers, and contractors; and

(B) clearance examiners.

(2) Establish minimum requirements for approval of the providers of:

(A) lead-based paint activities training courses; and

(B) clearance examiner training courses.

(3) Establish minimum qualifications for:

(A) lead-based paint activities training course instructors; and

(B) clearance examiner training course instructors.

(4) Extend the applicability of the licensing requirements to other facilities as determined necessary by the board.

(5) Establish work practice standards.

(6) Establish a department or third-party examination process.

(7) Identify activities, if any, that are exempted from licensing requirements.

(8) Establish a fee of not more than one hundred fifty dollars (\$150) per person, per license, for the period the license is in effect for a person seeking a license under section 3 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

(A) A state.

(B) A municipal corporation (as defined in IC 36-1-2-10).

(C) A unit (as defined in IC 36-1-2-23).

(9) Establish a fee of not more than one thousand dollars (\$1,000) per course, per year, for a lead-based paint training program seeking approval of a lead-based paint training course under section 4 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

- (A) A state.
- (B) A municipal corporation (as defined in IC 36-1-2-10).
- (C) A unit (as defined in IC 36-1-2-23).
- (D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(10) Establish a fee of not more than one thousand dollars (\$1,000) per course, per year, for a clearance examiner training program seeking approval of a clearance examiner training course under section 4.5 of this chapter. However, the following may not be required to pay a fee established under this subdivision:

- (A) A state.
- (B) A municipal corporation (as defined in IC 36-1-2-10).
- (C) A unit (as defined in IC 36-1-2-23).
- (D) An organization exempt from income taxation under 26 U.S.C. 501(a).

(b) The amount of the fees under subsection (a) may not be more than is necessary to recover the cost of administering this chapter.

(c) The proceeds of the fees under subsection (a) must be deposited in the lead trust fund established by section 6 of this chapter.

(d) The minimum requirements established under subsection (a)(1) must be sufficient to allow the clearance examiner to perform clearance examinations without the approval of a certified risk assessor or inspector as provided in 24 CFR 35.1340(b)(1)(iv), as in effect July 1, 2002.

As added by P.L.123-1997, SEC.11. Amended by P.L.111-1999, SEC.1; P.L.99-2002, SEC.4.

IC 13-17-14-6 Establishment of fund; investment and use of money

Sec. 6. (a) The lead trust fund is established to provide a source of money for the purposes set forth in subsection (f).

(b) The expenses of administering the fund shall be paid from the money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The sources of money for the fund are the following:

(1) License fees established under section 5 of this chapter.

(2) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.

(3) Penalties imposed under IC 13-30-4 and IC 13-30-5 for violations of this chapter and rules adopted under this chapter concerning lead-based paint activities.

(f) The department may use money in the fund to do the following:

(1) Pay the expenses of administering this chapter.

(2) Cover other costs related to implementation of 40 CFR 745 for lead-based paint activities in target housing and child occupied facilities.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-7

Records

Sec. 7. (a) A lead-based paint activities contractor licensed under this chapter shall compile records concerning each lead-based paint activities project performed by the lead-based paint activities contractor. The records must include the following information on each lead-based paint activities project:

(1) The name, address, and proof of license of the following:

(A) The person who supervised the lead-based paint activities project for the lead-based paint activities contractor.

(B) Each employee or agent of the lead-based paint activities contractor that worked on the project.

(2) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing.

(3) The site of the lead-based paint activities project.

(4) A description of the lead-based paint activities project.

(5) The date on which the lead-based paint activities project was started and the date on which the lead-based paint activities project was completed.

(6) A summary of procedures that were used in the lead-based paint activities project to comply with applicable federal and state standards for lead-based paint activities projects.

(7) A detailed written description of the lead-based paint activities, including methods used, locations of rooms or components where lead-based paint activities occurred, reasons for selecting particular lead-based paint activities methods for each component, and any suggested monitoring of encapsulants or enclosures.

(8) The occupant protection plan.

(9) The results of clearance testing and all soil analysis (if applicable) and the name of each federally-approved laboratory that conducted the analysis.

(10) The amount of material containing lead-based paint that was removed from the site of the project.

(11) The name and address of each disposal site used for the disposal of lead-based paint containing material that was disposed of as a result of the lead-based paint activities project.

(b) A copy of each receipt issued by a disposal site identified under subsection (a)(11) must be included in the records concerning the lead-based paint activities project that are compiled under this section.

(c) A lead-based paint activities contractor shall retain the records compiled under this section concerning a particular lead-based paint activities project for at least three (3) years after the lead-based paint activities project is concluded.

(d) A lead-based paint activities contractor shall make records kept under this section available to the department upon request.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-8

Restrictions on acceptance of bid by political subdivision or state agency

Sec. 8. A political subdivision or a state agency may not accept a bid for a lead-based paint activities project from a person that does not hold a lead-based paint activities license.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-9

Powers of commissioner

Sec. 9. Without limiting the authority to inspect under IC 13-14-2-2, the commissioner may do the following:

- (1) Inspect the site of a lead-based paint activities project:
 - (A) during the project; or
 - (B) after the project is completed.
- (2) Conduct an investigation of a lead-based paint activities project upon:
 - (A) the commissioner's own initiation; or
 - (B) the receipt of a complaint by a person.
- (3) Conduct an investigation of the provider of a lead-based paint activities training course upon:
 - (A) the commissioner's own initiation; or
 - (B) the receipt of a complaint by a person.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-10

Noncompliance with air pollution control laws or rules; notice

Sec. 10. (a) If the commissioner finds that a lead-based paint activities project is not being performed in accordance with air pollution control laws or rules adopted by the board, the commissioner may enjoin further work on the lead-based paint activities project without prior notice or hearing by delivering a notice to:

- (1) the lead-based paint activities contractor engaged in the lead-based paint activities project; or
 - (2) an agent or representative of the lead-based paint activities contractor.
- (b) A notice issued under this section must:
- (1) specify the violations of law that are occurring on the lead-based paint activities project; and
 - (2) prohibit further work on the lead-based paint activities project until the violations specified under subdivision (1) cease and the notice is rescinded by the commissioner.
- (c) Not later than ten (10) days after receiving written notification from a contractor that violations specified in a notice issued under this section have been corrected, the commissioner shall issue a determination regarding rescission of the notice.
- (d) A lead-based paint activities contractor or any other person aggrieved or adversely affected by the issuance of a notice under subsection (a) may obtain a review of the commissioner's action under IC 4-21.5.

As added by P.L.123-1997, SEC.11.

IC 13-17-14-11

Suspension or revocation of license

Sec. 11. (a) The commissioner may under IC 4-21.5 reprimand, suspend, or revoke the license of a clearance examiner or a lead-based paint activities inspector, risk assessor, project designer, supervisor, worker, or contractor for any of the following reasons:

- (1) Violating any requirements of this chapter or rules adopted under this chapter.
- (2) Fraudulently or deceptively obtaining or attempting to obtain a license under this

chapter.

(3) Failing to meet the qualifications for a license or failing to comply with the requirements of air pollution control laws or rules adopted by the board.

(4) Failing to meet an applicable federal or state standard for lead-based paint activities.

(b) The commissioner may under IC 4-21.5 reprimand a lead-based paint activities contractor or suspend or revoke the license of a lead-based paint activities contractor that employs a person who is not licensed under this chapter for a purpose that requires the person to hold a license issued under this chapter.

(c) The commissioner may under IC 4-21.5 revoke the approval of a clearance examiner or a lead-based paint activities training course for any of the following reasons:

(1) Violating any requirement of this chapter.

(2) Falsifying information on an application for approval.

(3) Misrepresenting the extent of a training course's approval.

(4) Failing to submit required information or notifications in a timely manner.

(5) Failing to maintain required records.

(6) Falsifying approval records, instructor qualifications, or other approval information.

As added by P.L.123-1997, SEC.11. Amended by P.L.99-2002, SEC.5.

IC 13-17-14-12

Removal of lead-based paint

Sec. 12. (a) This section applies to:

(1) remodeling, renovation, and maintenance activities at target housing and child occupied facilities built before 1960; and

(2) lead-based paint activities.

(b) This section does not apply to an individual who performs remodeling, renovation, or maintenance activities within a residential dwelling that the individual owns, unless the residential dwelling is occupied:

(1) while the activities are being performed, by an individual other than the owner or a member of the owner's immediate family; or

(2) by a child who:

(A) is less than seven (7) years of age or an age specified in rules adopted by the board under section 5 of this chapter; and

(B) resides in the building and has been identified as having an elevated blood lead level.

(c) A person not exempted under subsection (b) from the application of this section that performs an activity under subsection (a) that disturbs:

(1) exterior painted surfaces of more than twenty (20) square feet;

(2) interior painted surfaces of more than two (2) square feet in any one (1) room or space;

or

(3) more than ten percent (10%) of the combined interior and exterior painted surface area of components of the building;

shall meet the requirements of subsections (e), (f), and (g).

(d) For purposes of this section, paint is considered to be lead-based paint unless the absence of lead in the paint has been determined by a lead-based paint inspection conducted under this chapter.

(e) A person may not use any of the following methods to remove lead-based paint:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without high efficiency particulate air local exhaust control.

(3) Abrasive blasting or sandblasting without high efficiency particulate air local exhaust control.

(4) A heat gun that:

(A) operates above one thousand one hundred (1,100) degrees Fahrenheit; or

(B) chars the paint.

(5) Dry scraping, except:

(A) in conjunction with a heat gun; or

(B) within one (1) foot of an electrical outlet.

(6) Dry sanding, except within one (1) foot of an electrical outlet.

(f) In a space that is not ventilated by the circulation of outside air, a person may not strip lead-based paint using a volatile stripper that is a hazardous chemical under 29 CFR 1910.1200, as in effect July 1, 2002.

(g) A person conducting activities under subsection (a) on painted exterior surfaces may not allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or other exterior horizontal surface for more than forty-eight (48) hours after the surface activities are complete.

As added by P.L.99-2002, SEC.6.

C-8

Landlord Tenant Law

IC 32-31-8

Chapter 8. Landlord Obligations Under a Rental Agreement

IC 32-31-8-1

Application

Sec. 1. (a) Except as provided in subsection (b), this chapter applies only to dwelling units that are let for rent after June 30, 2002.

(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase.

IC 32-31-8-2

Applicability of definitions

Sec. 2. The definitions in IC 32-31-3 apply throughout this chapter.

IC 32-31-8-3

"Rental premises" defined

Sec. 3. As used in this chapter, "rental premises" includes all of the following:

- (1) A tenant's rental unit.
- (2) The structure in which the tenant's rental unit is a part.

IC 32-31-8-4

Effect of waiver of statute

Sec. 4. A waiver of the application of this chapter by a landlord or tenant, by contract or otherwise, is void.

IC 32-31-8-5

Landlord obligations

Sec. 5. A landlord shall do the following:

- (1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.
- (2) Comply with all health and housing codes applicable to the rental premises.
- (3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.
- (4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:
 - (A) Electrical systems.
 - (B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold

running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.

(E) Elevators, if provided.

(F) Appliances supplied as an inducement to the rental agreement.

IC 32-31-8-6

Tenant's cause of action to enforce landlord obligations

Sec. 6. (a) A tenant may bring an action in a court with jurisdiction to enforce an obligation of a landlord under this chapter.

(b) A tenant may not bring an action under this chapter unless the following conditions are met:

(1) The tenant gives the landlord notice of the landlord's noncompliance with a provision of this chapter.

(2) The landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant's notice. The tenant may not prevent the landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant's notice.

(3) The landlord fails or refuses to repair or remedy the condition described in the tenant's notice.

(c) This section may not be construed to limit a tenant's rights under IC 32-31-3, IC 32-31-5, or IC 32-31-6.

(d) If the tenant is the prevailing party in an action under this section, the tenant may obtain any of the following, if appropriate under the circumstances:

(1) Recovery of the following:

(A) Actual damages and consequential damages.

(B) Attorney's fees and court costs.

(2) Injunctive relief.

(3) Any other remedy appropriate under the circumstances.

(e) A landlord's liability for damages under subsection (d) begins when:

(1) the landlord has notice or actual knowledge of noncompliance; and

(2) the landlord has:

(A) refused to remedy the noncompliance; or

(B) failed to remedy the noncompliance within a reasonable amount of time following the notice or actual knowledge; whichever occurs first.

Health, Sanitation and Safety: Dwellings Unfit for Human Habitation

IC 16-41-20-1

Dwellings unfit for human habitation

Sec. 1. A dwelling is unfit for human habitation when the dwelling is dangerous or detrimental to life or health because of any of the following:

- (1) Want of repair.
- (2) Defects in the drainage, plumbing, lighting, ventilation, or construction.
- (3) Infection with contagious disease.
- (4) The existence on the premises of an unsanitary condition that is likely to cause sickness among occupants of the dwelling.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-2

Powers of local inspectors of buildings

Sec. 2. The inspector of buildings in a city or town may exercise all the powers granted the inspector in the following:

- (1) A city or town ordinance dealing with housing.
- (2) This chapter to boards of health.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-3

Exercise of powers by the state health department

Sec. 3. The state department may not exercise a power granted in this chapter without giving to the local board of health or county health officer having jurisdiction a notice setting forth the conditions that have been certified to the state department or of which the state department has knowledge. If the local board of health or county health officer fails to act not more than three (3) days after the notice, the state department may exercise the granted powers.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-4

Orders to vacate dwellings

Sec. 4. Whenever the state department, the local board of health, or county health officer determines that a dwelling is unfit for human habitation, the state department, local board of health, or county health officer may issue an order requiring all persons living in the dwelling to vacate the dwelling within not less than five (5) days and not more than fifteen (15) days. The order must mention at least one (1) reason for the order.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-5

Extension or revocation of orders to vacate dwellings

Sec. 5. (a) The state department, local board of health, or county health officer that issued an order to vacate under section 4 of this chapter shall, for a good reason, extend the time within which to comply with the order.

(b) The state department, local board of health, or county health officer may revoke the order if satisfied that the danger from the dwelling has ceased to exist and that the dwelling is fit for habitation.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-6

Public nuisances

Sec. 6. The state department, local board of health, or county health officer may declare a dwelling that is unfit for human habitation a public nuisance. The state department, local board of health, or county health officer may order to be removed, abated, suspended, altered, improved, or purified a dwelling, structure, excavation, business, pursuit, or thing in or about the dwelling or the dwelling's lot, or the plumbing, sewerage, drainage, light, or ventilation of the dwelling.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-7

Orders for cleaning, repairing, or improving

Sec. 7. The state department, local board of health, or county health officer may order purified, cleansed, disinfected, renewed, altered, repaired, or improved a dwelling, excavation, building, structure, sewer, plumbing, pipe, passage, premises, ground, or thing in or about a dwelling that is found to be unfit for human habitation or the dwelling's lot.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-8

Service of orders

Sec. 8. An order issued under this chapter shall be served on the tenant and the owner of the dwelling or the owner's rental agent. The order may be served on a person who by contract has assumed the duty of doing the things that the order specifies to be done.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-9

Judicial review of orders

Sec. 9. (a) A person aggrieved by an order of a local board of health or county health officer issued under this chapter may, not more than ten (10) days after the making of the order, file with the circuit or superior court a petition seeking a review of the order.

(b) The court shall hear the appeal. The court's decision is final.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-10

Appeal bonds

Sec. 10. The person appealing to the circuit or superior court shall file with the court a bond in an amount to be fixed by the court with sureties to be approved by the judge and conditioned to pay all the costs on the appeal if the person fails to sustain the appeal or the appeal is dismissed.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-11

Review proceedings

Sec. 11. (a) Review proceedings shall be docketed as an action between the appellant and the local board of health or county health officer and shall be tried as civil actions are tried.

(b) The:

(1) corporation counsel or the department of law in the city or town; and

(2) prosecuting attorney in cases arising outside of cities and towns and in cities and towns that do not have a department of law or any other legal representative; shall attend to all the proceedings on the part of the local board of health or county health officer.

(c) If no appeal is taken within the required ten (10) days, the order of the local board of health or county health officer is final and conclusive.

As added by P.L.2-1993, SEC.24.

IC 16-41-20-12

Costs and expenses

Sec. 12. A person who:

(1) violates this chapter; or

(2) fails to comply with an order of:

(A) the state department or the state department's authorized agents;

(B) a local board of health; or

(C) a county health officer;

is liable for all costs and expenses paid or incurred by the state department, a local board of health or the local board of health's authorized agents, or a local health officer in executing the order. This amount may be recovered in a civil action brought by the state department, the local board of health or the local b B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

As added by P.L.2-1993, SEC.24.

C-10

Local Health Departments (selected sections)

IC 16-20-1-23

Inspection of private property; property in which officer has interest

Sec. 23. (a) Except as provided in subsection (b), the local health officer or the officer's designee may enter upon and inspect private property, at proper times after due notice, in regard to the possible presence, source, and cause of disease. The local health officer or designee may order what is reasonable and necessary for prevention and suppression of disease and in all reasonable and necessary ways protect the public health.

(b) However, a local health officer, or a person acting under the local health officer, shall not inspect property in which the local health officer has any interest, whether real, equitable, or otherwise. Any such inspection or any attempt to make such inspection is grounds for removal as provided for in this article.

(c) This section does not prevent inspection of premises in which a local health officer has an interest if the premises cannot otherwise be inspected. If the premises cannot otherwise be inspected, the county health officer shall inspect the premises personally.

As added by P.L.2-1993, SEC.3.

IC 16-20-1-25

Unlawful conditions; abatement order; enforcement

Sec. 25. (a) A person shall not institute, permit, or maintain any conditions that may transmit, generate, or promote disease.

(b) A health officer, upon hearing of the existence of such unlawful conditions within the officer's jurisdiction, shall order the abatement of those conditions. The order must:

- (1) be in writing if demanded;
- (2) specify the conditions that may transmit disease; and
- (3) name the shortest reasonable time for abatement.

(c) If a person refuses or neglects to obey an order issued under this section, the attorney representing the county of the health jurisdiction where the offense occurs shall, upon receiving the information from the health officer, institute proceedings in the courts for enforcement. An order may be enforced by injunction. If the action concerning public health is a criminal offense, a law enforcement authority with jurisdiction over the place where the offense occurred shall be notified.

