



City of New York  
DEPARTMENT OF  
HOUSING PRESERVATION AND DEVELOPMENT  
100 GOLD STREET, NEW YORK, N.Y. 10038  
nyc.gov/hpd

RUTHANNE VISNAUSKAS  
Commissioner

November 14, 2013

Hon. Christine Quinn, Speaker  
New York City Council  
City Hall  
New York, N.Y. 10007

**Re: Report to the City Council:  
Implementation of Local Law #1 of 2004 in FY 2013**

Dear Speaker Quinn:

I am pleased to submit to the City Council the Department of Housing Preservation and Development's (HPD) report on implementation of Local Law #1 of 2004, in accordance with Administrative Code §27-2056.12. The report contains a narrative analysis of the program and incorporates a statistical section on expenditures, enforcement, and implementation.

Thank you for your time and attention to the report.

Sincerely,

A handwritten signature in black ink, appearing to read "RuthAnne Visnauskas".

RuthAnne Visnauskas



**REPORT TO THE CITY COUNCIL:  
THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S  
IMPLEMENTATION OF LOCAL LAW #1 OF 2004  
IN FY 2013**

This report was prepared by the Department of Housing Preservation and Development (HPD) in accordance with Administrative Code § 27-2056.12. The report describes the implementation of Local Law #1 of 2004 (Administrative Code § 27-2056.1 *et seq.*) in FY 2013.

**LOCAL LAW #1**

Local Law #1 is the City's Lead Poisoning Prevention and Control Law. HPD has successfully implemented and enforced this Local Law since its effective date in August, 2004.

**PROCESS FOR ENFORCING LOCAL LAW #1**

**Complaints**

Since 2004, complaints have been received for lead paint under Local Law #1 in the same manner that all complaints are received. Complaints are called in to the Customer Service Center at 311 (311) by tenants. 311 operates 24 hours a day, seven days a week. If a complaint included peeling paint or other deteriorated surfaces in a pre-1960 multiple dwelling, the operator will ask if there is a child under 6 living in the apartment.<sup>1</sup> For lead complaints, 311 operators attempt to obtain information regarding children in the household, including the name and age of any children under 6. In FY10, HPD modified this intake process so that 311 asks about children under 6 for all complaints. These complaints are referred to the Lead-Based Paint Inspection Program (LBPIP), as outlined below, for inspection.

After an attempt is made to contact the landlord to advise him/her of the complaint, the complaint is automatically forwarded to HPD's LBPIP for scheduling of an inspection with the tenant. If the tenant indicates that the condition has not been corrected, an appointment is set. If the tenant is not reached, an inspection is scheduled.

The number of apartments filing lead complaints decreased significantly from FY 12 to FY13, from 14,520 to 12,695.

**Inspections**

*Complaint Inspection* - Pursuant to statutory mandate, an inspection must be attempted within 10 days from the date of the complaint. An inspection that is the result of a lead complaint consists of an inspector making a sketch of the apartment to designate all rooms, checking all painted surfaces for the presence of peeling or deterioration and gathering any additional information regarding children. The inspector will also test any deteriorated surfaces within the apartment using an X-Ray Fluorescence Analyzer

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<sup>1</sup> As of October 1, 2006, the Board of Health reduced the applicable age of a child to under 6 years old from under 7 years old pursuant to the authority provided by Local Law #1. HPD modified its documents and procedures to implement this change.

(XRF). Results from the XRF are downloaded on a laptop computer. At the time of inspection, the inspector gives a copy of the Department of Health and Mental Hygiene (DOHMH) information pamphlet to the family. If a violation is observed, the inspector enters the violation information into the computer system. When the inspector's supervisor approves the violation, the computer system automatically sends the information to the Emergency Services Bureau's (ESB) owner notification unit for a call to the owner (notification). A Notice of Violation is sent to the owner along with a copy of the HPD booklet on safe work practices.

*Line of Sight Inspection* - If a Code Enforcement inspector enters an apartment in a multiple dwelling for any reason, the inspector will ask the occupant if a child under 6 lives there. If the occupant answers "yes" or if the inspector observes a child, the inspector is then required under Local Law #1 to check all painted surfaces for the presence of deteriorated or peeling paint. The inspector will note any peeling paint or deteriorated surfaces and will refer the apartment to the LBPIP for an XRF inspection conducted pursuant to the *Complaint Inspection* process. If there is no access when LBPIP attempts to inspect, a presumed lead-based paint violation is issued for each room in which peeling paint was noted. There was a 31% decrease in the number of referrals from non-LBPIP staff to LBPIP between FY12 and FY13. In addition, the LBPIP had better access to these units in FY13, reducing the number of presumed lead-based paint violations issued.

Letters detailing the results of the inspection – including whether surfaces tested positive or negative – are sent to both tenants and owners.

