

A PRELIMINARY REVIEW OF THE VERMONT EXPERIENCE WITH ESSENTIAL MAINTENANCE PRACTICES AND LEAD DISCLOSURE

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In April 1996, the Vermont legislature passed Act 165 “An Act to Prevent Lead Poisoning in Children in Rental Housing and Child Care Facilities.” Act 165 took effect on July 1, 1996. In general terms, this new legislation requires owners of rental property and child care facilities to take active steps to alert tenants/occupants of potential lead hazards and reduce lead hazards by following relatively simple maintenance practices that take lead into account. More specifically, these owners must provide tenants written material on preventing lead poisoning, perform a set of Essential Maintenance Practices (EMPs) designed to reduce a child’s exposure to lead paint and dust hazards and ensure that anyone performing the maintenance practices has attended an EMP training class or is supervised by a trained individual (EMPs were endorsed by a federal task force on lead hazard evaluation and control in private housing). Rental property owners are also required to file an affidavit of performance with the state Health Department and their insurance carrier. This groundbreaking legislation was supported by broad coalition that included the Health Department, Vermont Apartment Association, insurance industry, and lead poisoning prevention advocates. The Act was amended in 1997 to target required lead activities to properties and structures that posed the greatest risk of poisoning children.

In September 1997, property owners, managers and trainers were contacted to explore their reactions to the new Vermont lead requirements. The impetus for this review was to learn more about what was working and not working under this relatively new law, the backbone of which is Essential Maintenance Practices. This paper summarizes the views of the roughly 15 individuals interviewed. The majority of those interviewed are large landlords or property managers (i.e., own or manage at least 15 units). Their views are likely to reflect the opinions of professional owners and not necessarily property owners at-large. The two trainers interviewed are the most active in the state, having trained nearly half of those who have completed the EMP course. Health Department staff were also interviewed to gauge their reactions to program implementation and clarify key program elements.

Overview of Vermont’s EMP and Disclosure Requirements Under Act 165

Vermont regulations currently require that all property owners and day care providers who own properties built before 1978:

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- provide written lead-based paint hazard information to current and prospective tenants (distributing the EPA pamphlet “Protect Your Family From Lead in Your Home” satisfies this requirement);
- attend the Essential Maintenance Practices (EMP) course developed by the Health Department or have a representative from their maintenance staff attend (anyone performing EMPs must also be trained or be supervised on-site by a trained individual);
- perform a visual inspection for interior and exterior deteriorated paint by July 1, 1998 and subsequently at unit turnover (More than 1 ft² of deteriorated paint triggers lead safe paint stabilization; interior paint repair must be completed in 30 days.);
- complete specialized lead cleaning at unit turnover (HEPA vacuum and wet wash with lead specialized cleaner);
- install window well inserts in all units and common areas accessible to children by July 1, 1998;
- take reasonable precautions when disturbing paint to minimize lead dust by avoiding unsafe practices and following recommended procedures;
- post a notice asking building occupants to report deteriorated paint to the property owner; and
- perform annual specialized cleaning of window wells/sills in units with children six or younger (HEPA vacuum and wet wash with lead specialized cleaner).

Owners of rental properties built before 1978 are only exempt from these requirements if the results of a lead inspection show no lead-based paint. In the 15 months since the new requirements took effect, approximately 7,000 people have attended the EMP class. The Health Department estimates that this is roughly half of those who are affected by the requirements.

What's Working

Getting the Word Out: Larger rental property owners and managers know about the lead law. Although some seem to be a bit hazy on the details, they are aware of the EMP and disclosure requirements. Most of those contacted said that they learned of the requirements through the Vermont Apartment Association or because they were involved in the legislative process. One owner, who is also a real estate agent, learned of the requirements through the National and Vermont Association of Realtors. The Health Department has distributed over 40,000 copies of the lead information pamphlet “Protect Your Family From Lead in Your Home,” 17,000 copies of the notification poster for deteriorated paint, and 23,000 affidavits to Vermont rental property owners since August 1996. The Vermont Apartment Association has described the requirements in its newsletter. Both trainers interviewed have distributed brochures describing the requirements and sponsored radio advertisements of the EMP course.