As added by P.L.2-1993, SEC.3.

C-11

Enforcement of Municipal Ordinances

IC 36-1-6-4

Injunction

Sec. 4. A municipal corporation may bring a civil action to enjoin any person from:

- (1) violating an ordinance regulating or prohibiting a condition or use of property; or
- (2) engaging in conduct without a license if an ordinance requires a license to engage in the conduct.

As added by Acts 1980, P.L.211, SEC.1.

C-12

Indiana Unsafe Building Law – Selected Sections

IC 36-7-9

Chapter 9. Unsafe Building Law

IC 36-7-9-1

Application of chapter

Sec. 1. This chapter applies to each consolidated city and its county. This chapter also applies to any other municipality or county that adopts an ordinance under section 3 of this chapter.

As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1982, P.L.33, SEC.33.

IC 36-7-9-2

Definitions

Sec. 2. As used in this chapter:

"Community organization" means a citizen's group, neighborhood association, neighborhood development corporation, or similar organization that:

(1) has specific geographic boundaries defined in its bylaws or articles of incorporation and contains at least forty (40) households within those boundaries;

(2) is a nonprofit corporation that is representative of at least twenty-five (25) households or twenty percent (20%) of the households in the community, whichever is less;

(3) is operated primarily for the promotion of social welfare and general neighborhood improvement and enhancement;

(4) has been incorporated for at least two (2) years; and

(5) is exempt from taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

"Department" refers to the executive department authorized by ordinance to administer this chapter. In a consolidated city, this department is the department of metropolitan development, subject to IC 36-3-4-23.

"Enforcement authority" refers to the chief administrative officer of the department, except in a consolidated city. In a consolidated city, the division of development services is the enforcement authority, subject to IC 36-3-4-23.

"Hearing authority" refers to a person or persons designated as such by the executive of a city or county, or by the legislative body of a town. However, in a consolidated city, the director of the department or a person designated by him is the hearing authority. An employee of the enforcement authority may not be designated as the hearing authority.

"Substantial property interest" means any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a present possessory interest, or an equitable interest of a contract purchaser. In a consolidated city, the interest reflected by a deed, lease, license, mortgage, land sale contract, or lien is not a substantial property interest unless the deed, lease, license, mortgage, land sale contract, lien, or evidence of it is:

(1) recorded in the office of the county recorder; or
(2) the subject of a written information that is received by the division of development services and includes the name and address of the holder of the interest described.
As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.4; P.L.177-2003, SEC.3.

IC 36-7-9-3

Ordinances adopting this chapter

Sec. 3. The legislative body of a municipality or county may adopt this chapter by ordinance. The ordinance must specify the executive department of the unit responsible for the administration of this chapter or establish such a department. However, in a municipality in which a commissioner of buildings was appointed to administer IC 18-5-5 (before its repeal on September 1, 1981), the commissioner of buildings is responsible for the administration of this chapter. The ordinance must also incorporate by reference the definition of "substantial property interest" in this chapter.

As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1982, P.L.33, SEC.34; P.L.3-1990, SEC.126.

IC 36-7-9-4

Unsafe buildings and unsafe premises described

Sec. 4. (a) For purposes of this chapter, a building or structure, or any part of a building or structure, that is:

(1) in an impaired structural condition that makes it unsafe to a person or property;
(2) a fire hazard;
(3) a hazard to the public health;
(4) a public nuisance;
(5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or

(6) vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;
is considered an unsafe building.

(b) For purposes of this chapter:

(1) an unsafe building; and
(2) the tract of real property on which the unsafe building is located;
are considered unsafe premises.

(c) For purposes of this chapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premises if the tract of real property is:

(1) a fire hazard;
(2) a hazard to public health;
(3) a public nuisance; or
(4) dangerous to a person or property because of a violation of a statute or an ordinance.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.14-1991, SEC.9; P.L.66-2005, SEC.1.

IC 36-7-9-4.5

Legislative findings; vacant or deteriorated structures

Sec. 4.5. (a) In Indiana, especially in urban areas, there exist a large number of unoccupied structures that are not maintained and that constitute a hazard to public health, safety, and welfare.

(b) Vacant structures often become dilapidated because the structures are not maintained and repaired by the owners or persons in control of the structures.

(c) Vacant structures attract children, become harborage for vermin, serve as temporary abodes for vagrants and criminals, and are likely to be damaged by vandals or set ablaze by arsonists.

(d) Unkept grounds surrounding vacant structures invite dumping of garbage, trash, and other debris.

(e) Many vacant structures are situated on narrow city lots and in close proximity to neighboring structures, thereby increasing the risk of conflagration and spread of insect and rodent infestation.

(f) Vacant, deteriorated structures contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to properties.

(g) Structures that remain boarded up for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood by decreasing property values, discouraging persons from moving into the neighborhood, and encouraging persons to move out of the neighborhood.

(h) Vacant structures often continue to deteriorate to the point that demolition of the structure is required, thereby decreasing available housing in a community and further contributing to the decline of the neighborhood.

(i) The blighting influence of vacant, deteriorated structures adversely affects the tax revenues of local government.

(j) The general assembly finds that vacant, deteriorated structures create a serious and substantial problem in urban areas and are public nuisances.

(k) In recognition of the problems created in a community by vacant structures, the general assembly finds that vigorous and disciplined action should be taken to ensure the proper maintenance and repair of vacant structures and encourages local governmental bodies to adopt maintenance and repair standards appropriate for the community in accordance with this chapter and other statutes.

As added by P.L.14-1991, SEC.10. Amended by P.L.1-1992, SEC.186.

IC 36-7-9-5

Orders; contents; notice; expiration

Sec. 5. (a) The enforcement authority may issue an order requiring action relative to any unsafe premises, including:

- (1) vacating of an unsafe building;
- (2) sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;
- (3) extermination of vermin in and about the unsafe premises;
- (4) removal of trash, debris, or fire hazardous material in and about the unsafe premises;
- (5) repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance;

- (6) removal of part of an unsafe building;
- (7) removal of an unsafe building; and
- (8) requiring, for an unsafe building that will be sealed for a period of more than ninety (90)

days:

- (A) sealing against intrusion by unauthorized persons and the effects of weather;
- (B) exterior improvements to make the building compatible in appearance with other buildings in the area; and
- (C) continuing maintenance and upkeep of the building and premises; in accordance with standards established by ordinance.

Notice of the order must be given under section 25 of this chapter. The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

(b) The order must contain:

- (1) the name of the person to whom the order is issued;
- (2) the legal description or address of the unsafe premises that are the subject of the order;
- (3) the action that the order requires;
- (4) the period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;
- (5) if a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments;
- (6) if a hearing is not required, a statement that an order under subsection (a)(2), (a)(3), (a)(4), or (a)(5) becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten (10) day period;
- (7) a statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;
- (8) a statement indicating the obligation created by section 27 of this chapter relating to notification of subsequent interest holders and the enforcement authority; and
- (9) the name, address, and telephone number of the enforcement authority.

(c) The order must allow a sufficient time, of at least ten (10) days, but not more than sixty (60) days, from the time when notice of the order is given, to accomplish the required action. If the order allows more than thirty (30) days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.

(d) The order expires two (2) years from the day the notice of the order is given, unless one (1) or more of the following events occurs within that two (2) year period:

- (1) A complaint requesting judicial review is filed under section 9 of this chapter.
- (2) A contract for action required by the order is let at public bid under section 11 of this chapter.
- (3) A civil action is filed under section 17 of this chapter.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.5; P.L.14-1991, SEC.11; P.L.177-2003, SEC.4.

IC 36-7-9-6

Modification or rescission of orders

Sec. 6. (a) The enforcement authority may issue an order that modifies the order previously issued.

(b) The enforcement authority may rescind an order previously issued, even if the order has been affirmed by the hearing authority.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.6.

IC 36-7-9-7

Hearing; extension of time limits; performance bonds; record of findings and action; penalties

Sec. 7. (a) A hearing must be held relative to each order of the enforcement authority, except for an order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter. An order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter becomes final ten (10) days after notice is given, unless a hearing is requested before the ten (10) day period ends by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the hearing authority.

(b) The hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five (5) days after notice is given, to continue the hearing to a business day not later than fourteen (14) days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five (5) days before the continued hearing date, in the manner prescribed by section 25 of this chapter. If the order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.

(c) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.

(d) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:

(1) affirm the order;

(2) rescind the order; or

(3) modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

In addition to affirming the order, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000). The effective date of the civil penalty may be postponed for a reasonable period, after which the hearing authority may order the civil penalty reduced or stricken if the hearing authority is satisfied that all work necessary to fully comply with the order has been done. For purposes of an appeal under section 8 of this

chapter or enforcement of an order under section 17 of this chapter, action of the hearing authority is considered final upon the affirmation of the order, even though the hearing authority may retain jurisdiction for the ultimate determination of a fine.

(e) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(f) The board or commission having control over the department shall, at a public hearing, after having given notice of the time and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The hearing authority shall use this schedule to fix the amount of the performance bond required under subsection (e).

(g) The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

(h) A civil penalty under subsection (d) may be collected in the same manner as costs under section 13 of this chapter. The amount of the civil penalty that is collected shall be deposited in the unsafe building fund.

As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1981, P.L.45, SEC.26; P.L.59-1986, SEC.7; P.L.14-1991, SEC.12; P.L.177-2003, SEC.5.

IC 36-7-9-8

Appeals

Sec. 8. (a) An action taken under section 7(d) of this chapter is subject to review by the circuit or superior court of the county in which the unsafe premises are located, on request of:

- (1) any person who has a substantial property interest in the unsafe premises; or
- (2) any person to whom that order was issued.

(b) A person requesting judicial review under this section must file a verified complaint including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten (10) days after the date when the action was taken.

(c) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the hearing authority.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-9

Emergency action; recovery of costs; challenge of determination of emergency

Sec. 9. (a) If the enforcement authority finds it necessary to take emergency action concerning an unsafe premises in order to protect life, safety, or property, it may take that action without issuing an order or giving notice. However, this emergency action must be limited to removing any immediate danger.

(b) The department, acting through the enforcement authority, may recover the costs incurred by the enforcement authority in taking emergency action, by filing a civil action in the circuit court or superior court of the county against the persons who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises at the time the enforcement authority found it necessary to take emergency action. The department is not liable

for the costs of this civil action.

(c) If an unsafe premises poses an immediate danger to the life or safety of persons occupying or using nearby property, the enforcement authority may, without following this chapter's requirements for issuing an order and giving notice, take emergency action to require persons to vacate and not use the nearby property until the danger has passed. However, any person required to vacate an unsafe premises under this subsection may challenge in an emergency court proceeding the enforcement authority's determination that the premises poses an immediate danger to the life or safety of any person. In an emergency court proceeding, the enforcement authority has the burden of proving that emergency action is necessary to protect from immediate danger the life or safety of persons occupying or using nearby property.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.8.

IC 36-7-9-10

Action to enforce orders

Sec. 10. (a) The enforcement authority may cause the action required by an order issued under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter to be performed by a contractor if:

(1) the order has been served, in the manner prescribed by section 25 of this chapter, on each person having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises that are the subject of the order;

(2) the order has not been complied with;

(3) a hearing was not requested under section 5(b)(6) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and

(4) the order is not being reviewed under section 8 of this chapter.

(b) The enforcement authority may cause the action required by an order, other than an order under section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter, to be performed if:

(1) service of an order, in the manner prescribed by section 25 of this chapter, has been made on each person having a substantial property interest in the unsafe premises that are the subject of the order;

(2) the order has been affirmed or modified at the hearing in such a manner that all persons having a substantial property interest in the unsafe premises that are the subject of the order are currently subject to an order requiring the accomplishment of substantially identical action;

(3) the order, as affirmed or modified at the hearing, has not been complied with; and

(4) the order is not being reviewed under section 8 of this chapter.

(c) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement by publication and indicate that the enforcement authority intends to perform the work, unless the authority has received information in writing that enables it to make service under section 25 of this chapter by a method other than publication.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.9; P.L.177-2003, SEC.6.

IC 36-7-9-11

Liability for costs for performance of work required by orders

Sec. 11. (a) The work required by an order of the enforcement authority may be performed in the following manner:

(1) If the work is being performed under an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the cost of this work is estimated to be less than ten thousand dollars (\$10,000), the department, acting through the unit's enforcement authority or other agent, may perform the work by means of the unit's own workers and equipment owned or leased by the unit. Notice that this work is to be performed must be given to all persons with a substantial property interest, in the manner prescribed in subsection (c), at least ten (10) days before the date of performance of the work by the enforcement authority. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(2) If the work is being performed under an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the estimated cost of this work is ten thousand dollars (\$10,000) or more, this work must be let at public bid to a contractor licensed and qualified under law. The obligation to pay costs imposed by section 12 of this chapter is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.

(3) If the work is being performed under an order issued under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, the work may be performed by a contractor who has been awarded a base bid contract to perform the work for the enforcement authority, or by the department, acting through the unit's enforcement authority or other governmental agency and using the unit's own workers and equipment owned or leased by the unit. Work performed under an order issued under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter may be performed without further notice to the persons holding a fee interest, life estate interest, or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work, as provided by section 12 of this chapter.

(b) Bids may be solicited and accepted for work on more than one (1) property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs described by section 12(a)(1) of this chapter.

(c) All persons who have a substantial property interest in the unsafe premises and are subject to an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter must be notified about the public bid in the manner prescribed by section 25 of this chapter, by means of a written statement including:

- (1) the name of the person to whom the order was issued;
- (2) a legal description or address of the unsafe premises that are the subject of the order;
- (3) a statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;
- (4) a description of work to be accomplished;
- (5) a statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter of the unsafe premises may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;

- (6) the time of the bid opening;
- (7) the place of the bid opening; and
- (8) the name, address, and telephone number of the enforcement authority.

(d) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by subsection (c), except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the enforcement authority.

(e) Notice of the statement that public bids are to be let must be given, at least ten (10) days before the date of the public bid, to all persons who have a substantial property interest in the property and are subject to an order other than an order under section 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter.

(f) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the enforcement authority has received information in writing that enables the unit to make service under section 25 of this chapter by a method other than publication.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.11; P.L.255-1996, SEC.26.

IC 36-7-9-12

Liability for costs for performance of work required by orders

Sec. 12. (a) When action required by an order is performed by the enforcement authority or by a contractor acting under section 11 of this chapter, each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:

(1) The actual cost of the work performed by the enforcement authority or the bid price of work accomplished by the contractor under section 11 of this chapter.

(2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the enforcement authority in taking the technical, administrative, and legal actions concerning typical unsafe premises that are necessary under this chapter so that the action required by an order may be performed by a contractor under section 11 of this chapter. In calculating the amount of the average processing expense, the following costs may be considered:

(A) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises.

(B) The cost of notice of orders, notice of statements of rescission, notice of continued hearing, notice of statements that public bids are to be let or that the enforcement authority intends to accomplish the work, and notice that a hearing may be held on the amounts indicated in the record, in accordance with section 25 of this chapter.

(C) Salaries for employees.

(D) The cost of supplies, equipment, and office space.

(b) The board or commission having control over the department shall determine the amount of the average processing expense at the public hearing, after notice has been given in the same manner as is required for other official action of the board or commission. In determining the average processing expense, the board or commission may fix the amount at a full dollar amount

that is an even multiple of ten (10).

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.11.

IC 36-7-9-13

Notice of unpaid costs; filing with clerk of court; hearing; judgment lien

Sec. 13. (a) If all or any part of the costs listed in section 12 of this chapter remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than fifteen (15) days after the completion of the work, the enforcement authority does not act under section 13.5 of this chapter, and the enforcement authority determines that there is a reasonable probability of obtaining recovery, the enforcement authority shall prepare a record stating:

- (1) the name and last known address of each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time the order requiring the work to be performed was recorded to the time that the work was completed;
- (2) the legal description or address of the unsafe premises that were the subject of work;
- (3) the nature of the work that was accomplished;
- (4) the amount of the unpaid bid price of the work that was accomplished; and
- (5) the amount of the unpaid average processing expense.

The record must be in a form approved by the state board of accounts.

(b) The enforcement authority, or its head, shall swear to the accuracy of the record before the clerk of the circuit court and deposit the record in the clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by section 25 of this chapter.

(c) If, within thirty (30) days after the notice required by subsection (b), a person named in the record files with the clerk of the circuit court a written petition objecting to the claim for payment and requesting a hearing, the clerk shall enter the cause on the docket of the circuit or superior court as a civil action, and a hearing shall be held on the question in the manner prescribed by IC 4-21.5. However, issues that could have been determined under section 8 of this chapter may not be entertained at the hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.

(d) If no petition is filed under subsection (c), the clerk of the circuit court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record.

(e) A judgment under subsection (c) or (d), to the extent that it is not satisfied under IC 27-2-15, is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on the real and personal property of the persons named. The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the court. The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office, as prescribed by the Indiana Rules of Trial Procedure.

(f) Judgments rendered under this section may be enforced in the same manner as all other judgments are enforced.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.12; P.L.7-1987, SEC.167; P.L.247-1989, SEC.3; P.L.31-1994, SEC.12.

IC 36-7-9-13.5

Unpaid costs for unsafe premises repairs; notice; certification as special assessment; collection as

delinquent taxes; disposition of collections

Sec. 13.5. (a) This section does not apply to the collection of an amount if a court determines under section 13 of this chapter that the enforcement authority is not entitled to the amount.

(b) If all or any part of the costs listed in section 12 of this chapter remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than fifteen (15) days after completion of the work, the enforcement authority may send notice under section 25 of this chapter to each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. The notice must require full payment of the amount owed within thirty (30) days.

(c) If full payment of the amount owed is not made less than thirty (30) days after the notice is delivered, the enforcement officer may certify the following information to the county auditor:

(1) The name of each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(2) The description of the unsafe premises, as shown by the records of the county auditor.

(3) The amount of the delinquent payment, including all costs described in section 12 of this chapter.

(d) The county auditor shall place the total amount certified under subsection (c) on the tax duplicate for the affected property as a special assessment. The total amount, including accrued interest, shall be collected as delinquent taxes are collected.

(e) An amount collected under subsection (d), after all other taxes have been collected and disbursed, shall be disbursed to the unsafe building fund.

