

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: January 2, 1990

TO: JANE A. NELSON, Rules Coordinator
Dept. of Health, Div. of Environmental Health
717 Delaware St., S.E., Minneapolis (55414)

FROM: CHARLENE W. HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust and Drinking Water from Public Fountains

The above-referenced rule has been approved as to its legality by the Attorney General on December 29, 1989.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

CH:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Paul Zerby, SAAG " "

Office of the Revisor of Statutes
Administrative Rules

Kathleen T. Harrington
Assistant Revisor
296-0956



700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

December 14, 1989

Jane Nelson
Department of Health
717 Delaware Street SE
Minneapolis, Mn 55414

RE: File No. 1571

Dear Ms. Nelson:

Enclosed are four copies of your rule with the modifications you requested.

Please submit the rules to the Attorney General or the Office of Administrative Hearings, as appropriate.

If you have any questions or need further modifications, please call me.

Very truly yours,

Kathleen T. Harrington

Removed 2 rules to be taken to Revisors - back from Revisors

Emergency Rules

C/A

RULE REVIEW CHECKLIST

File No. 1651

Docket No. 050009 1230

DATE RECEIVED 12-14-89

ADOPTED W/O HEARING _____

REVIEW DATE ~~12-23-89~~ 12-26-89

EMERGENCY RULE _____

DUE DATE 12-29-89

TO REVISOR ON 12-19

REVISOR APPROVED 12-27-89

APPROVED 12-29-89

REVISOR DISAPPROVED _____

DISAPPROVED _____

FILED W/SEC. OF STATE _____

WITHDRAWN _____

RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
Aug. 7, 1989 Date published in State Register
_____ Comments

_____ ~~Petition for Adoption of a Rule~~ (if applicable)

_____ ~~Board's Authorizing Resolution~~
_____ ~~Date adopted~~

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
144,856 Statutory Authority
NA Small Business Statement
✓ Expenditure of public money statement 14.11
Oct 20, 1989 Signature

NA Statement of Need and Reasonableness (if applicable)
Emergency Rule
_____ Small Business Statement
_____ Fees - § 16A.128

_____ Affidavit of Mailing Notice of Intent to Adopt Rule
Oct 26, 1989 Date 30/25 days before adoption
_____ Notice attached - indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
Nov 6, 1989 Date 30/25 days before adoption

_____ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) Approved June 1, 1989 - Oct 20, 1989
_____ end of comment period (§ 14.26) (rules without hearing)
✓ effective date of statutory authority (§ 14.29) (emergency rules) Approved June 1, 1989 - Dec 14, 19

NA Resolution Adopting
_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
Dec 14, 1989 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
Paul Jerbey Name of SAAG representing agency

Dec 14, 1989 Notice of Submission to Atty. Gen. (if applicable)

Dec 14, 1989 Aff. of Mailing Notice to Atty. Gen. (if applicable)

Department of Health
Division of Environmental Health

Adopted Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains

Rules as Adopted

4620.1900 [Emergency] APPLICABILITY.

Parts 4620.1900 to 4620.2500 [Emergency] apply to lead abatement contractors performing lead abatement work ordered by boards of health in cities of the first class.

4620.2000 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4620.1900 to 4620.2500 [Emergency], the following terms have the meanings given them.

Subp. 2. **Abatement.** "Abatement" means the use of the best available technology to remove or encapsulate deteriorating or intact paint or to reduce the availability of lead in soil and house dust, medicine, water, and any other sources considered a lead hazard by the commissioner.

Subp. 3. **Abrasive blasting or abrasive blasted.** "Abrasive blasting" or "abrasive blasted" means the use of pressurized airborne abrasive to remove surface coatings.

Subp. ~~3.~~ 4. **Assessment.** "Assessment" means sampling and analysis, as described in part 4620.2200 [Emergency], for sources of lead exposure in a residence or day care facility.

Subp. ~~4.~~ 5. **Board of health.** "Board of health" means a local administrative authority established under Minnesota Statutes, section 145A.03 or 145A.07.

~~Subp. 5. Commissioner. "Commissioner" means the commissioner of health.~~

Subp. 6. **Day care facility.** "Day care facility" means the structure and indoor and outdoor space used by a provider licensed under chapter 9502 to provide day care in a residence.

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Subp. 7. **Encapsulation.** "Encapsulation" means the covering or containment of a lead source in soil or paint to prevent harmful exposure to lead. Encapsulation includes, but is not limited to, covering of bare soil that contains more than acceptable levels of lead under part 4620.2100 [Emergency] with sod or soil that contains acceptable parts per million lead under part 4620.2100 [Emergency]. Encapsulation also includes, but is not limited to, seeding and treatment for walkways and parking areas.

Subp. 8. **High efficiency particle accumulator.** "High efficiency particle accumulator" means a vacuum cleaner with a filter capable of removing at least 99.8 percent of airborne particles that are at least three-tenths of a micron in diameter.

Subp. 9. **Intact paint.** "Intact paint" means paint that is not visibly deteriorating and that covers undamaged base material.

Subp. 10. **Lead abatement contractor.** "Lead abatement contractor" means an employer or other person or entity who, for financial gain, directly performs or causes to be performed, through subcontracting or similar delegation, work related to lead hazard abatement or immediate hazard removal.

Subp. 11. **Public fountain.** "Public fountain" means a drinking water fixture connected to a building's water supply system that supplies water to 25 or more people or has 15 or more service connections.

Subp. 12. **Residence.** "Residence" means:

A. every structure used or intended for use as single family habitation, including exterior surfaces and every other structure located within the same lot; or

B. a dwelling unit within a structure used or intended for use as multifamily habitation, including common areas located within the same lot but not including other dwelling units.

~~Subp. 13. Sandblasting. "Sandblasting" means the use of pressurized airborne abrasive to remove surface coatings.~~

Subp. ~~14.~~ 13. **Standard tube auger.** "Standard tube auger"

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means a hollow 13/16 inch interior diameter soil sampling tool.

Subp. ~~15.~~ 14. **Vacuum blasting.** "Vacuum blasting" means the use of a vacuum device with ~~**sandblasting**~~ abrasive blasting to collect spent abrasive.

Subp. ~~16.~~ 15. **Waterblasting.** "Waterblasting" means the use of pressurized water to remove surface coatings.

Subp. ~~17.~~ 16. **Wet ~~sandblasting~~ abrasive blasting.** "Wet ~~**sandblasting**~~ abrasive blasting" means the use of water with ~~**sandblasting**~~ abrasive blasting to remove surface coatings.

Subp. ~~18.~~ 17. **X-ray fluorometer.** "X-ray fluorometer" means a portable or laboratory instrument that measures lead by gamma ray induced fluorescence of lead atoms.

4620.2100 [Emergency] STANDARDS.

Subpart 1. **Existing paint.** Paint that has been applied to residences or day care facilities before January 1, 1990, must not contain one-half of one percent (5,000 parts per million) lead or more by dry weight or register one milligram per square centimeter or more as measured by X-ray fluorometer unless laboratory analysis shows that the lead content is less than one-half of one percent.

Subp. 2. **New paint.** Paint that is to be applied to residences or day care facilities on or after January 1, 1990, must not contain six one-hundredths of one percent (600 parts per million) of lead or more by dry weight.

Subp. 3. **Bare soil.** Bare soil within the boundaries of a residential lot must not contain five one-hundredths of one percent (500 parts per million) of lead or more by dry weight.

Subp. 4. **Dust.** Interior or exterior residential dust must not contain five one-hundredths of one percent (500 parts per million) of lead or more by dry weight.

Subp. 5. **Drinking water.** Drinking water from public fountains must not contain 50 micrograms per liter or more of lead.

4620.2200 [Emergency] SAMPLING AND ANALYSIS.

Subpart 1. **General.** As required by Minnesota Statutes,

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section 144.854, subdivision 1, boards of health must assess the residence of a child or pregnant woman who has a blood lead level of 25 micrograms per deciliter.

~~Subpart 1.~~ Subp. 2. **Paint.** In conducting an assessment, paint on each wall, floor, window well, window sill, ceiling, and fixture must be tested by either:

A. X-ray fluorometer measurement of in-place paint; or

B. "Test Methods for Evaluating Solid Waste, 1A: Laboratory Manual for Physical/Chemical Methods," Chapter 3, Acid Digestion of Sludges and Soils, U.S. Environmental Protection Agency, September 1986. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. It is not subject to frequent change.

Subp. ~~2.~~ 3. **Soil.** In conducting an assessment, bare soil and exterior dust must be collected and analyzed by the methods in items A to D.

A. Bare soil areas must be divided into two-foot by two-foot grids from which a square must be randomly selected for sampling.

B. A standard tube auger must be used to collect samples from the top two centimeters of soil and dust in each corner and in the center of the randomly selected square.

C. The sample must be passed through a two millimeter standard steel sieve with crushable particles forced through the sieve. Noncrushable objects larger than two millimeters must be discarded from the sample.

D. Soil samples must be analyzed by a method approved by either:

(1) the U.S. Environmental Protection Agency as described in subpart ~~1~~ 2, item B; or

(2) the University of Minnesota Soil Testing and Research Analytical Laboratory in "Description of Methods Used in the Preparation and Analysis of Lead and Fourteen Other Elements in the PCA Soil Lead Study" (St. Paul, October 17, 1986). This publication is incorporated by reference and is

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available through the Minitex interlibrary loan system. This publication is not subject to frequent change.

Subp. ~~3.~~ 4. **Dust.** In conducting an assessment, interior dust must be collected by the surface wipe method described in Industrial Hygiene Technical Manual, Chapter VIII and Appendix A, U.S. Department of Labor, Occupational Safety and Health Administration, May 24, 1984. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Interior dust must be analyzed by a method approved by the U.S. Environmental Protection Agency as described in subpart ~~1~~ 2, item B.

Subp. ~~4.~~ 5. **Drinking water.** Drinking water from public fountains must be collected by the method described for drinking fountains in "Lead in School's Drinking Water," prepared by the Office of Drinking Water, U.S. Environmental Protection Agency Document EPA 570/9-89-001, January 1989. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Drinking water must be analyzed by a method approved by the U.S. Environmental Protection Agency in Code of Federal Regulations, chapter 40, part 136, Table 1B "List of Approved Inorganic Test Procedures for Atomic Absorption or Inductively Coupled Plasma" (Washington, D.C., Government Printing Office).

4620.2300 [Emergency] LEAD ABATEMENT METHODS.

Subpart 1. **Paint abatement preparations.** Abatement of lead-based paint must not begin until the requirements in items A to F have been met.

A. An assessment of lead sources within the residence or day care facility must be completed by the board of health ~~or by the property owner~~.

B. Preparations must be ~~taken~~ made to minimize dust generation and dispersal during abatement and to contain any semisolid or liquid wastes generated during abatement. Double

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six mil or equivalent thickness plastic bags or leak-proof containers must be on-site to collect all debris, dust, and other waste generated by abatement. Waste must be disposed of according to chapter 7045.

C. The occupants of the residence or operators of the day care facility must be notified by the lead abatement contractor of the presence of lead and of the schedule for abatement.

D. For interior paint abatement:

(1) leaking roofs or plumbing must be repaired;

(2) residents must be relocated and all personal possessions, carpeting, and furniture must be cleaned of lead ~~as needed~~ and relocated;

(3) the rooms to be abated must be sealed from the rest of the residence or day care facility and from the exterior by securely taping six mil or equivalent thickness plastic over windows or doors that are not to be used during abatement;

(4) any fixtures, furnishings, or carpeting that cannot be removed but that are not to be abated must be covered with two layers of six mil or equivalent thickness tarpaulins;

(5) for removal and replacement of exterior doors and windows, tarpaulins must be placed to contain dust and debris on both the interior and exterior sides; and

(6) other preparations due to unusual circumstances such as unique structural components affecting the work area must be ~~taken~~ made as needed to prevent dispersal of lead from abatement procedures.

E. For exterior paint abatement:

(1) occupants must be advised to remove all personal property from the lot before abatement and to close all doors, windows, and storm windows during abatement;

(2) tarpaulins in good condition must be:

(a) secured to the building foundation;

(b) overlapped at least 18 inches where the tarpaulins meet and secured to each other; and

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(c) laid over the ground at least 15 feet in all horizontal directions from the surface to be abated. An additional five feet of tarpaulin is required for each floor above the first floor to be abated to a maximum requirement of 25 feet.

F. For use of ~~sandblasting~~ abrasive blasting, waterblasting, and wet ~~sandblasting~~ abrasive blasting:

(1) all windows, doors, and vents must be sealed with tape on the exterior side. The tape must be sufficiently adhesive and durable to prevent any material from being forced into the residence or day care facility;

(2) the lead abatement contractor must notify occupants of any residence or operator of any day care facility within 30 feet of the surface to be abated of the schedule for ~~sandblasting~~ abrasive blasting, of the need to remove personal property from the lot nearest the surface to be ~~sandblasted~~ abrasive blasted, and of the need to keep windows and doors sealed with tape during ~~sandblasting~~ abrasive blasting;

(3) tarpaulins must either be:

(a) laid over the ground at least 25 feet in all horizontal directions, with an additional five feet for each floor above the first floor to a maximum requirement of 40 feet; or

(b) vertically extended at least four feet above the surface to be ~~sandblasted~~ abrasive blasted with horizontal tarpaulins covering the ground from the foundation to the vertical tarpaulins; and

(4) for wet ~~sandblasting~~ abrasive blasting or waterblasting, the edges of horizontal tarpaulins must be raised to contain all liquid wastes.

Subp. 2. **Paint abatement.** Except as prohibited in subpart ~~4~~ 3, paint that is in violation of part 4620.2100 [Emergency], subpart 1 or 2, must be abated by the methods in items A and B.

A. Deteriorating paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed with the base material and replaced

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with new base material that complies with part 4620.2100 [Emergency]; or

(2) removed from the base material by wet or dry scraping or wire brushing; stripped with nontoxic and nonflammable chemical paint strippers either on-site or off-site with removal of chemical strippers from surfaces by scraping and direct placement into waterproof containers; heated with a heat gun that does not exceed 800 degrees Fahrenheit; ~~sandblasted~~ exterior abrasive blasted, vacuum blasted, exterior waterblasted, or exterior wet ~~sandblasted~~ abrasive blasted. All damaged base material must be patched, sealed, and repainted or covered with material that complies with part 4620.2100 [Emergency].

B. Intact paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed by a method described in item A; or

(2) encapsulated with an impervious material that is securely attached to the base material. All seams must be caulked. Examples of impervious material include but are not limited to plywood, sheetrock, tile, fiberglass, linoleum, and vinyl, metal, or wood exterior siding.

Subp. 3. **Prohibited paint abatement methods.** Use of the following methods on paint in violation of part 4620.2100 [Emergency] is prohibited:

A. open flame torching;

B. heating with a heat gun above 800 degrees Fahrenheit;

C. dry sanding manually;

D. dry sanding with a power sander unless a high efficiency particle accumulator is attached;

E. stripping with methylene chloride based stripper;

F. removing any chemical paint stripper with sprayed water;

G. covering with contact paper, ordinary wallpaper, or new paint;

H. using silica sand for ~~sandblasting~~ abrasive

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blasting;

I. ~~sandblasting~~ abrasive blasting, waterblasting, and wet ~~sandblasting~~ abrasive blasting for interior work; and

J. ~~sandblasting~~ abrasive blasting, wet ~~sandblasting~~ abrasive blasting, and waterblasting for exterior work when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

Subp. 4. **Soil abatement.** Bare soil and exterior dust that is in violation of part 4620.2100 [Emergency] must be abated either by removal or by covering with sod, asphalt, concrete, or other durable material intended for exterior use. Soil and dust must be disposed of according to chapter 7045. Abatement of soil and exterior dust in violation of part 4620.2100 [Emergency] must be done after any paint abatement but before interior dust abatement or final cleanup.