EMP Training: Approximately 7,000 people have attended the EMP course. Reaction to the training course was almost universally positive. Every person interviewed felt that they learned something about the dangers of lead poisoning and the specific elements of the Vermont requirements. Several remarked that they were pleasantly surprised that these requirements were less burdensome than they had feared. The course was viewed as being of reasonable length (2 ½ hours) and therefore accessible as an evening program. The two trainers interviewed explained that they divide the 2 - 3 hour class into two segments. The first half is spent discussing the health risks of exposure to lead, providing an overview of Act 165, and describing the Federal disclosure regulations. The second half is devoted to the nuts and bolts of EMPs – what must be done and how to do it. Class participants found the tips on how to install window well inserts, where to purchase a HEPA vacuum, and who is offering EMP contracting services among the most useful. One individual complained that his instructor devoted less than 20 minutes to the mechanics of EMPs, but this appeared to be an unusual experience in one of the early training classes. Several owners paid for their handyman or maintenance staff to attend the class.

The Health Department conducted an evaluation of the training during the initial year. This two-day session received positive reviews from both trainers interviewed who felt it helped them learn how to respond to difficult questions and share training tips (both substantive and those related to adult education). In addition, the Department conducted an evaluation of the trainers and tested whether participants were absorbing the material. This evaluation was quite helpful in pointing out trainers' strengths/weakness as well as areas of the course materials requiring modification. Although roughly 25 trainers initially offered the class, one and half years later less than ten trainers consistently provide the training. This decline may represent a natural settling out in the market place and a response to the decline in the initial wave of demand.

Actions At Turnover: Owners/managers were most receptive to lead-related work that could be accomplished at unit turnover and, conversely, very resistant to doing anything when the unit was occupied. The visual inspection at turnover was viewed as requiring little extra time. Units that are generally in good physical shape rarely exceed the interior threshold for paint stabilization (i.e., 1 ft² per wall). Similarly, most owners felt it was feasible to conduct specialized cleaning at turnover. A majority of those interviewed owned HEPA vacuums (either individually or collectively with a nearby owner); HEPA's were purchased for between \$190 - \$600. For most, the specialized cleaning requirements have led them to modify their unit turnover procedures (i.e., using a HEPA vacuum and wet washing in lieu of broom sweeping). Many contracted out cleaning to an individual who in at least half the cases had taken the EMP class. If the cleaning contractor had not taken the class, the owner was willing to encourage them to do so or pay for them to attend. Several owners/managers estimated that specialized cleaning at turnover added between 2-3 hours per unit to previous cleaning time. One owner complained that it was difficult to squeeze specialized cleaning into the one day when one tenant is moving out and another is moving in. This comment was not echoed by others contacted.

Precautions for Interior Paint Stabilization: There was little resistance to following the lead safe paint repair practices when working on interior surfaces. Most felt that wet misting the surface, laying down plastic and cleaning after the work was completed were feasible and added little extra time or expense to the job.

Concerns Over EMPs

Several elements of the EMPs consistently touched a nerve with rental property owners.

Exterior Painting Triggers and Precautions: All those interviewed expressed grave concern that the threshold spurring exterior paint stabilization was unrealistically low (1 ft²). This complaint was aggravated by their perception that the current recommendation to work wet was not practical. These objections were universal and articulated best by a local painter who had been involved in testing EMP procedures for the Health Department. (He was also a former city councilman in Burlington who supported the EMP requirement and is currently a rental property owner trying to comply with the standards). His primary objections to the recommended safe painting practices, include:

- it is extremely awkward to carry a mister up on a ladder (even using a tool belt);
- wetting a surface before scraping eliminates the possibility of priming directly after finishing the scraping/sanding; this forces the painter to move the ladders and other equipment three times to complete the work on every wall/surface (wet scrap; prime; paint); if the scraping can be done dry then the procedure is accomplished in two steps (scrap & prime; paint) which is much faster;
- wearing protective booties can create safety hazards (falling from ladders) – it is more practical to recommend dedicated work shoes that are regularly cleaned; and
- the 1 ft² threshold is unreasonably low, effectively requiring repainting every three to five years which is extremely costly (especially if the recommended procedures are followed).

None of the property owners, managers or contractors interviewed indicated that they follow the full safe painting procedures for exterior work.