### **Inspection outcomes**

For Fiscal Year '13, 9% of all tests of painted surfaces have been positive for lead paint. Approximately 91% of tests of painted surfaces have been negative. Given the decrease in apartments filing complaints and referrals for testing based on observation, the % of apartments that were inspected for lead that had at least one lead paint violation issued declined from 22% in FY12 to 18.8% in FY13. The number of lead violations issued (tested and presumed) decreased by 34% overall. The number of positive lead violation decreased by 24% while the percent of presumed violations saw a steeper decrease of 42% (most of which is related to better access as noted above).

Since HPD's Code Enforcement inspectors must conduct a room-by-room inspection **each** time an inspector enters an apartment with a child under 6 – regardless of whether the complaint is specifically about a peeling paint condition or whether previous testing identified any lead-based paint -- repeat room-by-room inspections are being conducted in the same apartment each year, requiring a significant amount of resources. On average, inspections where XRF testing is done take approximately 60 minutes to complete; inspections without a room-by-room lead inspection average less than 25 minutes. As noted above, the majority of XRF tests are negative and the majority of tested apartments are negative for lead-based paint. Whether the inspection resources are being used effectively to identify new potential lead-based paint condition or whether a different strategy could be used to target apartments with a history of lead-based paint is an issue which HPD and DOHMH will be reviewing during FY14.

### **Notification of Owners Prior to Emergency Repairs**

When ESB receives a violation for lead, the ESB supervisor sends the violation (along with any associated violations for the same address) via the computer system to a researcher, who attempts to contact the owner. If the researcher speaks with the owner, the researcher informs him or her about the violations and what should be done to correct them. Researchers follow a script when providing this information. When ESB contacts the owner, staff informs the owner of the date by which he or she must correct the condition. If violations have not been certified as corrected by the end of the certification period, HPD sends an inspector within 10 days of the certification date to determine if the repairs have been made. If they have not been completed, HPD's Emergency Repair and Environmental Hazards Unit (EREH) will issue a repair order to its contractors.

### **HPD Repair of Lead Violations**

The Emergency Repair and Environmental Hazards Unit (EREH) is comprised of both office staff, including research and scheduling units, and field operations staff, including survey, review, and monitoring units. The units work cooperatively in an effort to encourage owner compliance and ensure that lead hazard violations are corrected properly. The violations are routed for scoping and appointments are made with tenants for access.

As noted above, if an inspection is performed and the work has not been done by the owner, HPD issues an Open Market Order to one of its requirements contractors or orders in-house staff to perform the repair.

If the landlord has done work to correct the lead hazard violations but failed to file a dust wipe test and other required documentation, then dust wipe samples are taken by HPD staff and sent to a laboratory for analysis. If dust wipe test results are positive, HPD cleans the affected area and performs a dust wipe test. If the dust wipe test shows clearance levels have been achieved, the repair order is closed. However the violation remains open on HPD's violation record, because the statute does not permit HPD to remove the violation if there is no record that the repair was performed using required work practices.

All repair work performed through HPD is performed by properly trained and certified workers. If the amount of work to be done is considered a small job (i.e., a relatively small amount of square footage in the unit must be repaired) it may be referred to the HPD's area site office to do the repairs. After the site office completes the work, an HPD Clearance Technician takes dust wipe samples and forwards the samples to a laboratory. If the samples are below clearance levels, the job is closed. If the sample fails, the area is re-cleaned and tested again.

For the majority of cases, the work order is forwarded to the Bureau of Maintenance Procurement (BMP). BMP then awards the job to one of the requirement contractors. Once awarded, the order is sent to the EREH for daily monitoring of the contractor's work. Monitoring includes the taking of dust wipe samples.

When the contractor finishes the work and it has been approved by HPD, dust wipe samples are taken by HPD staff and sent to a laboratory for testing. As is the case for small jobs, if the dust sample fails, the contractor must re-clean the area and HPD takes

a new test. The job is not considered completed until the dust wipe test results are below clearance levels.

All violations corrected by HPD (either through staff or contractors) are closed. If the property owner certified that the violations were corrected, Code Enforcement attempts to reinspect the condition. If, when Code inspects, they find the work not done, the violations are forwarded to the EREH for scoping.

One of the main obstacles to HPD's ability to correct lead hazard violations when the owner fails to do so is gaining access to the dwelling unit. HPD personnel have to gain access on several occasions: to inspect, to XRF test and scope the unit, to perform the work, and to perform dust clearance testing. The necessity of gaining access multiple times increases the likelihood that at some point access will be denied. In order to improve access HPD conducts a large number of inspections outside of normal work hours and on weekends.

Access problems arise when either an owner or tenant affirmatively refuses access to HPD personnel or contractors, or when the tenant is uncooperative in providing access to the apartment. If the tenant affirmatively denies access to the dwelling unit, the work is canceled. If after two unsuccessful visit attempts, access has not been obtained, a letter is sent to the tenant asking him or her to contact HPD to schedule an appointment. If no response is received within eight days the job is canceled. If the tenant responds and access is still not gained after scheduling an appointment, the job is canceled.