Subp. 5. **Dust abatement.** Interior dust that is in violation of part 4620.2100 [Emergency] must be abated by use of either a high efficiency particle accumulator vacuum or washing with trisodium phosphate solution. In either case, waste material must be disposed of according to chapter 7045. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited.

Subp. 6. **Waste removal.** Waste must be removed daily from the worksite so that no visible deposits remain. Waste must be disposed of according to chapter 7045.

Subp. 7. **Final cleanup.** Cleanup must proceed downward from the highest point abated or exposed to dust or debris from abatement. For interior abatement work, a final cleanup must be conducted at an abatement site no sooner than 24 hours after and no later than seven days after completion of active abatement. This final cleanup must, at a minimum, include a high efficiency particle accumulator vacuuming of all surfaces abated or exposed to lead from abatement, followed by wet mopping of these surfaces with trisodium phosphate solution. If a high efficiency particle accumulator vacuum is unavailable, then

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final cleanup must include two wet moppings with trisodium phosphate solution. The surfaces must be allowed to dry between moppings. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited. For exterior abatement work, final cleanup must be conducted no later than seven days after completion of abatement. If present, rain gutters must be cleaned of any waste.

Subp. 8. **Water abatement.** The owner of a public drinking water fountain that violates part 4620.2100 [Emergency] must disconnect or flush the public fountain daily according to the directions in "Lead in School's Drinking Water" as described in part 4620.2200 [Emergency], subpart ~~4~~ 5, until compliance can be demonstrated by retesting.

4620.2400 [Emergency] COMPLETION OF ABATEMENT.

Subpart 1. **Retesting required.** Abatement is considered successfully completed when retesting demonstrates compliance with part 4620.2100 [Emergency]. Retesting of each surface abated and testing of each surface exposed to abatement must be performed after final cleanup.

Subp. 2. **Paint.** Paint must be tested by collection of one interior dust sample from each of the walls and ~~windows~~ window wells and sills and from the floor in a room in which at least one of these surfaces was abated. Dust must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart ~~1, item B~~ 4.

Subp. 3. **Soil testing.** Two samples of bare soil, if any is present, must be collected within two feet of the foundation adjacent to each exterior wall that was abated. The soil must be analyzed with methods approved by either the U.S. Environmental Protection Agency or the University of Minnesota Soil Testing and Research Analytical Laboratory as described in part 4620.2200 [Emergency], subpart ~~2, item D~~ 3.

Subp. 4. **Dust testing.** One interior dust sample must be collected from each of the walls and ~~windows~~ window wells and sills and from the floor in a room in which at least one of

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these surfaces was abated and must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart ~~1, item~~ B 4.

4620.2500 [Emergency] LEAD ABATEMENT CONTRACTORS' DUTIES.

Subpart 1. **Safety measures.** Lead abatement contractors must comply with chapter 5207, and Code of Federal Regulations, title 29, section 1926, as amended through December 31, 1988, regarding safety measures appropriate for construction projects. Contractors must inform employees of the potential slip hazard of walking on plastic, especially wet plastic.

Subp. 2. **Equipment required.** Lead abatement contractors must provide their employees with hooded coveralls, shoe coverings, gloves, and toxic dust respirators on the Certified Equipment List of the National Institute of Occupational Health, U.S. Department of Health and Human Services (Washington, D.C., Government Printing Office, January 1989). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Lead abatement contractors must ensure that the workers properly use these items during work described in part 4620.2300 [Emergency], subparts 2 and 5, and that workers do not wear these items away from the worksite.

Subp. 3. **Prohibited actions.** Lead abatement contractors and their employees must not eat, drink, or smoke during work described in part 4620.2300 [Emergency], subparts 2 and 5, in lead abatement work areas. Visitors must be told by the contractor or employees not to eat, drink, or smoke in the worksite or must be told to leave the worksite.

Subp. 4. **Right-to-know.** Lead abatement contractors must comply with Employee Right-to-Know requirements in parts 5206.0100 to 5206.0900 and Minnesota Statutes, section 182.655.

Approved by Revisor _____

APPROVED AS TO LEGALITY

December 29, 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene K. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 01 1990

Joan Anderson Growe
Secretary of State

12:08 pm BB

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

MEMORANDUM

To: Patricia Nolte, legal assistant
Public Finance Division
Capitol Office Building
525 Park Street

From: Jane A. Nelson, rules coordinator
Environmental Health Division

Re: Proposed Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains, Minnesota Rules, parts 4620.1900 to 4620.2500 [Emergency].

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0400 for your review of an emeregency rule of the above entitled matter.

Official documents in this submittal include:

A. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

B. A copy of the proposed rule with a certificate of approval as to form by the Revisor of Statutes attached.

C. The notice of intent to adopt an emergency rule as mailed.

D. The affidavit of mailing the notice of intent to adopt an emergency rule. The affidavit states that the mailing list maintained by the department pursuant to Minnesota Statutes, section 14.30 is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list.

E. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the State Register.

F. Four copies of the emergency rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the Revisor of Statutes.

G. The Findings of Fact, Conclusions, and Order Adopting the Emergency Rule.

H. All written requests, submissions, or comments on the rule received by the department except requests solely for copies of the rule.

I. The declaration of counsel of the attorney in the attorney general's office who represents the agency.

J. The notice of submission of the rule to the attorney general-administration, if applicable.

K. The affidavit of mailing the notice of submission of the rule to the attorney general-administration, if applicable.

If you have any question on this submittal, please call me at 623-5749.

Stat. Auth. 144.856

By July 1, 1990, the commissioner shall develop a training program for abatement contractors and adopt rules specifying the abatement methods that must be used by contractors to provide for the safe collection, handling ... The commissioner shall adopt emergency rules for abatement methods and standards for paint, bare soil, dust and drinking water from public fountains for cities of the 1st class.

Findings of Fact, Conclusions

missing 2010.0400 E. (7) - emergency rule and its supporting documents will be submitted to A.G. ....

Minnesota Comprehensive Health Association

Notice of Meeting of the Studies Committee

NOTICE IS HEREBY GIVEN that a meeting of the Studies Committee of the Minnesota Comprehensive Health Association will be held at 3:00 p.m. on Tuesday, August 15, 1989, at Group Health, Inc., 2829 University Avenue S.E., Minneapolis, Minnesota. For additional information, please call (612) 456-8466.

Ethical Practices Board

Advisory Opinion #101 re: Legal Defense Fund

Issued 7-27-89 to Eric Sandrock—SUMMARY—101. Contributions to and payments from a legal defense fund established by a candidate are not subject to the registration and reporting requirements of *Minnesota Statutes* Ch. 10A.

The full text of the opinion is available upon request from the Ethical Practices Board, 625 North Robert Street, St. Paul, MN 55101-2520; (612) 296-5148.

Department of Health

Division of Environmental Health

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Various Subjects

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking information or opinions from sources outside the agency in preparing to propose the adoption of new rules and revision of existing rules relating to the subjects listed below. The adoption of the rules is authorized by the statutory provisions listed. The Department of Health requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to the contact persons listed. Oral statements will be received during regular business hours over the telephone at the number listed for the particular subject matter and in person at the above address.

All statements of information and opinions shall be accepted until the rules are formally proposed for adoption. Any written material received by the Department of Health shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Subject Matter	Statutory Authority	Contact Person	Phone
Water Well Construction Code	*Laws 1989*, Chap. 326, Art. 3	Ronald Thompson	612/623-5264
Monitoring and Dewatering Wells and Environmental Bore Holes	*Laws 1989*, Chap. 326, Art. 3	Ronald Thompson	612/623-5264
Requirements for Water Well Contractors and Monitoring Well Engineers	*Laws 1989*, Chap. 326, Art. 3	Ronald Thompson	612/623-5264
Infectious Waste	*Laws 1989*, Chap. 337, Sec. 7	Darrell Anderson	612/623-5333
Health Services in Board and Lodging Establishments	*Laws 1989*, Chap. 282, Art. 2, Sec. 49	Charles Schneider	612/623-5335
Lead Abatement	*Laws 1989*, Chap. 282, Art. 2, Sec. 20	Douglas Benson	612/623-5653
Health Risk Limits for Groundwater	*Laws 1989*, Chap. 326, Art. 1, Sec. 8	David Gray	612/623-5352
X-Ray Equipment Standards	*Minnesota Statutes*, Sec. 144.121	Wm. Breitenstein	612/623-5346

Children's Camps

Minnesota Statutes, Sec. 144.74

Charles Schneider 612/623-5335

Dated: 28 July 1989

Raymond W. Thron, Ph.D., P.E., Director
Division of Environmental Health

Higher Education Facilities Authority

Notice of Public Hearing on Proposal to Issue Revenue Bonds on Behalf of Gustavus Adolphus College

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Minnesota Higher Education Facilities Authority (the "Authority") with respect to a proposal to issue revenue bonds on behalf of the Gustavus Adolphus College, a Minnesota nonprofit corporation and institution of higher education (the "College"), at the Authority's offices at Suite 450 Galtier Plaza, 175 East Fifth Street, St. Paul, Minnesota on August 23, 1989 at 2 o'clock p.m. Under the proposal, the Authority would issue its revenue bonds in an aggregate principal amount of up to approximately $2,500,000, to provide financing for a Project generally described as (i) the refunding of certain outstanding debt associated with the construction of an 11 unit student apartment complex completed in August, 1988, which facility houses 44 students; and (ii) the refinancing of the College's portion of outstanding debt in connection with the Authority's Pooled Revenue Bonds, Series 1983-A, which debt was used to finance in part the construction of the Lund Center for Physical Education and Health, a student athletic facility. The apartment complex and the Lund Center are owned and operated by the College and located on the campus of the College, the street address of which is Gustavus Adolphus College, St. Peter, Minnesota 56082. At said time and place the Authority shall give all parties who appear an opportunity to express their views with respect to the proposal to undertake and finance the Project.

Dated: 7 August 1989

BY ORDER OF THE MINNESOTA HIGHER EDUCATION FACILITIES AUTHORITY
Joseph E. LaBelle
Executive Director

Department of Human Services

Assistance Payments Division

Notice of Solicitation of Outside Information or Opinions Regarding Amendments to Rules Governing Eligibility to Participate in the Medical Assistance Program

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose amendments to the rules governing eligibility to participate in the medical assistance program, *Minnesota Rules*, part 9505.0115, subpart 3.

The adoption of the amendment to the rules is authorized by *Minnesota Statutes*, section 256B.04, subdivision 2.

The proposed amendment extends the interval from 3 months to 6 months for the required review of a recipient's assets as part of a redetermination of the recipient's continued eligibility to participate in the medical assistance program.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Eleanor Weber
Rules Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-4301 by Eleanor Weber and in person at the above address.

Department of Health

Division of Environmental Health

Proposed Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains

Rules as Proposed (all new material)

4620.1900 [Emergency] APPLICABILITY.

Parts 4620.1900 to 4620.2500 [Emergency] apply to lead abatement contractors performing lead abatement work ordered by boards of health in cities of the first class.

4620.2000 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4620.1900 to 4620.2500 [Emergency], the following terms have the meanings given them.

Subp. 2. **Abatement.** "Abatement" means the use of the best available technology to remove or encapsulate deteriorating or intact paint or to reduce the availability of lead in soil and house dust, medicine, water, and any other sources considered a lead hazard by the commissioner.

Subp. 3. **Assessment.** "Assessment" means sampling and analysis, as described in part 4620.2200 [Emergency], for sources of lead exposure in a residence or day care facility.

Subp. 4. **Board of health.** "Board of health" means a local administrative authority established under Minnesota Statutes, section 145A.03 or 145A.07.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of health.

Subp. 6. **Day care facility.** "Day care facility" means the structure and indoor and outdoor space used by a provider licensed under chapter 9502 to provide day care in a residence.

Subp. 7. **Encapsulation.** "Encapsulation" means the covering or containment of a lead source in soil or paint to prevent harmful exposure to lead. Encapsulation includes, but

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is not limited to, covering of bare soil that contains more than acceptable levels of lead under part 4620.2100 [Emergency] with sod or soil that contains acceptable parts per million lead under part 4620.2100 [Emergency]. Encapsulation also includes, but is not limited to, seeding and treatment for walkways and parking areas.

Subp. 8. **High efficiency particle accumulator.** "High efficiency particle accumulator" means a vacuum cleaner with a filter capable of removing at least 99.8 percent of airborne particles that are at least three-tenths of a micron in diameter.

Subp. 9. **Intact paint.** "Intact paint" means paint that is not visibly deteriorating and that covers undamaged base material.

Subp. 10. **Lead abatement contractor.** "Lead abatement contractor" means an employer or other person or entity who, for financial gain, directly performs or causes to be performed, through subcontracting or similar delegation, work related to lead hazard abatement or immediate hazard removal.

Subp. 11. **Public fountain.** "Public fountain" means a drinking water fixture connected to a building's water supply system that supplies water to 25 or more people or has 15 or more service connections.

Subp. 12. **Residence.** "Residence" means:

A. every structure used or intended for use as single family habitation, including exterior surfaces and every other structure located within the same lot; or

B. a unit within a structure used or intended for use as multifamily habitation, including common areas located within the same lot but not including other units.

Subp. 13. **Sandblasting.** "Sandblasting" means the use of pressurized airborne abrasive to remove surface coatings.

Subp. 14. **Standard tube auger.** "Standard tube auger" means a hollow 13/16 inch interior diameter soil sampling tool.

Subp. 15. **Vacuum blasting.** "Vacuum blasting" means the use of a vacuum device with sandblasting to collect spent abrasive.

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Subp. 16. **Waterblasting.** "Waterblasting" means the use of pressurized water to remove surface coatings.

Subp. 17. **Wet sandblasting.** "Wet sandblasting" means the use of water with sandblasting to remove surface coatings.

Subp. 18. **X-ray fluorometer.** "X-ray fluorometer" means a portable or laboratory instrument that measures lead by gamma ray induced fluorescence of lead atoms.

4620.2100 [Emergency] STANDARDS.

Subpart 1. **Existing paint.** Paint that has been applied to residences or day care facilities before January 1, 1990, must not contain one-half of one percent (5,000 parts per million) lead or more by dry weight or register one milligram per square centimeter or more as measured by X-ray fluorometer unless laboratory analysis shows that the lead content is less than one-half of one percent.

Subp. 2. **New paint.** Paint that is to be applied to residences or day care facilities on or after January 1, 1990, must not contain six one-hundredths of one percent (600 parts per million) of lead or more by dry weight.

Subp. 3. **Bare soil.** Bare soil within the boundaries of a residential lot must not contain five one-hundredths of one percent (500 parts per million) of lead or more by dry weight.

Subp. 4. **Dust.** Interior or exterior residential dust must not contain five one-hundredths of one percent (500 parts per million) of lead or more by dry weight.

Subp. 5. **Drinking water.** Drinking water from public fountains must not contain 50 micrograms per liter or more of lead.

4620.2200 [Emergency] SAMPLING AND ANALYSIS.

