

CHAPTER 4761

DEPARTMENT OF HEALTH

RESIDENTIAL LEAD ABATEMENT

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4761.0100 APPLICABILITY.

Chapter 4761 applies to boards of health and any person performing lead abatement on residential property and playgrounds.

A. A property owner who personally performs lead abatement is not exempt from this chapter, whether or not the abatement is performed under an order to abate or voluntarily, and whether or not the abatement is performed on a residence the owner occupies.

B. A tenant who personally performs lead abatement on the tenant's residence is not exempt from this chapter.

C. Pursuant to Minnesota Statutes, section 144.878, subdivision 5, after July 1, 1995, a person who performs work that removes intact paint on residences built before February 27, 1978, must determine whether lead sources are present and whether the planned work would be lead abatement as defined in Minnesota Statutes, section 144.871, subdivision 2. This determination may be made by quantitative chemical analysis, x-ray fluorescence analyzer, or chemical spot test using sodium rhodizonate. If lead sources are identified, the work must be performed by a licensed lead abatement contractor. An owner of an owner-occupied residence with one or two units is not subject to the requirements of this item on either of the units owned.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827; L 1994 c 567 s 25*

4761.0200 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4761.0100 to 4761.0800, the following terms have the meanings given them.

Subp. 2. **Abatement.** "Abatement" has the meaning given in Minnesota Statutes, section 144.871, subdivision 2.

Subp. 3. **Abatement contractor.** "Abatement contractor" has the meaning given in Minnesota Statutes, section 144.871, subdivision 3.

Subp. 4. **Abrasive blasting.** "Abrasive blasting" has the meaning given in part 7025.0020, subpart 2.

Subp. 5. **Assessment.** "Assessment" means preabatement sampling and analysis of residential property and playgrounds, as described in part 4761.0400.

Subp. 6. **Bare soil.** "Bare soil" means an outdoor area where soil is visible over a continuous area of one square foot or more.

Subp. 7. **Board of health.** "Board of health" has the meaning given in Minnesota Statutes, section 145A.03 or 145A.07.

Subp. 7a. **Child.** "Child" means a child as described in Minnesota Statutes, section 144.871.

Subp. 8. **Deteriorated paint or deteriorating paint.** "Deteriorated paint" or "deteriorating paint" means paint that has become or is becoming chipped, peeled, or otherwise separated from its substrate or that is attached to damaged substrate.

Subp. 8a. **Distributing authority.** “Distributing authority” means a governmental agency or entity, such as a local board of health, that distributes funds for the abatement of soil lead contamination.

Subp. 9. [Repealed, 18 SR 827]

Subp. 10. **Encapsulation.** “Encapsulation” has the meaning given in Minnesota Statutes, section 144.871, subdivision 7.

Subp. 11. **High efficiency particulate air filter.** “High efficiency particulate air filter” means a filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles 0.3 microns in diameter or larger.

Subp. 12. **Intact paint.** “Intact paint” means any paint that is not deteriorated paint or deteriorating paint as defined in subpart 8.

Subp. 12a. **Lead abatement trainer.** “Lead abatement trainer” means an individual who educates contractors, workers, or other trainers about lead abatement.

Subp. 12b. **Lead abatement worker.** “Lead abatement worker” means an individual employed directly or indirectly to perform lead abatement as defined in Minnesota Statutes, section 144.871, subdivision 2.

Subp. 13. **Modified-wet abrasive blasting.** “Modified-wet abrasive blasting” has the meaning given in part 7025.0020, subpart 8.

Subp. 13a. **Person.** “Person” has the meaning given in Minnesota Statutes, section 103I.005, subdivision 16.

Subp. 13b. **Playground.** “Playground” means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children’s recreation and play.

Subp. 13c. **Point-of-use device.** “Point-of-use device” means a filter or water conditioner for drinking water that is attached at the tap.

Subp. 14. **Reassessment.** “Reassessment” means postabatement sampling and analysis of residential property and playgrounds, as described in part 4761.0600.

Subp. 15. **Residence.** “Residence” means:

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

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

C. every location, such as a residential child care facility, in which the child regularly spends several hours per day and all associated structures and areas to which the child has access.

Subp. 15a. **Residential property.** “Residential property” means real property that contains a house, building, or other structure used or intended for use as human habitation. The term residential property includes all open areas on the real property that may be used by children as playgrounds and includes sidewalks, walkways, gardens, and driveways.

Subp. 15b. **Response action.** “Response action” means action to limit exposure to lead contaminated bare soil sites, including fencing, covering sites with vegetation, removal and replacement of contaminated bare soil, and other appropriate action.

Subp. 15c. **Site.** “Site” means an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

Subp. 15d. **Sponsor.** “Sponsor” means the person responsible for organizing and presenting a lead abatement training course or lead abatement annual refresher course to another person or group of persons.

