

Title 38: WATERS AND NAVIGATION

Chapter 12-B: LEAD ABATEMENT

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Maine Revised Statutes
Title 38: WATERS AND NAVIGATION
Chapter 12-B: LEAD ABATEMENT

§1291. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 375, §14 (NEW).]

1. Abatement. "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and [1997, c. 375, §14 (NEW).]

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures. [1997, c. 375, §14 (NEW).]

"Abatement" does not include renovation and remodeling as defined in subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

[1997, c. 375, §14 (NEW) .]

2. Accredited training program. "Accredited training program" means a training program that has been accredited by the State pursuant to rules adopted in accordance with this chapter.

[1997, c. 375, §14 (NEW) .]

3. Business entity. "Business entity" means a partnership, firm, association, corporation, sole proprietorship or other business concern.

[1997, c. 375, §14 (NEW) .]

4. Certificate. "Certificate" means a document issued to an individual by the commissioner affirming that the individual has successfully completed the training and other requirements set forth in this chapter to qualify as a lead professional.

[1997, c. 375, §14 (NEW) .]

5. Commercial building. "Commercial building" means any building used primarily for commercial or industrial activity that is generally not open to the public or occupied or visited by children, including, but not limited to, warehouses, factories, storage facilities, aircraft hangars, garages and wholesale distribution facilities.

[1997, c. 375, §14 (NEW) .]

6. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

[1997, c. 375, §14 (NEW) .]

7. Department. "Department" means the Department of Environmental Protection.

[1997, c. 375, §14 (NEW) .]

8. Design consultant. "Design consultant" means an individual engaged in preparing and supervising the implementation of plans for the removal or abatement of lead-based paint. These activities include, but are not limited to, design, inspection or monitoring of lead abatement activities; and advising building owners, contractors and project supervisors regarding lead abatement activities.

[1997, c. 375, §14 (NEW) .]

9. Employee. "Employee" means an individual who may be permitted, required or directed by an employer, in consideration of direct or indirect gain or profit, to engage in any employment.

[1997, c. 375, §14 (NEW) .]

10. In-house lead abatement unit. "In-house lead abatement unit" means the unit of a business or public entity that engages in or intends to engage in lead abatement activities or projects solely within the confines of property owned or leased by the entity and that employs one or more lead abatement supervisors for lead abatement activities.

[1997, c. 375, §14 (NEW) .]

11. Inspection.

[1997, c. 624, §9 (RP) .]

12. Interim controls. "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.

[1997, c. 375, §14 (NEW) .]

13. Lead abatement contractor. "Lead abatement contractor" means a business entity that engages in or intends to engage in lead abatement activities as a business service and that employs or involves one or more project supervisors for lead abatement activities.

[1997, c. 375, §14 (NEW) .]

14. Lead abatement professional. "Lead abatement professional" means an individual certified by the commissioner to engage in lead-based paint activities, including, but not limited to, a lead abatement worker, a lead abatement project supervisor, a lead inspector, a lead abatement design consultant and a lead risk assessor.

[1997, c. 375, §14 (NEW) .]

15. Lead abatement worker. "Lead abatement worker" means an individual engaging in any lead abatement activity for any employer.

[1997, c. 375, §14 (NEW) .]

16. Lead-based paint. "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

[1997, c. 375, §14 (NEW) .]

17. Lead-based paint activities. "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as lead screening, lead determination and deleading.

[1997, c. 624, §10 (AMD) .]

17-A. Lead determination. "Lead determination" means an inspection of a limited portion of a building for the purpose of identifying the presence of lead-based paint.

[1997, c. 624, §11 (NEW) .]

17-B. Lead hazard. "Lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition.

[1997, c. 624, §11 (NEW) .]

17-C. Lead inspection. "Lead inspection" means a surface-by-surface assessment to determine the presence of lead-based paint.

[1999, c. 334, §9 (AMD) .]

18. Lead inspector. "Lead inspector" means an individual who conducts lead inspections and lead determinations.

[1997, c. 624, §12 (AMD) .]

19. Lead-poisoned. "Lead-poisoned" means having a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the Department of Health and Human Services.

[1997, c. 375, §14 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

19-A. Lead-safe. "Lead-safe" means premises do not contain lead at a level or in a condition that constitutes an environmental hazard, according to rules adopted pursuant to section 1295.

[2007, c. 628, Pt. B, §1 (NEW) .]

20. License. "License" means a document issued by the commissioner to a business entity or public entity, including, but not limited to, a lead abatement contractor, an in-house lead abatement unit or a lead training provider, affirming that the entity has met the requirements set forth in this chapter to engage in lead-based paint activities.