Subpart 1. **Paint.** In conducting an assessment, paint on each wall, floor, window, ceiling, and fixture must be tested by either:

A. X-ray fluorometer measurement of in-place paint; or

B. "Test Methods for Evaluating Solid Waste, 1A:

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Laboratory Manual for Physical/Chemical Methods," Chapter 3, Acid Digestion of Sludges and Soils, U.S. Environmental Protection Agency, September 1986. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. It is not subject to frequent change.

Subp. 2. **Soil.** In conducting an assessment, bare soil and exterior dust must be collected and analyzed by the methods in items A to D.

A. Bare soil areas must be divided into two-foot by two-foot grids from which a square must be randomly selected for sampling.

B. A standard tube auger must be used to collect samples from the top two centimeters of soil and dust in each corner and in the center of the randomly selected square.

C. The sample must be passed through a two millimeter standard steel sieve with crushable particles forced through the sieve. Noncrushable objects larger than two millimeters must be discarded from the sample.

D. Soil samples must be analyzed by a method approved by either:

(1) the U.S. Environmental Protection Agency as described in subpart 1, item B; or

(2) the University of Minnesota Soil Testing and Research Analytical Laboratory in "Description of Methods Used in the Preparation and Analysis of Lead and Fourteen Other Elements in the PCA Soil Lead Study" (St. Paul, October 17, 1986). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change.

Subp. 3. **Dust.** In conducting an assessment, interior dust must be collected by the surface wipe method described in Industrial Hygiene Technical Manual, Chapter VIII and Appendix A, U.S. Department of Labor, Occupational Safety and Health Administration, May 24, 1984. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent

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change. Interior dust must be analyzed by a method approved by the U.S. Environmental Protection Agency as described in subpart 1, item B.

Subp. 4. **Drinking water.** Drinking water from public fountains must be collected by the method described for drinking fountains in "Lead in School's Drinking Water," prepared by the Office of Drinking Water, U.S. Environmental Protection Agency Document EPA 570/9-89-001, January 1989. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Drinking water must be analyzed by a method approved by the U.S. Environmental Protection Agency in Code of Federal Regulations, chapter 40, part 136, Table 1B "List of Approved Inorganic Test Procedures for Atomic Absorption or Inductively Coupled Plasma" (Washington, D.C., Government Printing Office).

4620.2300 [Emergency] LEAD ABATEMENT METHODS.

Subpart 1. **Paint abatement preparations.** Abatement of lead-based paint must not begin until the requirements in items A to F have been met.

A. An assessment of lead sources within the residence or day care facility must be completed by the board of health or by the property owner.

B. Preparations must be taken to minimize dust generation and dispersal during abatement and to contain any semisolid or liquid wastes generated during abatement. Double six mil or equivalent thickness plastic bags or leak-proof containers must be on-site to collect all debris, dust, and other waste generated by abatement. Waste must be disposed of according to chapter 7045.

C. The occupants of the residence or operators of the day care facility must be notified by the lead abatement contractor of the presence of lead and of the schedule for abatement.

D. For interior paint abatement:

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(1) leaking roofs or plumbing must be repaired;

(2) residents must be relocated and all personal possessions, carpeting, and furniture must be cleaned of lead as needed and relocated;

(3) the rooms to be abated must be sealed from the rest of the residence or day care facility and from the exterior by securely taping six mil or equivalent thickness plastic over windows or doors that are not to be used during abatement;

(4) any fixtures, furnishings, or carpeting that cannot be removed but that are not to be abated must be covered with two layers of six mil or equivalent thickness tarpaulins;

(5) for removal and replacement of exterior doors and windows, tarpaulins must be placed to contain dust and debris on both the interior and exterior sides; and

(6) other preparations due to unusual circumstances such as unique structural components affecting the work area must be taken as needed to prevent dispersal of lead from abatement procedures.

E. For exterior paint abatement:

(1) occupants must be advised to remove all personal property from the lot before abatement and to close all doors, windows, and storm windows during abatement;

(2) tarpaulins in good condition must be:

(a) secured to the building foundation;

(b) overlapped at least 18 inches where the tarpaulins meet and secured to each other; and

(c) laid over the ground at least 15 feet in all horizontal directions from the surface to be abated. An additional five feet of tarpaulin is required for each floor above the first floor to be abated to a maximum requirement of 25 feet.

F. For use of sandblasting, waterblasting, and wet sandblasting:

(1) all windows, doors, and vents must be sealed with tape on the exterior side. The tape must be sufficiently

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adhesive and durable to prevent any material from being forced into the residence or day care facility;

(2) the lead abatement contractor must notify occupants of any residence or operator of any day care facility within 30 feet of the surface to be abated of the schedule for sandblasting, of the need to remove personal property from the lot nearest the surface to be sandblasted, and of the need to keep windows and doors sealed with tape during sandblasting;

(3) tarpaulins must either be:

(a) laid over the ground at least 25 feet in all horizontal directions, with an additional five feet for each floor above the first floor to a maximum requirement of 40 feet; or

(b) vertically extended at least four feet above the surface to be sandblasted with horizontal tarpaulins covering the ground from the foundation to the vertical tarpaulins; and

(4) for wet sandblasting or waterblasting, the edges of horizontal tarpaulins must be raised to contain all liquid wastes.

Subp. 2. **Paint abatement.** Except as prohibited in subpart 4, paint that is in violation of part 4620.2100 [Emergency], subpart 1 or 2, must be abated by the methods in items A and B.

A. Deteriorating paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed with the base material and replaced with new base material that complies with part 4620.2100 [Emergency]; or

(2) removed from the base material by wet or dry scraping or wire brushing; stripped with nontoxic and nonflammable chemical paint strippers either on-site or off-site with removal of chemical strippers from surfaces by scraping and direct placement into waterproof containers; heated with a heat gun that does not exceed 800 degrees Fahrenheit; sandblasted, vacuum blasted, waterblasted, or wet sandblasted. All damaged base material must be patched, sealed, and repainted or covered

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with material that complies with part 4620.2100 [Emergency].

B. Intact paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed by a method described in item A; or

(2) encapsulated with an impervious material that is securely attached to the base material. All seams must be caulked. Examples of impervious material include but are not limited to plywood, sheetrock, tile, fiberglass, linoleum, and vinyl, metal, or wood exterior siding.

Subp. 3. **Prohibited paint abatement methods.** Use of the following methods on paint in violation of part 4620.2100 [Emergency] is prohibited:

A. open flame torching;

B. heating with a heat gun above 800 degrees Fahrenheit;

C. dry sanding manually;

D. dry sanding with a power sander unless a high efficiency particle accumulator is attached;

E. stripping with methylene chloride based stripper;

F. removing any chemical paint stripper with sprayed water;

G. covering with contact paper, ordinary wallpaper, or new paint;

H. using silica sand for sandblasting;

I. sandblasting, waterblasting, and wet sandblasting for interior work; and

J. sandblasting, wet sandblasting, and waterblasting for exterior work when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

Subp. 4. **Soil abatement.** Bare soil and exterior dust that is in violation of part 4620.2100 [Emergency] must be abated either by removal or by covering with sod, asphalt, concrete, or other durable material intended for exterior use. Soil and dust must be disposed of according to chapter 7045. Abatement of soil and exterior dust in violation of part 4620.2100

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[Emergency] must be done after any paint abatement but before interior dust abatement or final cleanup.

Subp. 5. **Dust abatement.** Interior dust that is in violation of part 4620.2100 [Emergency] must be abated by use of either a high efficiency particle accumulator vacuum or washing with trisodium phosphate solution. In either case, waste material must be disposed of according to chapter 7045. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited.

Subp. 6. **Waste removal.** Waste must be removed daily from the worksite so that no visible deposits remain. Waste must be disposed of according to chapter 7045.

Subp. 7. **Final cleanup.** Cleanup must proceed downward from the highest point abated or exposed to dust or debris from abatement. For interior abatement work, a final cleanup must be conducted at an abatement site no sooner than 24 hours after and no later than seven days after completion of active abatement. This final cleanup must, at a minimum, include a high efficiency particle accumulator vacuuming of all surfaces abated or exposed to lead from abatement, followed by wet mopping of these surfaces with trisodium phosphate solution. If a high efficiency particle accumulator vacuum is unavailable, then final cleanup must include two wet moppings with trisodium phosphate solution. The surfaces must be allowed to dry between moppings. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited. For exterior abatement work, final cleanup must be conducted no later than seven days after completion of abatement. If present, rain gutters must be cleaned of any waste.

Subp. 8. **Water abatement.** The owner of a public drinking water fountain that violates part 4620.2100 [Emergency] must disconnect or flush the public fountain daily according to the directions in "Lead in School's Drinking Water" as described in part 4620.2200 [Emergency], subpart 4, until compliance can be demonstrated by retesting.

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4620.2400 [Emergency] COMPLETION OF ABATEMENT.

Subpart 1. **Retesting required.** Abatement is considered successfully completed when retesting demonstrates compliance with part 4620.2100 [Emergency]. Retesting of each surface abated and testing of each surface exposed to abatement must be performed after final cleanup.

Subp. 2. **Paint.** Paint must be tested by collection of one interior dust sample from each of the walls and windows and from the floor in a room in which at least one of these surfaces was abated. Dust must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

Subp. 3. **Soil testing.** Two samples of bare soil, if any is present, must be collected within two feet of the foundation adjacent to each exterior wall that was abated. The soil must be analyzed with methods approved by either the U.S. Environmental Protection Agency or the University of Minnesota Soil Testing and Research Analytical Laboratory as described in part 4620.2200 [Emergency], subpart 2, item D.

Subp. 4. **Dust testing.** One interior dust sample must be collected from each of the walls and windows and from the floor in a room in which at least one of these surfaces was abated and must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

4620.2500 [Emergency] LEAD ABATEMENT CONTRACTORS' DUTIES.

Subpart 1. **Safety measures.** Lead abatement contractors must comply with chapter 5207, and Code of Federal Regulations, title 29, section 1926, as amended through December 31, 1988, regarding safety measures appropriate for construction projects. Contractors must inform employees of the potential slip hazard of walking on plastic, especially wet plastic.

Subp. 2. **Equipment required.** Lead abatement contractors must provide their employees with hooded coveralls, shoe coverings, gloves, and toxic dust respirators on the Certified Equipment List of the National Institute of Occupational Health, U.S. Department of Health and Human Services (Washington, D.C.,

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Government Printing Office, January 1989). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Lead abatement contractors must ensure that the workers properly use these items during work described in part 4620.2300 [Emergency], subparts 2 and 5, and that workers do not wear these items away from the worksite.

Subp. 3. **Prohibited actions.** Lead abatement contractors and their employees must not eat, drink, or smoke during work described in part 4620.2300 [Emergency], subparts 2 and 5, in lead abatement work areas. Visitors must be told by the contractor or employees not to eat, drink, or smoke in the worksite or must be told to leave the worksite.

Subp. 4. **Right-to-know.** Lead abatement contractors must comply with Employee Right-to-Know requirements in parts 5206.0100 to 5206.0900 and Minnesota Statutes, section 182.655.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4620

INCORPORATIONS BY REFERENCE:

Rule Numbers and Material Incorporated:

4620.2200 [Emergency]: "Test Methods for Evaluating Solid Waste, 1A: Laboratory Manual for Physical/Chemical Methods," Chapter 3, Acid Digestion of Sludges and Soils, U.S. Environmental Protection Agency, September 1986; "Description of Methods Used in the Preparation and Analysis of Lead and Fourteen Other Elements in the PCA Soil Lead Study" (St. Paul, October 17, 1986); Industrial Hygiene Technical Manual, Chapter VIII and Appendix A, U.S. Department of Labor, Occupational Safety and Health Administration, May 24, 1984; "Lead in School's Drinking Water," prepared by the Office of Drinking Water, U.S. Environmental Protection Agency Document EPA 570/9-89-001, January 1989.

4620.2500 [Emergency]: Certified Equipment List of the National Institute of Occupational Health, U.S. Department of Health and Human Services (Washington, D.C., Government Printing Office, January 1989).

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Emergency Rule of the Department of Health Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water from Public Fountains

NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

(1) Notice is hereby given that the Department of Health (hereinafter "Department") intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minn. Stat. Sec. 144.856 (Minn. Supp. 1989). The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in Minn. Stat. Sections 14.29 to 14.36.

(2) All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. (3) Any comments must be submitted to:

Douglas Benson
Lead Program Coordinator
Minnesota Department of Health
P.O. Box 9441
Minneapolis, Minnesota 55440
(612) 623-5653

(4) A copy of the proposed rule is attached to this notice and published in the State Register.

(5) A free copy of the proposed emergency rule is available by contacting Douglas Benson at the address and telephone number stated above.

(6) The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed emergency rule as noticed.

(7) Upon adoption of the emergency rule by the Department, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Douglas Benson at the address stated above.

(8) The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the Department gives notice of continuation in accordance with Minn. Stat. Section 14.35.

(9) Adoption of these rules will require an expenditure of public money by local public bodies. Under the requirements of Minn. Stat. Section 14.11 (1988), the Department's estimate of total cost to all local public bodies to implement the rule for the two years immediately following adoption of the rule is $307,000 in each year, provided the rule is made permanent.

DATED: 10/20, 1989

Sr. Mary Madonna Ashton

SISTER MARY MADONNA ASHTON
Commissioner

Department of Health
Division of Environmental Health

Proposed Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains

Rules as Proposed (all new material)

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is not limited to, covering of bare soil that contains more than acceptable levels of lead under part 4620.2100 [Emergency] with sod or soil that contains acceptable parts per million lead under part 4620.2100 [Emergency]. Encapsulation also includes, but is not limited to, seeding and treatment for walkways and parking areas.

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A. X-ray fluorometer measurement of in-place paint; or

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B. A standard tube auger must be used to collect samples from the top two centimeters of soil and dust in each corner and in the center of the randomly selected square.

C. The sample must be passed through a two millimeter standard steel sieve with crushable particles forced through the sieve. Noncrushable objects larger than two millimeters must be discarded from the sample.

D. Soil samples must be analyzed by a method approved by either:

(1) the U.S. Environmental Protection Agency as described in subpart 1, item B; or

(2) the University of Minnesota Soil Testing and Research Analytical Laboratory in "Description of Methods Used in the Preparation and Analysis of Lead and Fourteen Other Elements in the PCA Soil Lead Study" (St. Paul, October 17, 1986). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change.

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change. Interior dust must be analyzed by a method approved by the U.S. Environmental Protection Agency as described in subpart 1, item B.

Subp. 4. **Drinking water.** Drinking water from public fountains must be collected by the method described for drinking fountains in "Lead in School's Drinking Water," prepared by the Office of Drinking Water, U.S. Environmental Protection Agency Document EPA 570/9-89-001, January 1989. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Drinking water must be analyzed by a method approved by the U.S. Environmental Protection Agency in Code of Federal Regulations, chapter 40, part 136, Table 1B "List of Approved Inorganic Test Procedures for Atomic Absorption or Inductively Coupled Plasma" (Washington, D.C., Government Printing Office).

4620.2300 [Emergency] LEAD ABATEMENT METHODS.

Subpart 1. **Paint abatement preparations.** Abatement of lead-based paint must not begin until the requirements in items A to F have been met.

A. An assessment of lead sources within the residence or day care facility must be completed by the board of health or by the property owner.

B. Preparations must be taken to minimize dust generation and dispersal during abatement and to contain any semisolid or liquid wastes generated during abatement. Double six mil or equivalent thickness plastic bags or leak-proof containers must be on-site to collect all debris, dust, and other waste generated by abatement. Waste must be disposed of according to chapter 7045.