(f) A judgment entered under section 13 of this chapter may be collected under this section. However, a judgment lien need not be obtained under section 13 of this chapter before a debt is certified under this section.

As added by P.L.31-1994, SEC.13.

IC 36-7-9-14

Unsafe building fund; deposits and expenditures

Sec. 14. (a) The enforcement authority shall establish in its operating budget a fund designated as the unsafe building fund. Any balance remaining at the end of a fiscal year shall be carried over in the fund for the following year and does not revert to the general fund.

(b) Money for the unsafe building fund may be received from any source, including appropriations by local, state, or federal governments, and donations. The following money shall be deposited in the fund:

(1) Money received as payment for or settlement of obligations or judgments established under sections 9 through 13 and 17 through 22 of this chapter.

(2) Money received from bonds posted under section 7 of this chapter.

(3) Money received in satisfaction of receivers' notes or certificates that were issued under section 20 of this chapter and were purchased with money from the unsafe building fund.

(4) Money received for payment or settlement of civil penalties imposed under section 7 of this chapter.

(5) Money received from the collection of special assessments under section 13.5 of this chapter.

(c) Money in the unsafe building fund may be used for the expenses incurred in carrying out

the purposes of this chapter, including:

- (1) the cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;
 - (2) the cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the department;
 - (3) the cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;
 - (4) the cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by section 25 of this chapter;
 - (5) the bid price of work by a contractor under section 10 or sections 17 through 22 of this chapter;
 - (6) the cost of emergency action under section 9 of this chapter; and
 - (7) the cost of notes or receivers' certificates issued under section 20 of this chapter.
- (d) Payment of money from the unsafe building fund must be made in accordance with applicable law.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.14-1991, SEC.13; P.L.31-1994, SEC.14.

IC 36-7-9-15

Transfer of money to unsafe building fund

Sec. 15. The board or commission having control over the department may transfer all or part of the money in a building, demolition, repair, and contingent fund that was established by IC 18-5-5-7 (before its repeal on September 1, 1981) to the unsafe building fund.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.3-1990, SEC.127.

IC 36-7-9-16

Inspection warrants

Sec. 16. (a) If the owners or those in possession of a building refuse inspection, an inspection officer of the enforcement authority may obtain an inspection warrant from any court of record in the county in which the building is located in order to determine if the building is an unsafe building. The court shall issue the warrant subject to the following conditions:

(1) The person seeking the warrant must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the building, or that there is probable cause for believing that a condition, object, activity, or circumstance legally justifies a search or inspection of that building.

(2) An affidavit establishing one (1) of the grounds described in subdivision (1) must be signed under oath or affirmation by the affiant.

(3) The court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.

(b) The warrant is valid only if it:

(1) is signed by the judge of the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only forty-eight (48) hours after its issuance;

(2) describes (either directly or by reference to the affidavit) the building where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the

building can reasonably determine what property the warrant authorizes an inspection of;

(3) indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

(4) is attached to the affidavit required to be made in order to obtain the warrant.

(c) A warrant issued under this section is valid for only forty-eight (48) hours after its issuance, must be personally served upon the owner or possessor of the building, and must be returned within seventy-two (72) hours.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-17

Civil actions regarding unsafe premises

Sec. 17. (a) The department, acting through its enforcement authority, a person designated by the enforcement authority, or a community organization may bring a civil action regarding unsafe premises in the circuit, superior, or municipal court of the county. The department is not liable for the costs of such an action. The court may grant one (1) or more of the kinds of relief authorized by sections 18 through 22 of this chapter.

(b) A civil action may not be initiated under this section before the final date of an order or an extension of an order under section 5(c) of this chapter requiring:

(1) the completion; or

(2) a substantial beginning toward accomplishing the completion;

of the required remedial action.

(c) A community organization may not initiate a civil action under this section if:

(1) the enforcement authority or a person designated by the enforcement authority has filed a civil action under this section regarding the unsafe premises; or

(2) the enforcement authority has issued a final order that the required remedial action has been satisfactorily completed.

(d) A community organization may not initiate a civil action under this section if the real property that is the subject of the civil action is located outside the specific geographic boundaries of the area defined in the bylaws or articles of incorporation of the community organization.

(e) At least sixty (60) days before commencing a civil action under this section, a community organization must issue a notice by certified mail, return receipt requested, that:

(1) specifies:

(A) the nature of the alleged nuisance;

(B) the date the nuisance was first discovered;

(C) the location on the property where the nuisance is allegedly occurring;

(D) the intent of the community organization to bring a civil action under this section;

and

(E) the relief sought in the action; and

(2) is provided to:

(A) the owner of record of the premises;

(B) tenants located on the premises;

(C) the enforcement authority; and

(D) any person that possesses an interest of record.

(f) In any action filed by a community organization under this section, a court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the

prevailing party.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.31-1994, SEC.15; P.L.177-2003, SEC.7.

IC 36-7-9-18

Injunctions

Sec. 18. A court acting under section 17 of this chapter may grant a mandatory or prohibitory injunction against any person that will cause the order to be complied with, if it is shown that:

- (1) an order, which need not set a hearing date, was issued to the person;
- (2) the person has a property interest in the unsafe premises that are the subject of the order that would allow the person to take the action required by the order;
- (3) the building that is the subject of the order is an unsafe building; and
- (4) the order is not being reviewed under section 8 of this chapter.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-19

Civil forfeitures

Sec. 19. (a) A court acting under section 17 of this chapter may impose a civil forfeiture not to exceed one thousand dollars (\$1,000) against any person if the conditions of section 18 of this chapter are met. The forfeiture imposed may not be substantially less than the cost of complying with the order, unless that cost exceeds one thousand dollars (\$1,000). The effective date of the forfeiture may be postponed for a period not to exceed thirty (30) days, after which the court may order the forfeiture reduced or stricken if it is satisfied that all work necessary to fully comply with the order has been done.

(b) On request of the enforcement authority the court shall enter a judgment in the amount of the forfeiture. If there is more than one (1) party defendant, the forfeiture is separately applicable to each defendant. The amount of a forfeiture that is collected shall be deposited in the unsafe building fund.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-20

Appointment of receiver; conditions; rehabilitation of property by owner, mortgagee, or person with substantial interest

Sec. 20. (a) A court acting under section 17 of this chapter may appoint a receiver for the unsafe premises, subject to the following conditions:

(1) The purpose of the receivership must be to take possession of the unsafe premises for a period sufficient to accomplish and pay for repairs and improvements.

(2) The receiver may be a nonprofit corporation the primary purpose of which is the improvement of housing conditions in the county where the unsafe premises are located, or may be any other capable person residing in the county.

(3) Notwithstanding any prior assignments of the rents and other income of the unsafe premises, the receiver must collect and use that income to repair or remove the defects as required by the order, and may, upon approval by the court, make repairs and improvements in addition to those specified in the order or required by applicable statutes, ordinances, codes, or

regulations.

(4) The receiver may make any contracts and do all things necessary to accomplish the repair and improvement of the unsafe premises.

(5) A receiver that expends money, performs labor, or furnishes materials or machinery, including the leasing of equipment or tools, for the repair of an unsafe premises may have a lien that is equal to the total expended. When a lien exists, the receiver may sell the property:

(A) to the highest bidder at auction under the same notice and sale provisions applicable to a foreclosure sale of mechanic's liens or mortgages; or

(B) for fair market value if all persons having a substantial property interest in the unsafe premises agree to the amount and procedure.

The transferee in either a public or private sale must first demonstrate the necessary ability and experience to rehabilitate the premises within a reasonable time to the satisfaction of the receiver.

(6) The court may, after a hearing, authorize the receiver to obtain money needed to accomplish the repairs and improvement by the issuance and sale of notes or receiver's certificates to the receiver or any other person or party bearing interest fixed by the court. The notes or certificates are a first lien on the unsafe premises and the rents and income of the unsafe building. This lien is superior to all other assignments of rents, liens, mortgages, or other encumbrances on the property, except taxes, if, within sixty (60) days following the sale or transfer for value of the notes by the receiver, the holder of the notes files a notice containing the following information in the county recorder's office:

(A) The legal description of the tract of real property on which the unsafe building is located.

(B) The face amount and interest rate of the note or certificate.

(C) The date when the note or certificate was sold or transferred by the receiver.

(D) The date of maturity.

(7) Upon payment to the holder of a receiver's note or certificate of the face amount and interest, and upon filing in the recorder's office of a sworn statement of payment, the lien of that note or certificate is released. Upon a default in payment on a receiver's note or certificate, the lien may be enforced by proceedings to foreclose in the manner prescribed for mechanic's liens or mortgages. However, the foreclosure proceedings must be commenced within two (2) years after the date of default.

(8) The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages. The fees, commissions, and expenses shall be paid out of the rents and incomes of the property in receivership.

(b) The issuance of an order concerning unsafe premises is not a prerequisite to the appointment of a receiver nor does such an order prevent the appointment of a receiver.

(c) If the enforcement authority or the enforcement authority's designee requests the appointment of a receiver, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(d) A court, when granting powers and duties to a receiver, shall consider:

(1) the occupancy of the unsafe premises;

(2) the overall condition of the property;

(3) the hazard to public health, safety, and welfare;

(4) the number of persons having a substantial property interest in the unsafe premises; and

(5) other factors the court considers relevant.

(e) Instead of appointing a receiver to sell or rehabilitate an unsafe premises, the court may permit an owner, a mortgagee, or a person with substantial interest in the unsafe premises to rehabilitate the premises if the owner, mortgagee, or person with substantial interest:

(1) demonstrates ability to complete the rehabilitation within a reasonable time, but not to exceed sixty (60) days;

(2) agrees to comply within a specified schedule for rehabilitation; and

(3) posts a bond as security for performance of the required work in compliance with the specified schedule in subdivision (2).

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.31-1994, SEC.16; P.L.177-2003, SEC.8.

IC 36-7-9-21

Court order authorizing performance of work; judgment for costs

Sec. 21. (a) A court acting under section 17 of this chapter may authorize the department, acting through its enforcement authority, to cause the action required by the order to be performed by a contractor licensed and qualified under law, if it is shown that:

(1) an order was issued to each person having a substantial property interest in the unsafe premises;

(2) each of the orders has been affirmed or modified at a hearing in such a manner that all persons having substantial property interest in the unsafe premises that are the subject of the orders are currently subject to an order requiring substantially identical action;

(3) the order, as affirmed or modified at the hearing, has not been complied with;

(4) the building that is the subject of the order is an unsafe building; and

(5) the order is not being reviewed under section 8 of this chapter.

(b) If the enforcement authority requests permission to cause the action required by the order to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(c) The cost of the work and the processing expenses incurred by the enforcement authority computed under section 12 of this chapter, may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.13.

IC 36-7-9-22

Emergencies; court order authorizing action to make premises safe; judgment for costs

Sec. 22. (a) A court acting under section 17 of this chapter may set a hearing to be held within ten (10) days after the filing of a complaint alleging the existence of unsafe premises presenting an immediate danger to the health and safety of the surrounding community sufficient to warrant emergency action. Upon a finding at the hearing in favor of the department, the court may:

(1) permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law;

(2) permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law after the defendants have had a reasonable time, as established by the court, to make the unsafe premises safe and have failed to complete the necessary action; or

(3) grant a mandatory injunction relative to the unsafe premises that would require a

defendant who has an interest in the premises that allows the defendant to take corrective action to immediately make the premises safe.

In granting relief under subdivision (2) or (3) the court shall set a date certain for the completion of the necessary action and shall hold a hearing within ten (10) days after that date to determine whether the necessary action has been completed.

(b) The issuance of an order concerning the unsafe premises is not a prerequisite to permission by the court to cause action to be performed on the unsafe premises. If an order has been issued concerning the unsafe premises, it does not prevent the permission by the court to cause action to be performed on the unsafe premises.

(c) If the enforcement authority requests authority to cause action on the unsafe premises to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(d) The cost of accomplishing the work may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.59-1986, SEC.14.

IC 36-7-9-23

Change of venue and judge

Sec. 23. A change of venue may not be allowed in an action filed under section 8, 13, or 17 of this chapter, but a change of judge shall be allowed in the same manner as is provided for other civil matters.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-24

Priority of actions

Sec. 24. An action filed under section 8 or 17 of this chapter takes precedence over other pending litigation, and shall be tried and determined by the court at as early a date as possible.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-25

Manner of serving notice

Sec. 25. (a) Notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are to be let, and notice of claims for payment must be given by:

- (1) sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;
- (2) delivering a copy of the order or statement personally to the person to be notified; or
- (3) leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified.

(b) If, after a reasonable effort, service is not obtained by a means described in subsection (a), service may be made by publishing a notice of the order or statement in accordance with IC 5-3-

1 in the county where the unsafe premises are located. However, publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by subdivisions (1), (2), (4), (5), (6), (7), and (9) of section 5(b) of this chapter, and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority.

(c) When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that he has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the enforcement authority.

(d) The date when notice of the order or statement is considered given is as follows:

(1) If the order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at his dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication was made.

(e) Notice of orders, notice of continued hearings without a specified date, and notice of a statement that public bids are to be let need not be given to a person holding a property interest in an unsafe premises if:

(1) no instrument reflecting the property interest held by the person is recorded in the recorder's office of the county where the unsafe premises is located;

(2) the order or statement was recorded in accordance with section 26 of this chapter; and

(3) the enforcement authority has received neither written information nor actual notice of the identity of the person who holds a property interest in the unsafe premises.

A person who fails to record an instrument reflecting an interest in his unsafe premises is considered to consent to action taken under this chapter relative to which notice would otherwise be given.

As added by Acts 1981, P.L.309, SEC.28. Amended by Acts 1981, P.L.45, SEC.27; P.L.59-1986, SEC.15.

IC 36-7-9-26

Recording of orders, statements of rescission, statements of public bids, and records of actions taken by hearing authority

Sec. 26. (a) The enforcement authority shall record in the office of the county recorder orders issued under section 5(a)(6), 5(a)(7), or 6(a) of this chapter. If the enforcement authority records an order issued under section 5(a)(6), 5(a)(7), or 6(a) of this chapter, statements of rescission issued under section 6(b) of this chapter, statements that public bids are to be let under section 11 of this chapter, and records of action in which the order is affirmed, modified, or rescinded taken by the hearing authority under section 7 of this chapter shall be recorded. The recorder shall charge the fee required under IC 36-2-7-10 for recording these items.

(b) A person who takes an interest in unsafe premises that are the subject of a recorded order takes that interest, whether or not a hearing has been held, subject to the terms of the order and other documents recorded under subsection (a) and in such a manner that all of the requirements

of sections 10, 11, and 17 through 22 of this chapter relating to the issuance of orders, service of orders and affirmation of orders are considered satisfied. If a hearing has been held, the interest is taken subject to the terms of the order as modified at the hearing, in other documents recorded under subsection(a), and in such a manner that all of the requirements of sections 10, 11, and 17 through 22 of this chapter relating to the issuance of orders, service of orders, and modification of orders at hearing are considered satisfied.

(c) A person who takes an interest in unsafe premises that are the subject of a recorded statement that public bids are to be let takes the interest subject to the terms of the statement and in such a manner that the notice of the statement required by section 11 of this chapter is considered given to the person.

As added by Acts 1981, P.L.309, SEC.28. Amended by P.L.290-1985, SEC.9; P.L.59-1986, SEC.16; P.L.177-2003, SEC.9.

IC 36-7-9-27

Transfers of property by persons not complying with orders

Sec. 27. (a) A person who has been issued and has received notice of an order relative to unsafe premises and has not complied with that order:

(1) must supply full information regarding the order to a person who takes or agrees to take a substantial property interest in the unsafe premises before transferring or agreeing to transfer that interest; and

(2) must, within five (5) days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the enforcement authority with written copies of:

(A) the full name, address, and telephone number of the person taking a substantial property interest in the unsafe premises; and

(B) the legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

(b) If a judgment is obtained against the department, enforcement authority, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in unsafe premises in an action taken by the entity under this chapter, a person who failed to comply with this section is liable to the entity for the amount of the judgment if it can be shown that the entity's failure to give notice was a result of that person's failure.

As added by Acts 1981, P.L.309, SEC.28.

IC 36-7-9-28

Violations; penalties

Sec. 28. A person who:

(1) remains in, uses, or enters a building in violation of an order made under this chapter;

(2) knowingly interferes with or delays the carrying out of an order made under this chapter;

(3) knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under this chapter; or

(4) fails to comply with section 27 of this chapter;

commits a Class C infraction. Each day that the violation continues constitutes a separate offense.

As added by Acts 1981, P.L.309, SEC.28.

Appendix D

Sample Pleadings and Other Documents

- D-1 Letter from Tenant to Landlord Notifying of Failure to Disclose Lead Paint Information (58)
- D-2 Complaint on behalf of Tenant against Landlord for Failure to Disclose Lead Paint Information (60)
- D-3 Marion County Health Department (MCHD) Notice of Code Violations and Order to Correct (67)
- D-4 MCHD Notice of Administrative Hearing (72)
- D-5 MCHD Final Order of Administrative Law Judge (73)
- D-6 MCHD Verified Complaint—Failure to Comply with Order to Correct Code Violations (75)
- D-7 MCHD Agreed Judgment—Code Violations (78)
- D-8 [*In the Matter of 17th Street Revocable Trust, Administrative Order, USEPA Docket No. RCRA-3-2000-0001TH*](#) (80)
- D-9 Sample 90 Day RCRA Notice (90)
- D-10 Sample Tenant’s Answer and Counterclaim (92)
- D-11 Sample Complaint by Buyer for Failure to Disclose (104)
- D-12 IDEM Violation Letter, Failure to Follow Work Practices in Renovation (118)
- D-13 IDEM Notice of Violation, Failure to Follow Work Practices in Renovation (119)
- D-14 IDEM Agreed Order, Failure to Follow Work Practices in Renovation (121)

Improving

Kids' Environment

D-1 Sample Letter to Landlord for Failure to Disclose

DATE

LANDLORD
Address
Anytown, IN ZIP

Re: Habitability of TENANT's Residence at 1324 Main St. in
Violation of Federal Disclosure Law

Dear LANDLORD:

Pursuant to IC 32-31-8-5, as a landlord, you are obligated to deliver to your tenants a home that is safe, clean, and habitable. The property must comply with all health and housing codes applicable to rental property. Sanitary systems must be in good and safe working condition when the rental agreement is made.