Subp. 16. **Substrate.** “Substrate” means a building material, such as wood, Sheetrock, or plaster, that is coated by paint or other surface coating.

Subp. 16a. **Swab team.** “Swab team” has the meaning given in Minnesota Statutes, section 144.871, subdivision 9.

Subp. 17. **Vacuum blasting.** “Vacuum blasting” has the meaning given in part 7025.0020, subpart 14.

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Subp. 18. **Waterblasting.** "Waterblasting" means the use of pressurized water to remove a surface coating.

Subp. 19. **Window well.** "Window well" means the horizontal surface on which the sash of a window sits when the window is closed.

Subp. 20. **Windowsill.** "Windowsill" means the interior horizontal ledge at the base of a window opening.

Subp. 21. **X-ray fluorescence analyzer.** "X-ray fluorescence analyzer" means a portable or laboratory instrument that measures lead by gamma ray-induced fluorescence of lead atoms.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827*

4761.0300 STANDARDS.

Subpart 1. **Paint.** Residential paint must not:

A. contain lead in a concentration of one-half of one percent (5,000 parts per million) or more by dry weight as measured by quantitative chemical analysis; or

B. register one milligram of lead per square centimeter or more as measured by x-ray fluorescence analyzer unless quantitative chemical analysis shows that the lead content is less than one-half of one percent by dry weight.

Subp. 2. **Dust.** Residential dust must not contain lead in a concentration of 80 micrograms of lead or more per square foot on a hard-surfaced floor, 300 micrograms of lead or more per square foot on a windowsill, and 500 micrograms of lead or more per square foot on a window well. Residential dust must not contain lead in a concentration of 300 parts per million in carpeting.

Subp. 3. **Drinking water.** Drinking water must not contain 15 micrograms of lead or more per liter of water.

Subp. 4. **Bare soil.** Bare soil on residential property or on playgrounds must not contain lead in a concentration of 1/100 of one percent (100 parts per million) or more by weight.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827*

4761.0400 ASSESSMENT.

Subpart 1. **General.** A board of health must conduct an assessment of residential property and the bare soil in a playground known to be used by a pregnant woman or child with a blood lead level as described in Minnesota Statutes, section 144.874, subdivision 1, and act on the findings of the assessment. If an assessment of residential property or playground fails to identify paint, soil, dust, or drinking water that exceeds a standard specified in part 4761.0300, then the board of health must provide information to the resident identifying the following as possible sources of lead exposure:

- A. painted articles including toys and furniture;
- B. metal objects including toys, jewelry, gunshot, bullets, beads, fishing sinkers, and collapsible dispensing tubes;
- C. printed material, especially colored pictures in magazines and newspapers;
- D. ceramic containers;
- E. matches;
- F. tobacco items;
- G. cosmetics and their containers, especially hair preparations and folk cosmetics;
- H. folk remedies including azarcon, greta, kohl, surman, and pay-loo-ah;
- I. cans of shellac, lacquer, drying agents, pigments, epoxy resins, pipe sealants, putty, dyes, industrial crayons, gasoline, and paint;
- J. fungicides, insecticides, and pesticides;
- K. batteries and battery casings;
- L. materials burned for heat including painted wood and battery casings;

M. parents' occupations; and

N. other locations where the child regularly spends time.

Subp. 2. Assessment contracting; optional testing. A board of health may contract for assessments. Board of health testing of the following items under subparts 4, 5, and 6, is optional:

A. any material not subject to an abatement order;

B. intact paint not producing dust; and

C. any material a property owner has agreed in writing to abate.

Subp. 2a. Variance. A board of health may request a variance from part 4761.0400 according to the procedures and criteria specified in parts 4717.7000 to 4717.7050.

Subp. 3. Abatement required. A board of health must order a property owner to perform abatement on a lead source that exceeds a standard in part 4761.0300 at the residence of a pregnant woman or of a child who has a blood lead level as described in Minnesota Statutes, section 144.874, subdivision 1. A board of health may order in-place management of lead sources. In-place management of lead sources includes encapsulation or the activities described in Minnesota Statutes, section 144.871, subdivision 9. Encapsulation is another means of in-place management.

Subp. 4. Paint. In conducting an assessment, a board of health must test paint in a residence built prior to February 27, 1978, and must test paint from each type of surface, such as a wall, floor, window well, windowsill, ceiling, shelf, door, or fixture. A board of health must test deteriorating paint and must test intact paint on surfaces that are accessible to small children as chewable or lead-dust producing surfaces and that are sources of actual lead exposure. A board of health is not required to test paint on every surface within a residence. The selected surfaces must be tested by either:

