

By: Easley of the Senate
and
Beutler of the House

An Act relating to environment and natural resources;
amending Sections 2, 3, 5, 6 and 10, Chapter 321,
O.S.L. 1994 (27A O.S. Supp. 1996, Sections 2-12-
102, 2-12-201, 2-12-301, 2-12-302 and 2-12-402),
which relate to the Oklahoma Lead-based Paint
Management Act; defining terms; modifying
definitions; deleting references to certain
activities; modifying facilities to which certain
procedures apply; removing requirement for certain
certification; providing for certificates to be
issued to individuals or firms; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 321, O.S.L. 1994 (27A O.S. Supp. 1996, Section 2-12-102), is amended to read as follows:

Section 2-12-102. For the purposes of the Oklahoma Lead-based Paint Management Act:

1. "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Board. The term abatement includes but is not limited to:

- a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil, and
- b. all preparation, cleanup, disposal and postabatement clearance testing activities associated with such measures;

2. "Board" means the Environmental Quality Board;

3. "Certified lead-based paint contractor" means any individual who is certified by the Department as a lead-based paint reduction contractor, inspector or hazard evaluator or a combination thereof;

4. "Certified lead-based paint specialist" means a lead-based paint specialist certified by the Department;

5. "Child-occupied facility" means a building or portion of a building constructed prior to 1978, which is visited by a child six (6) years of age or younger for at least three (3) hours in one day on two (2) or more days in the same week, when the combined visiting time for that child totals six (6) hours or more in one week and at least sixty (60) hours in one year. The designated weekly period for this calculation begins on Sunday and ends on Saturday. The term "child-occupied facility" may include, but is not limited to, day-care centers, preschools and kindergarten classrooms;

6. "Deleading" means activities conducted by a lead-based paint contractor or specialist who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities;

7. "Department" means the Department of Environmental Quality;

8. "Executive Director" means the Executive Director of the Department of Environmental Quality;

9. "Federally assisted housing" means residential dwellings receiving project-based assistance pursuant to programs including, but not limited to:

a. Section 221(d) (3) or 236 of the National Housing Act,

b. Section 1 of the Housing and Urban Development Act of 1965,

c. Section 8 of the United States Housing Act of 1937, or

d. Sections 502(a), 504, 514, 515, 516 and 533 of the Housing Act of 1949;

10. "Federally owned housing" means residential dwellings owned or managed by the federal agency, or for which a federal agency is a trustee or conservator. The term federal agency includes the federal Department of Housing and Urban Development, the Farmers Home Administration, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, the Department of Defense, the federal Department of Veterans Affairs, the Department of the Interior, the federal Department of Transportation, and any other federal agency;

11. "Hazard evaluation" means an on-site investigation process established by the rules of the Board to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings. For purposes of this act, the term hazard evaluation shall be synonymous with the term risk assessment as used in Title X of the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., Public Law No. 102-550;

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

13. "Lead-based paint" means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or:

- a. in the case of paint or other surface coatings in target housing, such lower level as may be established by the United States Secretary of Housing and Urban Development, as defined in Section 302(c) of the federal Lead-based Paint Poisoning Prevention Act, or
- b. in the case of any other paint or surface coatings, such other level as may be established by the Board;

14. "Lead-based paint activities" means:

- a. in the case of public property and private property, hazard evaluation assessment, inspection, deleading and abatement of lead sources or lead-based paint,

lead-based paint hazards, lead-contaminated dust, or lead-contaminated soil, and demolition, and

- b. in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges and demolition;

15. "Lead-based paint contractor" means any individual or firm who performs or supervises or offers to perform or to supervise lead-based paint inspections, hazard evaluations, project designs, abatements or reduction;

16. "Lead-based paint reduction contractor" means any individual who performs or supervises lead-based paint services, including but not limited to hazard reduction, abatement, or deleading;

17. "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Board;

18. "Lead-based paint hazard evaluator" means an individual certified by the Department to perform lead-based paint hazard evaluations;

19. "Lead-based paint inspector" means an individual certified by the Department to perform a surface-by-surface investigation to determine the presence of lead-based paint and provide a report explaining the results of the investigation;

20. "Lead-based paint services" means any lead-based paint hazard evaluation, detection, reduction, renovation, remodeling, abatement, on-site testing, or any other lead-based paint activities which may create a lead-based paint hazard;

21. "Lead-based paint specialist" means any worker or other person directly and substantially involved in the performance of lead-based paint services and who has satisfactorily completed the required level of lead-based paint training from accredited training providers and programs, or in the case of out-of-state providers and programs, from Department-recognized and approved providers and programs. For the purposes of this article, the term lead-based paint specialist shall be synonymous with the term abatement worker or worker as used in Title X of the Residential Lead-based Paint Hazards Reduction Act of 1992, 42 U.S.C., Section 4851 et seq., Public Law No. 102-550;