Window Well Inserts: The majority of those contacted had tried to, or were in the process of, installing window well inserts. However, most owners indicated that they did not intend to cover all wells due to financial considerations or because they did not believe the effort yielded health benefits and were a pain in the neck. Of those working with inserts, about half plan to install the inserts themselves or using their own staff while half plan to hire a contractor. Building supplies to perform the work are readily available (e.g., aluminum coil stock, caulk, nails) and inexpensive (e.g., \$4 supplies/window). For example, one land trust had installed inserts in all windows and now views the process as routine. In contrast, another landlord attempted to install a well, cut herself, and was no longer willing to perform installations or hire someone to do so. She explained that she felt it just wasn't worth the effort because none of the units with old windows are rented to families with young children. All of her units with young children already have new

windows. Only one owner firmly stated that he had no intention of installing inserts or doing any other element of EMPs. His rationale was that he faced no liability risk because he does not rent to families with children; he services the student market in Burlington.

Several owners raised concerns about inserts accelerating window rot. This appears to be a long standing objection that has no real factual or theoretical basis. One painter pointed out that aluminum siding contractors have been wrapping wood for decades with no adverse effects. A properly installed window well insert should be caulked, leave weep holes open for drainage, slope toward the holes and hence actually protect the underlying wood from moisture to a greater degree than repainting the wells. (The recommended practice for installing inserts is to cut the aluminum to the length of the well, pry up the stop on either side of the well, apply caulk to well, place the rectangular aluminum insert on the well sliding the edges under the stop, nail the insert in place and caulk the edges. This procedure avoids the need to cut the side portions of the insert to match up with the window shape, minimizing injuries from cutting sharp edges and reduces the time involved. The current training course describes this process in a clearly written one page sheet and attached diagram.)

Lack of Insurance Industry Support: A major obstacle to widespread and enduring implementation is the lack of insurance industry support for the program. Although the insurance industry supported the Vermont state legislation, they have not encouraged their policy holders to conduct EMPs or even tacitly endorsed such programs. This situation has severely undermined the widespread and continued implementation of the program. Only two insurers have sent policy holders an announcement explaining the EMP standards. Only one owner indicated that their insurer had sent them any information about lead or alerted them to the new Vermont EMP requirements. Several owners stated that their insurer had refused to accept the affidavit filed by the owner after completing unit turnover inspections. None of those interviewed felt they were at any risk of losing their coverage if they did not conduct EMPs or even that their insurer was anxious about lead claims. One individual contacted had been told that an insurer had settled a lead case in Vermont.

The Health Department recently sent out a mailing to hundreds of insurance companies offering coverage to Vermont property owners alerting them to the EMP and disclosure requirements. Thus far they have received only three calls in response confirming the liability insurance industry's almost total lack of interest and investment in the program.

Cleaning As A Buzz Word: The owners/managers universally expressed vehement indignation at being required to "clean". The common refrain was "cleaning is the tenant's job." However, when the term was cast aside and the specifics of turnover treatments to remove lead dust were explored, their reactions were significantly less negative. Owners were more willing to pursue vacuuming and wet washing when they were labeled as dust removal and characterized as the most cost effective approach to reduce lead exposures.

Apartment owners and managers were most hostile to the annual cleaning requirements. Their reactions ranged from outrage to subdued annoyance. Owners universally felt that they were being asked to take over the parent's job. In addition, none of owners/managers interviewed understood that the cleaning only applied to units with children six years old and younger and that only cleaning of window sills and troughs is required. Most assumed that the yearly cleaning meant vacuuming and mopping in all units and all horizontal surfaces which further aggravated their hostility.

One implication of this response is that the language/terminology used to describe requirements is powerful. Landlords view "cleaning" as not part of their responsibilities. They acknowledge that it is their job to prepare a vacant unit for new tenants that meets health and safety standards (e.g., no electrical risks, no peeling paint, no unsafe appliances, safe fire escapes and banisters). The challenge is to cast "dust removal" as a cost effective health and safety precaution, rather than "cleaning" which falls in the tenant's realm.

Tenant Notification Poster: Nearly every landlord or property owner stated that the poster was alarmist and ugly. The objections focused on the unreasonableness of displaying the poster, particularly in single family rental homes in very good physical condition that are unlikely to have deteriorated paint. Substantially less opposition existed to hanging notices in common areas of larger apartment buildings. Some property owners were confused about whether the poster must be displayed in all rental units or only in a prominent location in the building.

