

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



April 9, 2008

The Honorable Adrian M. Fenty
Mayor
District of Columbia
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Fenty:

Enclosed please find a copy of a Management Alert Report (MAR-08-I-002) issued February 22, 2008, to the Department of Consumer and Regulatory Affairs (DCRA) and the District Department of the Environment (DDOE). The MAR: (1) addresses deficiencies in the District's regulation of lead-based paint removal and the permit process for asbestos removal; (2) addresses the lack of public information regarding potential health hazards posed by lead and asbestos; and (3) makes three recommendations for the conditions cited. DDOE's response to the MAR, dated March 21, 2008, and DCRA's response, dated March 28, 2008, are also enclosed.

Although the OIG is conducting an ongoing inspection of DCRA and a full report of inspection will be completed later this fiscal year, we are providing this information to you now so that you are aware of the issues addressed in the MAR and the corrective actions proposed by DCRA and DDOE.

If you have questions, please contact Alvin Wright, Jr., Assistant Inspector General for Inspections and Evaluations, at (202) 727-2540.

Sincerely,


Charles J. Willoughby
Inspector General

CJW/ebs

Enclosures

cc: See Distribution List

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DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL
CHARLES J. WILLOUGHBY
INSPECTOR GENERAL

INSPECTIONS AND EVALUATIONS DIVISION
MANAGEMENT ALERT REPORT

**DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
AND
DISTRICT DEPARTMENT OF THE
ENVIRONMENT**

**DEFICIENCIES IN OVERSIGHT OF LEAD-BASED PAINT
AND ASBESTOS REMOVAL**

MAR 08 - I - 002
FEBRUARY 22, 2008

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



February 22, 2008

Linda Argo
Director
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20002

George Hawkins
Director
D.C. Department of the Environment
Government of the District of Columbia
51 N Street, N.E.
Sixth Floor
Washington, D.C. 20002

Dear Ms. Argo and Mr. Hawkins:

This is a Management Alert Report (**MAR-08- I -002**) to inform you of deficiencies in the District's regulation of lead-based paint removal and the permit process for asbestos removal as well as the lack of public information regarding potential health hazards posed by lead and asbestos. These issues came to our attention during our current inspection of the Department of Consumer and Regulatory Affairs (DCRA). The Office of the Inspector General (OIG) provides these reports when we believe a matter requires the immediate attention of District government officials.

Background

DCRA's mission is to "protect the health, safety, economic interests, and quality of life of residents, businesses, and visitors in the District of Columbia by issuing licenses and permits, conducting inspections, enforcing building, housing, and safety codes, regulating land use and development, and providing consumer education and advocacy services."¹ DCRA regulates new construction, renovations, and repairs to existing buildings through the building permit process.

¹ [Http://www.dcre.dc.gov/dcre/cwp/view.a,3,Q,599861,dcreNav_GID,1694,dcreNav,33437,asp](http://www.dcre.dc.gov/dcre/cwp/view.a,3,Q,599861,dcreNav_GID,1694,dcreNav,33437,asp) (last visited Feb. 6, 2008).

The District Department of the Environment (DDOE) is responsible for issuing permits for lead and asbestos abatement projects to companies that meet certification requirements. According to the DDOE website, the agency also “conducts community and educational outreach to increase public awareness of environmental . . . issues.”²

Lead found in dust, paint, soil, and water can damage children’s brains and nervous systems, slow growth, and lead to behavior problems and learning disabilities.³ Renovations in buildings containing lead-based paint can create lead dust, putting children at risk for lead poisoning.

In *Building Blocks for Primary Prevention: Protecting Children from Lead-Based Paint Hazards*, the Centers for Disease Control and Prevention (CDC) state:

Banning unsafe work practices and requiring basic safeguards for remodeling and paint repair work are key to preventing childhood lead poisoning in older housing. Banning unsafe methods of removing paint will sharply reduce the amount of lead contaminated dust that would otherwise be generated. The unsafe methods that should be prohibited include: dry sanding or scraping; open flame burning; operating a heat gun above 1100 degrees; machine sanding without a HEPA attachment;⁴ and stripping in poorly ventilated areas using volatile strippers on surfaces containing lead-based paint. Requiring precautions such as work area containment and careful post-work cleaning will prevent the dispersal of any lead-contaminated dust that might be generated.⁵