I have worked with your tenant, TENANT. Her family resided at your property on 1234 Walnut St. until they had to leave due to your failure to clean-up the property. Her children were lead poisoned. Based on the Vigo County Health Department's risk assessment, it seems clear that the lead came from deteriorated lead-based paint and lead dust on your property.

The home is not safe or habitable. The following lead hazards were found:

- **Lead dust on floors where children play:** Six of six dust wipe samples exceeded the U.S. Environmental Protection Agency (EPA) standard of 40 micrograms of lead per square foot. The maximum level was 255 micrograms per square foot – more than six times the EPA standard.
- **Lead dust of window sills:** Two of six dust wipe samples exceeded EPA's standard of 250 micrograms of lead per square foot. The maximum level was 1120 micrograms per square foot – almost 4.5 times the EPA standard.
- **Lead contaminated soil:** The soil sample had 10,900 milligrams of lead per kilogram of soil. The EPA standard is 1200 milligrams of lead per kilogram. Your soil was more than nine times the EPA standard.
- **Lead-based paint:** The tests confirmed that there is deteriorated lead-based paint on your property. The highest level was 4% lead in interior paint and 35% in exterior paint. The EPA definition of lead-based paint is anything greater than 0.5% lead.

In addition, it appears that you have violated the federal lead hazard disclosure law. TENANT told me that you did not provide them with the "Protect Your Family From Lead in Your Home" pamphlet and that you did not make the written lead disclosure statements pursuant to 40 CFR 745 Subpart F when they signed the lease. If you believe that you provided TENANT with the

notice, please provide it to me as soon as possible. I also understand that tenants in your other properties may not have received the required disclosure notices.

If you had followed the law and provided them with the notice, they would have had serious doubts about moving into the property and the rental rate you were charging. They would have had a lead risk assessment performed to protect their young family.

They are reserving their right to take a private action against you for damages pursuant to 40 CFR 745.118 including but not limited to recovery of past rent, cleaning of furniture, replacement of belongings that cannot be cleaned, moving expenses, recent and future healthcare costs, their security deposit, and other damages as well as the permanent damage that lead poisoning causes.

Please note that 40 CFR 745.118 entitles TENANT and her family to recover the cost of damages they have endured because of your failure to follow the federal disclosure regulation. In addition, the law requires that a court award triple those damages and allow them to recover attorney fees and expert witness fees. I would like to discuss how to resolve these issues with you as soon as possible so I can properly advise them.

Finally, you must provide a copy of this letter to all future buyers and tenants because it includes information regarding the specific lead hazards at your property. Finally, I have referred your failure to follow the lead hazard disclosure regulations to HUD for investigation. HUD's investigation and enforcement does not preclude or preempt TENANT's private right of action for the same violations. They can impose penalties of \$11,000 per violation or criminal sanctions.

Please contact me at [*advocate/lawyer contact information*] to discuss these issues and how we can resolve them in a manner that makes your property habitable consistent with federal, state and local law as well as the terms of the lease.

Sincerely,

Cc: Tenant
County Health Department

D-2

Sample Complaint By Tenant Against Landlord for Failure to Disclose

STATE OF INDIANA)	IN THE VIGO CIRCUIT COURT
) SS:	
COUNTY OF VIGO)	CASE NO.

TENANT, Individually and as
Parent and Next Friend of Minors
CHILD 1 and CHILD 2 and CHILD 3

Plaintiffs,

v.

LANDLORD

Defendant.

COMPLAINT

Come now the Plaintiffs, TENANT, Individually and as Parent and Next Friend of CHILD 1, CHILD 2 AND CHILD 3, and for their causes of action against the defendant, LANDLORD, say as follows:

I. FACTS

1. TENANT entered into an oral lease with LANDLORD or about February 16, 2003 to rent property owned by defendants at 1234 Main St., Anytown, IN ZIP. TENANT moved in on or about February 18, 2003.

2. Residents included TENANT, CHILD 1, CHILD 2 AND CHILD 3.

3. The LANDLORD was aware that five people lived at their 1234 Main St. property.

4. The property is located in Vigo County, Indiana.

5. The property was built in 1891.

6. CHILD 1 was born on December 5, 2001 and is now three years old.

7. CHILD 2 was born on December 15, 2002 and is now two years old.

8. CHILD 3 was born on November 14, 2003 and is now one year old.

9. On June 29, 2004, Vigo County Health Department tested CHILD 1's blood for lead. The sample was analyzed by the Indiana State Department of Health on July 12, 2004. His blood lead level was ten micrograms of lead per deciliter of blood.

10. On August 3, 2004, Vigo County Health Department tested CHILD 1's blood for lead. The sample was analyzed by the Indiana State Department of Health on August 16, 2004. His blood lead level was 16 micrograms of lead per deciliter of blood.

11. On June 29, 2004, Vigo County Health Department tested CHILD 2's blood for lead. The sample was analyzed by the Indiana State Department of Health on July 12, 2004. His blood lead level was 16 micrograms of lead per deciliter of blood.
12. On August 3, 2004, Vigo County Health Department tested CHILD 2's blood for lead. The sample was analyzed by the Indiana State Department of Health on August 16, 2004. His blood lead level was eleven micrograms of lead per deciliter of blood.
13. On June 29, 2004, Vigo County Health Department tested CHILD 3's blood for lead. The sample was analyzed by the Indiana State Department of Health on July 12, 2004. Her blood lead level was ten micrograms of lead per deciliter of blood.
14. On August 30, 2004, INSPECTOR of the Vigo County Health Department conducted a lead risk assessment on the defendant's property at 1234 Main St..
15. Based on these results, CHILD 1, CHILD 2 and CHILD 3 are considered lead poisoned.
16. INSPECTOR is a lead risk assessor licensed by the Indiana Department of Environmental Management to perform lead inspections, lead clearance examinations and lead risk assessments.
17. INSPECTOR identified peeling interior paint, peeling exterior paint, bare exterior soil, and dust on the property.
18. The soil sample taken by INSPECTOR on August 30, 2004 was analyzed by Indiana State Department of Health on September 16, 2004. It had 10,900 milligrams per kilogram of soil.
19. The 16 paint chip samples taken by INSPECTOR on August 30, 2004 were analyzed by Indiana State Department of Health on September 15, 2004. Three samples exceeded the 0.5% of lead by weight cutoff to be considered lead-based paint. The west wall baseboard in the bathroom was 3.94% lead. The south wall of window sill was 35.60% lead. The west side siding of exterior was 16.98% lead.
20. All six floor dust samples had levels in excess of 40 micrograms of lead per square foot with levels ranging from 75 to 254 micrograms of lead per square foot.
21. One of the six window sill dust samples had levels in excess of the 250 micrograms of lead per square foot with 1120 ug/ft² on the north window sill in the bedroom.
22. INSPECTOR identified in the lead risk assessment 13 specific steps that needed to be completed to eliminate the lead hazards.
23. INSPECTOR also identified extensive and active cockroach colonies.
24. Cockroaches contribute to asthma attacks.
25. CHILD 1, CHILD 2 and CHILD 3 have been diagnosed as having asthma.
26. On September 29, 2004, HEALTH COMMISSIONER, Vigo County Health Commissioner sent Defendant, LANDLORD, a letter stating that it is "imperative that all the lead hazards be corrected within 30 days of receipt of the letter." The letter included a copy of the lead risk assessment signed by INSPECTOR.
27. On September 15, 2004, TENANT sent Defendant, LANDLORD a letter asking him to eliminate the cockroaches and lead hazards within seven days. TENANT did not receive a response to her letter.
28. On October 4, 2004, LAWYER sent Defendant, LANDLORD, a letter asking him to eliminate lead hazards at 1234 Main St. property.
29. TENANT moved out on first week of October because the property was inhabitable and defendant would not make it safe.

30. Lead poisoning is acknowledged by ISDH and the U.S. Centers for Disease Control and Prevention to result in learning disabilities and contribute to violent behavior. The lead causes brain damage that permanently impairs a child's ability to learn by reducing IQ levels and contributing to attention deficit disorders. Subsequent drops in blood lead levels only limit further damage.

31. CHILD 1, CHILD 2 and CHILD 3 have begun to exhibit these symptoms.

32. CHILD 1, CHILD 2 and CHILD 3 will require special assistance and therapy for many years.

33. CHILD 1, CHILD 2 and CHILD 3 have experienced reduced asthma attacks since they moved out of the 1234 Main St. property.

34. Instead of repairing the property, Defendant attempted to sell the 1234 Main St. property.

35. On December 8, 2004, Vigo County Health Department declared the 1234 Main St. property unfit for habitation and prohibited occupancy.

II. STATUTORY SCHEME/REGULATORY HISTORY OF RLPHRA

36. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act ("RLPHRA").

37. Section 1018 of the RLPHRA (42 U.S.C. § 4852d(a)(1)) directs the Secretary of the United States Department of Housing and Urban Development ("HUD") and the Administrator of the United States Environmental Protection Agency ("EPA") to jointly issue regulations requiring disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing target housing.

38. Pursuant to 42 USC § 4852d(a), HUD and EPA adopted regulations implementing that statute and published the regulations in the March 6, 1996 Federal Register. The regulations of HUD and EPA are nearly identical.

39. HUD's regulations were enacted at 24 C.F.R. Part 35 Subpart H.

40. EPA's regulations were enacted at 40 C.F.R. Part 745 Subpart F.

41. HUD's 24 C.F.R. Part 35 Subpart H was in effect on December 6, 1996. EPA's 40 C.F.R. Part 745 Subpart F was in effect on December 6, 1996.

42. According to 24 C.F.R. 35.82 and 42 C.F.R. 745.101, the regulations described above apply to all transactions involving the sale or lease of target housing, except in four situations.

43. Three exceptions to the regulations are applicable to the lease of property. The exceptions are for 1) leases of target housing that have been found to be lead-based paint free by an inspector; 2) short-term leases of 100 days or less, where no lease renewal or extension can occur; and 3) renewals of existing leases in target housing in which the lessor has previously disclosed all information required under the federal lead hazard disclosure regulations.

44. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, "target housing" means "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling."

45. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, a "lessor" means "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.”

46. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, a “lessee” means “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 non-profit organizations.”

47. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, an “agent” means “any party who enters into a contract with a seller or lessor, including any party who enter into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser’s representatives who receive all compensation from the purchaser.”

III. STATUTORY HISTORY OF INDIANA RESIDENTIAL LANDLORD-TENANT STATUTES

48. Indiana’s Residential Landlord-Tenant Statutes apply to leases entered into after July 1, 2002.

49. Pursuant to IC 32-31-3-3, "landlord" means: (1) the owner, lessor, or sublessor of a rental unit or the property of which the unit is a part; or (2) a person authorized to exercise any aspect of the management of the premises, including a person who directly or indirectly acts as a rental agent or receives rent or any part of the rent other than as a bona fide purchaser.

50. Pursuant to 32-31-3-7, "rental agreement" means an agreement together with any modifications, embodying the terms and conditions concerning the use and occupancy of a rental unit.

51. Pursuant to 32-31-3-10, "tenant" means an individual who occupies a rental unit for residential purposes with the landlord's consent and for consideration that is agreed upon by both parties.

52. IC 32-31-8-6(a) states that a “tenant may bring an action in a court with jurisdiction to enforce an obligation of a landlord under this chapter.”

53. IC 32-31-8-6(b) states that a tenant may not bring an action under this chapter unless the following conditions are met: (1) the tenant gives the landlord notice of the landlord's noncompliance with a provision of this chapter. (2) the landlord has been given a reasonable amount of time to make repairs or provide a remedy of the condition described in the tenant's notice. The tenant may not prevent the landlord from having access to the rental premises to make repairs or provide a remedy to the condition described in the tenant's notice. (3) the landlord fails or refuses to repair or remedy the condition described in the tenant's notice.

54. IC 32-31-8-6(d) states that if the tenant is the prevailing party in an action under this section, the tenant may obtain any of the following, if appropriate under the circumstances: (1) recovery of actual damages and consequential damages and attorney's fees and court costs; (2) injunctive relief; and (3) any other remedy appropriate under the circumstances.

IV. CAUSES OF ACTION

A. Violations of the Residential Lead-Based Paint Hazard Reduction Act.

55. Defendant LANDLORD did not provide TENANT with an EPA approved lead hazard information pamphlet as required by 24 C.F.R. 35.88(a)(1) and 40 C.F.R. 745.107(a)(1).

56. At the time the lease was signed and TENANT lived there, the property at 1234 Main St, Anytown, Vigo County, Indiana met the definition of target housing pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

57. Plaintiff TENANT meets the definition of a lessee pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

58. Defendant LANDLORD meets the definition of a lessor or agent pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

59. Defendant TENANT meets the definition of a lessor or agent pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

60. None of the exceptions in 24 C.F.R. 35.82 and 42 C.F.R. 745.101 applies to the 1234 Main St. property. The property has not been found to be lead-based paint free. To the contrary, lead-based paint was documented to be present by a certified risk assessor. The lease lasted more than 100 days. And the lease was not a renewal where previous disclosure had occurred.

61. 24 C.F.R. 35 Subpart A and 42 C.F.R. 745 Subpart F applies to oral and written leases.

62. The oral lease between TENANT and LANDLORD is a lease that was covered by 24 C.F.R. 35 Subpart A and 42 C.F.R. 745 Subpart F.

63. Defendant did not include in the lease with TENANT, or an attachment to the lease with TENANT, the Lead Warning Statement as specified in 24 C.F.R. 35.92(b)(1) and 40 C.F.R. 745.113(b)(1).

64. Defendant did not include in the lease with TENANT, or an attachment to the lease with TENANT, the required statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of lead-based paint and/or lead-based paint hazards as specified in 24 C.F.R. 35.92(b)(2) and 40 C.F.R. 745.113(b)(2).

65. Defendant did not include in the lease with TENANT, or an attachment to the lease with TENANT, the statement by TENANT affirming receipt of the information described above as specified in 24 C.F.R. 35.92(b)(4) and 40 C.F.R. 745.113(b)(4).

66. Defendant did not include in the lease with TENANT, or an attachment to the lease with TENANT, a statement by the lessee that the agent informed the lessor of the lessor's obligation under 42 U.S.C. 4852d and that the agent is aware of his/her duty to ensure compliance with the requirements of this subpart as specified in 24 C.F.R. 35.92(b)(5) and 40 C.F.R. 745.113(b)(5).

67. Defendant did not include in the lease with TENANT, or an attachment to the lease with TENANT, the signatures of the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature as specified in 24 C.F.R. 35.92(b)(6) and 40 C.F.R. 745.113(b)(6).

68. Section 1018 of the RLPHRA (42 USC § 4852d) provides the penalties for violations of the statute.

69. Paragraph (b)(3) of section 1018 of the RLPHRA (42 USC § 4852d) establishes civil liability and provides that “[a]ny person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to three times the amount of damages incurred by such individual.”

70. Paragraph (b)(4) of section 1018 of the RLPHRA (42 USC § 4852d) provides that “[i]n any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.”

71. The requirements of paragraphs (b)(3) and (b)(4) were included in the HUD and EPA regulations at 24 C.F.R. 35.96 and 40 C.F.R. 745.118.

72. Defendant did not comply with 24 C.F.R. Part 35 Subpart H and 40 C.F.R. Part 745 Subpart F.

73. As a direct consequence of Defendant’s failure to comply with the RLPHRA, TENANT and her children suffered the damages described herein. Due to the harm caused by Defendant’s failure to comply with the RLPHRA, TENANT is entitled to damages in the amount of triple the sum of the actual damages plus costs including attorney fees and expert witness fees.

B. Negligence.

74. During the relevant time period, Defendant was a trained professional engaged in the leasing of real estate.

75. Defendant knew or should have known of the requirements of Residential Lead-Based Paint Hazard Reduction Act.

76. Defendant knew that TENANT had children and that children would be living with her at 1234 Main St. property.

77. Defendant knew or should have known of the dangers of lead-based paint and its special threat to children.

78. Defendant owed a duty to warn TENANT pursuant to the RLPHRA and Indiana common law.

79. Defendant negligently failed to warn TENANT of lead-based paint hazards as required pursuant to the provisions of the RLPHRA and Indiana common law.

80. As a direct consequence of Defendant’s negligent failure to warn, TENANT suffered the damages described herein.

C. Breach of Indiana’s Residential Landlord-Tenant Statute.

81. Defendant is a landlord as defined at IC 32-31-3-3.

82. The oral lease qualifies as a rental agreement as defined at IC 32-31-3-7.

83. TENANT qualifies as a tenant as defined at IC 32-31-3-10.

84. The lease is subject to the provisions of Indiana’s Residential Landlord-Tenant Statute at IC 32-31-2.9 and IC 32-31-8.

85. The property was not delivered to the Plaintiffs by the Defendant in a safe, clean, and habitable condition.

86. The Defendant violated IC 32-31-8-5 which requires that they deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.

87. The property did not comply with all health and housing codes applicable to the rental premises.

88. The Defendant violated IC 32-31-8-5 which requires that they comply with all health and housing codes applicable to the rental premises.

89. Plaintiffs gave Defendant written notice of Defendant's noncompliance with IC 32-31-8.

90. Plaintiffs gave Defendant seven days to make repairs or provide a remedy of the condition described in the Plaintiff's notice.

91. Plaintiffs did not prevent the Defendant from having access to the rental premises to make repairs or provide a remedy to the conditions described in the Plaintiffs' notice.

92. Seven days was a reasonable amount of time to make repairs.

93. Defendant failed to repair or remedy the conditions described in the Plaintiffs' notice.

94. Pursuant to IC 32-31-8-6(b), Plaintiffs are entitled to bring action in court to enforce Defendant's obligations under the lease.

95. Pursuant to IC 32-31-8-6(d), Plaintiffs may recover actual damages, consequential damages, attorney's fees, court costs, injunctive relief, and any other remedy appropriate under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, TENANT, CHILD 1, CHILD 2 and CHILD 3 demand judgment against LANDLORD for such damages as are reasonable in the premises of this complaint, including triple the actual damages pursuant to the RLPHRA, together with costs and disbursements herein.