A. X-ray fluorescence analyzer 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, United States Environmental Protection Agency, September 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. 5. Dust. In conducting an assessment, a board of health must test dust from each type of horizontal hard surface, such as a floor, window well, windowsill, shelf, or fixture. Carpeting, if any, must be tested for lead in dust nearest the main entrance to the residence and elsewhere within the residence if the carpet appears to the board of health to be in a soiled or worn condition or has not been subject to regular cleaning with a vacuum cleaner. A board of health must also test dust from surfaces that are accessible to small children, that are lead-dust producing, and that are actual sources of lead exposure. A board of health is not required to test dust on every surface within a residence. Dust samples from hard surfaces must be analyzed by a method approved by the United States Environmental Protection Agency as described in subpart 4, item B. Dust samples from carpeting must be analyzed by this method or by a method described in "Determination of Lead in Soil," Soil Testing and Research Analytical Laboratories, Department of Soil Science/Agricultural Experiment Station, University of Minnesota, Saint Paul, Minnesota, July 1990. This publication is incorporated by reference and is available through the Minitex interlibrary loan system. This publication is not subject to frequent change. A dust sample must be collected from an area of one square foot, if possible. For hard surfaces, either the method described in item A or B may be used. For carpeting, the method described in item B must be used. If the method in item B fails to collect enough of a dust sample from carpeting to conduct analysis, then the carpeting is considered to be in compliance. The information listed in item C must be recorded for each dust sample.

A. The person collecting the dust sample must wear disposable gloves and use a commercial wipe moistened with a nonalcohol wetting agent and use the following method:

(1) if the package of wipes has been opened, discard the first wipe;

(2) seal the next wipe in a 50 milliliter polypropylene tube so it can be used as a laboratory blank;

(3) measure the area of the surface to be sampled and place a wipe flat on it;

- (4) rub, but do not scrub, the wipe in an "S" pattern once over the entire area;
- (5) fold the wipe in half so that the dust is folded into the wipe;
- (6) rub the wipe in another "S" pattern over the entire measured area but at 90 degrees to the first "S" pattern; and

(7) fold the wipe and seal it in a 50 milliliter polypropylene tube.

B. The person collecting the dust sample must use the following method:

(1) use a calibrated air pump at a flow rate of at least five liters of air per minute to draw air and dust into the sampling port of a filter cassette containing a high efficiency particulate filter through a three-millimeter interior diameter sampling tube cut at a 45-degree angle;

(2) pass the sampling tube over the surface three times, alternating directions; and

(3) disconnect and seal the filter cassette until analysis.

C. The person collecting the sample must record the following information:

(1) name of the person collecting the sample;

(2) the address and location within the residence where each dust sample was collected;

(3) the surface area measured and the type of surface sampled, such as a floor or windowsill, and type of sample, such as a preabatement sample or postabatement sample; and

(4) the date on which the sample was collected.

Regardless of the actual area measured, a laboratory can convert units to micrograms per square foot, which is the unit of measurement in the standard.

Subp. 6. Drinking water. In conducting an assessment, the board of health must test the drinking water in the residence. One liter of tap water that has been in plumbing pipes at least six hours must be collected without running any water to waste. This water sample must be drawn directly from either the cold-water kitchen tap or cold-water bathroom tap. A point-of-use device must be disconnected or bypassed while the sample is collected. Drinking water must be analyzed by a method approved by the United States 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.

Subp. 7. Bare soil. In conducting an assessment, the board of health must test bare soil from the residence. The board of health need not collect and test soil from the residence for possible soil lead if the property owner agrees to treat the bare soil according to the abatement procedures adopted by the Pollution Control Agency under Minnesota Statutes, section 144.878, subdivision 2, paragraph (b). Soil must be collected according to items A to F and must be analyzed by a method approved by the United States Environmental Protection Agency as described in subpart 4, item B, or described in "Determination of Lead in Soil," prepared by the Soil Testing and Research Analytical Laboratories, Department of Soil Science/Agricultural Experiment Station, University of Minnesota, Saint Paul, Minnesota, July 1990. This publication is available through the Minitex interlibrary loan system and is incorporated by reference. This publication is not subject to frequent change.

A. A map shall be prepared of the residential property showing the main residential structure, gardens, sidewalks, play areas, and other features and structures.

B. Bare soil samples must be obtained from each of the following areas:

- (1) within three feet of the foundation;
- (2) within three feet of a street, sidewalk, alley, or driveway; and
- (3) an area of the residential property not described in subitems (1) and (2).

C. For each sample location described in item B, composite samples must be collected consisting of five to ten bare soil subsamples.

D. A standard soil sampling tube or a putty knife is an acceptable sampling tool. The sampling tool must be cleaned prior to each use.

E. Bare soil samples must be collected to two centimeters in depth and must include the surface soil.

F. Bare soil samples must be labeled with the date, address of property, sample location as described in item B, and the name of the person collecting the samples.

Subp. 8. Bare soil assessment beyond a residence. If a board of health undertakes the assessment of lead contamination in an area beyond a residence, the board of health must conduct the assessment according to the methods described in this subpart.

A. The area must be no greater than a census tract.

B. A map of the area must be prepared that shows the location of residences, boulevards, streets, alleys, schools, playgrounds, and all areas of bare soil.