This document also states:

Requiring governmental agencies that have regular contact with homeowners, landlords, tenants, and parents to disseminate lead poisoning prevention information to their constituents is an effective way to advance primary prevention Especially as tied to building permits, this strategy can alert homeowners and rental property owners about the hazards that could be created by disturbing or removing lead-based paint, as well as educate these groups

² [Http://ddoe.dc.gov/ddoe/cwp/view,a,3,q,490878,ddoeNav_GID,1457,ddoeNav,|31026|,asp](http://ddoe.dc.gov/ddoe/cwp/view,a,3,q,490878,ddoeNav_GID,1457,ddoeNav,|31026|,asp) (last visited Feb. 6, 2008).

³ U.S. EPA, <http://www.epa.gov/lead/pubs/leadinfo.htm#facts> (last visited Jan. 3, 2008).

⁴ High Efficiency Particulate Air (HEPA) attachments are used to capture small particles, including lead dust. U.S. EPA, *Reducing Lead Hazards When Remodeling Your Home* 4 (Sept. 1997), available at <http://www.epa.gov/oppt/lead/pubs/rrpamph.pdf>.

⁵ CDC, *Building Blocks for Primary Prevention: Protecting Children from Lead-Based Paint Hazards* 148 (Oct. 2005), available at http://www.cdc.gov/nceh/lead/publications/Building_Blocks_for_Primary_Prevention.pdf.

about lead-safe work practices; both are measures that can protect public health.⁶

When asbestos-containing materials are damaged or disturbed and become airborne, the fibers can be inhaled into the lungs.⁷ Continued exposure can increase the amount of fibers in the lungs and over time may cause serious diseases such as lung cancer.⁸ According to the Global Environment & Technology Foundation, “[A] modest investment in oversight, outreach, and education can have a significant effect in reducing exposure and avoiding needless expenses later.”⁹

Projects that include removing or encapsulating asbestos require asbestos abatement permits from DDOE. Title 20 DCMR § 800.1 adopts Code of Federal Regulations (CFR) sections regulating (in part) asbestos abatement projects disturbing regulated asbestos-containing materials on pipes and other facility components.¹⁰ If a project includes demolition of a building, a customer is required to complete a permit application with DCRA.

Observation

Deficiencies in the District’s regulation of lead-based paint, administration of asbestos permits, and information made available to the public in these areas may increase health risks.

Lead-Based Paint Removal Is Insufficiently Regulated

For projects that meet the narrow definition of a lead abatement project, the District requires lead abatement permits. However, only those projects undertaken specifically to permanently eliminate or temporarily reduce lead-based paint hazards are regulated. Projects not covered by current District law can pose significant health risks as well. In addition, although the District bans unsafe work practices for projects defined as lead-based paint activities, District law is not clear as to whether all practices that the CDC recommends banning are prohibited in the District.

D.C. Code § 8-115.01 (1)(A) (Supp. 2007) states in part, “‘Abatement’ means any measure or set of measures designed to permanently eliminate lead-based paint hazards” However, D.C. Code § 8-115.01 (1)(C) excludes the following activities:

(i) Renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-

⁶ *Id.* at 217.

⁷ U.S. EPA, <http://www.epa.gov/asbestos/index.html> (last visited Feb. 7, 2008).

⁸ U.S. EPA, *Asbestos and Vermiculite Basic Information*, available at <http://www.epa.gov/asbestos/pubs/help.html>, (last visited Feb. 7, 2008).

⁹ Global Environment & Technology Foundation, *Asbestos Strategies: Report of Findings and Recommendations on the Use and Management of Asbestos 1* (May 16, 2003), available at <http://www.epa.gov/asbestos/pubs/asbstrategiesrptgetf.pdf>.