22. "Lead-contaminated dust" means surface dust in residential or commercial dwellings that contains an area or mass concentration of lead in excess of levels determined by the Board to pose a threat of adverse human health effects;

23. "Lead-contaminated soil" means bare soil on residential or commercial real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Board;

24. "Lead-hazard detection" means the identification of lead-based paint hazards;

25. "Reduction" or "lead-hazard reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement;

26. "Residential dwelling" means:

- a. a single-family dwelling, including attached structures such as porches and stoops, or
- b. a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in

part, as the home or residence of one or more persons;
and

27. "Target housing" means any housing constructed prior to 1978. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the United States Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

SECTION 2. AMENDATORY Section 3, Chapter 321, O.S.L. 1994 (27A O.S. Supp. 1996, Section 2-12-201), is amended to read as follows:

Section 2-12-201. A. The Environmental Quality Board shall promulgate rules governing lead-based paint services which will:

1. Enable any lead-based paint contractor meeting the standards and criteria established by the Board, including satisfactory completion of required training in applicable courses offered by Department of Environmental Quality-accredited training providers and programs or an out-of-state provider or program recognized and approved by the Department, to become certified by the Department;

2. Require that any lead-based paint reduction contractor, inspector or hazard evaluator or specialist performing or offering to perform lead-based paint services on target housing or child-occupied facilities is certified prior to the performance of any such service;

3. Ensure that persons holding themselves out to be certified lead-based paint contractors or certified lead-based paint specialists have been certified as such by the Department; and

4. Provide for accreditation of approved training providers and programs located in this state.

B. Such rules shall:

1. Contain standards for performing lead-based paint activities taking into account reliability, effectiveness and safety;

2. Contain specific requirements for the accreditation of lead-based paint training programs and the instructors of such programs including, but not limited to:

- a. minimum requirements for the accreditation of training providers,
- b. minimum training curriculum requirements,
- c. minimum training hour requirements,
- d. minimum hands-on training requirements,
- e. minimum trainee competency and proficiency requirements, and
- f. minimum requirements for training program quality control;

3. Set training requirements for certified lead-based paint contractors and lead-based paint specialists and require that such training be provided by Department-accredited training providers and programs, or by out-of-state providers and programs recognized and approved by the Department. Such requirements shall allow for differences in the training needs of such contractors and specialists in lead-based paint services in target housing and child-occupied facilities and in applicable state and municipal regulatory waste disposal requirements;

4. Provide that training requirements applicable to lead-based paint specialists establish minimum acceptable levels of training and periodic refresher training for each class of specialists;

5. Require that all lead-based paint training programs shall include, but not be limited to, a hands-on component and instruction on the health effects of lead exposure, the use of personal protective equipment, workplace hazards and safety problems, reduction and abatement methods and work practices, decontamination procedures, cleanup and waste disposal procedures, lead monitoring and on-site testing methods, and legal rights and responsibilities;

6. Set forth requirements for certification of lead-based paint contractors and specialists. Such requirements shall include, but are not limited to, applications therefor, bonding and education, training, examination and experience prerequisites;

7. Establish a system of training for all personnel who render review and inspection services for the Department in order to assure uniform statewide application of rules; and

8. Identify guidelines, based on federal regulations, for the determination of adverse human health effects posed by lead-based paint hazards.

C. Rules promulgated by the Board shall not apply to railroad bridges owned or leased by a railroad.

D. 1. The Board shall establish a system of nonrefundable fees to be charged for certification of lead-based paint contractors and specialists, accreditation of approved Oklahoma training programs and training providers, recognition and approval of out-of-state accredited training programs and training providers, any training or other program related to lead-based paint services conducted by the Department, and for services rendered by the Department in connection with such certification, accreditation, recognition and approval, and programs.

2. The Board shall base its schedule of fees upon the costs of services provided.

3. The state and political subdivisions thereof, shall be exempt from any certification fees required by rules of the Board if an affidavit is filed with the Department stating that the applicant is employed by the state or political subdivision thereof and shall only be performing lead-based paint services for the state or political subdivision employer. Any such employee who performs or offers to perform lead-based paint services as a certified lead-based paint contractor or specialist for persons other than his or her state or political subdivision employer shall be subject to certification fees upon such performance or offer.

