



Lead-based paint: To be or not to be a 0.5mg/cm² That is the question we ask of thee... - by Melissa Guagenti

May 04, 2021 - Owners Developers & Managers

NYC Lead-based Paint Laws - An Update

On August 9th, 2020, all property owners of pre-1960 residential rental properties located in NYC, including singles and duplexes, must lead inspect/test all of their apartment units within five years from August 9th, 2020 per Local Law 31 of 2020. Owners must have a lead-based paint inspection completed at units that had or have a child five years of age or younger currently, "residing," at the property (Per LL64 of 2019, 10 hours or more per week), or moving in within 12 months of the move in. For those children residing in a property since last August 9th, 2020, these units must be inspected before August 9th, 2021 or owners risk violation.

This was all required of us, based on a city lead-based paint action level of 1.0mg/cm², same as the federal lead-based paint action level. However, NYC had incorporated into their newest amendments to the law, a change in the Department of Health and Mental Hygiene (DOHMH) regulations a new definition of unsafe lead paint, only for the purpose of a DOHMH elevated blood lead level investigation. Meaning, a unit could have been completely and properly lead based paint inspected over the last 20 years, have a valid and current lead-based paint HPD exemption and still be given a DOHMH violation if they find any surfaces in the unit to be at 0.5mg/cm². Even though you have an already existing and valid exemption which was issued at 1.0mg/cm². Not to mention, at the time these changes to the law were proposed there was no acceptable support documentation to support per the federal lead laws the instrumentation could be accurate & precise at these very low levels. "To be or not to be 0.5mg/cm², that is the question we ask of thee..."

The city also incorporated language into amendments to LL1 that if or when the federal government issues a Performance Characteristic Sheet (PCS) for any lead paint XRF instrumentation at the 0.5mg/cm² level, the city can promulgate a change to the law and lower the lead-based paint action level to 0.5mg/cm². In early 2021 HUD issued a PCS for an XRF instrument to test at the 0.5 level. Via the grapevine, it sounds like NYC will officially change from 1.0 to 0.5 mg/cm² for all lead-based paint requirements. "To be or not to be 0.5mg/cm², that is the question we ask of thee..."

Since the latest speculation and word on the street is that this threshold most likely will be changed to a 0.5 mg/cm². We just don't know when?? So, the big question(s), when do we inspect our units,

if the tests are going to be potentially invalidated, what does this mean for property management in New York City? How does this affect the apartments units that have already been tested and what does this mean moving forward? As a nationally known and respected lead paint consulting entity, LEW Corp. is being asked this every day from our landlord clients and based on our knowledge and research here is what we recommend...

Technically the clock has been ticking since August 9th, of 2020, last year. Start with identifying those units with children five years of age or under and have those units tested for lead-based paint soon! We are not aware of any extension of compliance or easing of these newest lead law requirements, which have some quickly arriving deadlines (August 9th, 2021). If you think you're not at risk—think again. As the wise carpenter says, "Measure twice, cut once!"

As for those units you have already addressed at the 1.0mg/cm² standard and the threshold goes to 0.5 mg/cm², (deep breaths), based on current conversation you will have to test them again upon turnover, "To be or not to be 0.5mg/cm², that is the question we ask of thee..."

HPD is now obligated to perform 200 property audits per year. Make sure all of your records are in order! Should HPD randomly audit you for an elevated blood lead level in property, resident complaint, HPD already on site, etc., and you do not have the appropriate required regulatory lead paint related documents, HPD will begin to investigate deeper and potentially issue violations. See link for clear list of regulatory expectations or call author for guidance. <https://www1.nyc.gov/site/hpd/services-and-information/lead-based-paint.page>

To reiterate from previous publications, I strongly recommend New York City property managers and landlords familiarize or re-familiarize themselves with the current NYC HPD & DOHMH requirements if their property is subject to these NYC lead-based paint regulations. If they are not extremely confident of compliance, begin a lead inspection program of your portfolio of pre-1960 properties sooner rather than later, especially for those units where children age five or under reside.

If you need assistance with any or all of these items, reach out to an environmental lead-based paint consultant who can accurately and clearly explain and guide you to where you need to be through all of these regulatory changes and provide the knowledge and step-by-step processes how best to comply.

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