C. Twelve samples must be collected from each soil sample location described in subitems (1), (2), and (3). For purposes of this subpart, soil sample location means soil collected within:

- (1) three feet of a foundation;
- (2) three feet of a street, sidewalk, alley, or driveway; and
- (3) an area of the residential property not described in subitems (1) and (2).

D. Each soil sample collected must be two centimeters in depth and must include the soil surface.

E. A standard soil sampling tube or a putty knife is an acceptable sampling tool. The sampling tool must be cleaned prior to each use.

F. Soil samples must be labeled with the date, city or township and county, census tract number, name of person doing the sampling, and soil sample location.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827*

4761.0500 LEAD ABATEMENT METHODS.

Subpart 1. General. Any person performing lead abatement must use the preparations, abatement methods, and cleanup methods in this part. In addition, this part applies whether the abatement was ordered by a board of health or undertaken voluntarily. Lead abatement ordered by a board of health must not begin until an assessment of lead sources within the residence is completed by the board of health according to part 4761.0400 or until the property owner agrees in writing with the board of health to treat all paint, dust, drinking water, and bare soil according to the requirements of this part.

Subp. 2. Paint abatement preparations. Abatement of lead-based paint must not begin until the requirements in items A to E have been met.

A. Preparations must be made 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 leakproof containers must be on-site to collect all debris, dust, and other waste generated by abatement.

B. The party undertaking abatement must notify the occupants of the residence of the presence of lead and of the schedule for abatement.

C. For interior paint abatement:

(1) sources of damage to surfaces to be abated, such as leaking roofs or plumbing, must be repaired;

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

(3) the rooms to be abated must be sealed from the rest of the residence and from the exterior by securely taping six mil or equivalent thickness tarpaulins or plastic over windows or doors not to be used during abatement and over any other openings into the work area such as, but not limited to, heating vents; air conditioning vents; and plumbing, electrical, or telephone system penetrations of floors, walls, or ceilings in the rooms to be abated;

(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 or plastic;

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

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

D. For exterior paint abatement:

(1) occupants of the residence to be abated and of adjoining residences 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 or plastic must be:

(a) secured to the residence foundation;

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

(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 to be abated above the first floor to a maximum of 25 feet; and

(d) in good condition.

E. Exterior abrasive blasting, waterblasting, modified-wet abrasive blasting, and vacuum blasting must be performed in a manner that contains all lead-contaminated dust, debris, and water for proper disposal and prevents lead exposure to people or the environment. Compliance with rules adopted by the Pollution Control Agency under Minnesota Statutes, section 144.878, subdivision 2, paragraph (c), constitutes compliance with this subpart.

Subp. 3. **Paint abatement methods.** Except as prohibited in subpart 4, paint that exceeds a standard in part 4761.0300 must be abated by the methods in this subpart.

A. Deteriorated paint or deteriorating paint that exceeds a standard in part 4761.0300, must either be:

(1) removed with the substrate and replaced with new substrate that complies with the standard in part 4761.0300; or

(2) removed from the substrate by:

(a) misted scraping or misted wire brushing;

(b) stripping with chemical paint strippers either on-site or off-site with removal of chemical strippers from surfaces and direct placement into leakproof containers;

(c) heating with a heat gun that does not exceed 700 degrees Fahrenheit;

(d) exterior abrasive blasting;

(e) exterior waterblasting or interior waterblasting only in a masonry or stone basement;

(f) exterior modified-wet abrasive blasting; or

(g) vacuum blasting.

B. All damaged substrate must be patched to a smooth surface, sealed, and repainted or covered with material that complies with the standards in part 4761.0300 except that paint used to repaint substrate must not have a lead concentration of 6/100 of one percent (600 parts per million) or more by dry weight.

C. Intact paint that exceeds a standard in part 4761.0300 must be abated if it is on a chewable or lead-producing surface and is a source of actual lead exposure. A property owner may choose to have intact lead paint abated even if it is not on a chewable or lead-producing surface or is not a source of actual lead exposure. Intact paint must be abated according to the abatement preparations and methods described in this part. Intact paint 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 substrate. All seams must be caulked. Examples of the impervious material include, but are not limited to, plywood, Sheetrock, tile, fiberglass, linoleum, and vinyl, metal, or wood exterior siding.

Subp. 4. **Prohibited paint abatement methods.** The following abatement methods are prohibited:

A. open flame torching;

- B. use of a heat gun above 700 degrees Fahrenheit;
- C. dry sanding manually;
- D. dry sanding with a power sander unless a high efficiency particulate air filter is attached;
- E. dry scraping or dry wire brushing;
- F. stripping with a methylene chloride based stripper;
- G. removing any chemical paint stripper with sprayed water;
- H. covering with contact paper, flexible wallcovering of less than 21 ounces per square yard, or new paint; and
- I. for interior abatement, abrasive blasting, waterblasting except in a masonry or stone basement, or modified-wet abrasive blasting.