[1997, c. 375, §14 (NEW) .]

21. Owner or operator. "Owner" or "operator" means a person who owns, leases, operates, controls or supervises a lead abatement activity within a building, structure or facility.

[1997, c. 375, §14 (NEW) .]

22. Person. "Person" means any individual, business entity, governmental body or other public or private entity.

[1997, c. 375, §14 (NEW) .]

23. Project supervisor. "Project supervisor" means an individual with responsibility for the supervision of lead abatement activities. "Project supervisor" includes, but is not limited to, an abatement project supervisor employed by a contractor or by an in-house lead abatement unit.

[1997, c. 375, §14 (NEW) .]

23-A. Property owner. "Property owner" means a person, firm, corporation, guardian, conservator, trustee, executor, legal representative or registered agent who alone or jointly and severally with others owns, holds or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession.

[2007, c. 628, Pt. B, §2 (NEW) .]

24. Public building. "Public building" means any building constructed before 1978, except residences and child care facilities, that is generally open to the public or occupied or visited by children, including, but not limited to, schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers and government buildings.

[1997, c. 375, §14 (NEW) .]

25. Public entity. "Public entity" means the State, any of its political subdivisions or any agency or instrumentality of either.

[1997, c. 375, §14 (NEW) .]

26. Renovation and remodeling. "Renovation and remodeling" means the replacement or reconstruction of any part of a residence in which the primary intent is to repair, restore or remodel a given structure, which may incidentally result in the reduction of lead-based paint hazards.

[1997, c. 375, §14 (NEW) .]

26-A. Residential dwelling. "Residential dwelling" means a room or group of rooms that form a single independent habitable unit for permanent occupation by one or more individuals that has facilities with permanent provisions for living, sleeping, eating, cooking and sanitation, including common areas and appurtenant structures. "Residential dwelling" does not include:

A. An area not used for living, sleeping, eating, cooking or sanitation, such as an unfinished basement, that is not readily accessible to children under 6 years of age; [2007, c. 628, Pt. B, §3 (NEW) .]

B. A unit within a hotel, motel or seasonal or temporary lodging facility unless the unit is occupied by one or more children under 6 years of age for a period exceeding 30 days; [2007, c. 628, Pt. B, §3 (NEW) .]

C. An area that is secured and inaccessible to occupants; [2007, c. 628, Pt. B, §3 (NEW) .]

D. Housing for the elderly, or a dwelling unit designated exclusively for adults with disabilities. This exemption does not apply if a child under 6 years of age resides or is expected to reside in the dwelling unit or visit the dwelling unit on a regular basis; or [2007, c. 628, Pt. B, §3 (NEW) .]

E. An unoccupied dwelling unit that is to be demolished, as long as the dwelling unit remains unoccupied until demolition. [2007, c. 628, Pt. B, §3 (NEW) .]

[2007, c. 628, Pt. B, §3 (NEW) .]

27. Risk assessment. "Risk assessment" means the on-site assessment to determine the existence, nature, severity and location of lead hazards and the provision of a written report explaining the results of the assessment and the options for reducing lead hazards.

[1997, c. 624, §13 (AMD) .]

28. Risk assessor. "Risk assessor" means an individual who has been trained to conduct risk assessments as well as lead inspections.

[1997, c. 375, §14 (NEW) .]

29. Superstructure. "Superstructure" means a large steel or other industrial structure, including, but not limited to bridges or water towers.

[1997, c. 375, §14 (NEW) .]

30. Training manager. "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

[1997, c. 375, §14 (NEW) .]

31. Training provider. "Training provider" means a person providing training that is necessary to fulfill certification or licensing requirements under this chapter.

[1997, c. 375, §14 (NEW) .]

SECTION HISTORY

1997, c. 375, §14 (NEW). 1997, c. 624, §§9-13 (AMD). 1999, c. 334, §9 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 628, Pt. B, §§1-3 (AMD).

§1292. PROHIBITIONS

1. License or certificate required for residential lead-based paint activities. A person may not engage in any residential lead-based paint activities in the State unless licensed or certified pursuant to this chapter.

[1997, c. 375, §14 (NEW) .]

2. License or certificate required for lead-based paint activities in public buildings, commercial buildings and superstructures. After the effective date of rules adopted by the department pursuant to section 1295 for licensing and certification to conduct lead-based paint activities in public buildings, commercial buildings and superstructures, a person may not engage in any lead-based paint activities in the State unless licensed or certified pursuant to this chapter.