C. The occupants of the residence or operators of the day care facility must be notified by the lead abatement contractor of the presence of lead and of the schedule for abatement.

D. For interior paint abatement:

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(1) leaking roofs or plumbing must be repaired;

(2) residents must be relocated and all personal possessions, carpeting, and furniture must be cleaned of lead as needed and relocated;

(3) the rooms to be abated must be sealed from the rest of the residence or day care facility and from the exterior by securely taping six mil or equivalent thickness plastic over windows or doors that are not to be used during abatement;

(4) any fixtures, furnishings, or carpeting that cannot be removed but that are not to be abated must be covered with two layers of six mil or equivalent thickness tarpaulins;

(5) for removal and replacement of exterior doors and windows, tarpaulins must be placed to contain dust and debris on both the interior and exterior sides; and

(6) other preparations due to unusual circumstances such as unique structural components affecting the work area must be taken as needed to prevent dispersal of lead from abatement procedures.

E. For exterior paint abatement:

(1) occupants must be advised to remove all personal property from the lot before abatement and to close all doors, windows, and storm windows during abatement;

(2) tarpaulins in good condition must be:

(a) secured to the building foundation;

(b) overlapped at least 18 inches where the tarpaulins meet and secured to each other; and

(c) laid over the ground at least 15 feet in all horizontal directions from the surface to be abated. An additional five feet of tarpaulin is required for each floor above the first floor to be abated to a maximum requirement of 25 feet.

F. For use of sandblasting, waterblasting, and wet sandblasting:

(1) all windows, doors, and vents must be sealed with tape on the exterior side. The tape must be sufficiently

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adhesive and durable to prevent any material from being forced into the residence or day care facility;

(2) the lead abatement contractor must notify occupants of any residence or operator of any day care facility within 30 feet of the surface to be abated of the schedule for sandblasting, of the need to remove personal property from the lot nearest the surface to be sandblasted, and of the need to keep windows and doors sealed with tape during sandblasting;

(3) tarpaulins must either be:

(a) laid over the ground at least 25 feet in all horizontal directions, with an additional five feet for each floor above the first floor to a maximum requirement of 40 feet; or

(b) vertically extended at least four feet above the surface to be sandblasted with horizontal tarpaulins covering the ground from the foundation to the vertical tarpaulins; and

(4) for wet sandblasting or waterblasting, the edges of horizontal tarpaulins must be raised to contain all liquid wastes.

Subp. 2. Paint abatement. Except as prohibited in subpart 4, paint **that** is in violation of part 4620.2100 [Emergency], subpart 1 or 2, must be abated by the methods in items A and B.

A. Deteriorating paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed with the base material and replaced with new base material that complies with part 4620.2100 [Emergency]; or

(2) removed from the base material by wet or dry scraping or wire brushing; stripped with nontoxic and nonflammable chemical paint strippers either on-site or off-site with removal of chemical strippers from surfaces by scraping and direct placement into waterproof containers; heated with a heat gun that does not exceed 800 degrees Fahrenheit; sandblasted, vacuum blasted, waterblasted, or wet sandblasted. All damaged base material must be patched, sealed, and repainted or covered

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with material that complies with part 4620.2100 [Emergency].

B. Intact paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed by a method described in item A; or

(2) encapsulated with an impervious material that is securely attached to the base material. All seams must be caulked. Examples of impervious material include but are not limited to plywood, sheetrock, tile, fiberglass, linoleum, and vinyl, metal, or wood exterior siding.

Subp. 3. **Prohibited paint abatement methods.** Use of the following methods on paint in violation of part 4620.2100 [Emergency] is prohibited:

A. open flame torching;

B. heating with a heat gun above 800 degrees Fahrenheit;

C. dry sanding manually;

D. dry sanding with a power sander unless a high efficiency particle accumulator is attached;

E. stripping with methylene chloride based stripper;

F. removing any chemical paint stripper with sprayed water;

G. covering with contact paper, ordinary wallpaper, or new paint;

H. using silica sand for sandblasting;

I. sandblasting, waterblasting, and wet sandblasting for interior work; and

J. sandblasting, wet sandblasting, and waterblasting for exterior work when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

Subp. 4. **Soil abatement.** Bare soil and exterior dust that is in violation of part 4620.2100 [Emergency] must be abated either by removal or by covering with sod, asphalt, concrete, or other durable material intended for exterior use. Soil and dust must be disposed of according to chapter 7045. Abatement of soil and exterior dust in violation of part 4620.2100

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[Emergency] must be done after any paint abatement but before interior dust abatement or final cleanup.

Subp. 5. **Dust abatement.** Interior dust that is in violation of part 4620.2100 [Emergency] must be abated by use of either a high efficiency particle accumulator vacuum or washing with trisodium phosphate solution. In either case, waste material must be disposed of according to chapter 7045. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited.

Subp. 6. **Waste removal.** Waste must be removed daily from the worksite so that no visible deposits remain. Waste must be disposed of according to chapter 7045.

Subp. 7. **Final cleanup.** Cleanup must proceed downward from the highest point abated or exposed to dust or debris from abatement. For interior abatement work, a final cleanup must be conducted at an abatement site no sooner than 24 hours after and no later than seven days after completion of active abatement. This final cleanup must, at a minimum, include a high efficiency particle accumulator vacuuming of all surfaces abated or exposed to lead from abatement, followed by wet mopping of these surfaces with trisodium phosphate solution. If a high efficiency particle accumulator vacuum is unavailable, then final cleanup must include two wet moppings with trisodium phosphate solution. The surfaces must be allowed to dry between moppings. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited. For exterior abatement work, final cleanup must be conducted no later than seven days after completion of abatement. If present, rain gutters must be cleaned of any waste.

Subp. 8. **Water abatement.** The owner of a public drinking water fountain that violates part 4620.2100 [Emergency] must disconnect or flush the public fountain daily according to the directions in "Lead in School's Drinking Water" as described in part 4620.2200 [Emergency], subpart 4, until compliance can be demonstrated by retesting.

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4620.2400 [Emergency] COMPLETION OF ABATEMENT.

Subpart 1. **Retesting required.** Abatement is considered successfully completed when retesting demonstrates compliance with part 4620.2100 [Emergency]. Retesting of each surface abated and testing of each surface exposed to abatement must be performed after final cleanup.

Subp. 2. **Paint.** Paint must be tested by collection of one interior dust sample from each of the walls and windows and from the floor in a room in which at least one of these surfaces was abated. Dust must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

Subp. 3. **Soil testing.** Two samples of bare soil, if any is present, must be collected within two feet of the foundation adjacent to each exterior wall that was abated. The soil must be analyzed with methods approved by either the U.S. Environmental Protection Agency or the University of Minnesota Soil Testing and Research Analytical Laboratory as described in part 4620.2200 [Emergency], subpart 2, item D.

Subp. 4. **Dust testing.** One interior dust sample must be collected from each of the walls and windows and from the floor in a room in which at least one of these surfaces was abated and must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

4620.2500 [Emergency] LEAD ABATEMENT CONTRACTORS' DUTIES.

Subpart 1. **Safety measures.** Lead abatement contractors must comply with chapter 5207, and Code of Federal Regulations, title 29, section 1926, as amended through December 31, 1988, regarding safety measures appropriate for construction projects. Contractors must inform employees of the potential slip hazard of walking on plastic, especially wet plastic.

Subp. 2. **Equipment required.** Lead abatement contractors must provide their employees with hooded coveralls, shoe coverings, gloves, and toxic dust respirators on the Certified Equipment List of the National Institute of Occupational Health, U.S. Department of Health and Human Services (Washington, D.C.,

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Government Printing Office, January 1989). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Lead abatement contractors must ensure that the workers properly use these items during work described in part 4620.2300 [Emergency], subparts 2 and 5, and that workers do not wear these items away from the worksite.

Subp. 3. **Prohibited actions.** Lead abatement contractors and their employees must not eat, drink, or smoke during work described in part 4620.2300 [Emergency], subparts 2 and 5, in lead abatement work areas. Visitors must be told by the contractor or employees not to eat, drink, or smoke in the worksite or must be told to leave the worksite.

Subp. 4. **Right-to-know.** Lead abatement contractors must comply with Employee Right-to-Know requirements in parts 5206.0100 to 5206.0900 and Minnesota Statutes, section 182.655.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4620

INCORPORATIONS BY REFERENCE:

Rule Numbers and Material Incorporated:

4620.2200 [Emergency]: "Test Methods for Evaluating Solid Waste, 1A: Laboratory Manual for Physical/Chemical Methods," Chapter 3, Acid Digestion of Sludges and Soils, U.S. Environmental Protection Agency, September 1986; "Description of Methods Used in the Preparation and Analysis of Lead and Fourteen Other Elements in the PCA Soil Lead Study" (St. Paul, October 17, 1986); Industrial Hygiene Technical Manual, Chapter VIII and Appendix A, U.S. Department of Labor, Occupational Safety and Health Administration, May 24, 1984; "Lead in School's Drinking Water," prepared by the Office of Drinking Water, U.S. Environmental Protection Agency Document EPA 570/9-89-001, January 1989.

4620.2500 [Emergency]: Certified Equipment List of the National Institute of Occupational Health, U.S. Department of Health and Human Services (Washington, D.C., Government Printing Office, January 1989).

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Adoption of Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust and Drinking Water from Public Fountains

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Linda McConn being sworn says:

That on the 26th day of October, 1989, at the City of Minneapolis, County of Hennepin, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1.a, and 14.22 or 14.30, that their names be placed on the State Department of Health rulemaking mailing list.

Linda McConn

Linda McConn, Secretary
Environmental Health Division

Subscribed and sworn to before me
this 26 day of October, 1989.

Louise Kaniuk

LOUISE KANIUK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSON EXPIRES FEBRUARY 22, 1991

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

IN THE MATTER OF THE PROPOSED
ADOPTION OF EMERGENCY RULES
RELATING TO ABATEMENT METHODS
AND STANDARDS FOR LEAD IN PAINT,
BARE SOIL, DUST, AND DRINKING
WATER FROM PUBLIC FOUNTAINS

CERTIFICATION

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, that their names be placed on file with, and maintained, by the Minnesota Department of Health for the purpose of receiving notice of rule hearings, is accurate and complete as of

10:45 a.m., this 25 day of October, 1989.

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SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : HEALTH

DATE : 10/26/89

TO : Linda McCann
EH

FROM : Executive Office

PHONE : 5460

SUBJECT : Rulemaking Notice Mailing List

A total of 325 (always make a few extras) copies of notices are needed.

There are approximately 124 interested persons listed, however, because we are required to provide this information to all legislators, an additional 201 copies are needed.

Labels for the 124 will be provided by the Executive Office. Also, 67 copies are to be sent inter-office to Senate, Room B40 State Capitol. Attach a note saying: "Please distribute to all Senators." 134 copies are to be sent to: House, Room 50 State Office Building. Attach a note saying: "Please distribute to all Representatives."

Before the envelopes are sent, sort out all those being sent internally to MDH staff. They can be sent through intra-Department mail, however, the rest of the mailing must be sent through U.S. Mail. Please notify the Shipping Room of this or they will sort the envelopes according to inter-office, inter-Campus, etc., and that is not in compliance with statute.

11/20

State of Minnesota

STATE REGISTER

Department of Administration—Print Communications Division

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MINNESOTA DEPARTMENT OF HEALTH
717 Delaware Street S.E.
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NOV 6 1989



Rules edition
Published every Monday

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Emergency Rules

Proposed Emergency Rules

According to Minn. Stat. of 1984, §§14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules

Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules

Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Health

Division of Environmental Health

Proposed Emergency Rules Relating to Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains

Notice of Intent to Adopt an Emergency Rule

NOTICE IS HEREBY GIVEN that the Department of Health (hereinafter "Department") intends to adopt the above-entitled emergency rule. The statutory authority to adopt the emergency rule is contained in *Minnesota Statutes* Sec. 144.856 (*Minnesota Supplement* 1989). The agency, in adopting the rule, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes* Sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to:

Douglas Benson
Lead Program Coordinator
Minnesota Department of Health
P.O. Box 9441
Minneapolis, Minnesota 55440
(612) 623-5653

A copy of the proposed rule is attached to this notice and published in the *State Register.*

A free copy of the proposed emergency rule is available by contacting Douglas Benson at the address and telephone number stated above.

The proposed emergency rule may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed emergency rule as noticed.

Upon adoption of the emergency rule by the Department, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Douglas Benson at the address stated above.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the Department gives notice of continuation in accordance with *Minnesota Statutes* Section 14.35.

Adoption of these rules will require an expenditure of public money by local public bodies. Under the requirements of *Minnesota Statutes* Section 14.11 (1988), the Department's estimate of total cost to all local public bodies to implement the rule for the two years immediately following adoption of the rule is $307,000 in each year, provided the rule is made permanent.

Dated: 20 October 1989

Sister Mary Madonna Ashton
Commissioner

Rules as Proposed (all new material)

4620.1900 [Emergency] APPLICABILITY.

Parts 4620.1900 to 4620.2500 [Emergency] apply to lead abatement contractors performing lead abatement work ordered by boards of health in cities of the first class.

4620.2000 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4620.1900 to 4620.2500 [Emergency], the following terms have the meanings given them.

Subp. 2. **Abatement.** "Abatement" means the use of the best available technology to remove or encapsulate deteriorating or intact paint or to reduce the availability of lead in soil and house dust, medicine, water, and any other sources considered a lead hazard by the commissioner.

Subp. 3. **Assessment.** "Assessment" means sampling and analysis, as described in part 4620.2200 [Emergency], for sources of lead exposure in a residence or day care facility.

Subp. 4. **Board of health.** "Board of health" means a local administrative authority established under *Minnesota Statutes*, section 145A.03 or 145A.07.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of health.

Subp. 6. **Day care facility.** "Day care facility" means the structure and indoor and outdoor space used by a provider licensed under chapter 9502 to provide day care in a residence.

Subp. 7. **Encapsulation.** "Encapsulation" means the covering or containment of a lead source in soil or paint to prevent harmful exposure to lead. Encapsulation includes, but is not limited to, covering of bare soil that contains more than acceptable levels of lead under part 4620.2100 [Emergency] with sod or soil that contains acceptable parts per million lead under part 4620.2100 [Emergency]. Encapsulation also includes, but is not limited to, seeding and treatment for walkways and parking areas.

Subp. 8. **High efficiency particle accumulator.** "High efficiency particle accumulator" means a vacuum cleaner with a filter capable of removing at least 99.8 percent of airborne particles that are at least three-tenths of a micron in diameter.

Subp. 9. **Intact paint.** "Intact paint" means paint that is not visibly deteriorating and that covers undamaged base material.

Subp. 10. **Lead abatement contractor.** "Lead abatement contractor" means an employer or other person or entity who, for financial gain, directly performs or causes to be performed, through subcontracting or similar delegation, work related to lead hazard abatement or immediate hazard removal.

Subp. 11. **Public fountain.** "Public fountain" means a drinking water fixture connected to a building's water supply system that supplies water to 25 or more people or has 15 or more service connections.

Subp. 12. **Residence.** "Residence" means:

A. every structure used or intended for use as single family habitation, including exterior surfaces and every other structure located within the same lot; or

B. a unit within a structure used or intended for use as multifamily habitation, including common areas located within the same lot but not including other units.

Subp. 13. **Sandblasting.** "Sandblasting" means the use of pressurized airborne abrasive to remove surface coatings.