Subp. 5. Dust abatement. Interior dust that exceeds a standard in part 4761.0300 must be abated both by use of a high efficiency particulate air filter vacuum and by washing with trisodium phosphate solution containing at least one ounce of five percent trisodium phosphate per gallon unless the board of health determines that one or the other of these methods is unsuited to the surface to be cleaned. A wet shop vacuum cleaner may be used with trisodium phosphate solution. Waterproof gloves must be worn by anyone working with trisodium phosphate solution. A final rinse with clean water must be done after the final wash with trisodium phosphate solution. Use of a household vacuum cleaner instead of a high efficiency particulate air filter vacuum is prohibited.

Subp. 6. Daily cleanup. Waste must be cleaned daily from the worksite so no visible deposits remain. On-site storage of waste is allowed only in covered containers and the storage site must be secure from intrusion.

Subp. 7. Final cleanup. To avoid recontamination, cleanup must proceed downward from the highest point abated or exposed to dust or debris from abatement and outward from the room furthest from the exit. For interior abatement work, a final cleanup must be conducted no sooner than 24 hours after and no later than seven days after completion of active abatement. This final cleanup must include a high efficiency particulate air filter vacuuming of all surfaces abated or exposed to lead from abatement followed by washing of these surfaces with trisodium phosphate solution containing at least one ounce of five percent trisodium phosphate per gallon. Waterproof gloves must be worn by anyone working with trisodium phosphate solution. A final rinse with clean water must be done after the final wash with trisodium phosphate solution. Use of a household vacuum cleaner instead of a high efficiency particulate air filter is prohibited. Cleanup must be repeated until reassessment demonstrates compliance with the standards in part 4761.0300. For exterior abatement work, final cleanup must be conducted no later than seven days after the lead source has been removed or encapsulated. Rain gutters must be cleaned of any debris and waste.

Subp. 8. Drinking water abatement. Residential drinking water that exceeds a standard in part 4761.0300 must be abated by disconnection of the plumbing fixture at which a violation of the standards in part 4761.0300 was found or by daily flushing of the fixture before using water from the fixture or by provision of bottled water or other source of potable water that complies with the standards in part 4761.0300.

Subp. 9. Bare soil abatement. The abatement methods prescribed in this subpart and subparts 10 to 14 apply to a person conducting abatement of bare soil that has been determined to exceed the bare soil standard established in part 4761.0300.

Unless the bare soil contains visible paint chips, a person who is performing abatement of bare soil may elect either to cover the bare soil to prevent exposure or to remove the soil. Depending on which alternative is selected, the person must comply with the requirements applicable to the alternative selected.

Subp. 10. Soil cover. A person performing abatement of bare soil by covering the soil must comply with the requirements in items A to C.

A. Living ground cover. If the person intends to cover the bare soil with sod or other living material, the person must first till and rake the soil before laying the sod or other living material.

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B. Impervious cover. If the person intends to cover the bare soil with concrete, asphalt, or other similar material, the person must compact the soil prior to laying the concrete, asphalt, or other similar material.

C. Other cover material. If the person intends to cover the bare soil with sand, wood chips, or other nonliving, pervious material, no preparation to the bare soil is required prior to application of the sand, wood chips, or other material.

Subp. 11. **Soil removal.** A person performing abatement of bare soil must remove the soil if the soil contains visible paint chips. A person performing abatement of bare soil by removing the soil must either remove the soil from the premises and dispose of it in accordance with requirements of the Pollution Control Agency or bury the soil on the property under clean soil that has been excavated from the premises. In the event the commissioner determines that burial of the bare soil on the premises would threaten the groundwater or cause other environmental damage, the bare soil must be removed from the premises and disposed of in accordance with requirements of the Pollution Control Agency.

Subp. 12. **Abatement implementation.** A person who is performing abatement of bare soil, regardless of the method selected or required, must comply with items A to D.

A. Children must be prohibited from playing or otherwise coming in contact with the soil being disrupted during abatement.

B. Soil that is removed must be properly stored or disposed of at the end of each work day.

C. Soil on steps and walkways must be removed and steps, walkways, and foundations must be hosed off with water at the end of each work day and before replacing soil or new sod each day.

D. During installation of the soil cover, the person performing the abatement must keep the soil moist.

Subp. 13. **Abatement priority.** If abatement of bare soil is done at a residential property or a playground in conjunction with other types of lead abatement, the abatement of the bare soil must be done after paint abatement but before interior dust abatement.

Subp. 14. **Abatement area.** In the event data establish that only a portion of the bare soil on a residential property or playground exceeds the bare soil standard, the person performing abatement is only required to abate the bare soil that exceeds the standard.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827*

4761.0600 REASSESSMENT.

Subpart 1. **Reassessment required.** Abatement of lead in paint, dust, drinking water, or bare soil is considered successfully completed when reassessment demonstrates compliance with standards in part 4761.0300. A board of health must conduct the reassessment of a residence or playground for which orders were issued under part 4761.0400, subpart 1.