DEMAND FOR JURY TRIAL

Plaintiffs demand that this action be tried to a jury.

Respectfully submitted,

LAWYER

by: _____

Lawyer

Attorney No.

D-3
**Marion County Health Department Notice of Code Violations
and Order to Correct**



**Marion
County
Health
Department**

3838 North Rural Street
Indianapolis, IN 46205
(317) 221-2155

03/07/2006

Property Owner
REGENCY PARK INDIANA LLC
C/O THE LIGHTHOUSE GROUP
326 THIRD ST
LAKEWOOD, NJ 08701

Re: 5580 CHALAN CT APT
Built: 1968

On February 22, 2006, a lead-based paint inspection and risk assessment was made at the above referenced property. The lead-based paint inspection and risk assessment revealed conditions that are in violation of Chapter 10 of the Code of the Health and Hospital Corporation of Marion County, Indiana.

A lead-based paint inspection is a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation. A risk assessment is an investigation of the property to determine the existence, nature, severity and location of lead-based paint hazards in a residential dwelling through an on-site investigation. All hazards and suggested corrective actions will be identified and detailed in this report.

Lead in paint testing was completed using a NITON XL309 X-Ray Fluorescence analyzer (XRF). Testing was completed on painted interior and exterior surfaces of the property that were cracking, chipping, peeling, chalking or separating from the surface. Visual assessments were also used on surfaces that were deemed inaccessible. The location and results of the XRF testing are located in Attachment B.

Testing for lead in dust and soil was also completed and the laboratory results are located in Attachment A.

The U.S. Environmental Protection Agency, U.S. Department of Housing and Urban Development and the State of Indiana set the minimal standard for lead-based paint at any value equal to or greater than 1.0 mg/cm² or 0.5% by weight.

Lead dust is elevated if the dust levels are greater than 40 ug/ft² for floors, 250 ug/ft² for window sills and 400 ug/ft² for window wells. Soil is considered to have elevated lead levels if it contains greater than 400 ppm of lead in bare soil in a child's play area or 1200 ppm in a general yard area.

40 CFR 745.107(a)(2) requires that "the seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards."

A lead-based paint inspection and risk assessment report prepared by the Marion County Health Department that is given to the owner or property manager must be disclosed to the prospective buyer or tenant. This report is additional information concerning lead-based paint hazards. Even if the report shows that no hazards were found, the report must be shared with purchasers or lessees. Fines can be imposed on the property owner if disclosure requirements are not met. The disclosure requirements only apply to target housing. Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom building.

All samples were analyzed by the Marion County Health Department Laboratory located at 3838 N. Rural Street, Indianapolis, Indiana 46205.

Please see:

- Attachment A for laboratory information
- Attachment B for risk assessor notes
- Attachment C for additional information, if available

You are hereby notified to correct each violation listed below on or before March 28, 2006 except as otherwise set forth. For each of the following lead violation corrections, both interim control options and/or abatement options are listed. Interim controls are designed to temporarily reduce lead-based paint hazards and abatement measures are designed to permanently eliminate lead-based paint hazards. The term abatement does not include the following: renovation, remodeling, landscaping, or other activities that are not designed to permanently eliminate lead-based paint hazards, but are designed to repair, restore, or remodel a structure or dwelling. Lead-based paint abatement can be very dangerous if done improperly. It's best to hire professional contractors to remove lead paint from your home.

<u>Ordinance</u>	<u>Violation and Correction</u>	<u>Location</u>	<u>Direction</u>
------------------	---------------------------------	-----------------	------------------

Medium Priority Lead Violations

10-303 THE BATH TUB IN THE UPSTAIRS BATHROOM CONTAINS HAZARDOUS LEVELS OF LEAD. YOU NEED TO EITHER REGLAZE OR REPLACE THE TUB USING LEAD SAFE WORK PRACTICES.	BATHROOM2
--	------------------

During lead hazard control repairs, each day lead-based paint chips and dust should be collected and placed in a 6-mil plastic bag or other leak tight container, securely sealed, and stored where others cannot come into further contact. The work area must be wet-mopped daily throughout the removal process with a high phosphate detergent to prevent dispersal of lead-containing dust. After all work is completed and all protective plastic is removed from the work area, the entire work area must be wet-washed with a high phosphate detergent or HEPA vacuumed. Either procedure must be done twice unless both methods are performed once.

Once lead hazards are remediated and clean up work is complete, a clearance dust exam will be performed to ensure compliance with lead dust standards.

The Marion County Health Department recommends that the property owner or manager perform visual examinations to ensure that the hazard control measures are not failing and continue to provide protection against lead dust. Visual examinations should be performed at least annually or when a unit turns over or becomes vacant, or whenever significant damage occurs (e.g. flood, fire, vandalism).

Failure to correct these violations could result in court action pursuant to Indiana Code 36-1-6-4. Fines up to \$2,500.00 and costs may result.


You are entitled to an administrative hearing on this matter. A written request must be filed with the legal department, 3838 N. Rural Street, Indianapolis, Indiana 46205, within 10 business days of receipt of this notice.

The Marion County Health Department is not responsible for the independent conclusions, opinions or recommendations made by others based on the observations and laboratory test data presented in this report.

Findings, conclusions and recommendations are based on limited research and site evaluations observed at 5560 CHALAN CT APT in Indianapolis, Indiana on February 22, 2006.

Component surfaces that could not be visually observed were not inspected. Additionally, the passage of time may result in changes of the environmental characteristics observed at the site.

Sincerely,



Daniel J Fries
Lead Risk Assessor
221-2212
License # IN5525038
HSG06-00595

Indiana's New Lead-Safe Work Practices Requirements for Pre-1960 Homes and Child-Occupied Facilities

House Enrolled Act 1171 (Public Law 2002-99) was signed by Governor O'Bannon on March 21, 2002. HEA-1171 added IC 13-17-14-12 Indiana Code. IC 13-17-14-12 was effective on July 1, 2002.

Who does it apply to?

Any person doing remodeling, renovation, and maintenance work in Indiana at target housing and child occupied facilities built before 1960. However, it does not apply to an individual who performs those activities within a residential dwelling that the individual owns, unless:

1. An individual other than the owner or a member of the owner's immediate family is present while the activities are being performed; or
2. A lead poisoned child resides in the building.

What is required?

1. **Interior and Exterior Paint:** The following work practices are prohibited to remove paint:
 - a. **Open flame burning or torching.**
 - b. Machine sanding or grinding without high efficiency particulate air local exhaust control.
 - c. **Abrasive blasting or sandblasting** without high efficiency particulate air local exhaust control.
 - d. **A heat gun that:**
 - i. operates above one thousand one hundred (1,100) degrees Fahrenheit; or
 - ii. chars the paint
 - e. **Dry scraping**, except:
 - i. in conjunction with a heat gun operating at less than 1000oF and not charring paint; or
 - ii. within one (1) foot of an electrical outlet.
 - f. **Dry sanding**, except within one (1) foot of an electrical outlet.
 - g. In a space that is not ventilated by the circulation of outside air, using a **volatile stripper** that is a hazardous chemical under 29 CFR 1910.1200.
2. **Exterior Paint:** A person conducting activities on painted exterior surfaces may not allow visible paint chips or painted debris to remain on the soil, pavement, or other exterior horizontal surface for more than forty-eight (48) hours after the surface activities are complete.

What are target housing and a child-occupied facility?

1. **Target Housing** is housing constructed before 1978, excluding housing without a bedroom or housing for the elderly or individuals with disabilities, that is not occupied or expected to be occupied by a child younger than six.
2. **Child-Occupied Facility** is a building or portion of a building constructed before 1978 that is visited regularly by a child younger than six at least 2 days a week for 3 hours per visit for at least 60 hours during a calendar year.

What if only a minor amount of paint is disturbed?

The requirements apply only when more than the following amount of paint is disturbed:

1. Exterior painted surfaces of more than **twenty (20) square feet**;
2. Interior painted surfaces of more than **two (2) square feet** in any one (1) room or space; or
3. More than ten percent (10%) of the combined interior and exterior painted surface area of components of the building.

What if the paint is not lead-based?

Paint in a building constructed before 1960 is considered to be lead-based paint unless the absence of lead in the paint has been determined by a lead-based paint inspection conducted pursuant to IC 13-17-14-1.

What are the potential penalties?

The State rarely pursues the maximum fine but the following penalties are possible:

1. **Civil Penalties (IC 13-30-4):** Maximum of \$25,000 per day per violation.
2. **Criminal Penalties (IC 13-30-6):** For persons, including responsible corporate officers, who intentionally, knowingly, or recklessly violate the requirements, the violation would be a **Class D Felony** and a minimum fine of **\$5000 per day per violation**.

D-4
Notice of Administrative Hearing

Re: Administrative Hearing Request
2739 Adams St.

NOTICE OF HEARING

Dear Mr. Ullrich and Mr. Howard:

This letter is to inform you that in accordance with Section 21-701 of the Code of the Health and Hospital Corporation of Marion County, the above matter has been referred for an administrative hearing before me, an administrative law judge for said agency. The hearing is hereby scheduled for November 11, 2005 commencing at 9:30 a.m. in the 5th Floor Conference Room of the Marion County Health and Hospital Corporation, 3838 North Rural Street, Indianapolis, Indiana.

The parties are entitled to file documents or submit written statements or affidavits with the administrative law judge for consideration as evidence. All testimony of parties and witnesses shall be made under oath or affirmation. This matter shall be heard in an informal manner without recourse to the technical common law rules of evidence applicable to civil actions in the courts, but the administrative law judge retains the power to control the proceedings for the efficient and orderly disposal of the matter, including but not limited to imposing reasonable time limitations.

All parties shall have the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence. Evidence which is unreasonably burdensome, irrelevant, immaterial or repetitious may be excluded or conditions may be imposed on the presentation of such evidence. Hearsay may form the basis of an order herein unless objected to. If such hearsay does not fall into a generally recognized hearsay exception, it may not form the sole basis for an order. If you desire that the hearing be recorded, please make your request 24 hours in advance so that we can have the appropriate equipment available. If the hearing is recorded you may request preparation of a transcript at your expense at the cost specified in the Code. Requests for a continuance should be directed to the attention of the undersigned.

Sincerely,

Deborah E. Albright
Administrative Law Judge

D-5
Marion County Health Department Final Order
Of Administrative Law Judge

October 27, 2005

Mr. Adam Lenkowsky
ROBERTS & BISHOP
The Roberts-Bishop Building
118 N. Delaware St.

Re: Administrative Hearing Request
3447 Washington Blvd.

FINAL ORDER

Dear Mr. Lenkowsky:

An administrative hearing in this matter was scheduled for 10:00 a.m. on October 19, 2005, in the 1st Floor Conference Room of the offices of the Marion County Health and Hospital Corporation, 3838 North Rural Street, Indianapolis, Indiana. The hearing concerned a Notice of Violations dated September 19, 2005 regarding the above-referenced property. The Notice was issued by Marion County Health and Hospital Corporation (hereinafter referred to as the "agency") as a result of the agency's inspection of the subject property on September 16, 2005. The Notice sets forth nineteen alleged violations of Chapter 10 of the Code of the Health and Hospital Corporation, which is the applicable law herein. The Notice cites the property for deterioration of exterior brick walls; missing and/or deteriorated downspouts; deteriorated eaves with lead-based paint on an accessory building; chipped or peeling lead-based paint on an exterior door of the accessory building; chipped or peeling lead-based paint on exterior doors and door frames; chipped or peeling lead-based paint on exterior window frames; chipped or peeling lead-based paint on exterior window sashes; chipped or peeling lead-based paint on exterior window sills; chipped or peeling lead-based paint on exterior wood trim; missing or improperly maintained gutters; lead-based paint chips on the ground; chipped or peeling paint on porch roof supports; chipped or peeling lead-based paint on accessory building siding; chipped or peeling lead-based paint on soffits (cited twice); chipped or peeling lead-based paint on accessory building window frames (cited twice); and an exterior stairway which has a loose or missing handrail.

At the hearing, Adam Lenkowsky, attorney, appeared on behalf of the Petitioner. The agency appeared by Gregory Ullrich, counsel, and Daniel Fries, Environmental Health Specialist.

At the commencement of the hearing, before witnesses were sworn, the parties informally conferred and then informed the Administrative Law Judge that they had reached an agreement whereby the alleged violations would be corrected within 60 days. Both parties indicated their assent to this time frame.

IT IS THEREFORE ORDERED that Petitioner shall be given 60 days from the date of this Order in which to correct the violations cited in the agency's September, 2005 Notice of Violations. If Petitioner is unable for any reason to complete repairs within that time frame, Petitioner shall be responsible for contacting the agency and requesting an extension of time, and the granting of such extension shall be within the discretion of the agency.

Sincerely,

Deborah E. Albright
Administrative Law Judge

cc: Greg Ullrich

compliance with the terms and provisions of The Code, and that the violations continue to exist at the time this Complaint was filed.

5. That the Health Officer issued an administrative notice and order to the Defendant in the manner set out in The Code, which notice and order required the Defendant to bring the property into compliance with The Code. A copy of the notice and order are attached hereto, incorporated herein, and marked as "Exhibit A".

6. That the Defendant has wholly or in part failed to comply with the terms and provisions of the administrative order, and the premises remain defective and in violation of the terms of The Code and the provisions of the order.

7. That Section 21-602 of The Code provides that the doing of any prohibited act or the omission of any required act subjects the party guilty of such violation to a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

8. That in accordance with Indiana Code 36-1-6-4, a municipal corporation may bring a civil action to enjoin any person from violating an ordinance regulating or prohibiting a condition or use of property or engaging in conduct without a license if an ordinance requires a license to engage in the conduct.

9. That valid orders of the Director of the Division of Public Health may be enforced in any court of competent jurisdiction by prohibitory or mandatory injunction as provided in Indiana Code 16-22-8-31.

WHEREFORE, the Plaintiff prays that the Court set a hearing on its Complaint, and that after such hearing, a mandatory injunction be issued ordering the Defendant to bring the premises into compliance with the terms of The Code; that further, a fine be imposed in the

amount of Two Thousand Five Hundred Dollars (\$2,500.00) for violation of The Code; that the costs of this action be assessed against the Defendant; and for all other proper relief.

Respectfully submitted,

Lawyer, Attorney #
Health and Hospital Corporation
of Marion County, Indiana
3838 North Rural Street
Indianapolis, Indiana 46205
(317) 221-2005
Attorney for Plaintiff

5. The NEXT HEARING in this matter will be on _____, 2005 at _____
_____. M for the purpose of:

_____ Significant progress on the following repairs:

_____ Compliance on all repairs _____ Compliance on cleaning property

_____ Significant progress on cleaning property

_____ Documentation regarding sale or transfer of ownership of property

Other, as specified _____

6. **Defendant agrees to appear at the next hearing without further notice.**

7. Defendant agrees to pay a fine of \$_____ and court costs of one hundred six dollars (\$106.00) to the Marion County Clerk.

8. Defendant agrees that a Motion to Dismiss does not release Defendant from fines and costs imposed by the Court in the Agreed Judgment.

Respectfully Submitted,

Attorney, #12345-67
Health and Hospital Corporation
3838 N. Rural Street
Indianapolis, Indiana 46205
(317)-221-2005
Attorney for Plaintiff

Signature of Defendant

Printed Name of Defendant

Address of Defendant

Telephone No. of Defendant

APPROVED AND SO ORDERED on _____

JUDGE, Marion Superior Court F12

D-8
Order to Group I Management and M275
Docket No. RCRA-01-2001-0072



September 4, 2001

Group I Management and M275, LLC
 Mr. Paul Carrigg
 P.O. Box 6068
 Fall River, Massachusetts 02724

**Re: Order to Group I Management and M275, LLC of Fall River, Massachusetts,
 Requiring Cleanup, Testing, Analysis and Reporting Under Section 7003 of the Resource
 Conservation and Recovery Act: Docket Number RCRA-01-2001-0072**

Dear Mr. Carrigg:

Thank you for agreeing on August 30, 2001, to remediate the potential and actual imminent and substantial threat to human health from lead-based paint dust at your property at 275 Martine Street, Fall River, Massachusetts (hereafter the "facility"). We appreciate the commitment that you expressed during the discussion to meet the cleanup requirements through work at the facility.

As you know, EPA has decided that the work will proceed more smoothly at the facility if conducted under an enforceable mechanism. Thus, with this letter, EPA is ordering cleanup, testing, analysis and reporting pursuant to Section 7003(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973(a).

Pursuant to Section 7003 of RCRA, once EPA determines that past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal, to restrain such person from such handling, storage, treatment, transportation or disposal, to order such person to take such other actions as may be necessary or both. Further, the Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

This Order applies to and binds Group I Management and M275, LLC, and their officers,

1

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employees, trustees, agents, successors, and assigns (collectively referred to in this Order as "Group I Management"). No change in ownership, name or corporate status shall alter the obligations to comply with this Order. Group Management I must give notice of this Order to any successors in interest prior to transfer of the facility or its operations and to all contractors, subcontractors, laboratories and consultants retained to help implement this Order. Group I must ensure that all such contractors, subcontractors, laboratories and consultants comply with the terms of this Order.

EPA has given the Commonwealth of Massachusetts notice of the issuance of this Order in accordance with RCRA Section 7003(a), 42 U.S.C. § 6973(a). EPA has provided notice to the City of Fall River, Massachusetts of this action pursuant to Section 7003(c) of RCRA, 42 U.S.C. § 6973(c).

I. LEGAL BASIS FOR ISSUING ORDER UNDER RCRA SECTION 7003

This section outlines the conclusions of law that support EPA's determination that it has jurisdiction and a factual basis to issue an Order pursuant to RCRA Section 7003 to Group I Management. The legal conclusions are based on the facts contained in Attachment I to this Order and to the administrative record compiled by EPA. The record is available for review at EPA's regional office, which is located at 1 Congress Street, Suite 1100, Boston, MA 02114-2023.