Subp. 14. **Standard tube auger.** "Standard tube auger" means a hollow 13/16 inch interior diameter soil sampling tool.

Subp. 15. **Vacuum blasting.** "Vacuum blasting" means the use of a vacuum device with sandblasting to collect spent abrasive.

Subp. 16. **Waterblasting.** "Waterblasting" means the use of pressurized water to remove surface coatings.

Subp. 17. **Wet sandblasting.** "Wet sandblasting" means the use of water with sandblasting to remove surface coatings.

Subp. 18. **X-ray fluorometer.** "X-ray fluorometer" means a portable or laboratory instrument that measures lead by gamma ray induced fluorescence of lead atoms.

4620.2100 [Emergency] STANDARDS.

Subpart 1. **Existing paint.** Paint that has been applied to residences or day care facilities before January 1, 1990, must not contain one-half of one percent (5,000 parts per million) lead or more by dry weight or register one milligram per square centimeter or more as measured by X-ray fluorometer unless laboratory analysis shows that the lead content is less than one-half of one percent.

Subp. 2. **New paint.** Paint that is to be applied to residences or day care facilities on or after January 1, 1990, must not contain six one-hundredths of one percent (600 parts per million) of lead or more by dry weight.

Subp. 3. **Bare soil.** Bare soil within the boundaries of a residential lot must not contain five one-hundredths of one percent (500 parts per million) of lead or more by dry weight.

Subp. 4. **Dust.** Interior or exterior residential dust must not contain five one-hundredths of one percent (500 parts per million) of lead or more by dry weight.

Subp. 5. **Drinking water.** Drinking water from public fountains must not contain 50 micrograms per liter or more of lead.

4620.2200 [Emergency] SAMPLING AND ANALYSIS.

Subpart 1. **Paint.** In conducting an assessment, paint on each wall, floor, window, ceiling, and fixture must be tested by either:

A. X-ray fluorometer measurement of in-place paint; or

B. "Test Methods for Evaluating Solid Waste, 1A: Laboratory Manual for Physical/Chemical Methods," Chapter 3, Acid Digestion of Sludges and Soils, U.S. Environmental Protection Agency, September 1986. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. It is not subject to frequent change.

Subp. 2. **Soil.** In conducting an assessment, bare soil and exterior dust must be collected and analyzed by the methods in items A to D.

A. Bare soil areas must be divided into two-foot by two-foot grids from which a square must be randomly selected for sampling.

B. A standard tube auger must be used to collect samples from the top two centimeters of soil and dust in each corner and in the center of the randomly selected square.

C. The sample must be passed through a two millimeter standard steel sieve with crushable particles forced through the sieve. Noncrushable objects larger than two millimeters must be discarded from the sample.

D. Soil samples must be analyzed by a method approved by either:

(1) the U.S. Environmental Protection Agency as described in subpart 1, item B; or

(2) the University of Minnesota Soil Testing and Research Analytical Laboratory in "Description of Methods Used in the Preparation and Analysis of Lead and Fourteen Other Elements in the PCA Soil Lead Study" (St. Paul, October 17, 1986). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change.

Subp. 3. **Dust.** In conducting an assessment, interior dust must be collected by the surface wipe method described in Industrial Hygiene Technical Manual, Chapter VIII and Appendix A, U.S. Department of Labor, Occupational Safety and Health Administration, May 24, 1984. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Interior dust must be analyzed by a method approved by the U.S. Environmental Protection Agency as described in subpart 1, item B.

Subp. 4. **Drinking water.** Drinking water from public fountains must be collected by the method described for drinking fountains in "Lead in School's Drinking Water," prepared by the Office of Drinking Water, U.S. Environmental Protection Agency Document EPA 570/9-89-001, January 1989. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Drinking water must be analyzed by a method approved by the U.S. Environmental Protection Agency in Code of Federal Regulations, chapter 40, part 136, Table 1B "List of Approved Inorganic Test Procedures for Atomic Absorption or Inductively Coupled Plasma" (Washington, D.C., Government Printing Office).

4620.2300 [Emergency] LEAD ABATEMENT METHODS.

Subpart 1. **Paint abatement preparations.** Abatement of lead-based paint must not begin until the requirements in items A to F have been met.

A. An assessment of lead sources within the residence or day care facility must be completed by the board of health or by the property owner.

B. Preparations must be taken to minimize dust generation and dispersal during abatement and to contain any semisolid or liquid wastes generated during abatement. Double six mil or equivalent thickness plastic bags or leak-proof containers must be on-site to collect all debris, dust, and other waste generated by abatement. Waste must be disposed of according to chapter 7045.

C. The occupants of the residence or operators of the day care facility must be notified by the lead abatement contractor of the presence of lead and of the schedule for abatement.

D. For interior paint abatement:

(1) leaking roofs or plumbing must be repaired;

(2) residents must be relocated and all personal possessions, carpeting, and furniture must be cleaned of lead as needed and relocated;

(3) the rooms to be abated must be sealed from the rest of the residence or day care facility and from the exterior by securely taping six mil or equivalent thickness plastic over windows or doors that are not to be used during abatement;

(4) any fixtures, furnishings, or carpeting that cannot be removed but that are not to be abated must be covered with two layers of six mil or equivalent thickness tarpaulins;

(5) for removal and replacement of exterior doors and windows, tarpaulins must be placed to contain dust and debris on both the interior and exterior sides; and

(6) other preparations due to unusual circumstances such as unique structural components affecting the work area must be taken as needed to prevent dispersal of lead from abatement procedures.

E. For exterior paint abatement:

(1) occupants must be advised to remove all personal property from the lot before abatement and to close all doors, windows, and storm windows during abatement;

(2) tarpaulins in good condition must be:

(a) secured to the building foundation;

(b) overlapped at least 18 inches where the tarpaulins meet and secured to each other; and

(c) laid over the ground at least 15 feet in all horizontal directions from the surface to be abated. An additional five feet of tarpaulin is required for each floor above the first floor to be abated to a maximum requirement of 25 feet.

F. For use of sandblasting, waterblasting, and wet sandblasting:

(1) all windows, doors, and vents must be sealed with tape on the exterior side. The tape must be sufficiently adhesive and durable to prevent any material from being forced into the residence or day care facility;

(2) the lead abatement contractor must notify occupants of any residence or operator of any day care facility within 30 feet of the surface to be abated of the schedule for sandblasting, of the need to remove personal property from the lot nearest the surface to be sandblasted, and of the need to keep windows and doors sealed with tape during sandblasting;

(3) tarpaulins must either be:

(a) laid over the ground at least 25 feet in all horizontal directions, with an additional five feet for each floor above the first floor to a maximum requirement of 40 feet; or

(b) vertically extended at least four feet above the surface to be sandblasted with horizontal tarpaulins covering the ground from the foundation to the vertical tarpaulins; and

(4) for wet sandblasting or waterblasting, the edges of horizontal tarpaulins must be raised to contain all liquid wastes.

Subp. 2. **Paint abatement.** Except as prohibited in subpart 4, paint that is in violation of part 4620.2100 [Emergency], subpart 1 or 2, must be abated by the methods in items A and B.

A. Deteriorating paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed with the base material and replaced with new base material that complies with part 4620.2100 [Emergency]; or

(2) removed from the base material by wet or dry scraping or wire brushing; stripped with nontoxic and nonflammable chemical paint strippers either on-site or off-site with removal of chemical strippers from surfaces by scraping and direct placement into waterproof containers; heated with a heat gun that does not exceed 800 degrees Fahrenheit; sandblasted, vacuum blasted, waterblasted, or wet sandblasted. All damaged base material must be patched, sealed, and repainted or covered with material that complies with part 4620.2100 [Emergency].

B. Intact paint in violation of part 4620.2100 [Emergency] must either be:

(1) removed by a method described in item A; or

(2) encapsulated with an impervious material that is securely attached to the base material. All seams must be caulked. Examples of impervious material include but are not limited to plywood, sheetrock, tile, fiberglass, linoleum, and vinyl, metal, or wood exterior siding.

Subp. 3. **Prohibited paint abatement methods.** Use of the following methods on paint in violation of part 4620.2100 [Emergency] is prohibited:

A. open flame torching;

B. heating with a heat gun above 800 degrees Fahrenheit;

C. dry sanding manually;

D. dry sanding with a power sander unless a high efficiency particle accumulator is attached;

E. stripping with methylene chloride based stripper;

F. removing any chemical paint stripper with sprayed water;

G. covering with contact paper, ordinary wallpaper, or new paint;

H. using silica sand for sandblasting;

I. sandblasting, waterblasting, and wet sandblasting for interior work; and

J. sandblasting, wet sandblasting, and waterblasting for exterior work when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

Subp. 4. **Soil abatement.** Bare soil and exterior dust that is in violation of part 4620.2100 [Emergency] must be abated either by removal or by covering with sod, asphalt, concrete, or other durable material intended for exterior use. Soil and dust must be disposed of according to chapter 7045. Abatement of soil and exterior dust in violation of part 4620.2100 [Emergency] must be done after any paint abatement but before interior dust abatement or final cleanup.

Subp. 5. **Dust abatement.** Interior dust that is in violation of part 4620.2100 [Emergency] must be abated by use of either a high efficiency particle accumulator vacuum or washing with trisodium phosphate solution. In either case, waste material must be disposed of according to chapter 7045. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited.

Subp. 6. **Waste removal.** Waste must be removed daily from the worksite so that no visible deposits remain. Waste must be disposed of according to chapter 7045.

Subp. 7. **Final cleanup.** Cleanup must proceed downward from the highest point abated or exposed to dust or debris from abatement. For interior abatement work, a final cleanup must be conducted at an abatement site no sooner than 24 hours after and no later than seven days after completion of active abatement. This final cleanup must, at a minimum, include a high efficiency particle accumulator vacuuming of all surfaces abated or exposed to lead from abatement, followed by wet mopping of these surfaces with trisodium phosphate solution. If a high efficiency particle accumulator vacuum is unavailable, then final cleanup must include two wet moppings with trisodium phosphate solution. The surfaces must be allowed to dry between moppings. Use of a household vacuum cleaner instead of a high efficiency particle accumulator is prohibited. For exterior abatement work, final cleanup must be conducted no later than seven days after completion of abatement. If present, rain gutters must be cleaned of any waste.

Subp. 8. **Water abatement.** The owner of a public drinking water fountain that violates part 4620.2100 [Emergency] must disconnect or flush the public fountain daily according to the directions in "Lead in School's Drinking Water" as described in part 4620.2200 [Emergency], subpart 4, until compliance can be demonstrated by retesting.

4620.2400 [Emergency] COMPLETION OF ABATEMENT.

Subpart 1. **Retesting required.** Abatement is considered successfully completed when retesting demonstrates compliance with part 4620.2100 [Emergency]. Retesting of each surface abated and testing of each surface exposed to abatement must be performed after final cleanup.

Subp. 2. **Paint.** Paint must be tested by collection of one interior dust sample from each of the walls and windows and from the floor in a room in which at least one of these surfaces was abated. Dust must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

Subp. 3. **Soil testing.** Two samples of bare soil, if any is present, must be collected within two feet of the foundation adjacent to each exterior wall that was abated. The soil must be analyzed with methods approved by either the U.S. Environmental Protection Agency or the University of Minnesota Soil Testing and Research Analytical Laboratory as described in part 4620.2200 [Emergency], subpart 2, item D.

Subp. 4. **Dust testing.** One interior dust sample must be collected from each of the walls and windows and from the floor in a room in which at least one of these surfaces was abated and must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

4620.2500 [Emergency] LEAD ABATEMENT CONTRACTORS' DUTIES.

Subpart 1. **Safety measures.** Lead abatement contractors must comply with chapter 5207, and Code of Federal Regulations, title 29, section 1926, as amended through December 31, 1988, regarding safety measures appropriate for construction projects. Contractors must inform employees of the potential slip hazard of walking on plastic, especially wet plastic.

Subp. 2. **Equipment required.** Lead abatement contractors must provide their employees with hooded coveralls, shoe coverings, gloves, and toxic dust respirators on the Certified Equipment List of the National Institute of Occupational Health, U.S. Department of Health and Human Services (Washington, D.C., Government Printing Office, January 1989). This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. Lead abatement contractors must ensure that the workers properly use these items during work described in part 4620.2300 [Emergency], subparts 2 and 5, and that workers do not wear these items away from the worksite.

Subp. 3. **Prohibited actions.** Lead abatement contractors and their employees must not eat, drink, or smoke during work described in part 4620.2300 [Emergency], subparts 2 and 5, in lead abatement work areas. Visitors must be told by the contractor or employees not to eat, drink, or smoke in the worksite or must be told to leave the worksite.

Subp. 4. **Right-to-know.** Lead abatement contractors must comply with Employee Right-to-Know requirements in parts 5206.0100 to 5206.0900 and *Minnesota Statutes*, section 182.655.

Higher Education Coordinating Board

Adopted Emergency Rules Relating to Child Care Grants Program

The rules proposed and published at *State Register*, Volume 14, Number 7, pages 333-336, August 14, 1989 (14 S.R. 336) are adopted as proposed.

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Ethical Practices Board

Advisory Opinion #103 re: Campaign Finance Disclosure

Issued 10-26-89 to Bruce D. Willis. Esq.—SUMMARY—103. The Board is concerned that the provisions of *Minnesota Statutes* § 10A.15, subd. 3b, are overly broad, confusing, and conflict internally with other provisions of the Ethics in Government Act, *Minnesota Statutes* Chapter 10A. Nevertheless, until amended by the Legislature, the cited statute requires that contributions received by a candidate from individuals who participate in any way with a political committee or political fund that is organized primarily to solicit or direct the contributions of its members and to influence the nomination or election of a candidate are attributable to that committee or fund and must count toward the contribution limits of that committee or fund specified in *Minnesota Statutes* § 10A.27.

The full text of the opinion is available upon request from the Ethical Practices Board, 625 North Robert Street, St. Paul, MN 55101-2520; (612) 296-5148.

STATE OF MINNESOTA

MINNESOTA DEPARTMENT OF HEALTH

FINDINGS OF FACT,
CONCLUSIONS AND ORDER
ADOPTING AN
EMERGENCY RULE

In the matter of the Adoption of Emergency Rules of the Minnesota Department of Health Governing Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains, Minnesota Rules, parts 4620.1900 to 4620.2500

(1) Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on November 6, 1989 at 14 S.R.1133 to 1138 and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.30 on October 26, 1989.

(2) All persons were given the opportunity to submit comment on the rules for at least 25 days after the notice of proposed rulemaking.

Based on the comments and evidence in the record before the department, I find the following:

FINDINGS

(3) Part 4620.1900 [Emergency] APPLICABILITY, page 1, lines 9-12

1. The department received several comments pertaining to the applicability and scope of the proposed rules.

J. Evelyn Adams, president of Lead Free Kids, Inc., essentially rewrote the entire proposed rule, but did not provide support for or any rationale for the changes indicated. Ms. Adams' cover letter mentions that she understands the legislative intent of Minnesota Statutes, sections 144.856 and 144.862 to have broader scope and applicability than the proposed rule provides. The numerous changes recommended by Ms. Adams are substantial in quantity and effect and the Commissioner believes they would constitute substantial change even if support were provided to justify the changes indicated. Regarding Ms. Adams' comments on the applicability of the proposed rule, the Commissioner finds that Minnesota Statutes, section 144.862 requires the adoption of permanent rules with toxic lead levels. Minnesota Statutes, section 144.856 requires the adoption of permanent rules which "specify the abatement methods that must be used by contractors." (Emphasis added.) This section of the statute also requires adoption of emergency rules for "abatement methods and standards for paint, bare soil, dust, and drinking water from public fountains for cities of the first class" but is silent on the applicability of the emergency rule. The commissioner believes it is unreasonable for the legislative intent of the emergency rule to be broader than the permanent rule.