Subp. 2. **Sample collection.** In conducting a reassessment, a board of health must collect interior dust samples from each type of horizontal surface that has been abated or exposed to dust from abatement. A board of health is not required to sample dust from every surface within a residence. A board of health must collect dust samples according to the method described in part 4761.0400, subpart 5. A board of health must collect a one-liter water sample from the tap from which the original sample was drawn. A point-of-use device must be disconnected or bypassed while the sample is collected unless the board of health orders that a point-of-use device be used to remove lead.

Subp. 3. **Sample analysis.** Dust samples must be analyzed by a method described in part 4761.0400. A water sample must be analyzed by the method described in part 4761.0400, subpart 6.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827*

4761.0700 LEAD ABATEMENT CONTRACTOR DUTIES.

Subpart 1. **Equipment required.** An abatement contractor must provide employees with hooded coveralls, shoe coverings, gloves, and toxic dust respirators listed on the Certi-

fied Equipment List of the National Institute of Occupational Health, United States 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. The abatement contractor must ensure that employees properly use these items during work described in part 4761.0500 and that employees do not wear or take these items away from the worksite except as necessary for proper cleaning and storage or for proper disposal, if not reusable. Reused work clothing and cleaning materials such as rags must be laundered separately from other clothing and cleaning materials. Disposable clothing and cleaning materials must be disposed with lead-contaminated waste. Hand and face washing facilities must be provided by the contractor and used by employees prior to leaving the worksite.

Subp. 2. Prohibited actions. An abatement contractor and the contractor's employees must not eat, drink, or smoke in the worksite during work described in part 4761.0500. A visitor must not eat, drink, or smoke in the worksite.

Subp. 3. License and certificate. A lead abatement contractor must obtain a license as required by part 4761.0710 and must ensure that each lead abatement worker employed by the contractor has obtained a certificate as required by part 4761.0720.

Subp. 4. Swab team. Each member of a swab team is required to be a certified lead abatement worker.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138; 18 SR 827*

4761.0710 LICENSING REQUIREMENTS FOR LEAD ABATEMENT CONTRACTORS.

Subpart 1. License required. A lead abatement contractor must obtain a license before doing lead abatement and must renew it annually. The license must be readily available at the contractor's primary place of business for inspection by the commissioner or by staff of a board of health with jurisdiction over a worksite. A license cannot be transferred. The owner of an owner-occupied residence with one or two units who performs lead abatement on either of the units of the residence is not required to obtain this license but must comply with part 4761.0500.

Subp. 2. License application. An application for license or license renewal must be on a form provided by the commissioner and must include:

A. a \$100 nonrefundable fee, in the form of a check; and

B. evidence that the applicant has successfully completed the lead abatement training course identified in part 4761.0740, subpart 1, or has, within the previous 180 days, successfully completed an initial lead abatement training course approved under part 4761.0740.

Subp. 3. License renewal. A license is valid for one year from the issuance date unless the commissioner revokes it. An applicant must successfully complete either an initial lead abatement training course or an annual refresher lead abatement training course to apply for license renewal.

Subp. 4. License replacement. A licensed lead abatement contractor may obtain a replacement license by reapplying for a license. A replacement expires on the same date as the original license. A nonrefundable \$50 fee is required with each replacement application.

Subp. 5. Denial of license application. An application for licensure or a replacement license must be denied for a reason listed in part 4761.0750, subpart 1. An applicant who submits an approvable application within 60 days of initial denial is not required to pay a second fee.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0720 CERTIFICATION OF LEAD ABATEMENT WORKERS.

Subpart 1. Certificate required. A lead abatement worker must obtain a certificate before doing lead abatement and must renew it annually. The lead abatement worker must have the certificate readily available at lead abatement worksites for inspection by the commis-

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sioner or by staff of a board of health with jurisdiction at a worksite. A certificate must not be copied and cannot be transferred. A property owner who personally performs lead abatement on a residence that the property owner occupies is not required to have a lead abatement worker's certificate but must comply with part 4761.0500.

Subp. 2. **Certificate application.** An application for certification and certificate renewal must:

A. be on a form provided by the commissioner and include a nonrefundable fee of \$50 in the form of a check; and

B. include evidence that the applicant has successfully completed the training course identified in part 4761.0740, subpart 1, or has, within the previous 180 days, successfully completed an initial lead abatement training course approved under part 4761.0740.

Subp. 3. **Certificate renewal.** A certificate is valid for one year from the issuance date unless the commissioner revokes it. An applicant must successfully complete either an initial lead abatement training course or an annual refresher lead abatement training course to apply for certificate renewal.