¹⁰ See 40 C.F.R. § 61.145.

based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards; and
(ii) Interim controls,¹¹ operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

While the District bans unsafe work practices for certain types of projects defined as lead abatement, it excludes broad categories of work. For example, D.C. Code § 8-115.03 (d) states, “No individual or business entity who performs lead-based paint activities or interim controls may cause lead-based paint dust, chips, debris, or residue to be disbursed onto adjacent property or increase the risk of exposure to lead-based paint hazards for the public by failing to follow applicable lead-safe work practices.” However, D.C. Code § 8-115.04 exempts individuals performing interim controls or lead-based paint activities at residences they own¹² from the subchapter of the D.C. Code that regulates lead-based paint and work practices.¹³ In addition, work not intended to be lead abatement or interim controls but that increases the risk of creating lead hazards is not included in the definitions of interim controls and lead-based paint activities as found in D.C. Code §§ 8-115.01 (7a) and (9), respectively. Consequently, removing lead-based paint for cosmetic or repair purposes is not subject to D.C. Code § 8-115.03 (d) prohibition against dispersing lead-based paint or increasing the risk of exposure through unsafe work practices.

In addition, it is unclear whether the District bans all unsafe work practices recommended by the CDC. D.C. Code § 8-115.03(a)(4) prohibits performing lead-based paint activities “in violation of any applicable federal standards” including U.S. Environmental Protection Agency (EPA) standards found at 40 C.F.R. §§ 745.226 and 745.227 and U.S. Housing and Urban Development (HUD) standards found at 24 C.F.R. Part 35, Subpart R. The EPA standards at 40 C.F.R. § 745.227(e)(6) restrict the following work practices during abatements: a) open-flame burning of lead-based paint; b) machine sanding, grinding, abrasive blasting, sandblasting, and dry scraping; and c) using heat guns on lead-based paint. The HUD standards prohibit additional unsafe work practices, such as using paint strippers in poorly ventilated areas and dry sanding.¹⁴

¹¹ D.C. Code § 8-115.01 (7A) states:

"Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, renovations, remodeling, restoration, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

¹² The provisions do apply if a person other than the owner or his/her immediate family occupies the property or if a child under 8 years old resides therein or regularly visits the property.

¹³ Provisions regarding lead-safe work practices apply to businesses performing internal controls.

¹⁴ See 24 C.F.R. § 35.140.

However, it is unclear if the HUD restrictions apply to District housing not federally owned or receiving federal funding. Although the D.C. Code prohibits lead-based paint activities that violate “any applicable” federal standard, 24 C.F.R. § 35.100 states that the subpart containing the bans on unsafe work practices applies to “target housing that is federally owned and target housing receiving Federal assistance.” In addition, although 16 DCMR § 3662.2 prohibits work practices banned by 40 C.F.R. § 745.227(e)(6), the District regulation does not include stripping or dry sanding, which HUD prohibits in 24 C.F.R § 35.140. The lack of clear standards for work practices in the District has the potential to create confusion regarding whether stripping and dry sanding are prohibited.

DCRA Permit Process Ineffective in Identifying Projects Requiring DDOE Asbestos Permits

DCRA’s permit process is not adequate for identifying renovation projects requiring asbestos permits. Title 20 DCMR § 800.1 generally states that renovations and demolitions subject to asbestos regulations must receive approval before they begin from the Environmental Health Administration of the D.C. Department of Health, which is now part of DDOE. DDOE issues asbestos abatement permits for projects involving over 260 linear feet or 160 square feet of regulated asbestos-containing material to ensure that asbestos is properly encapsulated or removed by certified companies.

When customers plan to demolish buildings, they must complete DCRA’s “Application for Raze Permit and/or Supplemental Razing Operation Permit.” This permit application directs customers to indicate if asbestos is present at a planned demolition site and requires them to receive written approval from DDOE for the demolition. However, DCRA permit application forms do not require applicants to identify renovation work that may involve removing, disturbing, or encapsulating asbestos. Therefore, DCRA could grant a permit for a building renovation project that includes removing asbestos where the owner has failed to secure written approval from DDOE.

Insufficient Information on Safe Work Practices for Lead and Asbestos

As previously stated, the CDC recommends that agencies having regular contact with homeowners, landlords, tenants, and parents provide information to them about preventing lead poisoning, especially in relation the building permit process. Similarly, the Global Environment & Technology Foundation recommends public education about asbestos to reduce exposure to it.¹⁵ Although DDOE is the District agency with primary responsibility for lead-based paint and asbestos, DCRA has regular contact with property owners and contractors planning work that may disturb lead-based paint or asbestos. However, DCRA does not provide adequate information on safe work practices for lead and asbestos to its customers.