Ignorance of 1997 Changes in Requirements: Owners were universally confused about the 1997 changes to the Vermont law. For example, none of those contacted understood the adjustment to focus annual cleaning on only those units with young children. In addition, they generally misinterpreted the requirement for annual cleaning to include cleaning floors. It is important to recognize that the vast majority of those contacted attended training courses before the 1997 changes. Both trainers explained that they discuss the 1997 changes in their current course curriculum. The Health Department is preparing a mailing to all those who have completed EMP describing the 1997 changes.

Decreasing Compliance: It appears that the initial wave of compliance may be slipping. Owners who attended early EMP classes and began to integrate unit turnover cleaning and window well inserts into their practices are becoming less diligent. This may be partly due to lack of interest by insurers and limited press coverage maintaining attention on lead poisoning concerns. Several property owners explained that because they were not familiar with any local lead poisoning cases, the problem still felt abstract. Increased media attention to poisoning cases would help put the issue in the public spotlight and draw their attention to the reality of lead poisoning in Vermont (e.g., 1996 lead screening results indicate that nearly 10% of children tested for lead have levels greater than the Center for Disease Control's level of concern – 10 micrograms per deciliter). One trainer suggested that the lead requirements could be discussed at all town meetings (which occur annually in all towns) as another means of alerting property owners and tenants of lead poisoning and the new EMP requirements.

Potential Modifications to the EMP Requirements

Those contacted also raised several more minor concerns that affect their willingness to complete the EMPs. In some instances, they identified a possible solution as well as a concern.

Focus on units with young children. A common theme was, “why does this law ask me to fix up all my units when the real concern is units in which young children live or receive child care?” Several owners felt that they would be more likely to install window well inserts if the requirement applied only in units with children six and under, making it a more manageable endeavor.

Establish a minimum time between turnover treatments. Some owners rent to tenants likely to stay only a short time. This can trigger multiple unit turnover actions for lead in a given year (e.g., women in transition programs where the tenants may stay only two months). For these landlords, the turnover treatments can become a significant burden. The suggested modification was to define a minimum time between turnover treatments, such as 9-12 months.

Reusing plastic within an unoccupied unit. One owner objected to buying and then throwing away a large amount of plastic when he felt it might be possible to reuse it. The situation cited was repainting an unoccupied unit (e.g., at turnover) where final cleaning will be conducted. The question raised was whether it would be acceptable to reuse plastic in multiple rooms if the plastic was misted and wiped down and the unit was thoroughly cleaned prior to reoccupancy.

Cost Estimates For EMP Compliance

The below cost estimates are anecdotal and only represent the opinions of a limited number of rental property owners and managers.

EMP training -- \$50/person (usually owner and 1 staff = \$100 per property, plus staff time); trainers estimated it cost them \$15/person to deliver the course which generated roughly a \$35/person profit.

Window well inserts -- \$10/window if conducted in-house (materials \$4; labor \$6); \$13-\$20 if contracted out (Prices vary depending upon window condition; if added time is need to unstick the sash, the price of the service increases.).

Specialized cleaning at turnover (HEPA vacuum and wet wash) -- extra 2-5 hours/unit, roughly \$30-\$70/unit (labor @\$10-\$15/hour, HEPA vacuum and other supply costs); one owner estimated an extra day of cleaning at a few hundred dollars, although this was an outlier.

Interior paint stabilization added lead precautions -- no measurable added costs (plastic, limited added cleaning time).

Visual inspection – insignificant added cost (additional 5 minutes/unit).

Annual window cleaning in units with young children -- no estimates available.

Exterior paint stabilization -- significant extra costs of at least \$1,500-\$2,000/building with 1-3 units (repainting would be required far sooner than would normally be done due to the 1 ft² trigger for stabilization and the significant added costs of working wet, containing dust with plastic, etc.).