E. Any rules promulgated by the Board shall be consistent with federal laws and regulations relating to lead-based paint services specified by the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., Public Law No. 102-550, to ensure consistency in regulatory action. Such rules shall not be more restrictive than corresponding federal regulations unless such stringency is specifically authorized by this article. The Board shall have the right to revise its rules and procedures from time to time to assure that lead-based paint projects continue to be eligible for federal funding by meeting the state certification program standards and other requirements that may from time to time be promulgated by federal agencies that have jurisdiction over lead-based paint hazards.

SECTION 3. AMENDATORY Section 5, Chapter 321, O.S.L. 1994 (27A O.S. Supp. 1996, Section 2-12-301), is amended to read as follows:

Section 2-12-301. A. An applicant who has paid the required nonrefundable certification fees and has complied with the requirements of this article and rules promulgated thereunder, including, but not limited to, education, training, experience and examination prerequisites, shall be certified by the Department of Environmental Quality.

B. The Department may waive some or all of its testing, training, experience, or examination requirements for certification if the applicant presents a currently valid certificate or license issued to him by another state or certifying agency or institution or national nonprofit organization for lead-based paint services, if the Department finds that the certification requirements of the issuer in effect at the time of issuance are equivalent to its certification requirements; provided, however, that no certification

shall be issued under this subsection unless the holder of the certificate would be issued a similar certificate or license by such other state, certifying agency, or organization under substantially the same conditions.

C. Any certificate issued under this section shall be renewed by the April 1 occurring not more than one year after the date of the most recent date of issuance, renewal, reactivation or reinstatement. Thereafter, the certificate may be renewed for a one-year period beginning April 1 and ending March 31 of the following year.

D. A certificate shall be renewed upon approval of the Department. Application for such renewal shall be submitted to the Department on forms prescribed by the Department, shall be accompanied by a nonrefundable renewal fee as set by the Board and shall include documentation that the applicant has met the annual renewal requirements of the Department. The Department shall allow a thirty-day grace period for such renewals without payment of late fees, provided the applicant submits the required renewal fee and qualifies for such renewal.

E. A certificate which is not so renewed shall expire on April 30 after the thirty-day grace period, and shall have no further validity unless the Department, upon receipt of an application from the holder of the expired certificate within one (1) year after the certificate's March 31 renewal date, reactivates and renews such certificate. Such reactivation and renewal application shall include the submission of data on forms prescribed by the Department, nonrefundable renewal and reactivation late fees as set by the Environmental Quality Board, and documentation that the applicant has met the Department's renewal requirements. A reactivated certificate may be renewed annually thereafter as provided in this section.

F. The holder of an expired and unreactivated certificate shall not be issued any new certificate unless the certificate holder applies and qualifies therefor pursuant to this article and rules promulgated thereunder.

G. Any certificate issued pursuant to the Oklahoma Lead-based Paint Management Act may contain such conditions or restrictions as the Department shall deem necessary or appropriate.

H. A certificate shall not be issued pursuant to the provisions of this article to any entity other than an individual or firm.

SECTION 4. AMENDATORY Section 6, Chapter 321, O.S.L. 1994 (27A O.S. Supp. 1996, Section 2-12-302), is amended to read as follows:

Section 2-12-302. A. No lead-based paint contractor shall perform or offer to perform lead-based paint services upon any target housing or child-occupied facilities unless such person is certified by the Department prior to performing or offering to perform such services.

B. No individual shall advertise or otherwise present himself as a certified lead-based paint contractor or specialist, for purposes of offering to perform or performing lead-based paint services unless certified by the Department pursuant to this article and rules promulgated thereunder.

C. Certified lead-based paint contractors and specialists shall use only environmental sampling laboratories that are part of an effective voluntary accreditation program as determined by the federal Environmental Protection Agency or which are federally certified to analyze for lead in paint films, soil and dust.

D. The Department shall maintain an official listing of the names and addresses of all certified lead-based paint contractors and specialists and make such list available to any person requesting it upon payment of a copying fee established by the Environmental Quality Board.

E. The State Department of Labor shall provide health and safety information on lead abatement to all lead-based paint contractors and specialists certified pursuant to the terms of this article.

SECTION 5. AMENDATORY Section 10, Chapter 321, O.S.L. 1994 (27A O.S. Supp. 1996, Section 2-12-402), is amended to read as follows:

Section 2-12-402. In order to reduce the risk of exposure to lead in connection with renovation, demolition and remodeling of target housing and child-occupied facilities, the Environmental Quality Board shall, consistent with the terms of federal funding agreements and the receipt of such funds by the Department of Environmental Quality for such development and dissemination, promulgate guidelines for the conduct of such renovation, demolition and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Department shall disseminate such guidelines to persons engaged in such renovation, demolition and remodeling through hardware and paint stores, employee organizations, trade groups, state and local agencies, and through other appropriate means.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.