2. Dorinda Wider, an attorney with the Legal Aid Society of Minneapolis, comments that the proposed rule is written as though a lead hazard has been identified and abatement ordered and thus allows contractors to do work that has not been ordered in a manner that may create a lead hazard. Ms. Wider states that Minnesota Statutes, section 144.856, refers only to emergency rules for abatement and that a policy decision has apparently been made to narrow the scope of the proposed rule in a manner that is not required by statute.

Similarly, David Lurie, Commissioner of the Minneapolis Department of Health, comments that application of the proposed rule only to contractors may cause many property owners to do abatement work themselves and do it improperly.

The Commissioner finds that the proposed rule is within the authority provided by Minnesota Statutes, section 144.856. Furthermore, the Commissioner finds no requirement in Minnesota Statutes, section 144.854 for any assessment of residences unless a child or pregnant woman is identified as having an elevated blood lead level. Absent a more inclusive requirement for assessment, no mechanism exists to identify situations where

contractors performing renovation work may create a lead hazard. Inclusion of all work done by contractors under the requirements of the proposed rule would be unenforceable, as a practical matter. The Commissioner considers abatement work done by contractors in response to orders issued by the local health board to have the highest priority for purposes of the proposed emergency rules.

3. Vicki Chouinard, an industrial hygienist with Honeywell, commented that drinking water from public fountains does not belong in the proposed emergency rule which addresses residential lead abatement work ordered by a board of health. Sampling and analysis methods for drinking water are addressed in part 4620.2200, subp. 4. Minnesota Statutes, section 144.856, requires adoption of an emergency rule that includes, among other things, abatement methods and standards for "lead in drinking water from public fountains." Although the proposed rule may be an odd place for it, the statute authorizes it.

4. Dr. Scott Clark of the University of Cincinnati questions why "water taps within private residences" are not included within the scope of the rule. He contends that most water lead exposures would occur there. The department notes that Minnesota Statutes, section 144.856 specifically requires and authorizes emergency rules to govern abatement methods and standards for lead in "drinking water from public fountains." Drinking water from the taps in private residences is not covered in this section of the statute. Also, residential drinking water is already governed by U.S. Environmental Protection Agency regulations which are currently under review.

5. Dr. Clark questions whether the rule applies to homes of all children under six years of age or only to those homes where children have blood lead levels which exceed the levels expected for children without housing exposure to lead. He suggests applying the rule to all housing upon sale and otherwise only to houses where children are at risk. Dr. Clark also states that application of the rule should base priority of application on the different risks faced by different children. The Commissioner finds, as required and authorized by statute, that the proposed emergency rule applies to contractors doing abatement work ordered by a board of health as a result of identifying a child with a blood lead level of at least 25 micrograms of lead per deciliter of whole blood. Other regulatory approaches may be scientifically justifiable or reasonable, but the proposed one is statutorily authorized.

6. Dale Zoerb of the Building Restoration Corporation comments that a specific minimum amount of lead, such as 400 square feet, should be present before the requirements of the proposed rule would apply. Mr. Zoerb also comments that quantities of lead that are not significant to the structure or the environment should not be covered even if the concentration of lead exceeds 500 parts per million. Such a method of applicability would be analogous to that used in the asbestos rules and is not unreasonable. However, the Commissioner finds that support for the specific minimum amount was not provided by Mr. Zoerb nor is Minnesota Department of Health staff aware of lead-related rules elsewhere that have such a provision. Mr. Zoerb does not offer support for defining a quantify significant to the structure or the environment.

7. Judy Barr, Health Services Manager of the City of St. Paul, Division of Public Health, stated that her main concern is that the rule establishes criteria in excess of what should be required of homeowners who choose to do their own abatement. This is in error; the proposed emergency rule applies only to contractors doing abatement ordered by boards of health as authorized by Minnesota Statutes, section 144.856.

8. Ms. Barr recommended that the emergency rule have broader application than "cities of the first class" and that the rule also be applied to day care "centers." The Commissioner finds that Minnesota Statutes, section 144.856 only authorizes the emergency rule to apply to cities of the first class. However, the permanent rule will have statewide application, as authorized by Minnesota Statutes, sections 144.56 and 144.862. Day care centers are not usually residential occupancies or in a child or pregnant woman's place of residence and Minnesota Statutes, section 144.854 only authorizes assessments of residences.

Part 4620.2000 [Emergency] DEFINITIONS

Subp. 2. Abatement. page 1, lines 17-21

9. Patrick Reagan, consultant for the Lead Coalition, comments that the definition of "abatement" in subpart 2 should be amended. Mr. Reagan would exclude "removal of intact paint from

its base material" because improper abatement of intact paint will very likely cause leaded paint chips and dust resulting in lead exposure. James Sorbel of the Minnesota Multi Housing Association makes much the same comment. The Commissioner finds the definition in part 4620.2000, subp. 2, is identical to the definition in Minnesota Statutes, section 144.851, subdivision 2. Improper removal of intact lead-based paint will very likely cause lead exposure. However, the proposed rule sets out requirements for proper removal of paint in part 4620.2300, subparts 1, 2, and 3. Proper removal of intact lead-based paint has the advantage of being permanent and final. Encapsulation lacks this.

10. Ms. Wider of the Legal Aid Society of Minneapolis, Inc. comments that the term "lead hazard" is not defined in either Minnesota Statutes, sections 144.851 to 144.862, or in the proposed rule and that this term should be defined because a reader does not easily construe "lead hazard" to mean a violation of the standards in part 4620.2100. The Commissioner finds that in the proposed emergency rule the term "lead hazard" appears only in the definitions of "abatement" and "lead abatement contractor" and these definitions are identical to those in Minnesota Statutes, section 144.851, subparts 2 and 7, respectively. No action or prohibition is based on the term "lead hazard" in the proposed rule. Action is required if an assessment of a residence detects a violation of the standards in part 4620.2100. Therefore, defining "lead hazard" in the proposed rule serves no purpose.

Subp. 3. Abrasive blasting. (New definition)

11. Ms. Chouinard of Honeywell commented in support of the proposed rule's prohibition on using silica sand but stated that use of the term "abrasive blasting" would be clearer and more correct than "sandblasting". The Commissioner agrees with Ms. Chouinard and is modifying the definition of "sandblasting" to use the term "abrasive."

As specified below, the proposed definition of sandblasting will be moved and renumbered as subpart 3. Subparts 3 and 4 will be renumbered and references to "sandblasting" throughout the rule will be changed to "abrasive blasting".

Page 1, (new definition)
Subp. 3. Abrasive blasting. "Abrasive blasting" means the use of pressurized airborne abrasive to remove surface coatings.

Page 1, lines 25 to 30

Subp. ~~3.~~ 4. Assessment. "Assessment" means sampling and analysis, as described in part 4620.2200 [Emergency], for sources of lead exposure in a residence or day care facility.

Subp. ~~4.~~ 5. Board of Health. "Board of Health" means a local administrative authority established under Minnesota Statutes, section 145A.03 to 145A.07.

Page 2, lines 30-31

~~Subp. 13. Sandblasting. "Sandblasting" means the use of pressurized airborne abrasive to remove surface coatings.~~

Page 2, lines 32 to 36 and Page 3, lines 1 to 7

Subp. ~~14.~~ 13. Standard tube auger. "Standard tube auger" means a hollow 13/16 inch interior diameter soil sampling tool.

Subp. ~~15.~~ 14. Vacuum blasting. "Vacuum blasting" means the use of a vacuum device with ~~sandblasting~~ abrasive blasting to collect spent abrasive.

Subp. ~~16.~~ 15. Waterblasting. "Waterblasting" means the use of pressurized water to remove surface coatings.

Subp. ~~17.~~ 16. Wet ~~sandblasting~~ abrasive blasting. "Wet ~~sandblasting~~ abrasive blasting " means the use of water with ~~sandblasting~~ abrasive blasting to remove surface coatings.

Subp. ~~18.~~17. X-ray fluorometer. "X-ray fluorometer" means a portable or laboratory instrument that measures lead by gamma ray induced fluorescence of lead atoms.

Part 4620.2300 , page 6, lines 33-34

F. For use of ~~sandblasting~~ abrasive blasting, waterblasting, and wet ~~sandblasting~~ abrasive blasting;

Page 7, lines 9-15

(2) the lead abatement contractor must notify occupants of any residence or operator of any day care facility within 30 feet of the surface to be abated of the schedule for ~~sandblasting~~ abrasive blasting, of the need to remove personal property from the lot nearest the surface to be ~~sandblasted~~ abrasive blasted, and of the need to keep windows and doors sealed with tape during ~~sandblasting~~ abrasive blasting;

Page 7, lines 14-17

(b) vertically extended at least four feet above the surface to be ~~sandblasted~~ abrasive blasted with horizontal tarpaulins covering the ground from the foundation to the vertical tarpaulins; and

Page 7, lines 25-27

(4) for wet ~~sandblasting~~ abrasive blasting or waterblasting, the edges of horizontal tarpaulins must be raised to contain all liquid wastes.

Page 7, lines 29 to 36 and Page 8, line 1

(2) removed from the base material by wet or dry scraping or wire brushing; stripped with nontoxic and nonflammable chemical paint strippers either on site or off site with removal of chemical strippers from surfaces by scraping and direct placement into water-proof containers; heated with a heat gun that does not exceed 800 degrees Fahrenheit; ~~sandblasted~~ abrasive blasted, vacuum blasted, waterblasted, or wet ~~sandblasted~~ abrasive blasted. All damaged base material must be patched, sealed, and repainted or covered with material that complies with part 4620.2100 [Emergency].

Page 8, lines 24 to 30

H. using silica sand for ~~sandblasting~~ abrasive blasting;

I. ~~sandblasting~~ abrasive blasting, waterblasting, and wet ~~sandblasting~~ abrasive blasting for interior work; and

J. ~~sandblasting~~ abrasive blasting, wet ~~sandblasting~~ abrasive blasting, and waterblasting for exterior work when average wind speed exceeds fifteen miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

Subp. 7. Encapsulation., page 1, lines 33-34 and page 2, lines 1-6

12. Jeff Mooney of the Minneapolis Public Housing Authority questions whether the seeding of bare soil is a realistic, safe or effective method of encapsulation which is an abatement method. Mr. Reagan comments that the definition of "encapsulation" in part 4620.2000, subpart 7 should be amended to require assurance of the permanence of seeding or sodding bare soil or to amend part 4620.2300, subpart 4 to require removal of soil to a depth of one foot. The department finds that the definition of "encapsulation" in part 4620.2000, subpart 7 is identical to that in Minnesota Statutes, section 144.851, subdivision 6 except for a reference to the standards in part 4620.2100.

13. Regarding part 4620.2000, subp.7, Ms. Wider comments that the definition of "encapsulation" includes a nonexclusive listing of types of encapsulation that refer only to soil lead. Since this could cause a reader to believe that encapsulation is appropriate only for soil, Ms. Wider recommends moving this nonexclusive listing to part 4620.2300, subp. 4, which deals with soil abatement. The department finds that part 4620.2000, subp. 7, contains essentially the same definition of "encapsulation" as Minnesota Statutes, sections 144.851, subd. 6. The only difference between the proposed rule and the statute is that needed to refer to the standards in the proposed rule in part 4620.2100.

Subp. 12. Residence. Page 2, lines 23 to 29.

14. Dr. Clark suggests insertion of "dwelling" before "unit" on line 27 to identify the portion of a multifamily structure that is subject to testing and abatement and questions why other units within the multifamily structure are not included. The Commissioner finds that insertion of "dwelling" is a useful clarification, especially since it is a defined term in the Minnesota Uniform Building Code. The Commissioner will make this modification and modifies the definition of "Residence" as follows.

Subp. 12. Residence. "Residence" means:

A. every structure used or intended for use as single family habitation, including exterior surfaces and every other structure located within the same lot; or

B. a dwelling unit within a structure used or intended for use as multifamily habitation, including common areas located within the same lot but not including other dwelling units.

15. Dorinda Wider, an attorney with the Legal Aid Society of Minneapolis, Inc., comments that the definition of residence should include all units within a multifamily structure or at least all units occupied by children under six years of age or by pregnant women. Ms. Wider's experience has shown that units other than the first unit to have an identified person with elevated blood lead will also have sources of lead exposure which should be abated to prevent continuing exposure. Ms. Wider comments that piecemeal abatement within multifamily structures would be prevented by the "very minimal requirement" of assessing other units within the structure. However, Ms. Wider notes that the Minneapolis Health Department has previously rejected this recommendation. The department does not choose to expand the applicability of the rule or the definition of residence at this time to dwelling units other than those in which a specific child or pregnant woman with elevated lead levels resides. The proposed emergency rule is within the authority provided by Minnesota Statutes, section 144.854, subdivision 1, which requires assessment of the residence of a child or pregnant woman with a blood lead level of at least 25 micrograms per deciliter. The other units within a multifamily structure are not the residence of such a child or woman so the statute does not require assessment of those other units. The Commissioner also disagrees that requiring assessment of the other units within a

multifamily unit is a very minimal requirement. The requirements in the proposed rule for the sampling and analysis that constitute assessment are not minor. Other units within a structure are not included for abatement because the highest priority is to address the unit in which a child has been identified with elevated blood lead. Also important is avoiding imposition of very high abatement costs that could result from abating all units within a multifamily structure regardless of whether lead-burdened children are present or not.

Subp. 14. Standard tube auger, page 2, lines 32 and 33.

16. Dr. Clark suggests that the definition of "standard tube auger" include provisions to prevent lead contamination of samples by the auger. The department does not choose to modify this definition because the sampling methods referenced in part 4620.2200, subpart 2, item D, subitems (1) and (2) cover cleaning of equipment between samples thus this procedure need not be included in the definition.

Part 4620.2100 [Emergency] STANDARDS Page 3, lines 8-28

Subp. 3. Bare soil. Page 3, lines 20-22.

17. Dr. Clark questions how "bare" soil is defined and used, since a continuous range exists between soil completely devoid of vegetation and soil covered by a thick mat of grass. Dr. Clark suggests that "bare" soil be defined as "those sites where soil is visible through the grass." The department cannot accept this clarifying language because the suggested clarification does not solve the problem of defining how bare is bare. How visible soil has to be, or under what conditions, is a problem. Long grass may completely obscure the soil beneath it but be no thicker (and no more protective) than short grass that does not completely obscure the underlying soil.

18. Mr. Lurie comments that a soil lead standard set at 500 parts per million seems inconsistent with an existing paint standard (subpart 1) of 5,000 parts per million. The department finds that this apparent inconsistency reflects the greater difficulty in properly abating lead-based paint compared to soil abatement. Also there has been no lead concentration between 5,000 parts per million in existing paint and 600 parts per million in new paint that has been supported as a standard.