Compliance With State and Federal Lead Disclosure

The State and Federal disclosure requirements for multi-family property owners are consistent. Both require distribution of written material on preventing lead poisoning prevention. The Federal regulations also require owners to disclose any known lead-based paint or lead-based paint hazards. Reactions of Vermont rental property owners to these lead disclosure requirements were varied. In general, it appears that many large property managers are complying with the requirements. In some cases compliance was not yet 100%, but being phased in. These managers include the disclosure warning statement as part of their standard lease package. A majority of the larger property owners were distributing the lead information pamphlet. Several larger property owners that rent primarily to students (who generally do not have children in the units) were not complying. Compliance was less consistent for owners of less than 10 units, most of whom were aware of the disclosure requirement but had not gotten around to complying. In one case, the owner was under the misimpression that satisfying the Vermont EMP requirements exempted them from the Federal requirement. (The Health Department recently revised the EMP training course to include specific discussion of the State and Federal disclosure requirements. This was not a part of the original training.) One property manager of 200 units in the Burlington area estimated that it cost them roughly \$200/year to reprint the brochures and distribute them. Most of the owners/managers had heard of the disclosure requirements from the Vermont Apartment Association or National Association of Realtors.

Conclusions and Implications

The Vermont program has spurred changes in rental property owner/manager awareness of lead poisoning prevention and, to a lesser degree, in how properties are managed. The program is potentially an avatar of the next wave of lead poisoning prevention. Vermont could also be viewed as a laboratory to evaluate the feasibility and effectiveness of the various elements of EMPs. We need to learn from the experiences of those trying to follow these practices and apply any lessons learned to other states developing similar programs (e.g., North Carolina) or others considering recommending elements of EMPs as lead hazard control measures (e.g., forthcoming HUD regulations for Federally assisted programs).

The unambiguous signs of success are the 7,000 people trained in less than 15 months and the favorable reactions to the course (both its accessibility and content). To a lesser extent, window well inserts are being installed, visual inspections and dust removal are occurring at some unit turnovers, and awareness of safe paint repair has increased with more dust control/cleaning occurring (e.g., some owners only hire painters who have completed the EMP class).

However, it is also clear that the program would be more successful if several changes could occur. First, the insurance industry must actively support the program by visibly endorsing the EMP requirements and taking concrete steps to encourage more of their policy holders to comply with these requirements. Such actions serve the interest of the insurance industry by reducing potential lead hazards in units owned by their policy holders (hence any potential lead claims) and benefits property owners as well as tenants (e.g., reducing rental property owner's liability exposure, minimizing lead exposures to tenants living in units following EMPs). Even if insurers are not currently feeling the pressure of looming liability claims, there is no down side to advocating EMPs as sound and workable lead poisoning prevention steps. Specifically, all insurance companies providing coverage to owners of pre-1978 rental properties should send a letter to their policy holders alerting them to the EMP requirements and encouraging them comply with the new standards. This message must be delivered by insurance industry leaders and be reinforced by individual agents who are the regular message carriers to their policy holders. Agents should welcome receipt of affidavits documenting compliance with EMPs and never tell policy holders "oh, don't bother." Agents should also be familiar with the components of EMPs and be able to refer policy holders to the Health Department for further clarification of the requirements. Insurance companies might also send agents who write policies for the rental property owners of older buildings to the EMP course to further increase their understanding of the scope of lead poisoning in Vermont (i.e., roughly 10% of children currently screened for lead have levels above the federal level of concern) and the feasibility EMPs. The Federal task force that developed the concept of EMPs recognized the win-win aspects that such a program might have for those affected by lead poisoning. These benefits must be reemphasized to the insurance carriers in Vermont; there is no reason why they should not become boosters of Act 165.

Second, isolated elements of EMPs seem to generate considerable negative reaction among rental property owners. Some of this opposition might be mollified by adjusting the program to respond to key concerns. For example, the Health Department might explore techniques to improve the feasibility of exterior paint stabilization as well as try and characterize the “cleaning” required during unit turnover and annually in windows as dust removal – a cost effective lead safety measure. Concomitantly, the Health Department must continue to clarify the 1997 amendment to Act 165 that streamline and target several elements of the program making it more workable (e.g., annual dust removal only applies units with children six and under).

Third, continued efforts are needed to get the word out. After an initial wave of media attention, it appears that interest in the program may be waning. Even those owners who began EMPs are no longer being as diligent in monitoring that the key activities continue to occur (e.g., the original cleaning manager attended the EMP class but, he has left and the new person has not completed the training). Sustained energy is need to make lead poisoning real to the many property owners and managers who are affected by the law. For example, only one owner interviewed knew of a poisoned child making the issue abstract to the vast majority of those contacted. The Health Department, insurance industry, lead poisoning prevention advocates all have a role to play as boosters of the Vermont program.