EPA has determined that :

- A. Group I Management and M275, LLC are "persons" within the meaning of that term as defined by RCRA Section 1004(15), 42 U.S.C. Section 6903(15).
- B. The lead dust at the facility, as identified in Attachment I hereto, constitutes a "solid waste" as that term is defined in Section 1004 (27) of RCRA, 42 U.S.C. Section 6903 (27).
- C. The solid waste referred to in paragraph B. above has been and/or is currently being handled, stored, treated, or disposed of at the facility;
- D. Based on the information described in Attachment I hereto, EPA has determined that present conditions at the facility may present an imminent and substantial endangerment to health and the environment within the meaning of section 7003(a) of RCRA, 42 U.S.C. Section 6973(a) arising from the past or present handling, storage, treatment or disposal of lead dust (i.e., "solid waste") at the facility;
- E. Group I Management has been and is currently contributing to the handling and/or storage, treatment and/or disposal of such solid waste at the facility which may present an imminent and substantial endangerment to human health and the environment;
- F. The actions required by this Order are consistent with RCRA, and are necessary to protect health and/or the environment;

II WORK REQUIRED UNDER THIS ORDER

A. Respondent shall **abate the conditions described above by September 7, 2001, by taking, at a minimum, the following steps:**

1. hire a licensed lead-abatement contractor experienced in lead-abatement in multi-use facilities;
2. abate the lead at the facility, beginning with the dance studio on the second floor, including lead dust on floors, walls, ceilings, window sills, furniture and other objects; lead contaminated debris; and equipment and all other objects contaminated with lead dust consistent with all applicable federal, state and local laws, regulations, and policies; all lead dust must meet the standard of 40 ug/ft², except for interior window sills and window troughs for which the standard is 250 ug/ft² and 400 ug/ft², respectively;
3. prevent access to the building by any children under the age of 6 and pregnant women until the lead-abatement contractor has submitted a written certification that the abatement has been completed and that all applicable standards have been met;
4. provide an alternative ingress and egress to avoid the impacted areas;
5. provide site access to state and federal officials;
6. hire a licensed, certified risk assessor to conduct sampling at the facility following the abatement, and provide all sampling results to EPA; and
7. provide (by FAX addressed to Marian Magoon (617-918-1809)) written updates to EPA at key stages of the work.

B. By September 5, 2001, Respondent shall post signs written in English, Portuguese, and Spanish at appropriate entrances to the Facility, advising that EPA has determined that the facility contains solid and/or hazardous wastes that may present an imminent and substantial endangerment to human health and the environment. These signs shall be maintained until Group I Management has complied with this Order as determined by EPA.

C. Off-Site Shipments. All hazardous wastes and constituents removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a licensed or permitted RCRA facility.

D. Compliance With Other Laws. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations.

- E. **Final Report.** Within seven (7) days after completion of all actions required under this Order, Group I Management shall submit to EPA a final report certifying that the facility has been cleaned of lead dust and meets the standards described in paragraph A. above ("Final Report"). The Final Report shall include a list of quantities and types of materials removed off-site or handled on-site, a list of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and copies of all documentation generated during the Work (e.g., manifests, invoices, bills, contracts and permits). The Final Report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the Final Report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

- F. If EPA determines that the Work has not been completed in accordance with this Order, EPA will notify Group I Management, provide a list of the deficiencies, and require that Group I Management take any additional actions necessary to correct such deficiencies. Group I Management shall implement any additional actions specified by EPA according to the schedule set forth in EPA's notice. Group I Management shall then submit a modified Final Report in accordance with the EPA notice. Failure by Group I Management to take the additional actions required by EPA shall be a violation of this Order.

III. INCORPORATION OF DOCUMENTS INTO THIS ORDER

All attachments to this Order are deemed incorporated into, and made an enforceable part of this Order. Upon interim approval by EPA, all submissions made under this Order shall be deemed incorporated into and made an enforceable part of this Order. Thus, the term "Order" refers to this Order, the attachments to this Order, and all submissions made pursuant to this Order.

IV. MODIFICATIONS

If warranted by conditions at the facility, the designated EPA inspector, after obtaining concurrence from his/her direct supervisor, may agree in writing to modify the deadlines or substantive performance requirements required by this Order.

V. CREATION OF DANGER; EMERGENCY RESPONSE

Upon the occurrence of any incident or discovery of any condition that causes or threatens a release of hazardous waste from the facility or endangerment to human health or the environment, Group I Management must notify immediately Marian Magoon, Office of Environmental Stewardship, at (617) 918-1848, or in the event of her unavailability notify the Regional Duty officer of the Emergency Planning and Response Branch, EPA Region I at (617) 918-1261. Please note that nothing in this Order limits the authority of EPA to take or order all action necessary to protect public health, welfare or the environment or prevent, abate or minimize an actual or threatened release of hazardous substances, hazardous wastes, or solid wastes, at or from the facility.

VI. COMMUNITY RELATIONS

Group I Management shall participate to the extent determined appropriate by EPA in any community relations plan developed by EPA. Respondent shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Facility.

VII. POTENTIAL CONSEQUENCE OF FAILURE TO COMPLY

In the event that Group I Management fails or refuses to comply with any requirement of this Order, Section 7003(b) of RCRA, 42 U.S.C. Section 6973(b), authorizes EPA to commence a civil action in the U.S. District Court to require compliance and to assess a civil penalty not to exceed \$5,500 for each day during which failure or refusal occurs.¹

We look forward to your continued cooperation in satisfying the requirements of this Order and encourage you to call the following EPA staff members with any questions: Andrea Simpson, Esq. At (617) 918-1738 (for legal issues), or Marian Magoon at (617) 918-1848 (for technical issues).

VIII. RESERVATION OF RIGHTS BY EPA

EPA reserves all rights against Group I Management and all other persons to take any further civil, criminal, or administrative enforcement action pursuant to any available legal authority (including Section 7003(b) of RCRA, 42 U.S.C. Section 6973(b)), and including the right to seek injunctive relief; the recovery of money expended or to be expended (plus interest); monetary

¹RCRA Section 7003(b) specifies that the penalty amount is \$5,000, but the Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. Section 3701, 40 C.F.R., authorizes EPA to add an inflation adjustment or ten percent to the penalty for violations occurring on or after January 31, 1997. Thus, together, RCRA and the DCIA authorize a maximum civil penalty of \$5,500 per day for non-compliance with the requirements of this Order.

penalties, criminal sanctions, and/or punitive damages regarding: (i) any violation of this Order; or (ii) any actual or potential threat to human health or welfare or the environment, or any release or threat of release of hazardous substances on, at, in, or near the facility. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to RCRA, or any other applicable law.

EPA further expressly reserves the right both to disapprove work performed by Group I Management or its contractors and to request or order Group I Management to perform tasks in addition to those detailed in this Order. In addition, EPA reserves all rights it may have to undertake response actions at any time and to perform any and all portions of the work activities which Group I Management has failed or refused to perform properly or promptly, and to seek reimbursement from Group I Management for its costs, or seek any other appropriate relief.

Notwithstanding any other provision of this Order, EPA shall retain all of its information gathering, entry, inspection, and enforcement authorities and rights under any applicable law, regulation, or permit.

Sincerely,



Sam Silverman
Acting Director
Office of Environmental Stewardship

Ann Pontius, OECA

ATTACHMENT 1

STATEMENT OF FACTS

In support of the issuance of this Order and based upon the information in the Administrative Record of this Order, EPA makes the following Finding of Facts:

1. Mr. Paul Carrigg, a principal with Group I Management, attested that M275, LLC owns the property located at 275 Martine Street, in Fall River, Massachusetts.
2. Renovation work was initiated by the owners, and D&D Sandblasting of Somerset, MA was hired to do the work.
3. On or about August 29, 2001, EPA-New England Lead (Pb) enforcement inspector, Marian Magoon, received a telephone call from Ernie Keily with the Massachusetts Division of Occupational Safety. He reported that staff in his New Bedford Office had received a complaint the day before (August 28, 2001), regarding renovation work at a commercial building, located at 275 Martine Street, in Fall River, Massachusetts. The owners, Group I Management, hired D&D Sandblasting on or about August 21, 2001, to sandblast paint from the first floor of the three floor converted mill. During the course of the sandblasting, several tenants in the building observed dust coming through the floors and out of the windows. One tenant also observed that D&D disposed of approximately fifty pounds of the debris in a trash dumpster, which was subsequently hauled away in a BFI truck. Following the sandblasting a tenant hired ProScience Analytical Services to test the debris for lead. The sampling results show the presence of lead in the debris (See Exhibit #1).
4. On August 29, 2001, EPA inspector Marian Magoon interviewed tenants of the facility and determined that additional sampling would be required. On August 30, 2001, Ms. Magoon returned with EPA inspectors Wayne Toland and Paul Carroll, after having received permission from Mr. Paul Carrigg to access the facility. While at the facility, they too observed dust throughout the interior of the building. Further, the inspectors were made aware that tenants in the building include a dance school that would begin classes on September 5, 2001, a computer repair store, furniture refinisher, a silk screening studio, an appliance repair facility, a storage facility, and a recording studio. The dance instructor is pregnant and most of the students are children.
5. The EPA inspectors conducted sampling in the building. Initial sample results taken by EPA inspectors are as follows:
 - Bucket of sand and paint debris on the exterior of the building: 1230 ppm lead and 868 ppm lead;
 - Interior floor sample: 1290 ppm lead;
 - Second Floor (the same floor as the dance school): 2790 ppm lead;

6. During the course of the sampling on August 30, 2001, Ms. Magoon advised Mr. Carrigg that he would have to hire a certified lead abatement contractor to remediate the entire building. Deborah Brown, Chief, Toxics, Pesticides, and Federal Programs Manager also spoke with Mr. Carrigg on August 30 and 31, 2001, and September 4, 2001, about the condition of the facility, the need to advise the tenants about the debris, and the need to formalize a cleanup agreement between EPA and himself.
7. The building is located in an industrial area although the University of Massachusetts Dartmouth is constructing a new building adjacent to the facility. Ms. Magoon observed workers outside the building.
8. Lead, a naturally-occurring metal, is a powerful toxicant with no known beneficial purpose in the human body. Virtually all parts of the human body can be damaged from exposure to lead.
9. Lead has been classified as a probable human carcinogen by the United States Environmental Protection Agency and a possible human carcinogen by the International Agency for Research on Cancer.
10. In adults, chronic exposure to low levels of lead may cause memory and concentration problems, hypertension, cardiovascular disease, and damage to the male reproductive system. Exposure to lead before or during pregnancy can alter fetal development and cause miscarriages.
11. While potentially harmful to individuals of all ages, lead exposure is especially harmful to children, especially those under the age of six. Childrens' heightened risk level is due not only to childrens' normal hand-to-mouth behavior which increases their exposure to lead by ingestion, but also children's increased physiological ability to ingest lead into their bodies. Furthermore, the rapidly developing nature of infants' and childrens' central nervous systems makes children most at risk of permanent harm from exposure to lead. Exposure to lead in children can cause learning disabilities, reduced intelligence, behavioral problems, growth impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system.
12. Dust containing lead is thought to be a major pathway by which people, especially young children, are exposed to lead. Young children are especially susceptible to lead poisoning from coming into contact with dust that contains lead.
13. EPA has established the following residential lead standards¹:

Dust Hazard:Floors: 40 ug/ft²Interior Window Sills: 250 ug/ft²**Dust Clearance:**uncarpeted floors: 40 ug/ft²

¹40 C.F.R. Part 745; 66 Fed. Reg. 1212, (January 5, 2001)

interior window sills: 250 ug/ft2
window troughs: 400 ug/ft2

Soil Lead Hazard:

play area: 400 ppm
average on bare soil: 1200 ppm

14. The dust containing lead at levels currently present at the facility may present an imminent and substantial endangerment to human health and the environment because it causes elevated blood lead levels associated with adverse human health effects. These adverse effects present a substantial risk to the health of children who may enter the facility and tenants of the facility.

15. Group I Management, either directly, or indirectly, through contractors or employees, is currently and, at all times relevant to this Order, has been responsible for the maintenance of the facility.

D-9
Sample 90 Day Notice to Sue Under RCRA

Date

Owner's Name & Address
Property Manager's Name & Address
Prior Owner's Name & Address
Prior Property Manager's Name & Address

Re: 90-Day Notice of Intent to File Citizen Suit

Dear _____:

We believe that you own or manage property at _____. We also believe that this property contains lead hazards that present an imminent and substantial endangerment to the health of residents who live at the property as well as their guests. Children are especially at risk for lead poisoning from these lead hazards.

You are hereby given notice pursuant to Resource Conservation and Recovery Act Section 7002, 42 U.S.C. § 6972 that _____ intends to file suit against you and the corporations you control in federal district court after the 90-day notice period has passed. We intend to ask the court to order you to eliminate the solid wastes on your property that threaten children with lead poisoning.

As the owner or operator of the property, you allowed the paint to deteriorate and/or contributed to its deterioration through poorly performed or inadequate maintenance. As a result, your actions generated:

- Detached lead-based paint chips;
- Lead dust that has settled on the floor and window sills; and
- Bare soil around the property that has been contaminated by the lead dust and lead-based paint chips.

These detached lead-based paint chips, lead dust, and lead-contaminated soil are solid wastes since they come from paint that was used for its intended purpose but as a result of that use can no longer serve that or any other purpose. The chips, dust and soil cannot be reused or recycled.

These solid wastes present an imminent and substantial endangerment to your residents and their guests. The solid wastes in your property meet the definition of a lead-based paint hazard adopted by the U.S. Environmental Protection Agency at 40 CFR Part 765 Subpart D. EPA adopted these regulations after extensive research, exhaustive analysis and careful deliberation

and determined that they were necessary to protect children exposed to those hazards from lead poisoning.

Consistent with Resource Conservation and Recovery Act Section 7002(b)(1), 42 U.S.C. § 6972(b)(1), we are also notifying the:

- Administrator of the U.S. Environmental Protection Agency
- Regional Administrator of the U.S. EPA
- State Environmental Agency

Respectfully submitted,

Persons Receiving Notice

This notice has been provided to the following addressees via certified mail, return receipt requested:

Alleged violators (listed above.) If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent, if any, of that corporation in the State in which such violation is alleged to have occurred. Personal service is also available.

Pursuant to 40 CFR 254.2(1), this notice is also being mailed to:

Michael Leavitt, Administrator
United States Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

U.S. EPA Regional Administrator. See <http://www.epa.gov/epahome/locate2.htm>

Chief administrative officer of the solid waste management agency for the state in which the violation is alleged to have occurred. See <http://www.epa.gov/epaoswer/osw/stateweb.htm>.

Persons giving notice

Identification of Counsel (if any)

Counsel's name, address, and telephone number.

D-10
Sample Tenant's Answer and Counterclaims

STATE OF INDIANA)	IN THE FLOYD COUNTY COURT
)	
COUNTY OF FLOYD)	CAUSE NO.
)	
MARY K. LANDLORD,)	
)	
Plaintiff,)	
)	
v.)	
)	
ALLEN TENANT and)	
CATHERINE TENANT,)	
)	
Defendants)	

AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Come now Defendants, Allen Tenant and Catherine Tenant, by counsel, and for their Amended Answer, Affirmative Defenses, and Counterclaims, state as follows:

ANSWER

With respect to the allegations set forth in the respective paragraphs of the Complaint filed by Plaintiff, Mary K. Landlord, Defendants answer as follows:

1. Defendants admit the allegations in paragraph one (1).
2. In response to the allegations in paragraph two (2), Defendants' complaint copy had no attachments.
3. Defendants admit the allegations in paragraph three (3).
4. Defendants admit that the allegations in paragraph four (4) were contained in the subject lease agreement.
5. Defendants admit that they did not make certain monthly payments to plaintiff pursuant to the subject lease agreements. Defendants deny the remaining allegations in paragraph five (5).

6. Defendants deny the allegations in paragraph six (6).
7. Defendants deny the allegations in paragraph seven (7).
- 8.. Defendants deny the allegations in paragraph eight (8). In further response, Defendants state that the allegations in paragraph eight (8) are moot due to the fact that Defendants have vacated the real estate and have relinquished possession of the real estate to Plaintiff.

AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

FACTUAL ALLEGATIONS:

The Defendants, for their affirmative defenses and counterclaims against the Plaintiff, allege as follows:

1. Defendants, Allen and Catherine Tenant ("Tenants") are the parents of three children, XXXXX (age 2), XXXXX (age 6), and XXXXX (age 11). Tenants presently reside at XXXXX., Town, IN, 47180.
2. On or about August 15, 2000, Tenants signed a Residential Lease-Rental Agreement and Deposit Receipt with Plaintiff, Mary Landlord ("Landlord"), for the property located at XXXXX, New Albany, IN 47150 (hereinafter, "the subject premises"). A copy of said Agreement is attached hereto as Exhibit A.
3. On or about said date, Tenants paid Landlord a security deposit in the amount of \$500.00.
4. Landlord is, and at all relevant times was, the owner of the subject premises, and was the landlord in the subject transaction.
5. Landlord is, and at all relevant times was a licensed realtor and real estate broker.
6. The subject premises was built before 1978.

7. Landlord did not provide Tenants with an EPA-approved lead hazard information pamphlet.
8. Landlord did not include a lead warning statement as part of the contract with Tenants.
9. Landlord did not include a statement disclosing the presence of any known lead-based paint and/or hazards, whether she had any knowledge of such, or any additional known lead information about the property as part of the contract with the Tenants.
10. Landlord did not include a list of records or reports pertaining to lead-based paint and /or hazards, or if she had no such records or reports, as part of the contract with the Tenants.
11. Landlord did not include a statement by the Tenants affirming receipt of the lead information as part of the contract with them.
12. On or about July 25, 2001, the Tenants' baby, XXXXX, was given a blood lead level test, which revealed an elevated blood lead level of 11ug/dl, a copy of which is attached as Exhibit B.
13. The subject premises has, and at all relevant times had, lead paint in it.
14. The lease agreement (Exhibit A) specifically provided, under "Additional Terms and Conditions," that Landlord would furnish paint and Tenants would paint at no cost to Landlord.
15. Landlord did not provide Tenants with any information about how to minimize the health risk of lead on the property.