¹⁵ Global Environment & Technology Foundation, *Asbestos Strategies: Report of Findings and Recommendations on the Use and Management of Asbestos 1* (May 16, 2003), available at <http://www.epa.gov/asbestos/pubs/asbstrategiesrptgetf.pdf>.

Brochures for safe work practices for lead and asbestos are not present in DCRA's permit center. The team observed some Spanish-language brochures regarding lead-safe work practices in the DCRA Homeowners Center, but no guides to lead-safe work practices in English. In addition, DCRA's website does not link visitors to information on lead and asbestos safety. According to a DCRA manager, customers who call DCRA to determine whether repainting requires a permit would learn that this activity does not require a permit, but customers are not informed that improper sanding or removing old paint to prepare for repainting may create lead hazards. Informing building owners and construction professionals about safe work practices for lead and asbestos is important because professional certification and permits are not required to perform all projects that may disturb lead-based paint or asbestos.

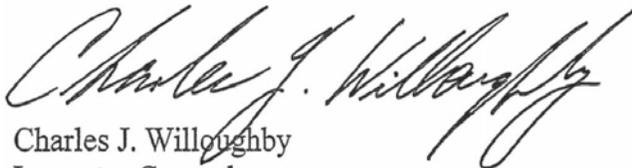
Recommendations

1. That DDOE propose revisions to the D.C. Code and DCMR regarding lead-based paint to clarify prohibited work practices and to require safe work practices for all work that may pose lead hazards, including work currently exempt from District law.
2. That DCRA revise its permit process and application forms to ensure that DDOE has provided appropriate approval for asbestos removal during renovation projects.
3. That DCRA consult with DDOE to develop and implement a plan to inform DCRA customers of safe work practices for lead-based paint and asbestos, including distributing such information with building permits.

Please provide your comments to this MAR by **March 21, 2008**. Your response should include actions taken or planned, dates for completion of planned actions, and reasons for any disagreement with the concerns and recommendations presented. Please distribute this MAR only to those who will be directly involved in preparing your response.

Should you have any questions or desire a conference prior to preparing your response, please contact [REDACTED] Deputy Assistant Inspector General for Inspections and Evaluations, at 202-727-9249.

Sincerely,



Charles J. Willoughby
Inspector General

CJW/kb

Letter to Linda Argo and George Hawkins

February 22, 2008

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cc: Daniel M. Tangherlini, City Administrator and Deputy Mayor
The Honorable Mary Cheh, Chairperson, Committee on Public Services and Consumer
Affairs
The Honorable Jim Graham, Chairperson, Committee on Public Works and the
Environment
The Honorable David Catania, Chairperson, Committee on Health

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9/2/08

GOVERNMENT OF THE DISTRICT OF COLUMBIA

2008 MAR 25 PM 1:14



MEMORANDUM

TO: Charles Willoughby, Inspector General
FROM: George Hawkins, Director, District Department of the Environment
DATE: March 21, 2008
SUBJECT: Management Alert Report Response

In its Management Alert Report (MAR) on Deficiencies in Oversight of Lead-Based Paint and Asbestos Removal, the Office of the Inspector General made two recommendations to the District Department of the Environment (DDOE) aimed at strengthening lead-based paint removal practices in the District. This letter outlines DDOE's progress in and plans for implementing these recommendations.

***Recommendation #1:** That DDOE propose revisions to the D.C. Code and DCMR regarding lead-based paint to clarify prohibited work practices and to require safe work practices for all work that may pose lead hazards, including work currently exempt from District law.*

- One issue raised in the MAR is a lack of clear standards, both in District and federal code. As cited in the report, the District code prohibits activity "in violation of any applicable federal standards" (D.C. Code §8-115.03(a)(4)). This provision may soon be greatly strengthened as a result of rules proposed by the U.S. Environmental Protection Agency (EPA). The EPA's proposed Lead Renovation, Repair, and Painting Rule would expand lead-safe work practice requirements and certification to explicitly include renovation activities, which is one of the gaps identified in the MAR.

Action #1: EPA is hosting a presentation on the proposed rules in April 2008. DDOE staff will be attending.