[1997, c. 375, §14 (NEW) .]

3. Notification required. A person may not engage in any residential lead abatement activity unless that person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust. After the effective date of rules adopted by the department pursuant to section 1295 for notification of lead abatement activities in public buildings, commercial buildings and superstructures, a person may not engage in those lead abatement activities unless the person notifies the commissioner in writing at least 5 working days before beginning any on-site work, including on-site preparation work, that has the potential to create lead dust.

[1997, c. 375, §14 (NEW) .]

4. Work practices. All residential lead-based paint activities must be conducted in accordance with work practice standards adopted by rule pursuant to this chapter. After the effective date of rules adopted by the department pursuant to section 1295 for work practices pertaining to lead-based paint activities in public buildings, commercial buildings and superstructures, those lead-based paint activities must be conducted in accordance with the applicable work practice standards adopted by rule.

[1997, c. 375, §14 (NEW) .]

5. Exemption. A person who is 18 years of age or older need not obtain licensing and certification to perform lead abatement activities within a residential dwelling unit that the person owns and personally occupies, as long as a child residing in the dwelling unit has not been identified as lead-poisoned. A person 18 years of age or older who owns and personally occupies a dwelling unit in which a resident child has been identified as lead-poisoned need not obtain licensing and certification to perform abatement activities within that dwelling unit, as long as the person completes any training required by the Department of Health and Human Services.

[1997, c. 624, §14 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY

1997, c. 375, §14 (NEW). 1997, c. 624, §14 (AMD). 2003, c. 689, §B6 (REV) .

§1293. CERTIFICATION, LICENSING AND ACCREDITATION REQUIREMENTS

1. Certification and licensing. The board shall adopt and amend rules necessary to govern the licensing of business or public entities, including, but not limited to, lead abatement contractors and in-house lead abatement units, the accreditation of lead training providers and the certification of lead abatement professionals.

[1997, c. 375, §14 (NEW) .]

2. Approval of training courses. The board shall adopt and amend rules establishing criteria and procedures for the approval of training courses and examinations that ensure the qualifications of applicants for certification as required in this chapter. These rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A. To ensure a smooth transition period before the adoption of accreditation rules in conformance with the requirements of this chapter, the commissioner shall provide for interim accreditation of training providers by establishing procedures in accordance with 40 Code of Federal Regulations, Part 745, Subpart L, Section 745.228.

To qualify for approval, a training course must contain a combination of class instruction, practical application and public health procedures of a length and content that ensure adequate training for the level and type of responsibility for each named certification category.

Courses certified under this section must be conducted by instructors whose training and experience are determined by the commissioner to be appropriate for the subject matter being taught and the level of certification category for which the course is designed. Courses must be designed and conducted under the guidance of a training manager.

[1997, c. 375, §14 (NEW) .]

3. Renewal. A license or certificate issued under this chapter expires one year after the date of issue. A licensee or certificate holder may apply to the commissioner for the renewal of a license or certificate. A renewal may not be granted if the application is received more than 2 years following expiration of the previously issued license or certificate.

To qualify for renewal of a license or certificate, the applicant must submit:

A. The appropriate fees as prescribed by rule pursuant to section 1295; [1997, c. 375, §14 (NEW) .]

B. Evidence of completion of any continuing education or training that may be required by rules adopted by the board; and [1997, c. 375, §14 (NEW) .]

C. A signed statement disclosing any violations of lead abatement standards for which the applicant may have been cited by a regulatory agency of the Federal Government or the State. If no citations were received during the previous year, that fact must be stated. The disclosure must include evidence that all penalties and fees assessed to the applicant are paid in full. [1997, c. 375, §14 (NEW) .]

[1997, c. 375, §14 (NEW) .]

SECTION HISTORY

1997, c. 375, §14 (NEW) .

§1294. RECIPROCITY AGREEMENT

The commissioner may develop reciprocity agreements with other states and with federally recognized tribes when the states and tribes have established licensing and certification and accreditation requirements that are at least as stringent as those set forth in this chapter. [1997, c. 375, §14 (NEW) .]

SECTION HISTORY

1997, c. 375, §14 (NEW) .

§1295. RULES

The department shall adopt and amend rules to carry out the purposes of this chapter and to ensure that state law relating to lead-based paint activities satisfies minimum requirements of federal law in all respects. In adopting the rules, the department shall consult the regulations of the United States Department of Labor, Occupational Safety and Health Administration to ensure that the rules minimize duplicative requirements. The rules are routine, technical rules in accordance with Title 5, chapter 375, subchapter II-A and may address, but are not limited to, the following: [1997, c. 375, §14 (NEW) .]