Subp. 4. **Certificate replacement.** A lead abatement worker may obtain a replacement by reapplying for a certificate. A replacement expires on the same date as the original certificate. A nonrefundable \$25 fee is required with each application for a replacement certificate.

Subp. 5. **Denial of certificate application.** An application for certification or a replacement certificate must be denied for a reason listed in part 4761.0750, subpart 1. A person who submits an approvable application within 60 days of initial denial is not required to pay a second fee.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0730 CERTIFICATION OF LEAD ABATEMENT TRAINERS.

Subpart 1. **Certificate required.** A person who provides lead abatement training, which is not part of a lead abatement training course approved under part 4761.0740, must obtain a certificate before providing lead abatement training and must renew it annually. A lead abatement trainer must have the certificate readily available at training sites for inspection by the commissioner or by staff of a board of health with jurisdiction at a training site. A certificate must not be copied and cannot be transferred.

Subp. 2. **Certificate application.** An application for certification and certificate renewal must:

A. be on a form provided by the commissioner and include a nonrefundable fee of \$50 in the form of a check; and

B. include evidence that the applicant has successfully completed the training course identified in part 4761.0740, subpart 1, or has, within the previous 180 days, successfully completed an initial lead abatement training course approved under part 4761.0740.

Subp. 3. **Certificate renewal.** A certificate is valid for one year from the issuance date unless the commissioner revokes it. An applicant must successfully complete either an initial lead abatement training course or an annual refresher lead abatement training course to apply for certificate renewal.

Subp. 4. **Certificate replacement.** A lead abatement trainer may obtain a replacement certificate by reapplying for a certificate. A replacement expires on the same date as the original certificate. A nonrefundable \$25 fee is required with each replacement application.

Subp. 5. **Denial of certificate application.** An application for certification or a replacement certificate must be denied for a reason listed in part 4761.0750, subpart 1. A person who submits an approvable application within 60 days of denial is not required to pay a second fee.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0740 APPROVAL OF LEAD ABATEMENT TRAINING COURSES.

Subpart 1. **Approved lead abatement training course.** The course titled "Lead-Based Paint Detection and Abatement in Residential Housing," presented March 31 to April

2, 1992, under contract to the Department of Health is an approved initial lead abatement training course. A lead abatement course sponsored by a regional lead training center established by the United States Environmental Protection Agency is also an approved initial lead abatement training course.

Subp. 2. Approval of lead abatement training course. A sponsor of a lead abatement initial or annual refresher training course must meet the requirements in this part and must be approved by the commissioner in writing. A sponsor must present the course at least annually and renew course approval biennially or when the course content is modified. The fee required in this subpart is required with initial and biennial applications for course approval and with modification of any of the course content. At least 30 days before the start of a lead abatement training course, a sponsor must inform the commissioner in writing of the schedule for the course. A sponsor must permit the commissioner to attend, evaluate, and monitor a lead abatement training course and course examinations at no cost. The commissioner need not give advance notice of attendance. An application must be on a form provided by the commissioner and must include:

- A. a \$100 nonrefundable fee, in the form of a check;
- B. the course instructors' qualifications in presenting adult education and in lead abatement;
- C. the course outline and manual and a description of the presentation method, such as live lecture or videotape, for each topic; and
- D. copies of any materials to be projected, such as photographic slides.

Subp. 3. Initial lead abatement training course requirements. An initial lead abatement training course must meet the requirements of this subpart to be approved. Videotapes may be used to present topics but an instructor must be present to answer questions. Live lectures must be provided on any change in federal or state laws governing lead abatement during the preceding year. An examination must be provided that addresses all the topics in item E. When the commissioner prepares a standard examination, the standard examination must be administered to course participants. For an initial lead abatement training course, a sponsor must:

- A. require that course participants attend the entire training course as a condition for successful course completion and maintain a daily sign-in attendance sheet to document attendance at each training course and provide a copy of this record to the commissioner;
- B. ensure that demonstrations and hands-on training are taught by instructors with experience in lead abatement;
- C. administer and monitor a written, closed-book examination and ensure that the examination is passed on personal merit;
- D. present an initial training course that lasts at least 24 hours, minus breaks and meals, which must be completed within 30 calendar days from the start of the course;
- E. address the following topics:
 - (1) history of the commercial use of lead;
 - (2) health effects of lead exposure on children and adults, especially lead abatement workers;
 - (3) this chapter;
 - (4) lead abatement requirements of the United States Department of Housing and Urban Development as described in "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing," September 1990, Office of Public and Indian Housing;
 - (5) lead exposure regulations under the Occupational Safety and Health Act, Code of Federal Regulations, title 29, part 1910;
 - (6) legal and insurance issues related to lead abatement;
 - (7) respiratory protection including hands-on respirator inspection, cleaning, and fit testing;
 - (8) personal protective clothing and equipment including demonstrations of use;

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(9) lead abatement methods including removal, replacement, and encapsulation;

(10) site preparation including containment methods and cleanup including demonstrations of a high efficiency particle accumulator vacuum;

(11) planning lead abatement work including contract specifications and project management;

(12) clearance criteria; and

(13) residential sources of asbestos; and

F. after July 1, 1993, in addition to item D, an initial lead abatement training course must include eight hours on lead abatement training in which each participant practices use of personal protection equipment, site preparation, lead abatement methods, and cleanup. The total training time required by this item and item D, is 32 hours of training which must be completed within 30 calendar days of the start of the course.