If the property owner or one of his employees denies access to the dwelling unit, the lead hazard violations are forwarded to the Housing Litigation Division (HLD) to seek a court order for access. HLD prosecutes access warrant cases to allow EREH to perform lead repairs. Housing Court judges are often reluctant to issue access warrants without giving the owner several opportunities to do the work themselves, particularly when there is partial compliance, even though the statutory period to correct has passed.

Most access warrant cases are concluded when a re-inspection finds that the owner has completed the work, often under consent orders issued as interlocutory relief during the course of the case. HLD commenced 129 access warrant cases in FY '13 under LL# 1.

HLD also commenced 51 cases against owners for false certification of the correction of violations. In FY '13, the Lead Unit was awarded \$25,955 in civil penalties and collected \$21,555.

### **Certifications of Violations**

If an owner certifies that the violation has been corrected within the statutory time period for correction, a notice is automatically generated to the tenant. The notice informs the tenant that the owner has submitted a certification to HPD that the condition has been corrected and provides the tenant with information on how to challenge that certification. Whether or not a tenant protest is received, inspectors attempt to re-inspect the condition within 14 days of the certification period.

The tenant is also advised that he or she should give access to an inspector who will visit to verify the correction. Unfortunately, HPD inspectors often cannot obtain access to verify the correction and, although the violations have been properly corrected, the violations remain open since Local Law #1 requires both appropriate documentation and

a physical inspection. In 49% of re-inspection attempts to verify owner certification of corrected lead violations, inspectors are unable to gain access to verify the correction.

HPD must re-inspect all violations at the end of the 21 day correction period. If HPD is re-inspecting after the owner has filed a certification of a lead violation, then the inspector must determine if the certification is correct. Should the inspector find noncompliance with any aspect of the required work, he or she reports that the violation was not corrected. A written notice is sent to the owner and tenant indicating that the certification has been invalidated, and the reason why the certification was invalidated. The violation is automatically referred to HLD for appropriate action for false certification. If the violation has been falsely certified, HPD will complete the repair process so that the lead violation can be corrected. If the Code Enforcement inspector finds that the condition has been corrected, the violation is dismissed.

### **Other Repairs**

Local Law #1 added new requirements for safe work practices when work that is disturbing lead paint is performed and there is a child under 6 residing in the unit.

The Division of Property Management (DPM) and the EREH identify units with children under 6 that are undergoing non-lead repairs that involved presumed lead or identified lead paint. HPD has procedures to test work areas, where appropriate, to determine if lead paint is present. HPD utilizes safe work procedures and requires its contractors to do so as well.

### **Training**

All new Code Enforcement inspector and EREH field staff receive a three-day training with an approved EPA provider, as a precursor to taking the EPA Certification Exam as a Lead-Based Paint Inspector. They are also trained in: (1) Local Law #1 requirements regarding the surfaces and the definitions of surface conditions that require issuance of a specific violation; (2) how to designate the surfaces in a uniform manner (i.e., size of services, compass location of wall, compass location of room) to ensure that the proper area is identified and remediated by the owner or HPD; and (3) the violation order numbers. Inspectors assigned to the LBPIP are additionally trained in the use of XRF machines and the use of notebook computers to automatically enter XRF and violation data. All inspectors working as of November 1, 2004 received the same training in advance of implementation of Local Law #1. Through both the Lead-Based Paint Inspection Unit supervision and HPD's Field Audit Review Unit, there is continual review of the work of these inspectors and training as warranted.

HPD's Public Outreach and Education Unit (formerly the Housing Education Services Unit) continues to provide courses in Lead Awareness, Safe Work Practices, Local Law #1 Compliance and Visual Assessment and works to increase the awareness of the general public about Local Law #1 through various community outreach events and marketing initiatives.

### **Contracts**

In order to comply with Local Law #1, HPD's Emergency Repair Program currently has five contracts for lead hazard reduction in the amount of \$7.3 million. Three contracts were also written in the amount of \$300,000 for dust wipe analysis.

### **City-Owned Housing**

In addition to implementing a process for the enforcement of Local Law #1, HPD, as the owner of many multiple dwellings, also implemented procedures to ensure conformance with Local Law #1 in its property management programs. The DPM inspects for and identifies the existence of lead paint hazards in these units. Inspections resulting in the identification of lead paint hazards are entered into the computer system, and conditions in units where children under 6 reside are referred to the EREH for correction. The ongoing annual notification process for tenants was revamped to reflect the Local Law #1 requirements. Responses to the annual notification are entered into the system; those responses reporting the presence of children under 6 are automatically forwarded to the EREH to scope and perform all necessary work related to the correction of lead paint hazards. Units that do not respond to the annual notification are inspected in order to determine whether a child under 6 resides in the unit. The results of these inspections are also entered into the system. DPM responds on an ongoing basis to complaints of peeling paint by inspecting the unit and correcting any hazards in the manner described above.