



Chapter 15, page 15-1, point out that a person with normal eyesight cannot detect dust particles smaller than 50  $\mu\text{m}$  in diameter (Olishifski, 1983), and that “a significant percentage of the dust generated during abatement is smaller than 50  $\mu\text{m}$ . See attachment to this Affidavit. Second, while ordinary household cleaning can result in a room that is free of visible dust, it cannot achieve the thorough level of dust-removal required to make an apartment which has been contaminated by lead dust environmentally safe.

4. A very small amount of lead dust is highly toxic. Very minute amounts present a health hazard. Consider that an aspirin contains about 200 milligrams (mg) per pill. It would have to be chopped into two thousand pieces to create a particle containing 100 micrograms ( $\mu\text{g}$ ), and that particle would then have to be spread over a square foot of floor in order to approximate the conditions of lead dust that meet the City Health Code standard of 100  $\mu\text{g}$ . This is a level of dust removal that cannot be achieved through ordinary housecleaning. In light of this concern and for the following reasons, Local Law 38 is likely to have a significant adverse environmental effect:

5. First, any evaluation of the potential adverse effects of Local Law 38 would have to examine adverse effects that could result from allowing lead-based paint removal work in homes containing young children to be undertaken using weakened dust control measures. The requirements of Local Law 38 for lead-based paint removal work differ greatly from those in the City Health Code as follows:

6. Local Law 38 eliminates the Health Code safety standards for abatement areas greater than six square feet which require the landlord to seal off the area and cover the entire floor and all openings with two layers of six-mil polyethylene sheeting. § 173.14(e)(2)(bb)(iv).

By way of comparison, asbestos regulations also require the use of two layers of six-mil polyethylene sheeting. Local Law 38 only requires covering of some unspecified amount of “the floor adjacent to the work area.” Also, the floor can be covered with any kind of plastic, polyethylene or “equivalent sheeting” of any thickness. Plastic that is too thin can easily be torn by work shoes and equipment.

7. Local Law 38 eliminates the Health Code safety standard for abatement areas smaller than six square feet which requires that two layers of six-mil polyethylene sheeting must be placed on the floor extending at least six feet outward from the abatement area. § 173.14(e)(2)(aa)(iii). It sets no minimum requirements for the thickness of covering or the size of floor area that must be covered.

8. Local Law 38 eliminates the Health Code safety standard that requires movable objects, including furniture, to be cleaned and then removed from the area and unmovable objects to be covered with two layers of six-mil polyethylene sheeting, taped together and to the floor with waterproof tape, “to form a continuous barrier to the penetration of dust.”

§ 173.14(e)(2)(aa)(ii) and (bb)(iii). It is well-known that a single layer, even of six-mil polyethylene sheeting, can tear during paint removal work. The use of two layers is a reasonable requirement that affords much better protection. The tape, moreover, must be waterproof because the work is being conducted using water. Local Law 38 does not require movable objects to be removed; it only requires that all objects be covered with some kind of sheeting of unspecified thickness. It does not even require that the sheeting be taped down with waterproof tape. This means that bedding, couches and similar furniture that easily trap dust can remain in the area while paint removal work is performed, and they will not be protected by a continuous,

impenetrable barrier against the fine particles of dust generated by that work. The wording of the local law does not even clarify that such objects should be cleaned after paint removal work is completed. (It should be noted that vague statements that sheeting must be “adequately secured” or “of sufficient thickness and durability to prevent tearing,” as contained in regulations recently proposed by the Department of Housing Preservation and Development for Local Law 38, are not sufficiently specific instructions – especially for workers who are not trained and certified.)

9. Local Law 38 eliminates the Health Code safety standard that requires workers to wait one hour after the paint has been removed before commencing clean-up of the area. § 173.14(e)(4)(bb). This waiting period is important because it allows microscopic airborne particles of lead dust to settle before beginning clean-up. One hour is an appropriate amount of time to wait before clean-up after lead-based paint removal work because lead is a heavy metal and therefore settles more quickly than asbestos. By way of comparison, asbestos abatement contractors are required to wait 12 hours before commencing clean-up.

10. Local Law 38 eliminates the obviously important Health Code safety standard that requires the polyethylene sheeting to be misted and cleaned before it is removed, to ensure that no spillage of particles occurs. § 173.14(e)(4)(bb)(I). Merely stating that such sheeting should be removed “in a safe manner” (as stated in section 27-2056.5(b)(9) of the local law) is not sufficient instruction.

11. Local Law 38 also eliminates the Health Code’s specific requirement to cover openings, such as forced air ventilation systems, to prevent the dispersal of dust, and to do so using two layers of six-mil polyethylene sheeting and waterproof tape. § 173.14(e)(2)(aa)(iv) and (bb)(v).

12. Second, any evaluation of the potential adverse effects of Local Law 38 would have to examine adverse effects that could result when toxic lead-based paint removal work is not subject to a thorough clean-up and when the effectiveness of the work is not verified by a lead dust wipe clearance test or is followed by only to a very inadequate dust wipe sampling protocol. In this regard, the requirements of Local Law 38 differ greatly from those in the City Health Code, which landlords were required to follow pursuant to Local Law 1. In particular:

13. Local Law 38 only requires a one-step clean-up, either by washing or HEPA-vacuuuming. In areas greater than two square feet, and window sills, window or door frames, the Health Code requires that clean-up include one HEPA-vacuuuming, washing with a detergent, then a second HEPA-vacuuuming. § 173.14 (e)(4) (bb)(ii), (iii) and (iv). The Health Code requirements are consistent with the federal HUD Guidelines, which were established to ensure that the very small particles of lead dust are removed from the environment. It should be noted that the HUD Guidelines also require the use of both a washing and a rinsing mop bucket, to ensure that the mopping process is not just spreading the dust around. An effective clean-up process is critical because, as mentioned before, the floor of the room probably already contained significant amounts of lead dust. In other words, even with the strictest of dust controls during paint removal, the room is likely to contain lead dust that must be cleaned carefully and thoroughly.