16. Landlord did not do anything to the property to minimize the health risks of lead to the Tenants while they occupied the premises.
17. On or about November 2, 2001, Tenants notified Landlord by letter of their intent to move from the subject premises, due to the presence of lead on the premises and their daughter's elevated blood lead level, a copy of which letter is attached hereto as Exhibit C.
18. The lease provided (§ 18) for a three day written notice of default and an opportunity to cure if the tenant fails to pay rent when due.
19. Landlord failed to give Tenants a three day written notice of default or an opportunity to cure.
20. The lease provided (§18) that either party may terminate the lease on thirty day written notice.
21. Tenants gave Landlord a thirty day written notice in their letter of November 2, 2001.
22. Landlord failed to give Tenants a thirty day written notice of termination.
23. Following Tenants' letter of November 2, 2001, Landlord caused a lawsuit to be filed against Tenants for possession of the premises, on November 20, 2001.
24. The lease provides (§18) that a statement showing any charges made against the security deposit will be provided within two weeks from the date possession is delivered to owner.
25. Tenants provided a forwarding address to Landlord, contained in their pro-se Answer filed in this cause and served on Landlord on or about December 18, 2001.

26. Landlord has failed to provide a properly itemized statement of deductions from the security deposit to Tenants, or to refund the damage deposit to Tenants.
27. Landlord had a duty to disclose the possibility and presence of lead paint in the house, and to warn the Tenants of the risks associated with lead paint exposure.
28. Landlord knew, or should have known of the presence of lead paint in the subject premises.
29. The lease provides (§10) for the tenant's acknowledgment that the premises are in good order and repair.
30. Tenants were unaware of the presence of lead paint in the subject premises, and relied on Landlord, a professional landlord, real estate agent and broker, to ensure that the subject premises were in good order and repair as represented by Landlord.
31. Upon discovery of XXXXX's elevated blood level, Tenants took all reasonable steps to educate themselves and minimize the exposure to their infant child and other family members, while they remained in the subject premises; such steps included washing down the woodwork, limiting the children's' contacts with the floor, and frequently washing their hands, among other things.
32. Tenants confirmed the presence of lead paint on the premises through testing, a copy of which is attached hereto as Exhibit D.
33. Landlord, as a licensed real estate agent and/or broker, and residential landlord, knew, or in the performance of her duties should have known, of the existence of applicable federal laws governing existence and disclosure of lead-based paint and lead-based paint hazards in her rental dwellings, and the obligation to provide

reports containing that information to all present and future tenants, including the Tenants.

34. The lease provided (¶12) that if the premises were rendered untenable from any cause, either party had the right to terminate the lease. The lease further provided that Landlord, as owner, would be liable for any damage or injury to tenants, occurring on the premises, if such damage was the proximate result of the negligence or unlawful act of Landlord, her agents, or her employees.
35. Prior to the date of the execution of the Lease, Landlord knew or should have known that the premises subject to the Lease was not fit, safe or in habitable condition, and was contaminated with lead, which posed a severe threat to the Tenants' minor children.
36. The lease provision, which required Tenants to paint the premises, and the fact that paint was peeling off at the time the premises were rented, increased the risk to the tenants of exposure to lead.
37. At all relevant times, Landlord knew or should have known that the premises was not fit, safe or in habitable condition, and was contaminated with lead, which posed a severe threat to the Tenants, particularly the children.
38. Landlord had a continuing duty arising out of the relationship between Landlord and the Tenants as lessors of the residential real property, to disclose the above-described defects in the property both prior to the date of the Lease and subsequent to the execution thereof.
39. But for Landlord's failure to disclose the above-described hazards, Tenants would not have signed the lease.

40. The exposure to and inhalation, ingestion or absorption of lead dust and particulates emanating from the premises subject to the above-described Lease by the Tenants' minor children was completely foreseeable and could or should have been anticipated by Landlord.
41. The premises were rendered untenable, as the direct and proximate result of one or more of the foregoing acts or omissions on the part of Landlord, namely her failure to disclose the lead contamination of which she was aware, or should have been aware.
42. Landlord's failure to provide the required disclosures to Tenants, coupled with the representation that the subject premises were in good order and repair, deprived Tenants of the opportunity to take reasonable precautions to limit the exposure of their family to lead.
43. Landlord's failure to disclose such information about the presence of lead deprived Tenants of the beneficial use and enjoyment of the premises and rendered it in untenable condition.
44. The Tenants and their children have suffered severe disruption in their lives, as a result of the lead exposure and Landlord's failure to disclose information that would have allowed them to avoid the harm, including having to take risk reduction steps, testing of the children and the property, locating another residence, and changing schools.

FIRST AFFIRMATIVE DEFENSE – BREACH OF WARRANTY OF HABITABILITY

1. The factual allegations above are incorporated herein by reference.

2. A warranty of habitability was imposed by law on Landlord by virtue of (a) the 1992 Residential Lead-Based Paint Hazards Reduction Act, 28 U.S.C. § 4852d, which required disclosure of the lead-based paint hazard; and (b) the course of dealing between the parties, and/or by acts done in the ordinary performance or by ordinary practices in the trade.

3. Tenants had reasonable expectations of compliance by Landlord with all applicable federal laws ensuring the safety and suitability of the premises.

4. Additionally, a warranty of habitability was imposed upon Plaintiff by virtue of the lease provisions that the lease was subject to cancellation if the premises became untenantable from any cause, and further, that Landlord, as owner, would be liable for any damage or injury to tenants, occurring on the premises, if such damage was the proximate result of negligence or the unlawful act of Landlord, her agents or employees.

5. Landlord's failure to disclose lead-based paint hazards of which she knew, or which, based on her knowledge and experience as a realtor and landlord she should have known, constituted a breach of the above-described implied warranties of habitability, entitling Tenants to rescission of the lease and /or actual and consequential damages.

SECOND AFFIRMATIVE DEFENSE: CONSTRUCTIVE EVICTION

6. The factual allegations above are incorporated herein by reference.

7. Landlord's acts and omissions, described above, constituted an interference with Tenants' possession of the premises which was so serious as to deprive the Tenants of the beneficial enjoyment of the leased premises.

8. While Landlord's acts and omissions, giving rise to grounds for constructive eviction, existed throughout the time Tenants had possession of the premises, the Tenants did not

discover the same until August, 2001, and vacated the premises within a reasonable time of such discovery.

THIRD AFFIRMATIVE DEFENSE: BREACH OF COVENANT OF QUIET

ENJOYMENT

9. The factual allegations above are incorporated herein by reference.

10. Landlord's acts and omissions, described above, constituted a breach of the covenant of quiet enjoyment, which covenant was either expressly provided by virtue of the lease or, in the absence of such provision, was implied by law, by depriving Tenants of the beneficial use and enjoyment of the subject premises.

FOURTH AFFIRMATIVE DEFENSE - FAILURE OF CONDITION PRECEDENT

11. The factual allegations above are incorporated herein by reference.

12. Landlord failed to meet a condition precedent to enforcement of the contract by failing to provide either a three day written notice of default and opportunity to cure, or a thirty day termination notice, as required by the contract.

**FIFTH AFFIRMATIVE DEFENSE- FRAUDULENT CONCEALMENT OR
CONSTRUCTIVE FRAUD**

13. The factual allegations above are incorporated herein by reference.

14. Landlord failed to disclose known defects to Tenants; specifically, Landlord failed to disclose that the property was contaminated with lead.

15. Landlord had actual or constructive knowledge of the lead contamination.

16. Landlord had a duty to disclose the lead contamination to Tenants arising out of the relationship between them as landlord-tenant.

17. Landlord made deceptive material misrepresentations of past or existing facts regarding the habitability of the property and its fitness for use as a residence, and/or remained silent about such facts despite the existence of a duty to disclose such facts.

18. Tenants were injured as a proximate result of Landlord's actions, as described above.

SIXTH AFFIRMATIVE DEFENSE—BREACH OF LEASE AGREEMENT

19. The factual allegations above are incorporated herein by reference.

20. Landlord's acts and omissions, namely, her failure to disclose the lead contamination to Tenants, constituted negligence and constituted an unlawful act which was the proximate cause of damage or injury to Tenants; Landlord, as owner, is liable to the Tenants for any such damage or injury, pursuant to the terms of the lease.

21. The undisclosed lead hazard further constituted a cause which rendered the premises uninhabitable, giving right to terminate, which Tenants, in fact, exercised by written notice, a copy of which is attached hereto as Exhibit B.

COUNTERCLAIMS

22. Tenants re-allege, and incorporate by reference, all paragraphs set forth in their factual allegations and affirmative defenses above.

23. Breach of Warranty of Habitability, Constructive Eviction, and Breach of Covenant of Quiet Enjoyment: As a result of Landlord's acts and omissions which constituted breach of the warranty of habitability, constructive eviction, and/or breach of covenant of quiet enjoyment, Tenants are entitled to rescission and retroactive rebate of all amounts paid to Landlord for rent or otherwise, including their damage deposit, which upon knowledge and belief are in the total sum of eight thousand, six hundred and twenty-five dollars

(\$8625.00); alternatively, Tenants are entitled to the difference between the value of the premises as warranted, and the value of the premises as received; Tenants are additionally entitled to the consequential damages arising out of the disruptions in their lives described in factual paragraph 44 above.

24. Breach of Contract: As a result of Landlord's acts and omissions that constituted untenable conditions pursuant to the lease agreement, Tenants are entitled to damages as described in the immediately preceding paragraph, or alternatively, any damages the parties could have reasonably contemplated at the time of the contract.

25. Negligence; failure to disclose latent defect; fraudulent concealment or constructive fraud: Landlord had a duty, pursuant to the lease and imposed by law, to disclose all potentially harmful conditions to the Tenants; Landlord's failure to disclose hazardous conditions, as set forth above, constituted failure to disclose a latent defect, and fraudulent concealment or constructive fraud, all of which caused injury to Mr. and Mrs. Tenant; Tenants were further deprived of the opportunity to protect themselves against the hidden danger while they occupied the subject premises. Defendants are entitled to fair compensation for injury sustained as the natural and proximate result of Landlord's wrongful acts and omissions.

a. **Violation of 42 U.S.C. § 4852d; treble damages:** Landlord's acts and omissions, set forth above, constituted knowing violation of the Residential Lead Paint Hazard Reduction Act, rendering her liable to Tenants in an amount three times the amount of damages incurred by Tenants. 42 U.S.C. § 4852d(b)(3).

b. **Failure to comply with security deposit requirements:** Landlord failed to return Tenants' security deposit of \$500.00 or to submit an itemized statement for deductions after Tenants' termination of the lease and delivery of possession, as required by lease and by

Indiana law. Landlord is liable to Tenants in said amount pursuant to I.C. § 32-7-5-12, which failure further constitutes an agreement that no damages are due by Tenants.

NON-WAIVER OF PERSONAL INJURY ACTION BY MINOR CHILDREN.

Any personal injury claims held by the Tenants' three minor children are specifically excluded from this action, in that assessment of permanent damage to the children from lead-based paint cannot yet be determined.

WHEREFORE, Defendants, Allen and Catherine Tenant, respectfully request that plaintiff take nothing by way of her complaint, for a judgment against plaintiff in the amount of all rent previously paid, in the amount of \$8125.00, plus the damage deposit of \$500.00, with the imposition of treble damages pursuant to 42 U.S.C. §4852d(b)(3), and additionally, or in the alternative, for such sums which are reasonable in the premises, for any costs expended herein, and for all other just and proper relief.

Attorney Name, Atty. No. XXXX-XX
INDIANA LEGAL SERVICES, INC.
Address
New Albany, IN 47150
(123) 456-7890

Attorney Name, Atty. No. XXXX-XX
INDIANA LEGAL SERVICES, INC.
Address
Bloomington, IN 47404
(123) 456-7890

ATTORNEYS FOR DEFENDANTS

3. BUYER purchased the property from Defendant SELLER in December 2003. She and Defendant SELLER signed a purchase agreement on December 3, 2003.
4. BUYER and Defendant SELLER closed the sale of the residence on December 31, 2003.
5. Defendant SELLER is a real estate agent.
6. BUYER paid \$71,500 for the property.
7. BUYER did not purchase the property at foreclosure.
8. BUYER's real estate agent was Defendant REAL ESTATE AGENT.
9. Defendant REAL ESTATE AGENT's licensed broker was Defendant BROKER.
10. Defendants REAL ESTATE AGENT and BROKER were both affiliated with REAL ESTATE COMPANY when the property sale occurred.
11. BUYER and Defendants REAL ESTATE AGENT, BROKER and REAL ESTATE COMPANY entered into a contract involving the real estate services provided by said Defendants.
12. BUYER did not compensate Defendants REAL ESTATE AGENT, BROKER, and REAL ESTATE COMPANY for the sale of the property to her.

13. Defendants REAL ESTATE AGENT, BROKER, and REAL ESTATE COMPANY were compensated for the sale of the property by Defendants SELLER and SELLER'S COMPANY.

14. Defendant SELLER's real estate broker was Defendant BROKER.

15. Defendant BROKER was the broker for Defendant SELLER'S COMPANY at the time the property sale occurred.

16. Plaintiff's mortgage company is BANK.

17. BUYER learned of the requirements of the RLHPA when shopping for paint for her home in February 2004.

18. When BUYER realized that lead-based paint might be present, she had her children tested for lead poisoning on February 24, 2004 by the Indiana State Department of Health ("ISDH").

19. On March 2, 2004, ISDH informed BUYER that her son, CHILD 1, had a capillary blood lead level of 11 micrograms of lead per deciliter of blood ("ug/dL").

20. BUYER had a venous blood lead test performed on CHILD 1 on March 9, 2004.

21. CHILD 1 had a blood lead level of 12 ug/dL.

22. ISDH considers a single venous blood lead levels over 10 ug/dL to be conclusive proof that a child is lead poisoned.

23. A follow-up venous blood lead test of CHILD 1 indicated that his blood lead level had dropped to 8 ug/dL on June 3, 2004.

24. Lead poisoning is acknowledged by ISDH and the U.S. Centers for Disease Control and Prevention to result in learning disabilities and contribute to violent behavior. The lead causes brain damage that permanently impairs a child's ability to learn by reducing IQ levels and contributing to attention deficit disorders. Subsequent drops in blood lead levels only limit further damage.

25. BUYER's son, CHILD 1, has begun to exhibit these symptoms.

26. CHILD 1 will require special assistance and therapy for many years.

27. BUYER arranged for ENVIRONMENTAL SERVICES COMPANY to conduct a lead risk assessment on Plaintiff's home on March 10, 2004.

28. INSPECTOR of ENVIRONMENTAL SERVICES COMPANY performed the lead risk assessment. INSPECTOR's state license number issued by the Indiana Department of Environmental Management to authorize him to perform lead risk assessments is XXXXX.

29. ISDH paid for the lead risk assessment performed by INSPECTOR.

30. The ENVIRONMENTAL SERVICES COMPANY's lead risk assessment found that lead hazards exist in BUYER's home, e.g., "There are lead dust levels around the rear entrance floor, and basement floor and basement stairway tread that exceeds HUD. guidelines" and "Lead soil levels around the drip line of the house require interim controls and the garage requires interim controls if children play around the garage".

31. On June 1, 2004, BUYER took a class called “Lead Safety for Remodeling, Repair and Painting” held by MasiMax Environmental Health and Safety Services in Danville, Kentucky. BUYER took this class in order to learn how to protect her children.

32. After taking the training, BUYER realized that she was not physically, financially, and emotionally able to implement the recommended work practices.

33. BUYER purchased a special vacuum and other cleaning supplies to reduce the lead-based paint hazards until she could secure a more sustainable solution.

34. BUYER asked ENVIRONMENTAL SERVICES COMPANY for an estimate to abate the lead-based paint in and around her home.

35. ENVIRONMENTAL SERVICES COMPANY is one of less than a dozen contractors licensed by the Indiana Department of Environmental Management to conduct lead-based paint abatement.

36. On July 6, 2004, ENVIRONMENTAL SERVICES COMPANY estimated the abatement would cost \$91,524.00.

37. The cost of abatement would be \$20,024 more than Plaintiff paid for the property.

II. STATUTORY SCHEME/REGULATORY HISTORY

38. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act (“RLPHRA”).

39. Section 1018 of the RLPHRA (42 U.S.C. § 4852d(a)(1)) directs the Secretary of the United States Department of Housing and Urban Development (“HUD”) and the Administrator of the United States Environmental Protection Agency (“EPA”) to jointly issue regulations requiring disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing target housing.

40. Pursuant to 42 USC § 4852d(a), HUD and EPA adopted regulations implementing that statute and published the regulations in the March 6, 1996 Federal Register. The regulations of HUD and EPA are nearly identical.

41. HUD’s regulations were enacted at 24 C.F.R. Part 35 Subpart H.

42. EPA’s regulations were enacted at 40 C.F.R. Part 745 Subpart F.

43. HUD’s 24 C.F.R. Part 35 Subpart H was in effect on December 6, 1996. EPA’s 40 C.F.R. Part 745 Subpart F was in effect on December 6, 1996.

44. According to 24 C.F.R. 35.82 and 42 C.F.R. 745.101, the regulations described above apply to all transactions involving the sale or lease of target housing, except in four situations.

45. The only exception to the regulations applicable to the sale of property is the sale of target housing at foreclosure.

46. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, “target housing” means “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.”

47. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, a “purchaser” means “any entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and non-profit organizations.”

48. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, a “seller” means “any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and non-profit organizations.”

49. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, an “agent” means “any party who enters into a contract with a seller or lessor, including any party who enter into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser’s representatives who receive all compensation from the purchaser.”

50. Pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103, a contract for the purchase and sale of residential real property means “any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as a home or residence of one or more persons.”

III. CAUSES OF ACTION

A. Violations of the Residential Lead-Based Paint Hazard Reduction Act.

51. Defendant SELLER did not provide BUYER with an EPA approved lead hazard information pamphlet as required by 24 C.F.R. 35.88(a)(1) and 40 C.F.R. 745.107(a)(1).

52. At the time the purchase agreement was signed and the property sale was closed, the property at 11 Main Street, Anytown, Johnson County, Indiana met the definition of target housing pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

53. Plaintiff BUYER meets the definition of a purchaser pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

54. Defendant SELLER meets the definition of a seller pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

55. Defendant REAL ESTATE AGENT meets the definition of agent pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

56. Defendant BROKER meets the definition of agent pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103. .

57. Defendant REAL ESTATE COMPANY meets the definition of agent pursuant to 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

58. The December 3, 2003, purchase agreement between Defendant SELLER and BUYER meets the definition of a contract for the purchase and sale of residential real property as defined by 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

59. The December 31, 2003, closing between Defendant SELLER and BUYER meets the definition of a contract for the purchase and sale of residential real property as defined by 24 C.F.R. 35.86 and 42 C.F.R. 745.103.