19. Dr. Lydia Caros of the Indian Health Board of Minneapolis comments that the soil standard of 500 parts per million is unsupported by scientific or medical data. The Commissioner finds that the Centers for Disease Control has stated that "lead in soil and dust appears to be responsible for blood lead levels in children increasing above background levels when the concentration in the soil or dust exceeds 500-1,000 ppm (parts per million)." (Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control - January 1985, page 7.) The American Academy of Pediatrics has stated that "Each increase of 100 ppm (parts per million) in the lead content of surface soil above a level of 500 ppm is associated with a mean increase in children's whole blood lead levels of 1 to 2 ug/dl." (American Academy of Pediatrics, Pediatrics, Vol. 79, No. 3, pp. 457 - 465. March 1987.) The Region V (Chicago) office of the United States Environmental Protection Agency uses an action level of 500 parts per million for industrial and commercial site cleanup. The Agency for Toxic Substance Disease Registry uses 500 parts per million for lead-related health risk assessments.

20. Ms. Wider of the Legal Aid Society of Minneapolis, Inc. comments that the term "lead hazard" is not defined in either Minnesota Statutes, sections 144.851 to 144.862, or in the proposed rule and that this term should be defined because a reader does not easily construe "lead hazard" to mean a violation of the standards in part 4620.2100. The Commissioner finds that in the proposed emergency rule the term "lead hazard" appears only in the definitions of "abatement" and "lead abatement contractor" and these definitions are identical to those in Minnesota Statutes, section 144.851, subparts 2 and 7, respectively. No action or prohibition is based on the term "lead hazard" in the proposed rule. Action is required if an assessment of a residence detects a violation of the standards in part 4620.2100. Therefore, defining "lead hazard" in the proposed rule serves no purpose.

Subp. 4. Dust. Page 3, lines 23-25.

21. The Minneapolis Public Housing Authority questions how exterior dust is differentiated from soil. The department notes that dust is a smaller particle than soil, but exterior dust is considered part of the soil. The two are not separated for sampling and analysis purposes.

22. Mr. Reagan comments that the soil and dust standards in part 4620.2100, subparts 3 and 4 are too high because of the lack of a margin of safety for lead in the general population, the rapid increase in blood lead levels that can be caused by soil and dust lead, the contribution of lead to some chronic diseases and reproductive impairment, the large doses of soil ingested by children with pica, and the lack of a demonstrated safe blood lead level. Mr. Reagan also recommends that eight to twelve samples be taken on each residential block and abatement ordered for the entire block when 25 percent of the samples exceed the standard. The Commissioner finds that Mr. Reagan does not provide specific support for a standard of 100 parts per million. The recommended block-wide sampling and abatement approach is unusual and would require further review by the Commissioner and affected parties. The Commissioner declines to make the recommended change for the proposed emergency rule at this time but notes that the permanent rule is to be developed and will be adopted jointly by the Commissioner and the Minnesota Pollution Control Agency. Both agencies may want to further consider this recommendation during permanent rule development.

Subp. 5. Drinking water.

23. Mr. Reagan comments that the drinking water standard in part 4620.2100, subpart 5 should be 20 micrograms per liter rather than the proposed 50 micrograms per liter in the proposed rule. As Mr. Reagan notes, the Minnesota Department of Health has a lead in water guideline of 20 micrograms per liter. However, the existing enforceable standard is 50 micrograms per liter. The U.S. Environmental Protection Agency is currently reviewing the federal standard of 50 micrograms per liter. The Commissioner will await the federal action before considering revision of this standard.

Part 4620.2200 [Emergency] SAMPLING AND ANALYSIS

24. Ms. Barr of the St. Paul Public Health Department questioned whether local governments can absorb the cost of the testing and retesting required and suggest that the investigating Environmental Health Specialist be given discretion as to how many samples be taken. Dr. Caros makes much the same comment, specifically for paint and dust. The Commissioner finds that

testing prior to abatement is necessary to define the extent of lead contamination. Retesting is necessary to demonstrate successful abatement. The cost of testing and retesting is unavoidable. As to the suggested discretion for the number of samples collected, discretion cannot be unlimited in state rules. Ms. Barr of St. Paul Public Health does not provide a suggestion for limits.

25. The comment by Ms. Barr that $307,000 " seems extremely low to remove all lead sources from homes to which these rules apply" appears to misunderstand what costs the $307,000 covers. As required by statute, an estimate was made of the cost to local governments to conduct their required activities, which included inspection of homes of children with elevated blood lead levels and testing and retesting of lead sources. The cost of the actual abatement work as performed by a contractor is not a responsibility of local government but rather of property owners and is therefore not included in the $307,000 estimate.

26. Mr. Lurie comments that the cost of the sampling required in the proposed emergency rule would exceed $95,000 per year and also require two full-time staff persons and equipment costing another $42,000. Mr. Lurie states that this is excessive. Mr. Lurie states that the Minneapolis Health Department paid $19,600 for sampling costs in 1988. The Commissioner finds that Mr. Lurie's cost estimate is based on graphite furnace spectrophotometry analysis rather than on x-ray fluorometer analysis in the field. An x-ray fluorometer will perform any number of analyses over the 12 to 14 month life of the radioactive source. The device costs about $8,000 to purchase and about $1,500 annually to replace the radioactive source. The Minnesota Pollution Control Agency currently has three x-ray fluorometers which are on loan to boards of health, including one at the Minneapolis Health Department.

27. Mr. Zoerb recommends redefining sampling and analysis if required of contractors and assessing the cost to property owners. The department notes that the sampling and analysis specified in part 4620.2200 are not required of contractors but rather of local boards of health who are not, however, restricted by the proposed emergency rule or statute from recovering assessment and sampling costs from property owners. To further clarify responsibility for assessment and sampling the department proposes to modify part 4620.2200 by adding a new subpart 1 at lines 30 of page 3. The proposed subparts in this part would be renumbered 2 to 5.

Subpart 1. General. As required by Minnesota Statutes, section 144.854, subdivision 1, boards of health must assess the residence of a child or pregnant woman who has a blood lead level of at least 25 micrograms per deciliter.

28. Ms. Wider comments that window wells are particularly apt to contain lead dust and paint chips and that the window wells should be brought to the attention of the resident, contractor and inspector. Mr. Mooney recommends that the sampling procedure for windows specify which part of the window (sash, sill, jamb) is to be sampled. The commissioner agrees that references to windows should be clarified as to which parts of the window are to be sampled and analyzed. Clear glass is not a source of lead ingestion so sampling glass in not appropriate. The window well and the sill are the most likely sources of lead exposure. The department thus modifies the following parts:

4620.2200 [Emergency] SAMPLING AND ANALYSIS (Page 3, lines 30-32)

Subpart 1. Paint. In conducting an assessment, paint on each wall, floor, window well, window sill, ceiling, and fixture must be tested by either:

4620.2400 [Emergency] COMPLETION OF ABATEMENT (Page 10, lines 7-11)

Subp. 2. Paint. Paint must be tested by collection of one interior dust sample from each of the walls and ~~windows~~ window wells and sills and from the floor in a room in which at least one of these surfaces was abated. Dust must be analyzed by an approved method as described in part 4620.00 [Emergency[, subpart 1, item B.

(Page 10, lines 19-23)

Subp. 4. Dust testing. One interior dust sample must be collected from each of the walls and ~~windows~~ window wells and sills and from the floor in a room in which at least one of these surfaces was abated and must be analyzed by an approved method as described in part 4620.2200 [Emergency], subpart 1, item B.

30. Mr. Mooney comments that the term "fixture" in subpart 1 (page 3, line 31) should be defined. The department notes that the term is not defined in the Minnesota Uniform Building Code, but that for purposes of the rule it is understood to mean items that are permanently attached to the structure like radiators, built-in furniture and light fixtures. To clarify intent the department proposes to modify part 4620.2200 [Emergency], subpart 1 as follows:

> Subpart 1. Paint. In conducting an assessment, paint on each wall, floor, window, ceiling, and fixture <u>permanently attached to the structure such as a radiator, built-in furniture and light fixture,</u> must be tested by either:

31. Mr. Mooney questions whether exterior window area wells have been shown to be unsafe and in need of abatement. The department notes that lead-based paint was commonly used on exterior surfaces due to the weather resistant qualities of the lead pigments. Exterior paint does eventually deteriorate, regardless of location, and therefore will contaminate the soil.

32. Mr. Reagan notes that although the sampling techniques will accomplish the needed tasks, the soil sampling procedure in subpart 2 is quite cumbersome and recommends that surface scrapes of the top two centimeters be allowed as an alternative method. The Commissioner cannot accept this recommendation for enforcement purposes because a precise, standardized procedure is desirable to avoid legal challenge of the results. The Commissioner declines to make the change for the emergency rule but notes that the permanent rule will be adopted jointly by the Commissioners of Health and Pollution Control and that this method of sampling and a verifiable enforcement means can be considered further.

33. Mr. Mooney inquires whether the Minnesota Department of Health staff have information regarding an alternative to the x-ray fluorometer which is prescribed in subpart 1, item A. The department notes that improvements to the x-ray fluorometer to increase sensitivity have reportedly been developed, but the department has not heard of a new alternative device or method.

34. Dr. Clark comments that the soil sampling costs that result

from subpart 2 should be substantially less than the abatement costs or the effect of the emergency rule will be to order covering of all bare soil regardless of lead content. The department finds that covering bare soil areas will very likely be less expensive than soil sampling and analysis costs. The end result will likely be the covering of all bare soil. This result is more desirable than inadequate soil sampling that might miss lead-contaminated soil and thereby allow continued exposure.

35. Mr. Mooney questions how exterior dust is different from soil. The department notes that dust is a smaller particle than soil but exterior dust is considered part of the soil. The two are not separated for sampling and analysis purposes.

36. Professor Robert Munter of the University of Minnesota Department of Soil Science suggests that the number of soil samples taken should depend on the size and shape of the bare soil area, e.g., bare soil along a foundation may be long and narrow whereas bare soil in mid yard may be irregular and highly variable in shape. The Commissioner finds that bare soil around the foundation of a residence that has lead-based paint chips falling onto it will be detected because the required home assessment includes exterior paint. If the exterior paint is abated, then retesting of surfaces exposed to dust and debris from abatement is required. Since Minnesota Pollution Control Agency data show that foundation soil has the highest lead contamination, the proposed rule will adequately address the soil most likely to violate standards. Soil sampling is costly enough that another commentor (Dr. Clark) believes that soil will simply be covered rather than tested to see whether it must be covered. The Commissioner believes that this is entirely possible and not contrary to the purpose of this proposed rule.

37. With respect to subpart 2, Professor Munter suggests that the person taking samples be required to make rough sketches of the sampled area with notes on approximate distances from curbside and the foundation of the residence. The Commissioner finds that as a practical matter this information has to be collected by a board of health to issue a legal order for soil lead abatement work. In fact, boards of health that collect samples for any regulatory purpose must record where the samples

were collected or any administrative order based on the samples may be vacated if there is a challenge to the order by an affected party. The Commissioner finds that including the recommended requirement is unnecessary although it is arguably only a clarification of what happens in practice.

38. Professor Munter also suggests, with respect to subpart 2, that soil be collected by either a standard tube auger or tulip bulb sampler or standard size putty knife. The Commissioner finds that the sampling methods should be as standardized as possible and should ensure a consistent sample which argues against using tulip bulb samplers or putty knives.

39. Professor Munter comments that subpart 2, item C should be split into items C and D. The Commissioner finds this repetitive and finds no explanation why this is desirable.

40. Professor Munter recommends that a new item E be added to subpart 2 to state that the soil analysis method of the University of Minnesota specified in subitem (2) differs from that specified by the EPA in subitem (1). The Commissioner finds that a laboratory that is capable of using either analysis method will understand that the methods are different without further explanation in rule.

41. Dr. Clark notes that other research, including some by the United States Environmental Protection Agency, uses 2.5 centimeters as the depth for soil sampling and suggests that this be used rather than the two centimeters proposed in subpart 2, item B so that state and federal results can be compared. The Commissioner finds that the proposed sampling method is reasonable because it is the method and depth used by the Minnesota Pollution Control Agency in its soil lead survey of 1986. Comparability of data within Minnesota is more useful than outside of Minnesota.

42. Dr. Clark suggests using the surface dust sampling method of Que Hee and the U. S. Department of Housing and Urban Development (HUD) because this method has been correlated with children's blood lead. The Commissioner finds that the method of Que Hee has not yet become an established, accepted method for regulatory purposes. There is some argument that a lead-weight-per-surface-area standard is more appropriate than a lead-weight-per-sample-weight standard but the latter is more commonly used for regulations.

Part 4620.2300 [Emergency] LEAD ABATEMENT METHODS

43. Dr. Caros comments that protocols should be developed for abatement methods that are practical, cost effective, and safe. The Commissioner agrees with this comment, but notes that no alternative language or protocols were proposed to amend the proposed emergency rules.

44. Mr. Zoerb states that disposal procedures should be included in the proposed emergency rule. Mr. Zoerb also comments that disposal methods for waste water from waterblasting or wet abrasion blasting should be included in the proposed rule. The Commissioner finds that the proposed emergency rule refers in part 4620.2300, subparts 1, 5 and 6 to existing waste disposal regulations of the Minnesota Pollution Control Agency.

45. Regarding part 4620.2300, subpart 1, item A, Ms. Wider comments that property owners are unlikely to have the resources to do an assessment and recommends that the phrase "or by the property owner" be deleted. The Commissioner agrees with Ms. Wider and furthermore notes that Minnesota Statutes, section 144.854 requires assessments by boards of health and not by property owners. The department thus modifies part 4620.2300, subpart 1, item A, (Page 5, lines 21-23) as follows:

> A. An assessment of lead sources within the residence or day care facility has been completed by the board of health ~~or by the property owner~~.

46. Regarding part 4620.2300, subpart 1, item C, Ms. Wider recommends that notification of residents of the schedule for abatement should come not only from the contractor but also from the owner of rental property. Mr. Mooney questions whether the onus of notifying occupants of a residence and operators of a day care facility should be on the property owner rather than on the contractor. The Commissioner finds that while some benefit may be derived from dual notification, it is also possible that the owner and contractor may erroneously rely on the other to notify residents. The contractor has the most control over his actual appearance at the residence, regardless of agreements with the owner. The Commissioner believes that holding the contractor responsible for this notification is the best approach.

47. Dr. Caros comments about part 4620.2300, subpart 1 that although safety is all important, flexibility should be allowed to tailor dust control preparations to the situation. While the Commissioner agrees that flexibility is important, the Commissioner finds that Dr. Caros does not provide alternative language that would allow flexibility without making the proposed rule too vague or giving too much discretion to either the property owner or the board of health that orders abatement.

48. Regarding part 4620.2300, subpart 1, items B and D, subitem (6), Mr. Mooney states that preparations should be made rather than taken. The Commissioner finds that this grammatical modification is correct and proposes the following changes to subpart 1, item B and item D, subitem (6):

> B. Preparations have been ~~taken~~ made to minimize dust generation and dispersal during abatement and to contain any semisolid or liquid wastes generated during abatement.
>
> D. (6) other preparations due to unusual circumstances such as unique structural components affecting the work area must be ~~taken~~ made as needed to prevent dispersal of lead from abatement procedures.

49. Regarding part 4620.2300, subpart 1, item D, Mr. Reagan recommends that preparations for abatement of lead paint on windows include a requirement that windows be made water-tight prior to abatement. The Commissioner finds that such a modification would be consistent with the requirement in part 4620.2300, subpart 1, item D, subitem (1), to repair leaking roofs or plumbing. Prevention of water damage is a necessary requirement because it prevents the rapid deterioration of abated surfaces, particularly for encapsulated, intact lead-based paint. However, the Commissioner finds that adding the recommended requirement for water-tight windows at this time, while appropriate, would constitute substantial change. Therefore, the Commissioner will make this change in proposing the permanent rule, rather than in the proposed emergency rule.