Subp. 4. Annual refresher lead abatement course requirements. An annual refresher lead abatement training course must meet the requirements of subpart 3, items A, B, and C, and must last at least eight hours, minus breaks and lunch, to be approved. Videotapes may be used to present course topics but an instructor must be present to answer questions. Live lectures must be presented on any change in federal or state laws governing lead abatement during the preceding year. An examination that addresses all the topics in subpart 3, item E, must be administered. When the commissioner prepares a standard examination, the standard examination must be administered to course participants.

Subp. 5. Duration of lead abatement training course approval. Approval of an initial lead abatement training course or an annual refresher lead abatement training course is valid for two years unless the commissioner revokes the approval.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0750 DISCIPLINARY ACTION.

Subpart 1. Commissioner action. The commissioner may deny an application, revoke, or impose limitations or conditions on a license, certificate, or training course approval if the licensed lead abatement contractor, certified lead abatement worker, certified lead abatement trainer, or approved lead abatement training course sponsor:

A. violates a provision of this chapter;

B. submits an application that is incomplete, inaccurate, lacks the required fee, or submitted an invalid check;

C. obtains a license, certificate, or approval through error, fraud, or cheating;

D. provides false or fraudulent information on forms;

E. aids or allows an unlicensed or uncertified person to engage in activities for which a license or certificate is required;

F. endangers public health or safety;

G. has been convicted during the previous five years of a felony or gross misdemeanor related to residential lead abatement; or

H. has violated any provision of Minnesota Statutes, section 270.72, 325F.69, or 325F.71.

Subp. 2. Revoked license, certificate, or course approval. An application for licensure, certification, or course approval that has been denied may be resubmitted when the reasons for denial have been corrected. A person whose license, certificate, or course approval is revoked may not apply for a license, certificate, or course approval within one year of the date of revocation. After one year, the application requirements in parts 4761.0710 to 4761.0740, as appropriate, must be followed by an applicant for a license, certificate, or course approval.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0760 PRIORITIES FOR RESPONSE ACTION FOR RESIDENTIAL SITES AND PLAYGROUNDS.

Parts 4761.0760 to 4761.0790 establish procedures for determining priorities for response action for residential sites and playgrounds in the state where soils are found to be contaminated with lead, as required by Minnesota Statutes, section 144.878, subdivision 2a.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0780 ABATEMENT PRIORITY LIST.

Subpart 1. **Abatement priority list.** A distributing authority shall prepare an abatement priority list that ranks known sites within the distributing authority's jurisdiction according to the priorities established in part 4761.0770. The abatement list must list those known residences and playgrounds that are priority one or priority two and those known census tracts as priority 3A, 3B, 3C, or 3D. The abatement list must be prepared before the distributing authority uses public funds to abate any site.

Subp. 2. **Amendment of list.** A distributing authority may at any time amend its abatement priority list. A distributing authority shall add additional sites to its abatement priority list at any time that information becomes available identifying new sites.

Subp. 3. **Additional sampling.** A distributing authority may elect to take additional samples before prioritizing a residence or playground or a census tract. The distributing authority shall consider all sample results that the authority considers reliable in making a decision on the proper priority ranking for a particular residence or playground or census tract.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0790 RESPONSE ACTION.

Subpart 1. **Use of public funds.** No distributing authority shall authorize public funds for abatement until the authority has prepared an abatement priority list. Public funds shall be used for abatement in order of priority established by the abatement priority list.

Subp. 2. **Additional abatement.** Nothing in parts 4761.0760 to 4761.0790 shall be construed to preclude any person from abating any site, regardless of priority, if the person pays for the abatement without the use of public funds or if the soil abatement is part of a publicly funded abatement project that is not strictly limited to soil lead abatement.

Subp. 3. **Abatement not required.** Parts 4761.0760 to 4761.0790 do not require:

A. any person to abate any site at that person's expense; or

B. a distributing authority to abate any site that does not exceed the soil lead standard in part 4761.0300.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0795 LOCAL ENFORCEMENT.

Nothing in this chapter shall be construed to restrict the authority of any local governmental body from enforcing applicable laws regulating the amount of lead in material.

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *18 SR 827*

4761.0800 VARIANCES.

The commissioner may grant a variance to part 4761.0500 according to the procedures and criteria specified in parts 4717.7000 to 4717.7050

Statutory Authority: *MS s 144.05; 144.12; 144.878*

History: *15 SR 2138*