60. Defendant SELLER did not permit BUYER a ten day period to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards pursuant 24 C.F.R. 35.90 and 40 C.F.R. 745.110.

61. Defendant SELLER did not include in the contract with BUYER, or an attachment to the contract with BUYER, the Lead Warning Statement as specified in 24 C.F.R. 35.92(a)(1) and 40 C.F.R. 745.113(a)(1).

62. Defendant SELLER did not include in the contract with BUYER, or an attachment to the contract with BUYER, the required statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of lead-based paint and/or lead-based paint hazards as specified in 24 C.F.R. 35.92(a)(2) and 40 C.F.R. 745.113(a)(2).

63. Defendant SELLER did not include in the contract with BUYER, or an attachment to the contract with BUYER, the statement by BUYER affirming receipt of the information described above as specified in 24 C.F.R. 35.92(a)(4) and 40 C.F.R. 745.113(a)(4).

64. Defendant SELLER did not include in the contract with BUYER, or an attachment to the contract with BUYER, a statement by the purchaser that he/she has either received the opportunity to conduct the risk assessment or inspection or waived the opportunity as specified in 24 C.F.R. 35.92(a)(5) and 40 C.F.R. 745.113(a)(5).

65. Defendant SELLER did not include in the contract with BUYER, or an attachment to the contract with BUYER, the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature as specified in 24 C.F.R. 35.92(a)(7) and 40 C.F.R. 745.113(a)(7).

66. Defendants, REAL ESTATE COMPANY, AGENT and BROKER did not ensure Defendant SELLER's compliance with all requirements of the subparts as specified in 24 C.F.R. 35.94 and 40 C.F.R. 745.115.

67. Defendants, REAL ESTATE COMPANY, AGENT and BROKER did not include in the contract or the attachment to the contract between Defendant SELLER and BUYER the statement that the agent has informed the seller of the seller's obligations under 42 USC 4852d even though each respective Defendant agent is aware of his/her duty to ensure compliance with the requirements of the subparts as specified in 24 C.F.R. 35.92(a)(6) and 40 C.F.R. 745.113(a)(6).

68. Defendants, REAL ESTATE COMPANY, AGENT and BROKER did not include in the contract or an attachment to the contract between Defendant SELLER and BUYER the signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to

the best of their knowledge, along with the dates of signature as specified in 24 C.F.R. 35.92(a)(7) and 40 C.F.R. 745.113(a)(7).

69. Section 1018 of the RLPHRA (42 USC § 4852d) provides the penalties for violations of the statute.

70. Paragraph (b)(3) of section 1018 of the RLPHRA (42 USC § 4852d) establishes civil liability and provides that “[a]ny person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to three times the amount of damages incurred by such individual.”

71. Paragraph (b)(4) of section 1018 of the RLPHRA (42 USC § 4852d) provides that “[i]n any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.”

72. The requirements of paragraphs (b)(3) and (b)(4) were included in the HUD and EPA regulations at 24 C.F.R. 35.96 and 40 C.F.R. 745.118.

73. Defendant SELLER did not comply with 24 C.F.R. Part 35 Subpart H and 40 C.F.R. Part 745 Subpart F.

74. Defendant REAL ESTATE COMPANY as agent for Defendant SELLER did not comply with 24 C.F.R. Part 35 Subpart H and 40 C.F.R. Part 745 Subpart F.

75. Defendant REAL ESTATE AGENT as agent for Defendant SELLER did not comply with 24 C.F.R. Part 35 Subpart H and 40 C.F.R. Part 745 Subpart F.

76. Defendant BROKER as agent for Defendant SELLER did not comply with 24 C.F.R. Part 35 Subpart H and 40 C.F.R. Part 745 Subpart F.

77. As a direct consequence of each Defendant's failure to comply with the RLPHRA, BUYER suffered the damages described herein. Due to the harm caused by each Defendant's failure to comply with the RLPHRA, BUYER is entitled to damages in the amount of triple the sum of the actual damages plus costs including attorney fees and expert witness fees.

B. Negligence.

78. During the relevant time period, each Defendant was a trained professional engaged in the sale of real estate.

79. Each Defendant knew or should have known of the requirements of Residential Lead-Based Paint Hazard Reduction Act.

80. Each Defendant knew that BUYER had children.

81. Each Defendant knew or should have known of the dangers of lead-based paint and its special threat to children.

82. Defendants owed a duty to warn BUYER pursuant to the RLPHRA and Indiana common law.

83. Each Defendant negligently failed to warn BUYER of lead-based paint hazards as required pursuant to the provisions of the RLPHRA and Indiana common law.

84. As a direct consequence of each Defendant's negligent failure to warn, BUYER suffered the damages described herein.

C. Breach of Contract.

85. BUYER entered in to a contract with Defendants REAL ESTATE COMPANY, AGENT and BROKER regarding real estate services provided by each said Defendant.

86. Defendants REAL ESTATE COMPANY, AGENT and BROKER had a contractual obligation to represent BUYER's interests during the purchase of the subject property.

87. Defendants REAL ESTATE COMPANY, AGENT and BROKER each breached their contract with BUYER by not ensuring that she was informed of lead-based paint hazards as required by the RLPHRA and the terms of the contract between BUYER and Defendants REAL ESTATE COMPANY, AGENT and BROKER.

88. As a direct consequence of Defendants REAL ESTATE COMPANY, AGENT and BROKER's breach of contract, BUYER suffered the damages described herein.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, BUYER, Individually and as Parent and Next Friend of CHILD 1 and CHILD 2, demand judgment against SELLER, REAL ESTATE COMPANY, AGENT and BROKER for such damages as are reasonable in the premises of this complaint, including triple the actual damages pursuant to the RLPHRA, together with costs and disbursements herein.

DEMAND FOR JURY TRIAL

Plaintiffs demand that this action be tried to a jury.

Respectfully submitted,

by: _____
Attorney
Attorney No. XXXX-XX

D-12
IDEM Violation Letter
Work Practice Standards



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
We make Indiana a cleaner, healthier place to live.

Joseph E. Kernan
Governor

October 21, 2003

100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 232-8603
(800) 451-6027
www.IN.gov/idem

Lori F. Kaplan
Commissioner

VIA CERTIFIED MAIL 0700 0600 0026 8340 2327

Mr. Jerry Williams
Owner/Landlord
3116 Queen Street
Fort Wayne, Indiana 46806

Re: **Inspection Summary/Violation Letter**
2905 Lillie Street
Fort Wayne, Indiana

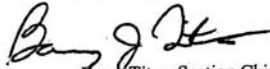
Dear Mr. Williams:

On September 12, 2003, a representative of the Indiana Department of Environmental Management, Office of Air Quality, conducted an inspection of a residence, located at 2905 Lillie Street, Fort Wayne, Indiana. This inspection was conducted pursuant to IC 13-17-14-12. For your information, and in accordance with IC 13-17-14-9, a summary of the inspection is provided below:

Type of Inspection:	<input type="checkbox"/>	Routine Lead Abatement Project
	<input type="checkbox"/>	Follow-up of prior inspection
	<input checked="" type="checkbox"/>	Complaint
	<input type="checkbox"/>	Other
Results of Inspection:	<input type="checkbox"/>	No violations were observed
	<input type="checkbox"/>	Violations were observed but corrected during the inspection.
	<input checked="" type="checkbox"/>	Violations were observed: IC 13-17-14
	<input type="checkbox"/>	Additional information/review is required to evaluate overall compliance.
	<input type="checkbox"/>	Violations observed and will be referred to the Office of Enforcement.

Within 2 days of receipt of this letter, all visible lead-based paint chips or painted debris shall be cleaned up from the soil, pavement, or other horizontal surfaces surrounding the home. Please submit a written detailed explanation, documenting the clean up of the lead-based paint chips or paint debris, to this office within fifteen (15) days of receipt of this letter. Failure to respond to this Violation Letter may result in a referral to IDEM's Office of Enforcement. Please direct any questions to this letter to Dan Stamatkin at (317) 233-6513

Sincerely,


Barry Titus, Section Chief
Asbestos/Lead Section
Office of Air Quality

cc: Chad Appleman, Fort Wayne-Allen County Health Department

D-13
IDEM Notice of Violation
Work Practice Standards

NOTICE OF VIOLATION

Via Certified Mail #:

To: Mr. Jerry Williams
3116 Queen Street
Fort Wayne, Indiana 46806

Case No. 2004-13924-A

Based on an investigation, the Indiana Department of Environmental Management (IDEM) has reason to believe Jerry Williams (Respondent) has violated environmental statutes. The violations are based on the following:

1. Respondent owns the property located at 2905 Lillie Street in Fort Wayne, Allen County Indiana (the "Site").
2. The Site is a residential dwelling that was occupied by individuals other than the owner or a member of the owner's immediate family during the time of remodeling, renovation, or maintenance activities and by at least one child who was identified as having an elevated blood lead level.
3. Pursuant to IC 13-17-14-12 no person conducting remodeling, renovation, and maintenance activities on painted exterior surfaces may allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or other exterior horizontal surface for more than 48 hours after the surface activities are complete.

On September 12, 2003, an inspection was conducted at the Site by a representative of IDEM's Office of Air Quality (OAQ). The inspector observed lead-containing paint chips around the perimeter of the house that had been deposited from power-washing the exterior of the house on or around September 6, 2003. On October 21, 2003, IDEM OAQ mailed an Inspection Summary/Violation Letter to Respondent requiring all visible lead-based paint chips or painted debris to be cleaned up within two days. Follow-up inspections conducted by IDEM on February 26, 2004 and March 24, 2004 revealed that the Respondent failed to clean up visible lead-based paint chips at the Site, a violation of IC 13-17-14-12.

In accordance with IC 13-30-3-3, the Commissioner herein provides notice that a violation may exist and offers an opportunity to enter into an Agreed Order providing for the action required to correct the violation and for the payment of a civil penalty. The Commissioner is not required to extend this offer for more than sixty (60) days.

As provided in IC 13-30-3-4, an alleged violator may enter into an Agreed Order without admitting that the violation occurred. IDEM encourages settlement by Agreed Order, thereby resulting in quicker correction of the environmental violation and avoidance of extensive litigation. Timely settlement by Agreed Order may result in a reduced civil penalty. Also, settlement discussions will allow the opportunity to present any mitigating factors that may be relevant to the violation.

If an Agreed Order is not entered into within sixty (60) days of receipt of this Notice of Violation, the Commissioner may issue a Notice and Order under IC 13-30-3-4 containing the actions that must be taken to correct the violation and requiring the payment of an appropriate civil penalty. Pursuant to IC 13-30-4-1, the Commissioner may assess penalties of up to \$25,000 per day for each violation.

Please contact Lynne Sullivan at (317) 233-5521 within fifteen (15) days after receipt of this Notice to discuss resolution of this matter.

For the Commissioner:

Signed 8/5/04
Felicia A. Robinson
Deputy Commissioner
for Legal Affairs

cc: Allen County Health Department
Office of Legal Counsel
Lynne Sullivan, Office of Enforcement
Dan Stamatkin, Office of Air Quality
OAQ Public File - Lead
Enforcement File
<http://www.in.gov/idem>

5. An inspection on September 12, 2003 was conducted at the Site by a representative of IDEM's Office Air Quality (OAQ). The following violations were in existence or observed at the time of this inspection:

- a. Pursuant to IC 13-17-14-12 no person conducting remodeling, renovation, and maintenance activities on painted exterior surfaces may allow visible paint chips or painted debris that contains lead-based paint to remain on the soil, pavement, or other exterior horizontal surface for more than 48 hours after the surface activities are complete.

On September 12, 2003, an inspection was conducted at the Site by a representative of IDEM's Office of Air Quality (OAQ). The inspector observed lead-containing paint chips around the perimeter of the house that had been deposited from power-washing the exterior of the house on or around September 6, 2003. On October 21, 2003, IDEM OAQ mailed an Inspection Summary/Violation Letter to Respondent requiring all visible lead-based paint chips or painted debris to be cleaned up within two days. Follow-up inspections conducted by IDEM on February 26, 2004 and March 24, 2004 revealed that the Respondent failed to clean up visible lead-based paint chips at the Site, a violation of IC 13-17-14-12.

6. The Allen County Health Department confirmed on April 16, 2004, that the lead paint chip debris previously observed on the ground had been cleaned up.
7. In recognition of the settlement reached, Respondent waives any right to administrative and judicial review of this Agreed Order.

II. ORDER

1. This Agreed Order shall be effective ("Effective Date") when it is approved by the Complainant or her delegate, and has been received by the Respondent. This Agreed Order shall have no force or effect until the Effective Date.
2. Respondent shall comply with IC 13-17-14-12.
3. Respondent is assessed a civil penalty of Five Hundred Dollars (\$500). Said penalty amount shall be due and payable to the Lead Trust Fund within thirty (30) days of the Effective Date of this Agreed Order. This penalty reflects a significant reduction based upon evidence submitted by the Respondent which adequately demonstrated an inability to pay.
4. Civil penalties are payable by check to the Lead Trust Fund.
5. Checks shall include the Case Number of this action and shall be mailed to:

Cashier

IDEM
100 N. Senate Avenue
P. O. Box 7060
Indianapolis, IN 46207-7060

6. In the event that the civil penalty required by Order paragraph 3 is not paid within thirty (30) days of the Effective Date of this Agreed Order, Respondent shall pay interest on the unpaid balance at the rate established by IC 24-4.6-1-101. The interest shall continue to accrue until the civil penalty is paid in full.
7. This Agreed Order shall apply to and be binding upon the Respondent, its successors and assigns. The Respondent's signatories to this Agreed Order certify that they are fully authorized to execute this document and legally bind the parties they represent. No change in ownership, corporate, or partnership status of the Respondent shall in any way alter its status or responsibilities under this Agreed Order.
8. In the event that any terms of the Agreed Order are found to be invalid, the remaining terms shall remain in full force and effect and shall be construed and enforced as if the Agreed Order did not contain the invalid terms.
9. The Respondent shall provide a copy of this Agreed Order, if in force, to any subsequent owners or successors before ownership rights are transferred. Respondent shall ensure that all contractors, firms and other persons performing work under this Agreed Order comply with the terms of this Agreed Order.
10. This Agreed Order shall remain in effect until Respondent has complied with all terms and conditions of this Agreed Order.

TECHNICAL RECOMMENDATION:

***Department of Environmental
Management***

By: _____

David P. McIver

Chief, Air Section

Office of Enforcement

Date: _____

RESPONDENT:

Jerry Williams

By: _____

Printed: _____

Title: _____

Date: _____

COUNSEL FOR COMPLAINANT:

Department of Environmental Management

COUNSEL FOR RESPONDENT:

By: _____ **By:** _____

Office of Legal Counsel

Date: _____ **Date:** _____

APPROVED AND ADOPTED BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT THIS _____ DAY OF _____, 2004.

For the Commissioner:

Signed 11/3/04

Felicia A. Robinson

Deputy Commissioner for

Legal Affairs

Appendix E

Additional Resources and Contact Information

There are many organizations that work on lead poisoning, lead paint, and healthy housing issues. Following is contact information.

Alliance for Healthy Homes

www.afhh.org

227 Massachusetts Avenue NE, Suite 200

Washington, DC 20002

(202) 543-1147

fax: (202) 543-4466

Centers for Disease Control and Prevention

www.cdc.gov

1600 Clifton Road, N.E.

Atlanta, GA 30333 USA

(404) 639-3311

Public Inquiries: (404) 639-3534 / (800) 311-3435

Consumer Product Safety Commission

<http://www.cpsc.gov/>

U.S. Consumer Product Safety Commission

Washington, D.C. 20207-0001

(800) 638-2772

Fax: (301) 504-0124 and (301) 504-0025

Environmental Management Institute

<http://www.envtimgmt.org/>

5610 Crawfordsville Road, Suite 15

Indianapolis, Indiana 46224-3787

(800) 488-8842 or

(317) 248-4848

fax: (317) 248-4846

Improving Kids' Environment, Inc.

www.ikecoalition.org

1201 N. Central Avenue, #9

Indianapolis, IN 46202

(317) 902-3610

fax: (866) 234-8505

mccabe@ikecoalition.org

**Indiana Department of Environmental Management
Office of Air Quality, Lead Program**

<http://www.in.gov/idem/air/compliance/#B>

100 North Senate Avenue
Indianapolis, IN 46204
(317) 232-8603
(800) 451-6027 (toll free in Indiana)
fax: 317-233-3257

Indiana Legal Services, www.indianajustice.org

Multiple office locations, check website for office contact information

**Indiana State Department of Health
Childhood Lead Poisoning Prevention Program**

<http://www.in.gov/isdh/programs/lead/>

2 N. Meridian Street
Indianapolis, IN 46204
(317) 233-1325

**Marion County Health Department
Childhood Lead Poisoning Prevention Program**

www.hhcorp.org

3838 North Rural Street
Indianapolis, IN 46205
(317) 221-2155

National Center for Healthy Homes

<http://www.centerforhealthyhousing.org/>

10227 Wincopin Circle, Suite 200
Columbia, MD 21044
(410) 992-0712
(877) 312-3046
Fax: (410) 715-2310

National Center on Poverty Law

<http://www.povertylaw.org/index.cfm>

50 East Washington, Suite 500
Chicago, IL 60602
(312) 263-3830
fax: (312) 263-3846

National Lead Information Center

www.epa.gov/lead/nlic.htm

8601 Georgia Ave

Suite 503

Silver Spring, MD 20910

(800) 424-LEAD

fax: 301-585-7976

hotline.lead@epamail.epa.gov

United States Department of Housing and Urban Development

<http://www.hud.gov/offices/lead/>

Office of Healthy Home and Lead Hazard Control

451 7th Street S.W.

Washington, DC 20410

(202) 708-1112

TTY: (202) 708-1455

United States Environmental Protection Agency

www.epa.gov

Ariel Rios Building

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

(202) 272-0167

Region V Office Lead Program (covering Indiana)

Mail Code DT-8J

77 West Jackson

Chicago, IL 60604

David Turpin, Lead (Pb) Coordinator

312-886-7836

turpin.david@epa.gov