14. Local Law 38 eliminates all dust clearance test requirements, even the requirement to simply take a dust *sample*, for any lead-based paint removal work on walls and ceilings. In particular, it eliminates the Health Code safety standards requiring four dust clearance samples to

be taken: from a window well, a window sill, the floor, and the floor of the adjacent area for abatement areas greater than two square feet. § 173.14(e)(4)(cc)(ii).

15. Elimination of that clearance test protocol requirement is a serious error that is likely to result in the failure to detect improper and inadequate clean-ups of lead-based paint hazards. It is important to remember that a dust clearance test is required not only to sample for dust released by the paint removal work, but also for dust generated by the deteriorated paint condition itself. Peeling or crumbling paint may simply fall from the ceiling or wall, or, in the case of a wall, it can be brushed off through contact. One must assume that the dust generated by the deteriorated paint, and possibly by the paint removal work as well, has been tracked around and therefore is not necessarily immediately next to the work area. This is why it is important to take several dust wipe samples, including a sample outside of the work area to test for tracking. Unlike a gas, dust does not usually become distributed evenly throughout an area. A sample taken in one location will not detect a problem just a few feet away. Taking four wipe samples helps to reduce the margin of error. Indeed, if the work is conducted over a large area, a conscientious inspector might want to take more than four samples.

16. With regard to removal of paint on interior wood trim or a door, Local Law 38 requires only that the landlord take a *single* dust sample. This sampling regimen falls far short of the four-sample dust clearance test required by the City's Health Code standards. While the local law requires that a sample also be taken on the window sill and window well if work is conducted on or near a window, this is still insufficient to identify a remaining environmental hazard, because no sample is required to be taken on the floor adjacent to the work area to test for tracking of dust.

17. Local Law 38 eliminates the important requirement that all dust wipe sampling be conducted by an independent inspector. This is of concern because it is easy to “bias” samples by taking them in locations that are not likely to have been contaminated, by wiping with minimal pressure or by failing to really cover the entire surface area of the sampling zone. For this reason, the federal HUD Guidelines state that the abatement contractor “must not know exactly where the clearance samples will be collected.” (Chapter 15, p. 15-11.) Similarly, asbestos regulations require that the clearance testing contractor be financially independent of the owner or the abatement contractor. As a practical matter, a professional, independent testing firm has a reputation to protect and therefore is less likely to “bias” a sample. Local Law 38 even eliminates the Health Code safety standard requiring a final overall *visual* inspection of the site for environmental safety by an experienced contractor who is *independent* of the lead-based paint removal contractor. *See* § 173.14(e)(4)(cc).

18. Also, the local law itself does not state that the dust wipe sample or samples result must be provided to an agency and pass a health standard *before the residents are allowed to re-enter and occupy the area again*, in contrast with the specific Health Code safety standard requiring that any abatement area greater than two square feet is not cleared for re-entry until the dust clearance test results meet the Health Code standard. § 173.14(e)(4)(dd). It only requires the landlord to “advise occupants not to enter the work area until the work has been completed in such work area.” The landlord cannot be certain that the work has been properly completed if there has been no independent inspection or dust clearance test results. More importantly, the tenant cannot be certain that the apartment is now environmentally safe.

19. As noted above, Local Law 38's's work standards for lead-based paint removal are weaker than those developed by the federal Department of Housing and Urban Development (the "HUD Guidelines"). Thus, it would be incorrect to state that Local Law 38 would require landlords to use work practices approved by HUD, and it would be misleading to state that its work protocols are "based on" or "incorporate many" of the work protocols required by HUD. The HUD work protocols are designed to work together; selecting only a few of HUD's requirements while ignoring many of its most important provisions does not provide adequate control of lead dust or adequate protection for the public.

20. Failure to provide sufficiently protective lead-based paint removal and clean-up protocols presents a risk both for the family that resides in the dwelling and for the workers who conduct the paint removal. Stringent work protocols are critical for the safety of families when they re-enter their homes after lead-based paint has been removed. Strict protocols also send an important message to workers that they are working with a toxic substance and must take precautions not only for the occupants but also for themselves.

21. Finally, there appears to be no requirement in the law to correct the underlying cause of the deterioration of the wall or paint. If chronic water leakage is the problem, then a single scrape-and-paint job alone may not be sufficient to protect the children in the apartment from lead-based paint hazards created by future deterioration of painted surfaces. The water damage may continue to spread, causing more painted surfaces to crumble. A requirement to correct the underlying cause of the deterioration is critically important because Local Law 38 allows intact paint to remain in an apartment.

22. For the foregoing reasons, a proper review of the environmental impact of Local Law 38 reasonably would have to conclude that the weakening of safety standards for removal of lead-based paint hazards and for post-removal clean-up of lead dust and paint chips has the potential to result in significant adverse environmental effects.

Respectfully submitted,

/s/ Edward Olmsted  
EDWARD OLMSTED, C.I.H.

Subscribed and sworn before me  
this 25 of September, 1999.

/s/ Cheryl Hanson  
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CHERYL HANSON  
Notary Public, State of New York  
No. 4953190  
Qualified in Putnam County  
Term Expires July 3, 2001