1. Licenses and certification. Licensing lead abatement contractors and in-house lead abatement units, and certification of lead abatement professionals;

[1997, c. 375, §14 (NEW) .]

2. Training programs. Accreditation of training providers offering courses for lead abatement professionals and in lead awareness for homeowners and for contractors involved in renovation, remodeling and painting;

[1997, c. 375, §14 (NEW) .]

3. Standards of acceptable work practices. Criteria and procedures of acceptable work practices for licensees and certificate holders and for persons exempt from licensing and certification requirements;

[1997, c. 375, §14 (NEW) .]

4. Standards of conduct. Standards of acceptable professional conduct for licensees and certificate holders engaged in lead-based paint activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee or certificate holder, the suspension or revocation of a license or certificate or the denial of the renewal of a license or certificate; and

[1997, c. 375, §14 (NEW) .]

5. Fees. Establishing fees for notifications and annual fees for each license and certification category. The fees must be deposited in the Maine Environmental Protection Fund.

[1997, c. 375, §14 (NEW) .]

SECTION HISTORY

1997, c. 375, §14 (NEW) .

§1296. EMERGENCY PROVISIONS

A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint not subject to the licensing and certification requirements of this chapter shall take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project. Activities that may result in the release of lead to the environment include, but are not limited to, removal of lead paint by using open-flame burning or torching, machine sanding or grinding without high-efficiency particulate exhaust control, uncontained hydro blasting or high-pressure washing, abrasive blasting or sandblasting without containment and high-efficiency particulate exhaust control and using heat guns operated above 1,100 degrees Fahrenheit. If the commissioner finds, after investigation, that any location at which lead dust, lead chips or other lead-contaminated wastes are or were handled or otherwise came to be located may create a danger to public health or the safety of any person or to the environment, the commissioner may order the person responsible for the lead dust, lead chips or lead-contaminated waste to cease the activity immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [2001, c. 576, §1 (AMD) .]

An order issued under this section must contain findings of fact describing, insofar as possible, the site of the activity and the danger to the public health or safety. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [2005, c. 330, §25 (AMD) .]

The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. The board shall hold the hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order within 15 working days after receipt of the application. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2005, c. 330, §25 (AMD) .]

A person who fails without sufficient cause to undertake abatement or remedial action promptly in accordance with an order issued pursuant to this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action. [1997, c. 375, §14 (NEW) .]

The commissioner may initiate enforcement action under section 347-A in lieu of issuing an order under this section. [2009, c. 501, §13 (NEW) .]

The Attorney General may commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. [1997, c. 375, §14 (NEW) .]

SECTION HISTORY

1997, c. 375, §14 (NEW). 2001, c. 576, §1 (AMD). 2005, c. 330, §25 (AMD). 2009, c. 501, §13 (AMD).

§1297. ASSISTANCE FROM OTHER DEPARTMENTS

The Commissioner of Administrative and Financial Services, the Commissioner of Labor and the Commissioner of Health and Human Services shall assist the commissioner in the enforcement of the licensing and certification requirements of this chapter. [1997, c. 375, §14 (NEW); 2003, c. 689, Pt. B, §7 (REV).]

SECTION HISTORY

1997, c. 375, §14 (NEW). 2003, c. 689, §B7 (REV).

§1298. REGISTRY OF LEASED LEAD-SAFE RESIDENTIAL DWELLINGS

1. Registry. The department shall maintain a registry of leased residential dwellings built before 1978 that are lead-safe as designated by the property owners in accordance with subsection 2.

[2007, c. 628, Pt. B, §4 (NEW) .]

2. Designation as lead-safe. A leased residential dwelling may be designated as lead-safe for the purposes of this section if the property owner has submitted to the department an application for the property to be placed on the registry created under subsection 1. Submission of an application to the registry is voluntary on the part of the property owner.

[2007, c. 628, Pt. B, §4 (NEW) .]

3. Application. The application under subsection 2 must be submitted together with a report by a lead inspector that indicates that the leased residential dwelling has been tested for the presence of lead-based paint and lead-contaminated dust or a report by a lead dust sampling technician that indicates the leased residential dwelling has been tested for lead-contaminated dust. The report must indicate that the dwelling meets the requirements for inclusion on the registry in accordance with the standards and procedures established by the department.

[2009, c. 501, §14 (AMD) .]

SECTION HISTORY

2007, c. 628, Pt. B, §4 (NEW). 2009, c. 501, §14 (AMD).

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