50. Regarding part 4620.2300, subpart 1, items E and F, Dr.

Clark questions whether adjacent property owners are responsible for removing items from their lots, taping and sealing doors, etc. on their property as a result of abatement work that is not on their property. The Commissioner finds that the rule does not require any action beyond notification by the contractor.

51. Mr. Lurie comments that sandblasting and waterblasting (subpart 1, item F) should both be prohibited methods outdoors as well are indoors because containment of debris is impossible for either method. Regarding part 4620.2300, subpart 1, item F, subitem (3), (b), Mr. Reagan comments that the requirement to extend vertical tarpaulins four feet above the surface to be abated by blasting methods is insufficient and recommends that dry sandblasting be entirely prohibited and that wet sandblasting and waterblasting be allowed only with complete containment of the work area. The Commissioner disagrees that abrasive blasting or waterblasting should be entirely prohibited and believes that the containment requirements for exterior blasting methods are adequate.

52. Bruce Neal, owner of Sandblasting Services, comments that part 4620.2300, subpart 1, item F, of the proposed rule will effectively prohibit sandblasting as a method of paint removal because of the cost of inspections, soil tests, alternate aggregate requirements, and dust containment standards. The Commissioner finds that Mr. Neal does not suggest an alternative to the proposed rule. Blasting methods impart considerable energy to the target material and containment is necessary to prevent lead dust and debris from contaminating a large area and exposing people to lead.

53. Regarding part 4620.2300, subpart 2, item A, Mr. Mooney comments that dry scraping and wire brushing increase the potential for airborne lead dust and should be discouraged. The Commissioner finds that all the methods for removing paint from its base material have potential for causing airborne dust. All of the methods have advantages and disadvantages. The containment of waste and the subsequent cleanup is critical for any of the methods.

54. Mr. Reagan comments that part 4620.2300, subpart 2, item A, subitem (2) allows interior sandblasting and that this should not

be allowed. The Commissioner finds that interior sandblasting is specifically prohibited in part 4620.2300, subpart 3, item I. The Commissioner proposes to clarify part 4620.2300, subpart 2, item A, subitem (2), to specify exterior sandblasting with the following modification:

> (2) removed from the base material by wet or dry scraping or wire brushing; stripped with nontoxic and nonflammable chemical paint strippers either on site or offsite with removal of chemical strippers from surfaces by scraping and direct placement into water-proof containers; heated with a heat gun that does not exceed 800 degrees Fahrenheit; exterior sandblasted, vacuum blasted, exterior waterblasted, or exterior wet sandblasted.

55. Mr. Reagan comments that part 4620.2300, subpart 2, item B, allows removal of intact paint and recommends that removal of intact paint from the base material be prohibited except for chewable surfaces like window wills. The Commissioner finds that the removal of intact paint is possible and has the advantage of being a permanent solution. Therefore, the Commissioner declines to make this change.

56. Ms. Barr expresses concern that removal of intact paint is cost prohibitive and may add additional lead to the home environment. The Commissioner finds that the proposed emergency rule allows intact paint to be removed from the base material, removed with the base material, or encapsulated. Abatement of intact paint can properly be done by any of these methods and the property owner can decide which is appropriate for the individual property.

57. Mr. Mooney recommends elaboration on the methods of installation in part 4620.2300, subpart 2, item B, subitem (2), such as specifying that encapsulants must be glued into position and on the term "fiberglass" as an example of an impervious material. The Commissioner finds that the proposed emergency rule requires that encapsulants be securely fastened to the base material and all seams caulked. This seems sufficient. The need to elaborate on "fiberglass" is unclear.

58. Regarding part 4620.2300, subpart 3, item J, Dr. Clark comments that an average wind speed of 15 miles per hour seems excessive for requiring vertical tarpaulins for exterior blasting methods. The Commissions finds that a better or alternative number is not offered in this comment.

59. Mr. Zoerb comments on part 4620.2300, subpart 3 that

prohibiting a method should never be part of any law because proper precautions can be taken. The department finds that waterblasting, abrasive blasting and wet abrasive blasting are prohibited for interior use in part 4620.2300, subpart 3. Vacuum blasting is allowed for interior use. In effect, the proper precaution for interior blasting is vacuum containment of waste as it is generated.

60. Mr. Reagan comments that part 4620.2300, subpart 4 requires that soils, interior dusts, and paint that is removed comply with the provisions of Minnesota Rules, Chapter 7045 which he considers unnecessary for soils and dusts. Mr. Reagan also states that lead paint should be disposed as construction debris. The department finds that Minnesota Rules, Chapter 7045 contains standards that determine whether its disposal requirements apply to a given waste. Wastes that do not exceed those standards will not have to meet the disposal requirements. If the provisions of Chapter 7045 are too stringent, then the proper course is to amend it rather than changing the proposed rule in a manner that conflicts with Chapter 7045. The proper disposal of lead paint depends on the method used to abate it. If the paint has been removed with the base material, then disposal as demolition debris may be appropriate. However, if caustic chemical strippers are used to remove the lead paint, then disposal as hazardous waste will be necessary.

61. Regarding part 4620.2300, subpart 4, Dr. Clark states that covering bare soil with sod "seems like a rather weak abatement effort" since the grass may die. He asks to what depth soil will be removed. The department finds that grass inhibits resuspension of soil particles by wind action or foot traffic and is a cost-effective abatement method. If grass cover cannot be maintained in a particular location, then soil removal or covering with a more durable material may be needed. Minnesota Statutes, section 144.851, subdivision 6 specifically includes seeding and covering of bare soil with sod to be acceptable encapsulation methods. If soil is removed, the resulting new bare soil surface will have to comply with the standard in part 4600.2100, subpart 3.

62. Dr. Clark states that exterior dust on paved or impervious surfaces should also be abated to prevent it from being tracked into the house. The Commissioner finds that Dr. Clark does not provide specific language to accomplish this. The Commissioner notes, however, that subpart 6 does provide for the daily removal of visible deposits from the worksite.

63. Regarding part 4620.2300, subpart 6, Mr. Lurie comments that daily removal of waste is impractical. The Commissioner finds

that daily removal of visible waste from the worksite is required in part 4620.2300, subpart 6 to prevent lead wastes from being dispersed and to ensure that final cleanup can be done in a timely manner. The Commissioner believes daily removal is practical.

64. Dr. Clark expresses concern that allowing up to seven days for exterior cleanup (part 4620.2300, subpart 7) allows too much time for the random dispersal of the waste and exposure to neighbors. The Commissioner finds that there is a conflict between allowing a reasonable time for cleanup and preventing any possible dispersal of waste by immediate cleanup. The Commissioner finds seven days to be a reasonable balance between the conflicting concerns.

Part 4620.2400 [Emergency] COMPLETION OF ABATEMENT.

65. Dr. Caros comments on part 4620.2400, subparts 1, 2, and 4 that retesting of every wall, window and floor after abatement is unwarranted and that only the abated area should be retested. The Commissioner finds that part 4620.2400, subpart 1 requires retesting of each surface abated and of each surface exposed to abatement. Retesting is not required of any surface not abated or exposed to waste material from abatement. Minnesota Statutes, section 144.854, subpart 7 requires retesting of paint, soil and dust previously in violation to assure that the violation no longer exists.

66. Ms. Barr comments that testing of new paint after abatement is not practical but the rule implies that all paint surfaces should be submitted for analysis. The Commissioner finds retesting of paint surfaces is required by dust wipe, not by paint removal and analysis (part 4620.2400, subpart 2).

67. Mr. Zoerb comments that the responsible agency should sign-off on abatement completion on the request of the property owner or contractor. The Commissioner finds that the board of health that ordered the abatement is the responsible agency and is free to do this.

68. Regarding part 4620.2400, subparts 1 and 2, Ms. Wider comments that an x-ray fluorometer is the only way to verify compliance of encapsulated intact paint. The Commissioner finds that an x-ray fluorometer will detect intact lead-based paint through encapsulating materials. This device measures lead by directing gamma rays through the material which causes the lead atoms to emit x-rays that the device detects. Both gamma rays and x-rays have considerable penetrating power. The Commissioner finds this commentor to be in error.

69. Mr. Reagan supports part 4620.2400 but suggests that sampling data for soil, dust, paint and water be collected by either the Minnesota Department of Health or the Minnesota Pollution Control Agency, that the data include the addresses where the data was collected, and that the data be made available to the public on request. The Commissioner finds that the collection of such data would be useful to further define the extent of lead sources but is not necessary to meet the purpose of the lead abatement issues addressed in the proposed emergency rule. This data will be collected by boards of health and would be public information, except for addresses which may be private or confidential data under the Data Practices Act.

Part 4620.2500 [Emergency] LEAD ABATEMENT CONTRACTORS' DUTIES

70. Regarding part 4620.2500, subpart 1, Ms. Wider comments that the safety requirement of 29 C.F.R. 1926, as amended through December 31, 1988, is subject to substantive change as well as recodification which could render subpart 1 weaker or meaningless and therefore the proposed rule should provide for possible amendment of the federal code. The Commissioner finds that any reference to the Code of Federal Regulations may have this problem. The commentor does not suggest how to amend the language. The Commissioner will monitor the relevant C.F.R. and respond as appropriate to any changes.

71. Mr. Reagan supports part 4620.2500 regarding contractors' duties but notes that the OSHA lead rule does not protect construction workers exposed to lead. He recommends that the proposed emergency rule adopt the OSHA lead rules by reference. The Commissioner finds that part 4620.2500, subparts 2 and 3 require equipment and prohibit certain actions at the worksite which will be protective of the workers. The proper place for adopting or amending the OSHA lead standard for construction workers is the OSHA rules themselves.

GENERAL COMMENTS

72. Dr. Caros comments that city health departments need financial assistance from the State in planning, training, and program design. The Commissioner finds that Minnesota Statutes, section 144.861 requires the Commissioner of the State Planning Agency to convene a task force to evaluate the costs of providing assistance to property owners and local communities required to do abatement and of providing subsidized programs to assist them.

73. The Commissioner notes that the definition of "Commissioner" in part 4620.2000, subpart 5, is not necessary because the term

is not used or repeated within the proposed rule parts. The Commissioner therefore proposes to modify the rule by deleting the definition as follows from page 1, lines 28-29:

~~Subp. 5. Commissioner. "Commissioner" means the commissioner of health.~~

74. The Commissioner finds that there was a technical reference error in the emergency rule as proposed. Part 4620.2300, subpart 2, (Page 7, line 22) should reference to subpart 3. This part will be modified as follows:

Subp. 2. Paint abatement. Except as prohibited in subpart ~~4~~ 3, paint that is in violation of part 4620.2100 [Emergency], subpart 1 or 2, must be abated by the methods in items A and B.

75. Because of the subpart renumbering in part 4620.2200, references in part 4620.2400, subparts 2, 3, and 4 must be modified. The following technical changes are necessary to make references in subparts 2, 3 and 4 of Part 4620.2400 consistent with the subpart numbering changes in part 4620.2200.

Page 10, line 11
described in part 4620.2200 [Emergency], subpart ~~1, item B~~ 4

Page 10, line 18
part 4620.2200 [Emergency], subpart ~~2, item D~~ 3.

Page 10, lines 23
4620.2200 [Emergency], ~~subpart 1, item B~~ 4 .

76. The Commissioner finds that the comments received from Prathere Seeger Doolittle & Farmer and from Bobby G. Wixson were received after the December 1, 1989, 4:30 p.m. deadline. The findings and conclusions therefore do not address the comments made by these parties.

CONCLUSIONS

I hereby conclude that:

1. The Commissioner has statutory authority to promulgate these rules.

2. Proper notice of the Department's intent to adopt the proposed emergency rules was given as required by law, and all interested persons were afforded an opportunity to submit data and views on the proposed emergency rules.

3. All modifications made to the proposed rules are not substantial changes.

4. The rules, as modified, are necessary and reasonable.

5. Any duplication in these rules of language contained in Minnesota Statutes is crucial to the ability of persons affected by the rules to comprehend their meaning and effect.

6. The Department has complied with all applicable provisions of law and rule in the promulgation of these rules.

7. If any finding or part of a finding, above, is properly characterized as a conclusion, it is adopted as a conclusion.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Abatement Methods and Standards for Lead in Paint, Bare Soil, Dust, and Drinking Water From Public Fountains, Minnesota Rules, parts 4620.1900 to 4620.2500 [Emergency] (as modified) is adopted this 14 day of Dec. , 1989 pursuant to authority vested in me by Minnesota Statutes, section 144.856.

S. Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner of Health

In the Matter of the Proposed Adoption of the Emergency Rule of the Minnesota Department of Health Governing Abatement Methods for Lead in Paint, Bare Soil, Dust and Drinking Water From Public Fountains, Minnesota Rules, parts 4620.1900 to 4620.2500 [Emergency]

AFFIDAVIT OF MAILING THE NOTICE SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Susan D Reese, being sworn, says:

That on the 14 day of December, 1989, in the City of Minneapolis, County of Hennepin, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Susan D Reese
(name)

Office Services Supervisor
(title)

Subscribed and sworn to before me this 14 day of December, 1989

Louise Kanuk

LOUISE KANUK
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES FEBRUARY 22, 1994

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of the Emergency Rule of the Minnesota Department of Health Governing Abatement Methods for Lead in Paint, Bare Soil, Dust and Drinking Water From Public Fountains, Minnesota Rules, parts 4620.1900 to 4620.2500 [Emergency]

NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted has been submitted to the Office of the Attorney on the date of this notice, December 14, 1989, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the attorney general.

The proposed emergency rule which was published in the State Register and made available to the public on November 6, 1989, has been modified. A free copy of the emergency rule as modified as well as the Findings of Fact, Conclusions, and Order explaining the amendments and adopting the rule is available upon request from Douglas Benson, (612) 623-5663.

The rule must be approved or disapproved by the Attorney General on the tenth working day following the date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.100. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Capitol Office Building
Patricia Nolte, legal assistant
525 Park Street
St. Paul, Minnesota 55155
Telephone: (612) 296-9715

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Douglas Benson
Environmental Health Division
Minnesota Department of Health
717 S. E. Delaware Street P.O. Box 9441
Minneapolis, Minn. 55440

Jane Nelson

Jane Nelson, rules coordinator
Environmental Health Division

Date: December 14, 1989

The following persons requested and were mailed the attached notice:

Patrick L. Reagan, Consultant
The Lead Coalition
1051 South McKnight Road
St. Paul, Minnesota 55119

William D. Spaulding
Minnesota Project Officer
Drinking Water Section
United States Environmental Protection Agency
Region 5
230 South Dearborn Street
Chicago, Illinois 60604

Dorinda L. Wider
Attorney at Law
Legal Aid Society of Minneapolis, Inc.
222 Grain Exchange Building
323 - 4th Avenue South
Minneapolis, Minnesota 55415

JN:sdr

DECLARATION OF
COUNSEL

In the matter of the Adoption
of Emergency Rules of the Minnesota
Department of Health Governing
Abatement Methods and Standards
for Lead in Paint, Bare Soil, Dust,
and Drinking Water From Public Fountains,
Minnesota Rules, parts 4620.1900 to 4620.2500

I, PAUL G ZERBY, Special Assistant Attorney General, do hereby declare that I have examined the above captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 50·45X5·1230

Paul G Zerby
Special Assistant
Attorney General

Dated: 12/14/89