Action #2: EPA has proposed a one year delay in implementing the rules, so that localities can develop complementary programs and submit them for EPA authorization. One of the responsibilities of the District's new consolidated lead program will be to develop a preventative program that targets renovation work. This program will particularly emphasize work practice trainings for contractors, inspections of construction sites, and a referral system, via collaboration with DCRA, to identify potential violations. This program will likely be developed in FY 2009, once consolidation is complete.

- In addition to new federal regulations, DDOE has been actively collaborating with Councilman Graham and the Mayor's Office of Policy and Legislative Affairs in order to draft a new District law. The draft Comprehensive Lead-Based Paint Risk Reduction Act of 2007 (B17-0116) would specifically require lead-safe work practices in all situations where lead-based paint chips or dust could be generated, which include interim control activities as well as the cosmetic and repair situations raised in the MAR. Passage of this legislation would likely be followed by a proposal of new regulations. This would present an opportunity for the clarification recommended in the MAR.

Action #3: The draft legislation is still pending in the Council Committee on Public Works and the Environment, and it is hoped that a hearing on this legislation will be scheduled soon.

Recommendation #3: That DCRA consult with DDOE to develop and implement a plan to inform DCRA customers of safe work practices for lead-based paint and asbestos, including distributing such information with building permits.

- DDOE's Lead-Based Paint Management Program (LBPMP) oversees the lead abatement permit application process, conducts inspections of work sites to verify that applicable practices are employed and conducts outreach about lead-safe work practices. The Program is eager to develop a closer relationship with DCRA in order to preemptively identify and remedy lead-based paint hazards and to prevent their generation during the course of construction and/or demolition activities. To this end, LBPMP will work with DCRA to identify opportunities in the short- and long-term to help ensure their clients are informed about lead-safe work practices and know when to use them.

Action #4: In the short term, DDOE will deliver both lead-based paint abatement permit applications and informational materials about lead-safe work practices to DCRA's construction permits office. We anticipate that this step will be completed within one week.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs



Office of the Director

March 28, 2008

Mr. Charles J. Willoughby
Inspector General
D.C. Office of the Inspector General
717 14th Street, NW
Washington, DC 20005

RE: Management Alert Report **MAR-08-I-002**

Dear Mr. Willoughby:

This letter is in response to your Management Alert Report (MAR-08-I-002) issued to the Department of Consumer and Regulatory Affairs (DCRA) regarding deficiencies that the District of Columbia Office of the Inspector General (OIG) uncovered in the District's regulation of lead-based paint removal and the permit process for asbestos removal as well as the lack of public information regarding potential health hazards posed by lead and asbestos. Specifically, OIG findings found that:

- Lead-Based paint removal is insufficiently regulated;
- DCRA permit process is ineffective in identifying projects requiring DDOE asbestos permits; and
- Insufficient information on safe work practices for lead and asbestos is available.

As a result of your findings, OIG recommended that:

1. DDOE propose revisions to the D.C. Code and DCMR regarding lead-based paint to clarify prohibited work practices and to require safe work practices for all work that may pose lead hazards, including work currently exempt from District law;
2. DCRA revise its permit process and application forms to ensure that DDOE has provided appropriate approval for asbestos removal during renovation projects; and

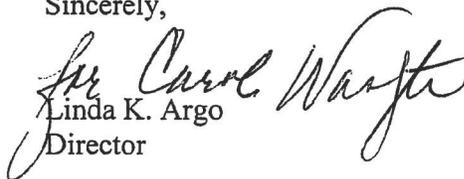
3. DCRA consult with DDOE to develop and implement a plan to inform DCRA customers of safe work practices for lead-based paint and asbestos, including distributing such information with building permits.

Below are DCRA's responses to the specific recommendations made by your office:

1. DCRA will support the efforts of DDOE and assist wherever necessary in the proposed revisions to the DCMR regarding lead-based paint and prohibited work practices;
2. All construction permit applications are reviewed by DDOE for compliance with District law within DDOE's jurisdiction, and all construction permit applications must be approved by the offices of DDOE prior to issuance. Accordingly, revisions to the permit process and application forms are not necessary at this time.
3. DDOE may consult with DCRA to inform DCRA how it may support DDOE's efforts to provide customers with safe work practices regarding lead-based paint and asbestos.

Thank you for bringing this matter to my attention. If you need additional information, please contact DCRA Service Integrity Officer at (202) 442-

Sincerely,


Linda K. Argo
Director

cc: