



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	15
VAC Chapter Number:	30
Regulation Title:	Virginia Lead-Based Paint Activities Regulations
Action Title:	Amending
Date:	February 20, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Board's current regulations became effective on November 13, 1996. These regulations were based upon EPA's proposed regulations which regulate lead-based paint activities in "target housing," "public buildings," "commercial buildings," and "superstructures." When EPA's final regulations became effective on August 31, 1998, activities for "public buildings," "commercial buildings," and "superstructures" were omitted, and "child-occupied facilities" was added. The web site address for locating the text of the EPA regulations is: http://www.access.gpo.gov/nara/cfr/waisidx_99/40cfr745_99.html.

Section 54.1-501 (6) of the Code of Virginia mandates the Virginia Board for Asbestos, Lead, and Home Inspectors (Board) to promulgate lead-based paint regulations that are no more stringent than the lead-based paint regulations promulgated by the United States Environmental Protection Agency (EPA). In the event that the EPA adopts any final regulations subsequent to

the promulgation by the Board of related regulations, then the Board shall, as soon as is practicable, amend its existing regulations so as to be not more stringent than such EPA regulations.

The regulation amendments will result in a deregulation of lead-based paint activities in “public buildings,” “commercial buildings,” and “superstructures” that are currently regulated, and will begin regulating these activities in “child-occupied facilities.” The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be “no more stringent than the federal regulations.”

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Board for Asbestos, Lead, and Home Inspectors adopted the proposed Lead-Based Paint Activities Regulations as a final regulation on December 17, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

On October 28, 1992, the U.S. Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X of the Housing and Community Development Act. This Act also amended the Toxic Substances Control Act (TSCA) to include a new subchapter, Subchapter IV, 15 U.S.C. 2681-2692. (Please see: <http://www4.law.cornell.edu/uscode/15/ch53.html>). TSCA Subchapter IV directed the EPA to promulgate regulations, including the lead-based paint activities training, certification and accreditation requirements, work practice standards, and a Model State Program (MSP), which States should be encouraged to reference and use as guidance in order to develop their own Federally authorized lead-based paint activities programs.

As a result of Title X, the EPA promulgated regulations pursuant to sections 402 and 404 of TSCA (see sections 2682 and 2684 respectively at: <http://www4.law.cornell.edu/uscode/15/ch53.html>). Section 402 regulations were promulgated to ensure that individuals conducting lead-based paint activities in target housing and child-occupied facilities are properly trained and certified; that training programs throughout the nation providing instruction in such activities are

accredited; and that these activities are conducted according to reliable, effective and safe work practice standards. Section 404 regulations require each State to seek authorization from the EPA to administer and enforce the regulations developed by the State pursuant to section 402 of TSCA, or to submit to the EPA's administration and enforcement of the federal regulations promulgated pursuant to section 402 of TSCA. (See <http://www.epa.gov/docs/epacfr40/chapt-I.info/subch-R/40P0745.pdf> for the EPA regulation). Virginia applied for section 404 authorization on October 30, 1998 and was informed officially of its approval as an EPA-authorized State by letter dated February 19, 1999.

EPA promulgated regulations pursuant to section 403 of TSCA, establishing standards for lead-based paint hazards and lead dust cleanup levels in most pre-1978 housing and child-occupied facilities. The same regulations also reflected amendments to section 402 of TSCA. (See http://www.epa.gov/lead/403_final.pdf for the EPA regulation). These regulations became effective on March 6, 2001.

It should be noted that the above-referenced EPA final regulations did not fully implement the provisions of TSCA or the provisions of the EPA proposed regulations. The EPA proposed regulations covered "target housing," "public buildings," "commercial buildings," and "superstructures." The final EPA regulations covered only "target housing" and a new category of structure called "child-occupied facilities." Regulations for the remaining structure types were held in abeyance and are now referred to by the EPA as the "building and structures" regulations or, simply, "B&S."

The Board's authority to promulgate the regulations is contained in Section 54.1-201 and Section 54.1-501 of the Code of Virginia.

The imperative form of the verb "shall" is used in the statute making the rulemaking provisions mandatory rather than discretionary.

Subsection 6 of 54.1-501 states "In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations."

The web site address for location of the text of the cited authority is: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>.

By memorandum dated February 13, 2003, the Office of the Attorney General stated that the Board has the authority to promulgate the final regulations with an effective date of July 1, 2003, or later pursuant to Sections 54.1-201(5) and 54.1-501 of the Code of Virginia. The Board does not have the statutory authority under Section 54.1-516 for 18 VAC 15-30-810 until July 1, 2003.

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The subject matter of the regulation amendments is to continue to establish procedures and requirements for the approval of accredited lead training programs; for the licensure of individuals and firms to engage in lead-based paint activities; and for the establishment of standards for performing lead-based paint activities.

The intent of the regulation amendments is to assure the existence of an infrastructure of trained and qualified individuals and firms to remove lead-based paint hazards in such a manner so as to reduce the hazard to humans, especially children under six years old.

Section 54.1-501 (6) of the Code of Virginia mandates the Virginia Board for Asbestos, Lead, and Home Inspectors (Board) to promulgate lead-based paint regulations that are no more stringent than the lead-based paint regulations promulgated by the United States Environmental Protection Agency (EPA). In the event that the EPA adopts any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as is practicable, amend its existing regulations so as to be not more stringent than such EPA regulations.

The Board's current regulations became effective on November 13, 1996. The current EPA regulations became effective on August 31, 1998.

The goal of the amendments to the Board's regulations is to make the Board's regulations no more stringent than the current EPA regulations.

The regulation amendments will result in a deregulation of certain licensing categories that are currently regulated. The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be "no more stringent than the federal regulations."

The regulations are mandated by statute, and are essential to protect the health, safety and welfare of citizens and for the efficient and economical performance of an important governmental function.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The following is a summary of the revisions to the Board's November 13, 1996 regulations that have been adopted to implement changes in EPA's final regulation that would make the Board's regulations "no more stringent" than EPA's regulations.

Section 18 VAC 15-30-10 has been modified to limit the applicability of these regulations to target housing and child-occupied facilities to align with EPA's revised limitations.

Section 18 VAC 15-30-20 has been amended to modify, add, or delete definitions for clarification and to come into alignment with EPA's regulations as mandated by the Board's enabling statutes. Additionally, one previously undefined term (environmental remediation activity) has been included.

Section 18 VAC 15-30-41 has been added to enable the Board to waive any requirements of the regulations if the Board finds that the waiver in no way lessens the protection of the public health, safety and welfare.

Section 18 VAC 15-30-50, Subsection A has been amended to delete the Department's mailing address, which is subject to change, appears on the printed regulation booklet and is available from the Department's web site (www.state.va.us/dpor). The instructions are simplified to require applications to be made on a form provided by the Department. Subsection C has been amended to clarify the use of fees and the justification for not issuing refunds. Subsection D has been modified to require the disclosure of all misdemeanors and to limit the disclosure of certifications, accreditations and licenses to the environmental remediation field.

Sections 18 VAC 15-30-60, 18 VAC 15-30-70, 18 VAC 15-30-80, and 18 VAC 15-30-90 have been repealed in their entirety. The standards established in the repealed sections are redundant with the licensure requirements in Part IV for individuals, Part V for contractors, and Part VI for training programs.

Section 18 VAC 15-30-100, Subsection B has been amended to eliminate the extension of interim licenses. By eliminating the ability to extend an interim license, the third-party examination can be used as a tool for "weeding out" incompetent candidates, thereby better protecting the public health, safety, and welfare.

Section 18 VAC 15-30-110 has been amended to include allowances for proficiency based courses. This came directly from EPA's regulations. Since these courses are more intense in both time and subject matter, refresher training is required after 60 months instead of only 36 months.

Section 18 VAC 15-30-130 has been amended so that the renewal cycle and the reaffirmation cycle of an accredited training program coincide by maintaining the 24-month renewal cycle and increasing the reaffirmation cycle from 36 to 48 months so that the training provider must reaffirm compliance every other renewal cycle. Additionally, the reaffirmation information from 18 VAC 15-30-320 has been moved to this section for ease of understanding.

Section 18 VAC 15-30-140, Subsection D has been amended to require an individual applying for a second interim license to retake and satisfactorily complete the initial training requirement, not just an 8-hour refresher. In conjunction with Section 18 VAC 15-30-100, the current regulations allow for an individual to take an 8-hour refresher to obtain subsequent interim licenses and never sit for or pass the third-party examination. By requiring these individuals to successfully retake the initial training, they may be better prepared to take and pass the third-party examination, ensuring that only competent lead professionals are performing work for the public.

Section 18 VAC 15-30-160, Subsection H has been added. The current regulations impose a late renewal fee on training programs that renew more than 30 days after the expiration date of the accreditation. The \$25 fee charged for late renewal is an agency-wide amount for all licenses, certificates, and accreditations. The fee amount was omitted in the current regulations. Also, language was added to clarify that renewal fees apply to both initial training programs as well as refresher training programs.

Section 18 VAC 15-30-170 has been revised to eliminate “grandfathering.” Very few applicants have applied for licensure in the past few years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted and since the EPA requires refresher training every three years, the Board felt that any new applicant must complete a Board-approved training course to enable the applicant to be more familiar with any changes in federal and state regulations. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained prior to the Board issuing a license. Additionally, “for target housing, superstructures and public and commercial buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Section 18 VAC 15-30-180 has been revised to eliminate “grandfathering.” Very few applicants have applied for licensure in the past few years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted and since the EPA requires refresher training every three years, the Board felt that any new applicant must complete a Board-approved training course to enable the applicant to be more familiar with any changes in federal and state regulations. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained prior to the Board issuing a license. Also, in response to EPA revisions, the discipline name has changed from planner/project designer to project designer, and an experience requirement has been added. Additionally, “for target housing and public buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Sections 18 VAC 15-30-190 and 18 VAC 15-30-200 were replaced in their entirety with new Section 18 VAC 15-30-205 “Licensed lead abatement supervisor.” For simplification, the requirements for both sections were combined. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated. Subsection C has been added to require the applicant to retake the initial

training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. Subsection D has been added to allow a licensed lead abatement supervisor to perform the duties of a licensed lead abatement worker since the worker training is included in the supervisor training course.

Sections 18 VAC 15-30-210 and 18 VAC 15-30-220 were replaced in their entirety with new Section 18 VAC 15-30-225 “Licensed lead inspector.” EPA’s regulations replace discipline title “Lead Inspector Technician” with “Lead Inspector.” The requirements are the same, only the title changes. For simplification, the requirements for both sections were combined. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated. Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood.

Sections 18 VAC 15-30-230 and 18 VAC 15-30-240 were replaced in their entirety with new Section 18 VAC 15-30-245 “Licensed lead risk assessor.” EPA’s regulations replace discipline title “Lead Inspector/Risk Assessor” with “Lead Risk Assessor.” The requirements are the same, only the title changes. For simplification, the requirements for both sections were combined. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated. Subsection A.1 has been added to specify the acceptable fields of study for applicable undergraduate degrees. The current regulations are unclear regarding any fields of study. Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood.

Section 18 VAC 15-30-250 has been amended to include the current practice of requiring the lead contractor to hold a valid Virginia contractor license with a lead specialty issued by the Virginia Board for Contractors, which is not specified in the November 13, 1996 regulations. Language was added to specify the availability of the licensed lead abatement supervisor during each stage of an abatement project to conform to EPA’s regulations.

Section 18 VAC 15-30-270, Subsection D has been deleted. Interim approvals were granted at the beginning of the licensing program. However, there is no longer a need to grant interim approval prior to an on-site audit.

Section 18 VAC 15-30-310 has been moved from Part VI, Training Program Accreditation to Part X, Standards of Practice and Conduct as Subsection C of Section 18 VAC 15-30-790.

Section 18 VAC 15-30-320 has been rephrased for clarity and for administrative purposes, and has been incorporated into Section 18 VAC 15-30-130 for ease of understanding.

Section 18 VAC 15-30-340 has been modified to require principal instructor approval prior to teaching a training course.

Section 18 VAC 15-30-380 has been modified to reflect training course requirements found in EPA's regulations.

Section 18 VAC 15-30-390, Language has been added to indicate that hands-on skills assessment is not required for refresher training programs. Subsection E has been added to allow for a proficiency test, to implement this new EPA regulation provision.

Section 18 VAC 15-30-420, Training program notification and training program participant roster requirements for accredited lead training programs were added to enable the Board to more closely monitor training activities and to be consistent with the Board's similar requirements found in the Asbestos Licensing Regulations.

Section 18 VAC 15-30-490 has been rewritten since Project Designer is a new training course. In the current regulation, the Supervisor and Project Designer courses were one and the same since EPA had not developed a separate course for Project Designer.

Sections 18 VAC 15-30-510, Language was added to prevent persons performing post-abatement clearance from having any financial connection with the abatement contractor.

Sections 18 VAC 15-30-510, 18 VAC 15-30-511, 18 VAC 15-30-520, 18 VAC 15-30-540 through 18 VAC 15-30-550, 18 VAC 15-30-610, 18 VAC 15-30-620, 18 VAC 15-30-650, and 18 VAC 15-30-651 have been revised, added, or rewritten to more accurately reflect EPA's regulations. Sections 18 VAC 15-30-530, 18 VAC 15-30-560 through 18 VAC 15-30-600, 18 VAC 15-30-630, 18 VAC 15-30-640, and 18 VAC 15-30-660 through 18 VAC 15-30-680 have been repealed because this material has been revised and rewritten to more accurately reflect EPA's regulations and incorporated more appropriately into the above-mentioned sections.

Sections 18 VAC 15-30-690 through 18 VAC 15-30-750 have been repealed because the scope of EPA's regulations, and subsequently these regulations, have changed to include only target housing and child-occupied facilities.

Section 18 VAC 15-30-810, Subdivision A.4 has been added to clarify that the Board has the authority to deny an application or to discipline a regulant for violating any federal or state regulation pertinent to lead-based paint activities. Subdivision A.11 has been added to hold the abatement contractor responsible for the actions and conduct of its lead abatement workers and supervisors.

Sections 18 VAC 15-30-830 and 18 VAC 15-30-840 have been repealed as they are redundant with Section 18 VAC 15-30-160. Fees have been more appropriately incorporated into Part III Application and Renewal Requirements of the regulations instead of being listed separately as a Fee Schedule.

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public of implementing the new regulatory provision is the added protection against lead poisoning in children six years of age and under in “child-occupied facilities” as well as continuing to protect children six years of age and under in “target housing.” The advantage to the agency and the Commonwealth is the ability to maintain Virginia’s status as an “EPA-Authorized State” in the implementation of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

As with any deregulation, the disadvantage to the public would be the loss of employment opportunities of the industry in “public buildings,” “commercial buildings,” and “superstructures.” Additionally, there is the cost of regulation to the industry in the form of fees, training and equipment, and to the agency in staffing to administer the regulations. These fees and other costs incurred by the industry due to regulation are passed on to the consumer by way of increased costs for services. However, these increases are more than offset by the protection from the intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems caused from lead poisoning of the Commonwealth’s children, our most precious resource.

The fees are those currently in effect for the asbestos and lead-based paint programs. In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department’s expenses are paid. The Board has no other source of revenue from which to fund its operations. The fee structure was developed in compliance with § 54.1-113 of the Code of Virginia.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

18 VAC 15-30-20. Definitions.

- Abatement. The language was modified to match EPA’s definition.
- Applicant. This language was added for consistency.
- Clearance levels. The language was added since EPA establishes clearance standards.
- Component or building component. Duplicate language was deleted.

- Deteriorated paint. The language was modified to match EPA's definition.
- Environmental remediation activity. This was an undefined term in the regulations. The definition as found in the Board's Asbestos Regulations was duplicated.
- Lead contaminated dust. The term was deleted since it was removed from EPA's March 2001 amended regulations.
- Lead contaminated soil. The term was deleted since it was removed from EPA's March 2001 amended regulations.
- Licensed lead abatement contractor. The change was needed because lead contractors only perform lead abatements. Lead inspections and risk assessments are lead-based paint activities, but are not performed by lead contractors.
- Regulant. This definition was deleted and replaced with "licensee" to remove any possible confusion in terminology. Abatement workers, abatement supervisors, inspectors, risk assessors, project designers and abatement contractors are issued a "license" and therefore are listed in the definition of "licensee." Training providers, however, are issued approvals for training programs they offer, even though they must complete an application, pay fees and renew such approvals. A training provider's training manager and principal instructors must receive approval as part of the approval process for their training programs, and are not issued either a license or a separate approval.
- Target housing. The language was modified to match EPA's definition.
- Window sill. The term was deleted to prevent any conflict with EPA regulations.
- Window stool. The term was deleted to prevent any conflict with EPA regulations.
- Window well. The term was deleted to prevent any conflict with EPA regulations.

18 VAC 15-30-40. Accreditation required.

- Subsection C. This language was added for consistency.

18 VAC 15-30-50. General.

- Subdivision D.2. The language modification requires an applicant to disclose "any" misdemeanor and places the authority to determine whether a conviction involves lying, cheating and stealing with the Board, not the applicant.
- Subdivision D.4. The scope of previously held certifications, accreditations or licenses to be disclosed was narrowed to apply only to an environmental remediation field.

18 VAC 15-30-110. Refresher training and individual license renewal.

- Subsections A and B. The term “regulant” was replaced with “licensee” to reflect the change in terminology as found in 18 VAC 15-30-20.

18 VAC 15-30-140. Renewal application.

- The term “regulant” was replaced with “licensee or accredited lead training provider” throughout this section to more accurately reflect the appropriate entity.
- Subsection F. This language was added for consistency.

18 VAC 15-30-160. Fees.

- Subsections C and D. This language was modified for consistency.
- Subsection F. This language was added for consistency.
- Subsections G, H, and I. This addition makes clear that renewal fees apply to both initial training programs as well as refresher training programs.

18 VAC 15-30-245. Licensed lead risk assessor.

- Subdivisions A.1 and A.2. The order of subdivisions 1 and 2 were reversed to make a more logical progression regarding the number of years of required experience in relationship to certification and education.

18 VAC 15-30-250. Requirements for licensure.

- Subdivision B.2. To be consistent with subsection B of 18 VAC 15-30-620 and to not be more stringent than EPA regulation, the language in subdivision 2 was replaced with the identical language of subsection B of 18 VAC 15-30-620.
- Subdivision B.3. “Paint” was inadvertently omitted.

18 VAC 15-30-260. General.

- Subdivision A.2. This language was added for consistency.

18 VAC 15-30-300. Change of ownership.

- This language was added for clarity. It is the provider (business entity) which can change ownership, not the program (training course).

18 VAC 15-30-330. General.

- This language was added for consistency.

18 VAC 15-30-340. Qualifications of training managers and principal instructors.

- This language was added for consistency.
- Subsection C. This subsection was added to ensure that principal instructors receive approval prior to teaching an approved course.

18 VAC 15-30-360. Training manager and principal instructor documentation.

- This language was added for consistency.

18 VAC 15-30-380. Length of training courses.

- Subsection A. This language was modified for consistency.
- Subdivision A.2. Terminology correction.

18 VAC 15-30-390. Course examination.

- Subsection A. This language was added for consistency with EPA regulations.

18 VAC 15-30-400. Certifications of completion.

- Subdivision 6. This was a terminology correction.
- Subdivision 7. The training manager's name and signature was added to the training certificate to ensure that the training manager can also be held responsible for the training course.

18 VAC 15-30-420. Record keeping.

- Subsection A through G. Current language was made subsection "A" and subsections "B" through "G" were added as training program notification and training program participant roster requirements for accredited lead training programs to enable the Board to more closely monitor training activities and to be consistent with the Board's similar requirements found in the Asbestos Licensing Regulations.

18 VAC 15-30-510. General requirements.

- Subsection C. It was felt that persons performing post-abatement clearance should have no financial connection with the abatement contractor.

- Subsection D. The incorrect subsection was referenced.
- Subdivisions E.1 through E.6. This subsection was amended to include more recent reference material.

18 VAC 15-30-511. Determination of the presence of lead-based paint, a paint-lead hazard, a dust-lead hazard, and a soil-lead hazard.

- A new section was added to reflect amendments to EPA Regulation, Subpart L of 40 CFR 745, effective March 6, 2001 to implement new language establishing standards for “determination.”

18 VAC 15-30-520. Inspections.

- Subdivisions B.1 and B.2. A change in terminology to be consistent with federal regulations.

18 VAC 15-30-540. Written inspection report.

- Subdivision 7. The word “licensed” was deleted because firms employing inspectors and risk assessors are not required to be licensed.
- Subdivision 9. A change in terminology to be consistent with federal regulations.

18 VAC 15-30-550. Risk assessment.

- Subdivisions B.3, B.4, B.5, B.6, and B.7. The language was modified to be consistent with EPA regulations.

18 VAC 15-30-610. Written risk assessment report.

- Subdivision 11. A change in terminology to be consistent with federal regulations.

18 VAC 15-30-620. Abatement.

- Subsection F. The language was modified to be consistent with EPA regulations.

18 VAC 15-30-650. Post-abatement clearance procedures.

- Subdivisions 4.a and 4.b. The language was modified to be consistent with EPA regulations.
- Subdivision 4.c. Terminology correction.
- Subdivision 6. The language was modified to be consistent with EPA regulations.

18 VAC 15-30-760. Responsibility to the public.

- The term “regulant” was replaced with “licensee” throughout this section to reflect the change in terminology as found in 18 VAC 15-30-20.

18 VAC 15-30-770. Public statements.

- Subsections A, B, and C. The term “regulant” was replaced with “licensee” to reflect the change in terminology as found in 18 VAC 15-30-20.

18 VAC 15-30-780. Solicitation of work.

- Subdivisions 1 and 2. The term “regulant” was replaced with “licensee” to reflect the change in terminology as found in 18 VAC 15-30-20.

18 VAC 15-30-790. Professional responsibility.

- Subsection A. The term “regulant” was replaced with “licensee or accredited lead training provider” to more accurately reflect the appropriate entity.
- Subsection B. The term “regulant” was replaced with “licensee” to reflect the change in terminology as found in 18 VAC 15-30-20.

18 VAC 15-30-800. Good standing in other jurisdictions.

- Subsections A, B, and C. The term “regulant” was replaced with “licensee, accredited lead training provider, training manager, or principal instructor” to more accurately reflect the appropriate entity.

18 VAC 15-30-810. Grounds for denial of application, denial of renewal, or discipline.

- Subsection A. This language was added for consistency.
- Subdivision A.2. This language was added for consistency.
- Subdivision A.3. The added language expands “altering” a training certificate to include both falsifying and issuing a fraudulent certificate. This addition was included to be consistent with the Board’s Asbestos Licensing Regulations.
- Subdivision A.4. The subdivision was added to give the Board the authority to deny an application or to discipline a regulant for violating any federal or state regulation pertinent to lead-based paint activities and to be consistent with the Board’s Asbestos Licensing Regulations.

- Subdivision A.11. The subdivision was added to hold the abatement contractor responsible for the actions and conduct of its lead abatement workers and supervisors and to be consistent with the Board's Asbestos Licensing Regulations.
- Subsection B. This language was added for consistency.

18 VAC 15-30-820. Suspension or revocation of approval of an accredited lead training provider.

- Subdivision A.4. This language was added for consistency.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Part I – Scope

Written Comment:

**Earl T. Robb
State Environmental Administrator
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219-2000**

Mr. Robb, on behalf of VDOT, is concerned that removal of certification requirements for lead-based paint activities involving superstructures may result in a loss of worker, public and environmental protection. Also, in the context of a broader interpretation of applicable Virginia statutory requirements, the Board is not mandated to remove the existing requirements to effect consistency with the EPA requirements. VDOT strongly recommends that the Board's existing regulations be retained and any reconsideration be made once EPA finalizes the bridges and superstructures portions of their proposed regulations. They suggest that the public interests as well as VDOT's bridge construction and maintenance programs would not be served well by this change. The public buildings, commercial buildings, superstructures, and bridges portions of the September 2, 1994 proposed EPA regulations continue to be considered "proposed" and EPA does plan to finalize these portions of their regulations sometime in the future. VDOT's argument for not deregulating these other building types that were not finalized in 1996 by EPA, is that 54.1-501 of the Code of Virginia indicates that "if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities, as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations."

Board Response:

The Board's enabling statutes does require that the Board's regulations be no more stringent than EPA's proposed regulations as VDOT has indicated. However, the sentence that follows clearly states "In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations." The Board has proposed amendments that would make its regulations no more stringent than EPA's final regulations. Since public buildings, commercial buildings, superstructure, and bridges were omitted from these final regulations, the Board lacks the statutory authority to continue regulating these building types.

As published in the August 29, 1996 Federal Register, EPA determined that it has not sufficiently developed regulations for the above-mentioned building types. Given this information and laying aside the issue of statutory authority, the Board would be poorly advised to continue a regulatory program of such dubious worth.

EPA was also concerned that the training requirements of the proposed regulations for those building types may be in conflict with and overlap training requirements contained in the Occupation Safety and Health Administration's (OSHA) interim final lead standard 29 CFR 1926.62. There has been no action taken during the past six years on these delayed regulations. Once EPA decides to restart the promulgation process for these other building types, *a completely different set of proposed regulations* will require public meetings, a comment period, and time for EPA to consider public comment received. The Board has been enforcing regulations based upon proposed federal regulations that were not considered sufficiently developed for seven years with no alternative regulations from EPA in the foreseeable future. The following information found on EPA's web site clearly indicates that a new proposed "rule" for bridges and structures has not been developed and that a proposal for public and commercial buildings will be further delayed:

"After gathering additional information and reviewing existing Federal and state regulations that could cover buildings and structures, EPA has determined that it has sufficient information to move forward and develop a proposed rule on bridges and structures. More information, however, is needed to characterize LBP activities in public and commercial buildings. Therefore, it has been decided to develop a proposed rule on bridges and structures at this time and delay a rule addressing public and commercial buildings until a later date."

To further support the Board's decision to deregulate lead-based paint activities in commercial buildings, public buildings, bridges, and superstructures, EPA has indicated that in states which have not received authorization from EPA to administer and enforce their own programs, lead-based paint certification programs are applicable only to target housing and child-occupied facilities. These programs are not applicable to those building types which were not included in EPA's August 29, 1996 final regulations. The primary focus of Title X is the protection of developing children from lead poisoning, not worker, public and environmental protection. The scope of EPA's and the Board's regulations is for lead-based paint activities that occur where children age six and younger spend the majority of their

time: at home (target housing) and child-care facilities (child-occupied facilities). While children, as well as adults, may be exposed to lead-based paint in the building types that EPA has delayed promulgating regulations, their risk appears to EPA to be minute compared to the risk of lead poisoning in target housing and child-occupied facilities.

OSHA regulation 29 CFR 1926.62 continues to apply to all occupational exposure to lead in all construction work in which lead, in any amount, is present in an occupationally related context. EPA has expressed concern that their regulations not overlap OSHA training requirements and continues to examine this issue.

The Board suggests that VDOT continue to only award projects for bridge deleading to licensed lead abatement contractors who use workers and supervisors who have successfully completed accredited lead training programs and who have been licensed by the Board.

Oral and Written Comments:

Mark S. Ingrao
Vice President of Government Affairs, Virginia
Apartment and Office Building Association of Metropolitan Washington
1050 17th Street, NW
Washington, DC 20036

The Apartment and Office Building Association, in conjunction with the National Multi-Housing Council believe the proposed regulations do not comply with either the Virginia statute (with regard to the regulations being no more stringent than the federal regulations) or the federal statute (with respect to limiting the application of the lead testing and abatement procedures to only federally-owned or federally-assisted housing) as referenced in subpart B of the HUD regulations.

AOBA and NMHC are concerned that the proposed regulations allowing the use of unlicensed workers to perform lead “abatement” activities of either a permanent or temporary nature expands testing into areas not authorized by Virginia law or federal statute. Studies by EPA and NIOSH have indicated that improperly performed renovations are the primary means by which children are exposed to dust containing high levels of lead. For this reason, we would strongly oppose Virginia sanctioning a lead-abatement workforce that does not meet the minimum requirements established for this category of worker by EPA.

Board Response:

Mr. Ingrao is correct that the HUD regulations (24 CFR Part 35) as published in the September 15, 1999 federal register applies only to federally owned residential property and housing receiving federal assistance. However, the Virginia Lead-Based Paint Activities Regulations are based upon and mandated by the EPA regulations (40 CFR Part 745) as published in the August 29, 1996 federal register. Additionally, § 54.1-501 of the Code of Virginia specifically states that the Board’s regulations shall not be more stringent than **EPA** regulations, not HUD regulations. Therefore, the Board’s proposed regulations are

applicable to all target housing and child-occupied facilities. In addition to the Board's regulations, HUD 24 CFR Part 35 regulations are also applicable to residential property which is either federally owned or is receiving federal assistance.

The Board cannot expand its authority to include interim control activities, nor require the licensing of firms and individuals for renovation and remodeling, or landscaping activities whose primary intent is not to permanently eliminate lead-based paint hazards since the Board's regulations apply to projects which fall into the narrow statutory definition of "abatement." Virginia is an EPA-authorized state.

Part II – Definitions and General Requirements

Fax Comment:

John J. Gerow and Jerry Donahue

Page 1, lines 20-22: Definition of "abatement" should read "means any measure or set of measures designed to permanently eliminate lead-based paint hazards." This would be consistent with EPA's regulation.

Board Response:

The Board agrees and implements the suggestion.

E-Mail Comment:

Rebecca S. Kunz
A.H. Reppert & Associates, Inc.
mwilliard@cavtel.net

Page 1, line 20-22: Consider revising definition for abatement to come into line with EPA regulations and remove the wording about reducing the hazard – i.e.: that in some cases an interim control done can be done by someone with training in renovation and remodeling.

Board Response:

The Board agrees and implements the suggestion.

Oral and E-Mail Comment:

Rachel Riley
7917 Bainbridge Road
Alexandria, VA 22308
RachelRiley@aol.com

Michael McGreevy

Alexandria, VA

Page 1, lines 20-22: Rephrase the definition of “abatement” to match EPA’s definition and to read “means any measure or set of measures designed to permanently eliminate lead-based paint hazards.”

Board Response:

The Board agrees and implements the suggestion.

E-mail Comment:

Kent Steinruck
Rockin01@aol.com

Page 1, lines 20-27: The Board’s proposed definition of “Abatement” or “Abatement Project” is more stringent than the Environmental Protection Agency’s (EPA) definition. The Board’s definition includes “reducing lead-based paint” as an abatement activity, even though reducing the lead-based paint may not result in the permanent elimination of the lead-based paint. By Federal definition, the removal or reduction of lead-based paint is not considered a lead abatement project unless designed to permanently eliminate an existing lead-based paint hazard. The Federal definition focuses only on “permanently eliminating lead-based paint hazards”. Mr. Steinruck recommends the Board using the exact same definition of abatement as EPA.

Board Response:

The Board agrees and implements the suggestion.

Rachel Riley and Michael McGreevy

Page 1, lines 25-27: Rephrase subdivision 1.a under the definition of “abatement” to match EPA’s definition and to read “The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and”.

Board Response:

The Board agrees and implements the suggestion.

E-mail Comment:

Frank J. Dzipinka, Jr.
1222 East Ocean View Avenue, #501
Norfolk, VA 23503

Dzupinka1@cs.com

Page 2, line 25-27: In 18 VAC 15-30-20, paragraph 4, the last sentence discusses the HUD Lead-Safe Rule 24. Does this mean that programs in compliance are or are not considered abatement? It is difficult to understand from the way it is written.

Board Response:

This language was inserted at the request of the Virginia Department of Housing and Community Development (DHCD) as assurance that rehabilitation projects undertaken by DHCD using HUD funding which comply with HUD regulation 24 CFR Part 35 will also comply with the Board's regulations. Since most of these rehabilitation projects do not meet the definition of "abatement," the Board's regulations do not apply. HUD regulations make very clear that compliance with the Board's regulations is necessary for any project conducted with the intent of eliminating lead-based paint and for all projects exceeding \$25,000 in cost. As a result, any project conducted in compliance with HUD Regulation 24 CFR Part 35 will, of necessity, be in compliance with the Board's regulations.

Rachel Riley and Michael McGreevy

Page 2, lines 25-27: If the errors of usage and terminology are corrected, the inclusion in Paragraph 3 of a statement that "federally assisted housing and community development programs conducted in compliance with the U.S. Department of Housing and Urban Development Lead Safe Final Rule, 24 CFR Part 35 shall be considered to meet the requirements of this chapter," is unnecessary, because interim controls workers will not need licenses, and abatement workers will.

Board Response:

This language was inserted by the Board at the request of the Virginia Department of Housing and Community Development (DHCD) as assurance that rehabilitation projects undertaken by DHCD using HUD funding which comply with HUD regulation 24 CFR Part 35 will also comply with the Board's regulations. Since most of these rehabilitation projects do not meet the definition of "abatement," the Board's regulations do not apply. HUD regulations make very clear that compliance with the Board's regulations is necessary for any project conducted with the intent of eliminating lead-based paint and for all projects exceeding \$25,000 in cost. As a result, any project conducted in compliance with HUD Regulation 24 CFR Part 35 will, of necessity, be in compliance with the Board's regulations.

John J. Gerow and Jerry Donahue

Page 2, lines 25-27: Abatement should include federally assisted housing and community development programs conducted in compliance with the U.S. Department of HUD Lead-Safe Final Rule 24 CFR Part 35.

Board Response:

This language was inserted by the Board at the request of the Virginia Department of Housing and Community Development (DHCD) as assurance that rehabilitation projects undertaken by DHCD using HUD funding which comply with HUD regulation 24 CFR Part 35 will also comply with the Board's regulations. Since most of these rehabilitation projects do not meet the definition of "abatement," the Board's regulations do not apply. HUD regulations make very clear that compliance with the Board's regulations is necessary for any project conducted with the intent of eliminating lead-based paint and for all projects exceeding \$25,000 in cost. As a result, any project conducted in compliance with HUD Regulation 24 CFR Part 35 will, of necessity, be in compliance with the Board's regulations.

Rebecca S. Kunz

Page 2, line 25-27: Consider revising the wording in the abatement definition to more clearly state the Virginia licensing requirement may still be required when in compliance with 24CFR35.

Board Response:

This language was inserted by the Board at the request of the Virginia Department of Housing and Community Development (DHCD) as assurance that rehabilitation projects undertaken by DHCD using HUD funding which comply with HUD regulation 24 CFR Part 35 will also comply with the Board's regulations. Since most of these rehabilitation projects do not meet the definition of "abatement," the Board's regulations do not apply. HUD regulations make very clear that compliance with the Board's regulations is necessary for any project conducted with the intent of eliminating lead-based paint and for all projects exceeding \$25,000 in cost. As a result, any project conducted in compliance with HUD Regulation 24 CFR Part 35 will, of necessity, be in compliance with the Board's regulations.

Kent Steinruck

Page 2, line 25-27: DPOR's proposed definition of "Abatement" states that "Furthermore, federally assisted housing and community development programs conducted in compliance with the U.S. Department of Housing and Urban Development Lead-Safe Final Rule 24 CFR Part 35 shall be considered to meet the requirements of this chapter." The statement is confusing, somewhat misleading and I am not quite sure what it means. I am not sure if it means that community development programs conducted in accordance with HUD regulations would still be required to comply with the Board's lead regulations or does it mean that community development programs conducted in compliance with HUD regulations is good enough, no need to be certified in accordance with the Board's regulations.

What is meant by "community development programs?" I would assume it involves lead abatement. There is no reference to this in the EPA final rule. The statement needs to be deleted in its entirety. Simply stated, if one is conducting a lead-based paint activity in a target house or child-occupied facility that is regulated by the Board (abatement, inspection,

risk assessment, etc.) then certification is required, regardless if the activity is also being conducted in accordance with HUD.

Board Response:

This language was inserted by the Board at the request of the Virginia Department of Housing and Community Development (DHCD) as assurance that rehabilitation projects undertaken by DHCD using HUD funding which comply with HUD regulation 24 CFR Part 35 will also comply with the Board's regulations. Since most of these rehabilitation projects do not meet the definition of "abatement," the Board's regulations do not apply. HUD regulations make very clear that compliance with the Board's regulations is necessary for any project conducted with the intent of eliminating lead-based paint and for all projects exceeding \$25,000 in cost. As a result, any project conducted in compliance with HUD Regulation 24 CFR Part 35 will, of necessity, be in compliance with the Board's regulations.

Rachel Riley and Michael McGreevy

Page 4, lines 3-4: "Clearance levels" means values that indicate lead levels following an abatement activity. If the Commonwealth does not intend to regulate non-abatement activities for clearance, please so state. Also, the absence of the policy to regulants allowing them to supervise "sampling/clearance technicians" on federally assisted non-abatement activities is a weakness in this proposal. The language from DPOR's the memorandum from DPOR indicating the allowance of sampling technicians working under licensed evaluation professionals in federally assisted housing should be included in this document. It is no more stringent than EPA's requirements.

Board Response:

This is the exact definition used by EPA. Additionally, the Board's enabling statute, 54.103 of the Code of Virginia, speaks only of requiring licensure to conduct lead abatement clearance testing. Regarding "sampling/clearance technicians," the Board has no statutory authority over these individuals. The memorandum was sent to explain how federal and Virginia requirements relate to each other. Therefore, no action is taken.

Kent Steinruck

Page 4, lines 3-4: The definition of "Clearance levels" should include the levels as allowed by EPA under the 403 rule or, at the minimum, reference the regulatory section where the levels can be found. The definition should clarify that clearance levels are established only for floors, window sills and window troughs.

Board Response:

The Board agrees and inserts the following at the end of the definition: "as identified by EPA, pursuant to Toxic Substances Control Act (TSCA) section 403.

John J. Gerow and Jerry Donahue

Page 5, line 2: Definition of “deteriorated paint” – replace “underlying” with “substrate.”

Board Response:

The Board agrees and implements the suggestion.

Oral Comment:

John Hart
Industrial Training Company
10821 Trade Road
Richmond, VA 23236

Page 6, lines 27-31: Mr. Hart indicated that the proposed regulations were unclear as to what an interim license allows an individual to actually do.

Board Response:

No action was necessary since the last sentence of the definition of “Interim license” reads “Each interim license . . . is equivalent to a license for the six-month period.”

Frank J. Dzupinka, Jr.

Page 6, lines 37-38: In 18 VAC 15-30-20, the LBP definition is greater than or equal to 1mg/cm², but only greater than .5% by weight. Both should be either one or the other. Title X uses greater than for both.

Board Response:

The Board defines “lead-based paint” as “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 percent by weight,” which is identical to the definition of “lead-based paint” as defined in 54.1-500 of the Code of Virginia and EPA Final Rule 40 CFR Part 745.

Kent Steinruck

Page 7, lines 7-18: The term and definition of “Lead-contaminated dust” should be substituted with the term and definition of “dust-lead hazard.” The definition of dust-lead hazard needs to be identical to the definition given under EPA’s 404 rule. The term and definition of lead-contaminated dust has been removed under the amendments made by EPA under the Federal Register dated January 5, 2001.

The term and definition of “Lead-contaminated soil” should be substituted with the term and definition of “soil-lead hazard.” The definition of soil-lead hazard needs to be identical to

the definition given under EPA's 404 rule. The term and definition of lead-contaminated soil has been removed under the amendments made by EPA under the Federal Register dated January 5, 2001.

The definition of a "Paint-lead hazard" needs to be included. The definition needs to be identical to the definition given in EPA's 404 rule.

It may be best to include the overall definition of "lead-based paint hazards". This would be inclusive of the above-mentioned comments as the regulations need to define hazards standards for a paint-lead hazard, dust-lead hazard and soil-lead hazard, important terms for risk assessors and contractors. As outlined in EPA's 404 rule, the hazard standards for these three media (lead-based paint, dust and soil) are collectively and statutorily defined as "lead-based paint hazards." The term "lead-based paint hazard" is used extensively used throughout the Board's proposed regulations; however, it should be defined in the regulations.

Board Response:

The definitions of "dust-lead hazard" and "soil-lead hazard" are new and are located in a new section, Subpart D – Lead-Based Paint Hazards, of 40 CFR Part 745 published in the January 5, 2001 Federal Register. Subpart D is the EPA regulation required by the Toxic Substances Control Act (TSCA) Section 403, "Identification of Dangerous Levels of Lead." Subpart L is the EPA regulation required by the Toxic Substances Control Act (TSCA) Section 402, "Lead-Based Paint Activities Training and Certification," first published as final regulation on August 29, 1996 and amended at the same time the TSCA 403 regulations were published on January 5, 2001. EPA explains this action on page 1214 of the January 5, 2001 Federal Register as follows: "While the Agency clearly has authority to establish separate levels for contaminated dust and soil, given the comments, the lack of clear statutory direction, and the lack of significance of the terms in the statutory structure, the Agency has determined not to established any separate levels for contaminated dust or soil beyond those levels that constitute a lead-based paint hazard."

EPA, therefore, has decided to remove the terms "lead-contaminated dust" and "lead-contaminated soil" soil so as to not establish any separate levels for dust or soil beyond those that constitute a "lead-based paint hazard." The new terms, "dust-lead hazard" and "soil-lead hazard," reflect those lead levels in dust and soil that constitute a "lead-based paint hazard."

The amendments to Subpart L of 40 CFR 745 published in the January 5, 2001 Federal Register are sufficient to implement the terms newly defined in Subpart D. Therefore, the Board decided to amend its text to reflect all of the January 5, 2001 amendments to Subpart L, including adding a new section to implement the new language establishing standards for "determination" found in Subpart L at § 745.227 (h). This new section will implement the substance of Mr. Steinruck's comment:

18 VAC 15-30—511. Determination of the presence of lead-based paint, a paint-lead hazard, a dust-lead hazard, and a soil-lead hazard.

- A. Lead-based paint is present:
 - 1. On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and
 - 2. On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.
- B. A paint-lead hazard is present:
 - 1. On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified by EPA, pursuant to Toxic Substances Control Act (TSCA) section 403;
 - 2. On any chewable lead-based paint surface on which there is evidence of teeth marks;
 - 3. Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and
 - 4. If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.
- C. A dust-lead hazard is present in a residential dwelling or child-occupied facility:
 - 1. In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than identified by EPA, pursuant to Toxic Substances Control Act (TSCA) section 403 for floors and interior window sills;
 - 2. On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and
 - 3. On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.
- D. A soil-lead hazard is present:
 - 1. In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than identified by EPA, pursuant to Toxic Substances Control Act (TSCA) section 403; or
 - 2. In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than identified by EPA,

pursuant to Toxic Substances Control Act (TSCA) section 403.

It should be noted at this point that the Board had adopted its proposed regulations several months before the above mentioned TSCA 403 regulations and TSCA 402 amendments were published on January 5, 2001.

Rebecca S. Kunz

Page 7, lines 15-18: Review the definition for clarification of Lead-contaminated soil. It includes a statement about “residential or real property and on property of a child occupied facility”. This definition seems to exclude business property or target housing.

Board Response:

As mentioned above, the Board is deleting the definition to conform to the EPA’s amendments to TSCA Section 403 regulations published on January 5, 2001.

Frank J. Dzapinka, Jr.

Page 7, lines 15-18: In 18 VAC 15-30-20 the definition of lead-contaminated soil is provided. Does it matter whether or not there are children in the residential real property?

Board Response:

As mentioned above, the Board is deleting the definition to conform to the EPA’s amendments to TSCA Section 403 regulations published on January 5, 2001.

Written Comment:

Suzanne Lowman
Work Environment Associates
PO Box 14703
Richmond, VA 23221

Page 7, line 33: In the definition of “licensed lead abatement contractor,” the phrase “lead-based paint activities” should be changed to “lead-based paint abatement.” This correction is needed because the lead contractor firms licensed by the Board provide abatement services not “activities” which is defined in these regulations to include risk assessments and inspections.

Board Response:

The Board agrees to replace “lead-based paint activities” with “lead abatements.”

Frank J. Dzapinka, Jr.

Page 7, line 37 through page 8, line 2: Under proposed regs do current lead inspector/risk assessor licensees get both licenses upon renewal or just the risk assessor license?

Board Response:

When the proposed amendments become effective, those individuals licensed as Lead Inspector/Risk Assessor will become and will renew as Lead Risk Assessors. This change was necessitated by a change in terminology by EPA. Lead Risk Assessors will be able to lawfully perform all the duties which are now performed by Inspector/Risk Assessors and will have met the same entry requirements.

Kent Steinruck

Page 9, lines 23-26: The definition of “Target Housing” should be reworded to match EPA’s definition. While the proposed wording in a sense means the same as EPA’s definition, the Board’s definition puts a twist on it by excluding houses for the elderly or disabled from its jurisdiction. The definition section should be used to define terms, as opposed to excluding areas from the Board regulations. The term should be defined in the exact same manner as EPA’s

Board Response:

The Board’s exclusion of housing for the elderly or disabled is identical in substance to EPA’s exclusion, even though the wording is different. The Board agrees to replace its proposed definition with the EPA definition.

Kent Steinruck

Page 10, lines 13-14: The term and definition for “Window sill” needs to be substituted for “Interior window sill,” which EPA has a definition under the 404 rule.

Board Response:

The term in the Board’s proposed regulations were drawn, word for word, from the EPA proposed regulations. This term is not defined in the EPA final regulations nor was it defined in the January 5, 2001 amendments to the TSCA Section 402 regulations. The Board is deleting the definition so as not to conflict with the definition of “interior window sill” found in the TSCA Section 403 regulations at 40 CFR 743.63, which is incorporated by reference in the proposed regulations.

Kent Steinruck

Page 10, lines 15-17: Delete the term “window stool.”

Board Response:

The Board agrees to the deletion since this term is no longer used.

Suzanne Lowman

Page 10, line 18: The term “window trough” should be added and defined to be consistent with federal regulations.

Board Response:

The term appears in 40 CFR 743.63 of the TSCA Section 403 regulations and is included by reference in the Board’s regulations in that it sets hazard standards for lead-based paint.

Kent Steinruck

Page 10, line 18: Substitute the term “Window well” for the term “Window trough” which is the term used and defined by EPA under the 404 rule. The definition needs to be identical to the EPA’s definition.

Board Response:

The term in the Board’s proposed regulations were drawn, word for word, from the EPA proposed regulations. This term is not defined in the EPA final regulations nor was it defined in the January 5, 2001 amendments to the TSCA Section 402 regulations. The Board is deleting the definition so as not to conflict with the definition of “window trough” found in the TSCA Section 403 regulations at 40 CFR 743.63, which is incorporated by reference in the proposed regulations.

Kent Steinruck

Page 10, line 25: Section 18 VAC 15-30-30 requires each person who engages in or offers to engage in any lead-based paint activity to be licensed. Section 54.1-512, Code of Virginia, exempts contractors who contract to undertake a project, a portion of which constitutes an asbestos or lead abatement project if the asbestos or lead abatement project is subcontracted by a person licensed to perform such work. A prime contractor would be offering that service but would not be conducting the actual abatement. The term “offering” appears to be in conflict with that section of the Code of Virginia.

Board Response:

In the situation described, the lead abatement work is actually performed by the properly licensed subcontractor, not the prime contractor who may be offering other services in addition to the actual abatement work.

Section 54.1-512 D of the Code of Virginia reads: “Nothing in this chapter shall be construed as requiring the licensure of a contractor who contracts to undertake a project, a portion of which constitutes an asbestos or lead abatement project if all of the asbestos or

lead abatement work is subcontracted to a person licensed to perform such work in accordance with the provisions of this chapter.”

The Board takes no action.

Rebecca S. Kunz

Page 10, line 33: 18 VAC 15-30-40 - Clarify the programs that require approval of the board. As it is stated it seems that all lead training, including those required by OSHA or HUD would need approval.

Board Response:

The only programs requiring Board approval are the initial and refresher programs appropriate for the specific disciplines in which the Board has the authority to license. The proposed language makes this clear by using terms that are specifically defined in 18 VAC 15-30-20. The Board takes no action.

Kent Steinruck

Page 10, line 34 through Page 11, line 2: Section 18 VAC 15-30-40(A) requires each person who provides or offers to provide a training program to be accredited. This appears to a Catch-22, especially for a training provider who has not been audited and must offer the class in order to have one that can be audited. Based on the wording, the training provider would have to conduct a class void of students during the audit. Would be a tough class to conduct and audit

Board Response:

For many years the Board’s staff has conducted initial on-site audits of training programs before granting approval. In the vast majority of cases, approval is granted at the end of the audit and the students may apply for licensure. Often staff provided advice and guidance that benefits the training provider and his students. The value of the on-site audit is best understood in those few cases where the on-site audit finds inadequate, incompetent or incomplete training and approval cannot be granted. There is some risk to the training provider. The potential hazard to the public resulting from deleting an element from its regulations on which the EPA regulations remains silent justifies the provision. The Board takes no action.

John J. Gerow and Jerry Donahue

Page 11, lines 8-14: Remove 18 VAC 15-30-41 “Waiver of the requirements of this chapter” in its entirety.

Board Response:

The Board added this section to the regulations to give the Board the ability to waive any requirements of the regulations if the Board finds that the waiver in no way lessens the protection of the public health, safety and welfare. The burden of proof rests with the party requesting the waiver and this is a burden so formidable that exceptions will likely be very few. The Board takes no action.

Kent Steinruck

Page 11, lines 8-14: Section 18 VAC 15-30-41 allows the Board to waive any of the requirements of the lead-based paint regulations. Section 54.1-512(A), Code of Virginia, allows the Board, in the event of an emergency to waive the requirements for an asbestos contractor's supervisor's or worker's license; however, no specific authority is granted by the Code of Virginia to the Board to waive lead licensure. The Board should not be granted such authority on a regulatory level. This section should be deleted in its entirety unless such authority is granted on a legislative level.

Board Response:

This waiver is not from the requirement to have a lead license in an emergency situation, but instead, it is a waiver from any of the entry and renewal requirements. This waiver has received the approval of Board counsel.

Rachel Riley and Michael McGreevy

A definition of "housing for the elderly" should be added to the definitions. The intent of Title X was that housing specifically designated for elderly occupants be exempt, not any housing unit occupied by an elderly individual. We feel the current wording will lead people to the incorrect belief that a specific housing unit is exempt because the occupant is elderly.

Board Response:

"Housing for the elderly" is not defined by Title X or in Subpart L of Part 745 of the Code of Federal Regulations (TSCA Section 402 regulations). The definition of "target housing" places limits on housing for the elderly that are specific. The Board takes no action.

Kent Steinruck

The term "Room" needs to be included and defined identical to the definition found in EPA's Federal Register dated January 5, 2001.

Board Response:

"Room" is defined in CFR 745 Subpart D (TSCA Section 403 regulations), not Subpart L (TSCA Section 402 regulations). Subpart D is included by reference in 18 VAC 15-30-510

and, as a result, the definition of “room” is included by reference. The Board feels that this implements Mr. Steinruck’s comment and takes no action.

Kent Steinruck

The terms and definitions for Arithmetic mean, chewable surfaces, common area group, concentration, deteriorated paint, dripline, friction surface, impact surface, loading, mid-yard, play area, residential building, soil sample, weighted arithmetic mean, and wipe sample also needs to be added. These terms are defined by EPA in the amendments made in the Federal Register dated January 5, 2001 and are used by EPA in their amended regulations.

Board Response:

These terms are defined in CFR 745 Subpart D and included by reference in the same manner as addressed for “room” above. The Board takes no action.

Part III – Application and Renewal Requirements

Written Comment:

Barbara A. Slayden
Executive Director
OAR of Richmond, Inc.
One North Third Street, Suite 200
Richmond, VA 23219

Page 11, lines 29-31 and Page 12, lines 19-20: How will incomplete applications be handled and will fees be returned if no license processing occurs? Under the current staff review of applications, it is difficult to know if an application will be considered incomplete. If applications are deemed incomplete and are not “processed” and are not returned to the applicant, how will the applicant know the status of his/her application?

Board Response:

The current procedure for incomplete applications, is to send written correspondence to the applicant indicating that his application is incomplete and what additional information or documentation is needed. The Board feels that this is more efficient than returning the application. Also, fees are not refundable since the application is processed, even if no license is issued. Fees cover the Board’s costs to process applications. The costs are incurred whether or not the license is issued. Fees will continue to be nonrefundable.

OAR of Richmond, Inc.

Page 12, lines 1-3: Subdivision D.2 states that the applicant shall disclose convictions involving “lying, cheating, and stealing.” These are not legal conviction terms and should

be deleted. Also, the proposed regulations do not agree with the wording used on the application which requires the disclosure of any misdemeanor and does not specify lying, cheating, and stealing.

Board Response:

Lying, cheating, and stealing are terms pertaining to the nature of misdemeanor convictions that could affect one’s fitness for licensure in the profession. The application requests disclosure of “any” misdemeanor. The Board, not the applicant, has the authority to determine whether a conviction involves lying, cheating and stealing. The Board amends the subdivision to require disclosure of any misdemeanor.

Fax Comment:

John J. Gerow and Jerry Donahue

Page 12, lines 1-2: Remove “of any misdemeanor involving lying, cheating and stealing.”

Board Response:

The Board amends the subdivision to require the disclosure of any misdemeanor.

E-mail Comment:

Kent Steinruck
Rockin01@aol.com

Page 12, lines 1-2: Section 18 VAC 15-30-50(D)(2) requires the applicant to disclose a conviction in any jurisdiction of any misdemeanor involving lying, cheating and stealing; however, the application itself (question #11) requires the applicant to disclose a conviction of any misdemeanor. The regulations and application should match. Better yet, this section should be deleted in its entirety for the following reasons:

- Section 18 VAC 15-30-50 already requires the applicant to complete the form provided by the department. It is redundant to outline what’s on the application.
- The disclosure requirements in general do nothing more then delay the application review process and waste staff time and resources and serves no particular value to safety and welfare of the public.
- The EPA final regulations do not require such disclosure nor am I aware of any other state that requires such disclosures of non- environmental related convictions.

Board Response:

Lying, cheating, and stealing are terms pertaining to the nature of misdemeanor convictions that could affect one’s fitness for licensure in the profession. The application requests disclosure of “any” misdemeanor. The Board, not the applicant, has the authority to determine whether a conviction involves lying, cheating and stealing. The Board amends

the subdivision to require disclosure of any misdemeanor. The Board is empowered by § 54.1-204 of the Code of Virginia to examine criminal records to evaluate fitness for licensure.

OAR of Richmond, Inc.

Page 12, lines 7-8: States that the applicant shall disclose “any current or previously held certifications, accreditations or licenses issued by Virginia or any other jurisdiction.” Does this refer to lead or to any occupation?

Board Response:

The Board amends the proposed language by adding “environmental remediation” after “held.”

OAR of Richmond, Inc.

Page 12, lines 16-17: Does amending the language to read “A certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order . . .” mean that the applicant’s Virginia State Police criminal record alone will be accepted as sufficient documentation of disclosed convictions? Due to the difficulty of acquiring court records as conviction documentation, this type of documentation should no longer be required to be submitted with the license application. Also, the regulations should include a statement that “offenses adjudicated as a minor in juvenile court do not have to be disclosed.”

Board Response:

The amendment replaces language in the current regulations that has the same substantive meaning and was made on the advice of the Office of the Attorney General. A state police record has never been acceptable as documentation of disclosed convictions, rather, is acceptable as verification that all convictions have been disclosed. The state police has no “lawful authority” to issue an order concerning a criminal conviction. Only the courts possess that authority. Offenses adjudicated as a minor are sealed and can be access only under the most extraordinary circumstances by an order of the juvenile court in question. The Board takes no action.

OAR of Richmond, Inc.

Page 13, lines 31-36: Currently, it takes many months and sometimes more than one year for a license application to be approved when the applicant has a criminal record. When finally issued, the license effective date is the date when the applicant completed the training program; therefore, the license is not actually a one-year license. In many cases the applicant may then have only a few months before the license expires. Suggestion for amendment: The effective date of the license shall be the date it is issued by DPOR.

Board Response:

EPA regulations establish the training completion date as the beginning of the certification cycle. As an EPA requirement, training is valid for three years. In many cases, not just applicants with criminal convictions, an applicant's initial license will be issued for less than twelve months. These instances would involve the submission of an incomplete application (which is frequently the case for those with a criminal record), or the individual not applying for licensure immediately following the training course. The Board takes no action.

E-Mail Comment:

Rebecca S. Kunz
A.H. Reppert & Associates, Inc.
mwilliard@cavtel.net

Page 14, lines 23-24: Can proficiency training be allowed in Virginia if it is not addressed in the 40cfr745 regulations? Doesn't that make Virginia exceed the EPA regulations?

Board Response:

This provision was included in the proposed regulations because they are located in EPA regulation 40 CFR Part 745.226 (e), Federal Register Vol. 61, No. 169, Page 45821.

Rebecca S. Kunz

Page 14, lines 36-39: Training program approval and renewal times and requirements are confusing. Do the training providers need to renew every 24 or 48 months?

Board Response:

Training providers are required to pay a renewal fee every 24 months to maintain the accreditation of each of their training programs. The Board's current regulations require the training program manager to certify that an accredited training program continues to meet the requirements of the regulations for accreditation every 36 months. The 36-month time frame is based on the proposed EPA regulations. The proposed amendment was made to conform to EPA final regulations, which changed the interval from 36 to 48 months.

Written Comment:

Colleen Becker, CIH, CSP
Marine Chemist Service, Inc.
11850 Tug Boat Lane
Newport News, VA 23606-2527

Page 14, lines 36-39: Section 18 VAC 15-30-130 A discusses the requirement for training providers to submit information every 48 months to maintain their approval. This doesn't

seem to match Section 18 VAC 15-30-130 B which renews an approval for an additional 24 months upon receipt of renewal application.

Board Response:

Training providers are required to pay a renewal fee every 24 months to maintain the accreditation of each of their training programs. The Board's current regulations require the training program manager to certify that an accredited training program continues to meet the requirements of the regulations for accreditation every 36 months. The 36-month time frame is based on the proposed EPA regulations. The proposed amendment was made to conform to EPA final regulations, which changed the interval from 36 to 48 months.

John J. Gerow and Jerry Donahue

Page 16, lines 17-19, 22-24, and 30-32: Delete \$25 late fee. All renewals, regardless of date submitted, should be the same.

Board Response:

Fees are set at a level to provide sufficient revenue to cover expenses in compliance with § 54.1-113 of the Code of Virginia. The current fee structure is projected to be sufficient for the next several years. The late fee was much higher in the past. The current amount is sufficient to encourage timely renewal but not so high as to be excessive. Virginia's fees for this program are among the lowest in the nation.

Kent Steinruck

Page 16, lines 17-19, 22-24, and 30-32: 18 VAC 15-30-160 outlines the fees for licensure. The late renewal fees should be consistent for all individuals and firm certification. Individuals renewing late must pay a \$25.00 late fee in addition to the \$25.00 renewal fee. This late fee of \$25.00 is 100% of the original \$25.00 renewal fee, doubling the cost of the license. However, a \$25.00 late fee is also required for Firms that renew late. This fee is approximately 63% of the initial \$40.00 renewal fee.

Late fees for Firms should be 100% of the amount of the renewal fee to match individuals or reduce the late renewal fee for individuals. A late fee of 100% of the initial renewal fee is excessive. Renewing a licensing late really puts no additional financial burden on DPOR staff.

Board Response:

Fees are set at a level to provide sufficient revenue to cover expenses in compliance with § 54.1-113 of the Code of Virginia. The current fee structure is projected to be sufficient for the next several years. The late fee was much higher in the past. The current amount is sufficient to encourage timely renewal but not so high as to be excessive. Virginia's fees for this program are among the lowest in the nation.

John J. Gerow and Jerry Donahue

Page 16, line 29: Remove \$100 renewal fee for lead training programs. This cost does not have any basis in actual department costs to maintain records and is ultimately passed along to regulants and then the public.

Board Response:

Lead training programs are regulated by the Board and must, therefore, bear a portion of the Board's costs. To remove the renewal fee would shift that portion of the Board's costs to other regulants. DPOR incurs costs every day maintaining records and responding to inquiries concerning training programs. The Board takes no action.

Part IV – Individual Licensure Requirements**Oral and E-Mail Comment:**

Rachel Riley
7917 Bainbridge Road
Alexandria, VA 22308
RachelRiley@aol.com

Michael McGreevy
Alexandria, VA

Page 17, line 7: Part IV, 18 VAC 15-30-170. DPOR should require all applicants for licensure provide undisputable proof of identify.

Board Response:

The Board makes every effort to ensure the proper identity of each applicant before licensure. The Board regrets that there is no form of proof of identity that is undisputable and believes its staff acts prudently to confirm identities.

Oral Comment:

John Hart
Industrial Training Company
10821 Trade Road
Richmond, VA 23236

Page 17, line 31: Mr. Hart indicated that the proposed regulations require a project designer to attend 32 hours of a lead supervisor course. He would like to see the regulations define which 32 hours or that it be the full 40-hour supervisor course.

Board Response:

The length of the initial supervisor course has been reduced from 40 hours to 32 hours to be consistent with EPA regulations. The Board takes no action.

Fax Comment:**John J. Gerow and Jerry Donahue**

Page 17, 18 VAC 15-30-170; Page 17, 18 VAC 15-30-180; Page 18, 18 VAC 15-30-190; Page 18, 18 VAC 15-30-200; Page 19, 18 VAC 15-30-210; Page 19, 18 VAC 15-30-220; Page 20, 18 VAC 15-30-230; and Page 20, 18 VAC 15-30-240: Reinstate stricken language and change end date to March 1, 1999. This would be consistent with EPA's final rule.

Board Response:

This option in the EPA's final regulations expired on August 30, 1999 and was deleted, for that reason, from the Board's proposed regulations. The Board takes no action.

John J. Gerow and Jerry Donahue

Page 17, 18 VAC 15-30-180: Allow grandfathering for individuals who have completed 40-hour Supervisor/Designer courses (board approved) for Designer licensing.

Board Response:

Those who completed the 40-hour supervisor course under the current regulations will continue to be eligible for a designer license under the Board's new regulations.

E-mail Comment:**Kent Steinruck**Rockin01@aol.com

Page 20, line 34 and Page 21, line 3: The experience requirements outline in 18 VAC 15-30-245 (A) for lead risk assessors requires a bachelor's or associates degree in engineering, architecture or a related profession. EPA's final regulations also requires a risk assessor to have a bachelor degree and 1-year experience or an associates degree and 2-years of experience; however, the EPA final regulations do not require the bachelor or associate degree to be in a particular field. The EPA regulations, under §745.226(b)(B)(2), simply require the applicant must have a bachelor's degree. Mandating a specific degree is more stringent than the EPA regulations.

Board Response:

Since EPA is silent as to a specific field of study, the Board feels that it is appropriate to limit the degree which may substitute for experience to a field pertinent to the industry. Otherwise, an applicant may substitute a degree in an unrelated field, such as art, accounting, political science, etc., for industry-related experience.

Part V – Licensed Contractor Requirements

E-mail Comment:

Kent Steinruck
Rockin01@aol.com

Page 21, lines 25-26: §18 VAC 15-30-250(B)(2) of the Board's proposed regulations requires Firms seeking licensure to certify that a licensed lead abatement supervisor is present at each job site while a lead abatement project is in progress. This is in direct conflict with §18 VAC 15-30-620(B) of the Board's proposed regulations and in conflict with EPA's final regulations. Both require the lead abatement supervisor to be on-site only during work site preparation and during post abatement cleanup. At all other times, the supervisor shall be on-site or available. § 18 VAC 15-30-250(B) needs to be revised to match with §18 VAC 15-30-620(B) and match the EPA requirements for on-site supervisors.

Board Response:

While it may be prudent to have a licensed lead abatement supervisor on-site during abatement, it would cause the Board's regulations to be more stringent than EPA and would be in direct conflict with the Board's enabling statutes. Therefore, the Board replaces subdivision "2" with the same language found in 18 VAC 15-30-620 subsection B on page 42: "A licensed lead abatement supervisor is present at each job site during all work site preparation and during post-abatement cleanup, and shall be on-site or available by telephone, pager or answering service, and able to be present at the work site in no more than two hours when abatement activities are being conducted."

E-mail Comment:

Frank J. Dzupinka, Jr.
1222 East Ocean View Avenue, #501
Norfolk, VA 23503
Dzupinka1@cs.com

Page 21, lines 25-26: Compare 18 VAC 15-30-250 para B (2) with 18 VAC 15-30-620 regarding when the lead supervisor is required on site. The former implies always. The latter says only during prep and post-abatement clean-up, but not during actual abatement. When is it more important to have him present? I would argue during abatement.

Board Response:

While it may be prudent to have a licensed lead abatement supervisor on-site during abatement, it would cause the Board's regulations to be more stringent than EPA and would be in direct conflict with the Board's enabling statutes. Therefore, the Board replaces subdivision "2" with the same language found in 18 VAC 15-30-620 subsection B on page 42: "A licensed lead abatement supervisor is present at each job site during all work site preparation and during post-abatement cleanup, and shall be on-site or available by telephone, pager or answering service, and able to be present at the work site in no more than two hours when abatement activities are being conducted."

Fax Comment:

John J. Gerow and Jerry Donahue

Page 21, lines 25-26: This language conflicts with 18 VAC 15-30-620 (B) and should be deleted.

Board Response:

While it may be prudent to have a licensed lead abatement supervisor on-site during abatement, it would cause the Board's regulations to be more stringent than EPA and would be in direct conflict with the Board's enabling statutes. Therefore, the Board replaces subdivision "2" with the same language found in 18 VAC 15-30-620 subsection B on page 42: "A licensed lead abatement supervisor is present at each job site during all work site preparation and during post-abatement cleanup, and shall be on-site or available by telephone, pager or answering service, and able to be present at the work site in no more than two hours when abatement activities are being conducted."

E-Mail Comment:

Rebecca S. Kunz
A.H. Reppert & Associates, Inc.
mwilliard@cavtel.net

Page 21, lines 25-26: 18 VAC 15-30-250 - In section B. 2., the statement: "A lead abatement supervisor is present at each job while a lead abatement project is in progress" conflicts with the requirements in section 18 VAC 15-30-620 Section B. Consider adding "or available" in the definition.

Board Response:

While it may be prudent to have a licensed lead abatement supervisor on-site during abatement, it would cause the Board's regulations to be more stringent than EPA and would be in direct conflict with the Board's enabling statutes. Therefore, the Board replaces subdivision "2" with the same language found in 18 VAC 15-30-620 subsection B on page 42: "A licensed lead abatement supervisor is present at each job site during all work site

preparation and during post-abatement cleanup, and shall be on-site or available by telephone, pager or answering service, and able to be present at the work site in no more than two hours when abatement activities are being conducted.”

Part VI – Training Program Accreditation

E-mail Comment:

Kent Steinruck
Rockin01@aol.com

Page 22, line 13: §18-VAC 15-30-260(3) requires applicants for training program accreditation to submit a copy of student manuals and instructor manuals or other materials to be used. Under EPA’s final regulations, training provider applicants who will be utilizing EPA recommended model training materials or materials approved by States or Indian tribes to certify that they will be using these materials. Submission of the materials as part of the application is not required. EPA only requires training provider applicants who do not use EPA approved material to submit student and instructor manuals. The Board’s proposed regulations need to match the EPA requirements on training course applicants. Mandating all applicants to submit this material, regardless if it’s EPA approved or not, is a more stringent requirement.

Board Response:

The situation described by Mr. Steinruck applies only to EPA-administered states and does not place any additional burden upon a training provider. Applications have been received with “EPA recommended model training materials” that have been found to be outdated, incomplete and improperly modified. It is the Board’s responsibility to ensure the accuracy and applicability of all training manuals, and that those using an EPA model training curriculum do, in fact, have accurate and complete documents. The Board takes no action.

Fax Comment:

John J. Gerow and Jerry Donahue

Page 24, lines 3-5: Delete the “Change of ownership” section. It is more stringent than EPA.

Board Response:

Since EPA is silent on this issue, the Board feels that it has established a procedure for these situations for which EPA has not. Identifying those it regulates is an essential function of a regulatory program. Should a change of ownership take place without the Board’s knowledge, all regulatory oversight may be lost. The Board takes no action.

Part VII – Requirements for the Accreditation of Training Programs

E-mail Comment:

Kent Steinruck
Rockin01@aol.com

Page 25, lines 3-8: §18 VAC 15-30-340(1)(a) and (b) of the proposed regulations outlines the requirements for the training manager. This section needs to be correctly worded and punctuated to reflect EPA requirements. EPA requires the training manager to have at least two-years experience, education, or training in teaching workers or adults or a bachelor or graduate degree in building construction technology, engineering, industrial hygiene, safety, public education, business administration or program management or a related field. The way the proposed regulations are punctuated infers that two-years of experience is required in addition to the education. EPA allows a training manager to have one of the three choices; 2-years experience in training or teaching adults or a bachelor or graduate degree in the named fields or two-years experience in managing a training program specializing in environmental hazards.

Board Response:

By placing the “or” on line 6 after “a related field” the wording is correct and the training manager is required to meet only one of the three qualifications. The Board takes no action.

Kent Steinruck

Page 25, lines 14-15: The training program must appoint an overall training manager and also appoint a principal instructor for each course offered. The proposed regulations make it clear that a training manager has to meet the requirements of a principal instructor to serve as one; however, it is not specifically stated that an individual who acts only as an instructor is required to meet any of those requirements. The asbestos regulations specifically require individuals who act as asbestos training instructors to be approved prior to teaching a course. This is not specifically stated for lead instructors who are not appointed as a training manager or principal instructor. Do all instructors have to be approved or just the individuals acting as a training manger or principal instructor?

Board Response:

The Board agrees and inserts a subsection “C” which copies the Asbestos regulation language: “Documentation of all instructor qualifications shall be reviewed and approved by the board prior to the instructor teaching in an accredited lead training program.”

Kent Steinruck

Page 26, line 12: Certificates from train the trainer course has been struck through in §18 VAC 15-30-360 of the proposed regulation as documentation of meeting the training experience for training managers and principal instructors. Train the trainer certificates are

allowed in the EPA final regulations and therefore, should be recognized by the Board. Not allowing the use of train the trainer certificates is being more stringent than EPA's final regulations.

Board Response:

The Board felt that this qualification for instructors was not relevant and deleted it in the proposed regulations. The Board does not view this as more stringent and takes no action.

Oral Comment:

John Hart
Industrial Training Company
10821 Trade Road
Richmond, VA 23236

Page 27, line 9: Mr. Hart recommended increasing the project designer refresher from four hours to eight hours.

Board Response:

This suggested change would clearly make the Board's regulations substantially more stringent than EPA. The Board takes no action.

Fax Comment:

John J. Gerow and Jerry Donahue

Page 27, lines 10-13: Delete the paragraph limiting the number of training hours in a specific time period. It is more stringent than EPA.

Board Response:

EPA regulations are silent on this issue. Training is the foundation of this regulatory program. Students fatigued from work do not learn well. The language has been carefully drawn to place a reasonable constraint on training hours. The Board takes no action.

Kent Steinruck

Page 27, lines 10-13: §18 VAC 15-30-380(B) limits the amount of training to eight hours in a 24-hour period and no more than four hours when conducted in the evening. EPA's final regulations does not put a limit on the amount of training hours that can be given in a 24-hour period or evening training hours. The limitation in the Board's proposed regulations is more stringent than EPA's final regulations, therefore, it needs to be deleted.

Board Response:

EPA regulations are silent on this issue. Training is the foundation of this regulatory program. Students fatigued from work do not learn well. The language has been carefully drawn to place a reasonable constraint on training hours. The Board takes no action.

E-Mail Comment:

Rebecca S. Kunz
A.H. Reppert & Associates, Inc.
mwilliard@cavtel.net

Page 27, lines 10-13: 18 VAC 15-30-380 - In section B the limit of conducting training in the evening should be revised to state that training should not exceed 4 hours if training is conducted in conjunction with the person working – otherwise, there is no need to limit the hours of training after 5 pm even if they do not specifically work those shifts. Also, the limit of 16 hours during the weekend should be changed to 20 hours or defined more specifically to allow for 4 hours on Friday and 8-hour sessions on Saturday and Sunday.

Board Response:

EPA regulations are silent on this issue. Training is the foundation of this regulatory program. Students fatigued from work do not learn well. The language has been carefully drawn to place a reasonable constraint on training hours. The Board takes no action.

Rebecca S. Kunz

Page 27, lines 15-21: Clarify Section A - Will refreshers require a hands-on skills assessment?

Board Response:

The Board agrees that the language can be more clear and adds the following sentence to the end of the subsection: “Refresher training programs are not required to conduct a hands-on skills assessment.”

E-mail Comment:

Frank J. Dzipinka, Jr.
1222 East Ocean View Avenue, #501
Norfolk, VA 23503
Dzipinka1@cs.com

Page 28, line 18: 18 VAC 15-30-400 para 6 doesn't make sense. Should the word “program” be replaced with “provider”?

Board Response:

The Board agrees with the comment and changes the word “program” to “provider.”

Part VIII – Training Course Curricula Requirements

Oral Comment:

John Hart
Industrial Training Company
10821 Trade Road
Richmond, VA 23236

Mr. Hart requested that a statement be added that stated that existing approved training curriculum could be grandfathered in if they meet the present requirements or the changed requirements for curriculums as they are submitted in the proposed regulations.

Board Response:

The training programs currently approved will continue to be approved but must review their current curriculum to assure compliance with the Board’s new regulations. The Board takes no action.

E-Mail Comment:

Rebecca S. Kunz
A.H. Reppert & Associates, Inc.
mwilliard@cavtel.net

There are no guidelines stating how to revise current approved programs to come into line with the updated training program policy. Will training programs that are presently accredited be “grand-fathered”?

Board Response:

The current regulations contain no such guidelines. Programs must update their curriculums using the same methods that used under the existing regulations. The training programs currently approved will continue to be approved but must review their current curriculum to assure compliance with the Board’s new regulations. The Board takes no action.

Written Comment:

Suzanne Lowman
Work Environment Associates
PO Box 14703
Richmond, VA 23221

Page 29, line 29: Under the “Training Course Curricula Requirements,” the training should not just include “background information on federal, state and local regulations” but should state specifically that the OSHA Lead Standard for Construction (29 CFR 1926.62) is be thoroughly reviewed and discussed. This is crucial to protecting the public and the lead workers. Lead workers and supervisors conducting abatement activities must have thorough training in the lead safety standards put in place by OSHA.

Board Response:

The Board is concerned that the suggested change would result in regulations more stringent than EPA regulations and duplicate the functions of the U.S. Occupational Safety and Health Administration. The Board takes no action.

Suzanne Lowman

Page 29, 18 VAC 15-30-450 and page 30, 18 VAC 15-30-460: Under the Training Course Curricula, the training for workers and supervisors should include information on abrasive blasting since this abatement activity has been undertaken on many steel structure.

Board Response:

Since the amendments to the Board’s regulations deregulate abatement activities on bridges and superstructures, the Board takes no action.

Suzanne Lowman

Page 33, line 1: Under the Training Course Curricula for risk assessors, the Board proposes to have the risk assessor be trained in “Lead Hazard Screen Protocol.” The language “and Lead Hazard Risk Assessment Protocol” should be added since risk assessors conduct both “screens” and full scale “risk assessments.”

Board Response:

The lead hazard screen is a minor function of the risk assessor and needs to be listed separately and discussed how it differs from the lead risk assessment. Since most of the other required topics are the individual components of the “full scale” risk assessment, the Board feels that no additional language is needed.

Suzanne Lowman

Page 33, lines 20-21 and 26: Under the Training Course Curricula for project designers, the Board proposes to include training criteria for development and implementation of an occupant protection plan for “large scale” abatement projects and the clearance standards and testing for “large scale” abatement projects. The term “large scale” needs to be expanded to either include both “large scale and small scale” or completely deleted since a project designer is trained to develop occupant protection plans and clearance standards for

all size projects. Allowing this language to stay may limit the opportunity for designers to practice their profession on small scale projects. These regulations do not and should not regulate or dictate the size of the project for which a project design is prepared.

Board Response:

This language is drawn from EPA. The Board takes no action.

John Hart

Page 33, line 20: Mr. Hart suggested that a definition of “large scale abatement projects” would help in the definition of curriculum as it relates to project designers.

Board Response:

The material is drawn directly from the EPA final regulations. The Board takes no action.

E-mail Comment:

Frank J. Dzapinka, Jr.
1222 East Ocean View Avenue, #501
Norfolk, VA 23503
Dzapinka1@cs.com

Page 33, line 31 through page 34, line 8: Refresher training requirements in 18 VAC 15-30-500 list only 3 topics that shall be addressed. Can the required topics be expanded or be more definitive so training providers have a better idea of what additional topics the state feels should be reviewed?

Board Response:

The Board is concerned that the suggested change would result in regulations more stringent than EPA regulations. The proposed language in no way prohibits a review of pertinent material from the initial course in the context of explaining how things have changed. The Board takes no action.

Part IX – Standards for Conducting Lead-Based Paint Activities

E-mail Comment:

Ian Nazarenko, Staff Environmental Consultant
Consolidated Engineering Services, Inc.
AAS Environmental, Inc.
320 23rd Street South, Suite 100
Arlington, VA 22202-3820

Mr. Nazarenko expressed concern that by not mentioning XRF devices during inspections in 18 VAC 15-30-520 and the repeal of 18 VAC 15-30-530 (Use of x-ray fluorescence spectroscopy), whether the use of an XRF would continue to be an accepted inspection method.

Board Response:

The Board understands the concern. Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, as revised in 1997, provides documented methodologies for the use of XRF devices. The Board takes no action.

Written Comment:**Colleen Becker**

Page 24, line 9 through Page 46, line 30: Part IX Standards for Conducting Lead-Based Paint Activities - This part as written is already out of date. As an example, the revised HUD inspection chapter requires testing per testing combination not per component as required in this Part. This Part could end at 18 VAC 15-30-510 including the references and thus not need updating. Additional references that should be included: Chapter 7: Lead-Based Paint Inspection 1997 Revision, HUD Guidelines and 40 CFR Part 745 Lead; Identification of Dangerous Levels of Lead; Final Rule, January 5, 2001.

Board Response:

Specific hazard and clearance standards as well as certain procedures which may change more quickly than regulations are included by a reference to the TSCA Section 403 regulations and to the guidelines of appropriate federal agencies, which have been mandated by Title X to establish such standards and procedures. The Board's Lead-Based Activities Regulations, which implement EPA's regulations in the Commonwealth because of Virginia's status as an EPA-authorized state, must include the same procedural requirements as found EPA's regulations promulgated under TSCA Section 402. The Board revises the regulation's procedures as follows:

- Page 35, lines 21, 22, 23, 26, and 27: Replace "component" with "testing combination" in all five occurrences.
- Page 36, line 31: Replace "component" with "testing combination."
- Page 41, line 12: Replace "component" with "testing combination."

The Board agrees to the addition of references to the 1997 revisions to the HUD Guidelines and EPA's 403 regulations. Therefore, on page 34, line 36, add to the end of the sentence " , including the 1997 Revision to Chapter 7: Lead-Based Paint Inspection." The Board also agrees to add a new subdivision on page 34, line 37: "The EPA 40 CFR Part 745: Lead; Identification of Dangerous Levels of Lead; Final Rule; January 5, 2001."

Colleen Becker

Page 24, line 9 through Page 46, line 30: Part IX Standards for Conducting Lead-Based Paint Activities - This Part also includes wording that inspections, lead-hazard screens, risk assessments or abatements must be performed in compliance with documented methodologies (18 VAC 15-30-510.D). Currently, inspections and risk assessments do not have to be performed in accordance with the HUD Guidelines as long as that is stated on the report (a client may want or can only afford to have a few surfaces tested). Will this still be allowed? Previously, the Board felt that given a choice between no information and some information, it was better to have some information.

Board Response:

Inspections, lead-hazard screens, and risk assessments must be conducted in accordance with documented methodologies. However, should an inspector or risk assessor be engaged to conduct a partial inspection, lead-hazard screen, or risk assessment, then it must be documented that the product is such and is not an inspection, screen or assessment as provided for in the Board's regulations.

Written Comment:

Suzanne Lowman
Work Environment Associates
PO Box 14703
Richmond, VA 23221

Page 34, lines 20-25: Ms. Lowman strongly opposes allowing a lead abatement contractor to have an employer/employee relationship or financial interest with any individuals performing a post abatement clearance. This language allowing contractors to clear their own projects with just a disclosure form is inconsistent with federal requirements that address the independence of post abatement clearance examinations. Also, the Board's Asbestos regulations prohibit the same relationship between the abatement contractor and the project monitor who conducts clearance examinations on an asbestos project. Ms. Lowman suggests adding "or" before "project design" on line 21, deleting "or post-abatement clearance procedures" from lines 21-22, and adding the following to the end of the subsection: "Persons licensed to perform post-abatement clearance procedures shall be independent of, and have no financial interest in or an employer/employee relationship with the licensed lead abatement contractor."

Board Response:

The Board agrees and implements the changes.

Oral and E-Mail Comment:

Rachel Riley
7917 Bainbridge Road

Alexandria, VA 22308
RachelRiley@aol.com

Michael McGreevy
Alexandria, VA

Page 34, line 35-36: 18 VAC 15-30-510. General requirements. We recommend the Board take this rulemaking opportunity to update the list of documented methodologies to include current reference documents such as Chapter 7 of the HUD Guidelines, 1997 Revision, HUD's Lead Safe Housing Rule, and EPA's 403 Rule.

Board Response:

As previously stated, the Board agrees to the addition of references to the 1997 revisions to the HUD Guidelines and EPA's 403 regulations. Therefore, on page 34, line 36, add to the end of the sentence (, including the 1997 Revision to Chapter 7: Lead-Based Paint Inspection." The Board also agrees to add a new subdivision on page 34, line 37: "The EPA 40 CFR Part 745: Lead; Identification of Dangerous Levels of Lead; Final Rule; January 5, 2001."

E-Mail Comment:

Rebecca S. Kunz
A.H. Reppert & Associates, Inc.
mwilliard@cavtel.net

Page 34, line 33-36: Documented methodologies should be evaluated. There is no statement about the update to chapter 7 in the HUD Guidelines. There is no statement about the ASTM standards required in 40CFR745.

Board Response:

As previously stated, the Board agrees to the addition of references to the 1997 revisions to the HUD Guidelines and EPA's 403 regulations. Therefore, on page 34, line 36, add to the end of the sentence (, including the 1997 Revision to Chapter 7: Lead-Based Paint Inspection." The Board also agrees to add a new subdivision on page 34, line 37: "The EPA 40 CFR Part 745: Lead; Identification of Dangerous Levels of Lead; Final Rule; January 5, 2001."

Rebecca S. Kunz

Page 35, line 20: Consider changing the words residential dwelling to target housing in section B1.

Board Response:

This terminology is drawn from the EPA final regulations. The Board takes no action.

Suzanne Lowman

Page 36, lines 23-24: Under the Written Inspection report section, item #7 requires the name, address and telephone number of the “licensed firm” employing each inspector or risk assessor. These firms are not required to be licensed. Therefore, “licensed firm” in this section needs to be deleted.

Board Response:

The Board agrees and deletes “licensed” before “firm.” The name, address, and telephone number of the firm is still relevant information.

E-mail Comment:

Kent Steinruck
Rockin01@aol.com

Page 38, line 23 through Page 39, line 9: §18 VAC 15-30-550(B)(3), (4), (5), (6), and (7) needs to be amended to reflect the amendments that were promulgated by EPA and published in the January 5, 2001 Federal Register.

Board Response:

The Board agrees and makes the following revisions:

3. The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:
 - a. Each friction surface or impact surface with visibly deteriorated paint; and
 - b. All other surfaces with visibly deteriorated paint.
4. In residential dwellings, dust samples (either composite or single-surfaces samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in living areas where one or more children, age six and under, are most likely to come into contact with dust.
5. For multi-family dwellings and child-occupied facilities, the samples required in subdivision 3 of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:
 - a. Common areas adjacent to the sampled residential dwelling or child-occupied facility; and
 - b. Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come into contact with dust.

6. For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where one or more children, age six and under, are likely to come into contact with dust.
7. Soil samples shall be collected and analyzed for lead concentrations in the following locations:
 - a. Exterior play areas where bare soil is present;
 - b. The rest of the yard (i.e., non-play areas) where bare soil is present; and
 - c. Dripline/foundation areas where base soil is present.

Rebecca S. Kunz

Page 39, lines 6-9: Section 7: for soil sampling should include “the rest of the yard (i.e. non-play areas) where bare soil is present.”

Board Response:

The Board agrees to the addition and makes subdivision “b” to read “The rest of the yard (i.e., non-play areas) where bare soil is present; and” changing current subdivision “b” into subdivision “c.”

Rebecca S. Kunz

Page 40, line 33: For risk assessment report, Item 5 should say “owner or owners.” There should be a section which includes a requirement listing the ages of occupants residing in the unit if available.

Board Response:

This subsection was drawn from the EPA final regulations. The term “each owner” makes clear that there may be more than one owner and that each must be identified. the Board takes no action. EPA does not require a listing of the occupants’ ages and, for this reason, the Board views such a requirement as more stringent. The Board takes no action.

Rebecca S. Kunz

Page 41, line 35: Section 17: use the word condition versus severity.

Board Response:

This subsection was drawn from the EPA final regulations. The Board takes no action.

Colleen Becker

Page 42, lines 9-14: Subsection 620 B - OSHA requires that a lead competent person be on site during abatement. This can be a worker or supervisor if the OSHA compliance officer determines they are competent. Depending on the job and personnel, a lead worker may not be considered competent. A supervisor would then need to be on the job throughout the abatement process. This can cause confusion for the contractor if he reads this section that only requires a licensed supervisor to be available within two hours.

Board Response:

The language found in question comes directly from EPA 40 CFR Part 745. From a licensing standpoint, if the Board's regulations were to require that a licensed lead supervisor be onsite while a lead abatement project is in progress, the Board's regulations would be more stringent than EPA, and therefore, would be in conflict with the Code of Virginia. The Board has no authority to enforce OSHA regulation.

Rachel Riley and Michael McGreevy

Page 42, line 35: 18 VAC 125-30-620.E.3. Recommend inserting, "Dry sanding or" before "dry scraping..."

Board Response:

The paragraph is drawn directly from the EPA final regulations. The Board takes no action.

Kent Steinruck

Page 43, lines 3-7: §18 VAC 15-30-620(F) needs to be amended to reflect the amendments promulgated by EPA. The amendments state that if soil is removed, it must be replaced with soil that has a lead concentration as close to local background as possible, but no more than 400 ppm and the soil that is removed cannot be used as topsoil at another residential property or child occupied facility.

Board Response:

The Board agrees and will amend the language to reflect the amendments to Subpart L of Part 745 of the Code of Federal Regulations (TSCA Section 402 regulations) that were published on January 5, 2001.

Rebecca S. Kunz

Page 45, lines 19-24: Post abatement clearance stated in 4a of VA regulations "one dust sample shall be taken from one window (if available)" should read as the Federal Regulation in order for this section to be in compliance with 40cfr745.

Board Response:

The Board agrees and replaces the subdivision with the following: “After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.”

Kent Steinruck

Page 45, lines 19-30: 18 VAC 15-30-650 needs to be amended to reflect the changes promulgated by EPA in the Federal Register mentioned above. The Board’s regulation should also state the clearance levels that were promulgated by EPA and include language that would automatically reduce the levels in the event EPA does.

Board Response:

The Board agrees and replaces both subdivisions with the following:

- a. After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.
- b. After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor or each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

EPA establishes clearance level standards through Subpart D of CFR 745 (TSCA Section 403), which is included by reference. Future amendments to Subpart D would go into effect without amending the Board’s regulations.

Rachel Riley and Michael McGreevy

Page 45, line31: 18 VAC 15-30-650, 4.c, line 1. Change “visible” to “visual.”

Board Response:

This language was drawn directly from the EPA final regulation. EPA used the word “visible” before “inspection” in this phrase. A review of the preceding and following language finds the consistent use of “visual” before “inspection.” For this reason, the Board feels the suggested amendment can be made without creating a more stringent requirement.

Fax Comment:

John J. Gerow and Jerry Donahue

Page 46, lines 1-9: Insert current clearance levels as published in 40 CFR Part 745.227 and include language that would automatically reduce levels if EPA does.

Board Response:

EPA establishes clearance level standards through Subpart D of CFR 745 (TSCA Section 403), which is included by reference. Future amendments to Subpart D would go into effect without amending the Board’s regulations.

Rebecca S. Kunz

Page 46, lines 1-9: Section 6 has the same issue – windows are not clarified as interior window sills and window troughs.

Board Response:

The Board agrees and replaces the subdivision with the following: “The licensed inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with the clearance levels, as established in 40 CFR Part 745 (Lead; Identification of Dangerous Levels of Lead; Final Rule; January 5, 2001), for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested.”

Rebecca S. Kunz

Page 46, lines 24-30: 18VAC15-30-651 - Recommend that this section be removed or that dust sampling be completed by ASTM protocol.

Board Response:

This language is drawn directly from 40 CFR 745.227 (g). The Board takes no action.

Part X – Standards of Practice and Conduct**Fax Comment:****John J. Gerow and Jerry Donahue**

Page 51, lines 22-36: Delete section 18 VAC 15-30-770, “Public statements,” in its entirety. The section is confusing.

Board Response:

It is not clear how the section is confusing. The section sets reasonable standards for practice and conduct. The Board takes no action.

John J. Gerow and Jerry Donahue

Page 52, lines 1-10: Delete section 18 VAC 15-30-780, “Solicitation of work,” in its entirety. This is a performance based regulation, not moral guidance.

Board Response:

The objective is to protect the public. Setting practice and conduct standards pursues that objective. Those who engage in the proscribed practices should have their fitness for continued licensure reviewed by the Board.

E-Mail Comment:

Rachel Riley
7917 Bainbridge Road
Alexandria, VA 22308
RachelRiley@aol.com

Michael McGreevy
Alexandria, VA

Page 52, line 11: 18 VAC 15-30-790. Licensed Risk Assessor requirements. We recommend the Board take advantage of this provision allowing submission and review of risk assessment reports in the context of evaluating training providers’ ability to deliver instruction on risk assessment report writing or based on tips and complaints of incomplete and low quality of risk assessment reports. Our experience is that some risk assessments being provided to housing agencies nationwide are incomplete and of poor quality. Some have not even included dust testing. This should be covered in risk assessor training courses. We recommend, therefore, that DPOR investigate this matter and consider an evaluation of the effectiveness of this segment of risk assessment training.

Board Response:

Information concerning any regulant's failure to comply with the regulations should be reported to the Department. If investigation develops evidence of a violation, the Board will then be able to take appropriate disciplinary action. Over time, the results of such investigations will provide the effective evaluation suggested. The Board hopes that Ms. Riley and Mr. McGreevy will report defective risk assessments to the Board.

John J. Gerow and Jerry Donahue

Page 52, lines 23-35: Delete section 18 VAC 15-30-800, "Good standing in other jurisdictions." This sounds like double jeopardy.

Board Response:

The Board feels that regulants should be held accountable for their actions in the performance of their duties in other jurisdictions. A regulant's failure to comply with the requirements of another jurisdiction must be reviewed by the Board to determine fitness for Virginia licensure.

John J. Gerow and Jerry Donahue

Page 53, lines 25 and 37: Remove "lying, cheating, or stealing."

Board Response:

Lying, cheating, and stealing are terms pertaining to the nature of misdemeanor convictions that could affect one's fitness for licensure. The Board takes no action.

Written Comment:

Barbara A. Slayden
Executive Director
OAR of Richmond, Inc.
One North Third Street, Suite 200
Richmond, VA 23219

Page 53, lines 25 and 37: The terms lying, cheating, or stealing are again used.

Board Response:

Lying, cheating, and stealing are terms pertaining to the nature of misdemeanor convictions that could affect one's fitness for licensure. The Board takes no action.

General Comments

Colleen Becker

Ms. Becker expressed concern in deregulating an industry that is currently regulated. She felt that exempting renovation/remodeling work and dropping licensing requirements for public and commercial buildings and superstructures would be a step backwards in protecting workers and the public.

Board Response:

The Board is required by the Code of Virginia to amend its regulations, should EPA implement any applicable regulation, to ensure that Virginia regulations are no more stringent than EPA. When EPA finally promulgates all of the regulations mandated by the Residential Lead-Based Paint Hazard Reduction Act of 1992, the Board will proceed to amend its regulations to implement same.

OAR of Richmond, Inc.

Suggested change to the criminal conviction questions on the applications.

Board Response:

The application forms are not a part of the Board's proposed regulations.

John Hart

Mr. Hart requested further clarification on the significant harm clause due to lying, cheating or stealing.

Board Response:

Lying, cheating, and stealing are terms pertaining to an individual's character which could affect his fitness for licensure in the profession. The Board felt that no action was needed.

Oral Comment:**Larry Ingram
Training Consultant with OAR of Richmond
On Behave of Barbara Slayton**

Mr. Ingram indicated that Ms. Slayton wanted to comment on the fact that there was nothing in the proposed regulation which addressed licensure of the special populations. He also indicated that a clearer definition of when an individual can be denied a license due to misdemeanors relating to lying, cheating and stealing.

Board Response:

The Board's authority to deny licenses is found in § 54.1-204 of the Code of Virginia, which guides the Board in determining fitness for licensure. Each decision is made after careful consideration of the facts and circumstances surrounding the individuals background. The Board takes no action.

Oral and E-Mail Comment:

Rachel Riley
7917 Bainbridge Road
Alexandria, VA 22308
RachelRiley@aol.com

Michael McGreevy
Alexandria, VA

The proposal is more stringent than EPA requirements in several important areas. We request the Board not approve these proposed regulations until a comprehensive, item-by-item review of the proposal, comparing the wording of each item in the proposal to EPA's requirements has been performed and provided to the public. The purpose of this exercise is to ensure compliance with the Statute by identifying each specific deviation from EPA requirements and to provide to the public the justification for each deviation proposed.

Board Response:

Staff has performed this task while preparing this document. It should be noted that the concerns expressed overlook the fact that this regulation was proposed by the Board several months before the January 5, 2001 publication of the EPA's TSCA Section 403 regulations, which also revised EPA's 1996 final regulations promulgated under TSCA Section 402. The Board feels that further delay of amending its regulations is not warranted.

Rachel Riley and Michael McGreevy

The Purpose of the proposed State regulations, as stated on page 1, is "to assure the existence of an infrastructure of trained and qualified individuals and firms to remove lead-based paint hazards..." In Federal lead-based paint documents, the word "remove" can be used when referring to a method of abatement of paint, hazards or components, but also when referring to "dust removal." Dust removal per se is not an abatement method only, but occurs as a component of maintenance, interim controls or abatement. Thus, "removal" refers to both permanent or temporary lead-based paint responses. Using this particular word muddies DPOR's stated intent of aligning with EPA and requires people performing lead-safe maintenance work or interim controls to be licensed. We recommend that the words "remove" and "removal of hazards" be changed to "abate" and "abatement" as applicable and the text from the Summary in the Preamble Section of the EPA 402-404 rule be added.

Also, we recommend the addition of the following clarification copied from the EPA's 402 Summary be inserted in DPOR's rule:

“This rule would not regulate a renovation contractor that incidentally disturbs lead-based paint or an individual who samples paint on a kitchen cabinet to determine if the paint contains lead. Today's final rule would cover a contractor who offers to abate a home of lead-based paint hazards, or an inspector who offers to conduct a lead-based paint inspection in a residential dwelling.”

Board Response:

This information is located in the Town Hall Agency Background Document and is not part of the Board's regulations. Therefore, no action is taken.

Rachel Riley and Michael McGreevy

We object to statements such as (on page 4), “...under the proposed regulations small painting contractors who have no employees who are licensed to work with lead may bid for painting contracts on homes that are known to have lead-based paint. Personnel at such [painting] firms may have good intentions, but without training in lead work, it seems likely that they would be less successful at preventing the spread of lead-based paint dust.” Please provide to the public the scientific basis for this statement, which implies the only lead training painters receive is DPOR-approved training for licensing. We know this to be untrue, because HUD has an interim control training requirement, and HUD trained 30,000 individuals performing non-abatement activities in the last year and a half, some in Virginia. Statements that use terms such as, “it is probable that,” “seems likely that,” “may have,” and “the chances that,” are not based in fact, but rather, supposition that needs to be supported when placed in a document of regulatory significance.

We question the cost analysis that reports A.H. Reppert's costs for an initial lead inspector course as \$600. This appears excessive for a 3-day course in a state that has several training providers approved to deliver this program.

On page 4, second column, paragraph 5, 6 and 7, the term “removal” should be replaced with “abatement.”

Board Response:

This information is part of the Department of Planning and Budget's economic impact analysis of the proposed regulation, not part of the Board's regulations. The Board has no authority to make changes.

Rachel Riley and Michael McGreevy

The proposed regulations do not specify whether these rules apply to individuals performing lead-based paint activities only for compensation, or for individuals performing them as

community service not for compensation. These requirements should apply only to professionals performing them for compensation. The wording from EPA's 402 summary quoted in Item 1 above would also apply to this issue, as only compensated professionals are identified as being regulated in the clarifying examples.

Board Response:

As indicated § 54.1-512 of the Code of Virginia, the only exemption from the Board's regulations is "any person who performs lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted or a child is residing in the property and has been identified as having an elevated blood-lead level." The Board has no authority to exempt any other groups.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

All references to certificates or certification have been changed to license or licensure to reflect statutory changes throughout the regulations. There is no economic impact.

All references to the department have been changed to the Board, since it is the Board who has statutory authority, not the department. There is no economic impact.

Since training managers and principal instructors must receive Board approval, references to these individuals have been added throughout the regulations, where appropriate, whenever there is any reference to an accredited lead training program or an accredited lead training provider.

Section 18 VAC 15-30-10 has been modified to limit the applicability of these regulations to "target housing" and "child-occupied facilities" to align them with EPA's revised limitations. The economic impact would be the deregulation of lead abatement projects on public and commercial buildings, steel structures, and superstructures.

Section 18 VAC 15-30-20. Definitions have been modified, added, or deleted for clarification and to come into alignment with EPA's regulations as mandated by the Board's enabling statutes.

- In paragraph number four under the definition of "abatement," interim controls would no longer be regulated as abatement activities. This has been a gray area that had been left to

Board interpretation. The economic impact would be two-fold. Demand for licensed lead professionals would decrease. However, the burden on property owners to engage the use of licensed lead professionals to perform interim controls, who generally charge higher fees for their services, whose purpose is to temporarily reduce lead-based paint hazards, would be reduced.

- One previously undefined term, “environmental remediation activity,” has been added. There is no economic impact.

Section 18 VAC 15-30-30 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-40 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-41 has been added to enable the Board to waive any requirements of the regulations if the Board finds that the waiver in no way lessens the protection of the public health, safety and welfare. There is no economic impact.

Section 18 VAC 15-30-50

- Subsection A has been amended to delete the Department’s mailing address, which is subject to change, appears on the printed regulation booklet and is available from the Department’s web site (www.state.va.us/dpor). The instructions are simplified to require applications to be made on a form provided by the Department. There is no economic impact.
- Subsection C has been amended to clarify the use of fees and the justification for not issuing refunds. There is no economic impact.
- Subsection D has been amended to require the disclosure of all misdemeanors and to limit the disclosure of certifications, accreditations and licenses to the environmental remediation field. There is no economic impact.
- Subsection E has been rephrased for clarity. There is no economic impact.
- Old Subsection E has been incorporated into Subsection C. There is no economic impact.
- Subsections G through J have been added for administrative purposes. There is no economic impact.

Sections 18 VAC 15-30-60, 18 VAC 15-30-70, 18 VAC 15-30-80, and 18 VAC 15-30-90 have been repealed in their entirety. The standards established in the repealed sections are redundant with the licensure requirements in Part IV for individuals, Part V for contractors, and Part VI for training programs. There is no economic impact.

Section 18 VAC 15-30-100, Subsection B has been amended to eliminate the extension of interim licenses. It was observed that individuals requesting extensions never sat for and passed the third-party examination. By eliminating the ability to extend an interim license, the third-

party examination can be used as a tool for “weeding out” incompetent candidates, thereby better protecting the public health, safety, and welfare. There is no economic impact.

Section 18 VAC 15-30-110 has been amended to include allowances for proficiency based courses. This came directly from EPA’s regulations. Since these courses are more intense in both time and subject matter, refresher training is required after 60 months instead of only 36 months. There is no economic impact.

Section 18 VAC 15-30-130 has been amended so that the renewal cycle and the reaffirmation cycle of an accredited training program coincide by maintaining the 24-month renewal cycle and increasing the reaffirmation cycle from 36 to 48 months so that the training provider must reaffirm compliance every other renewal cycle. This was an administrative change to alleviate confusion between the two different cycles. Additionally, the reaffirmation information from 18 VAC 15-30-320 has been moved to this section for ease of understanding. There is no economic impact.

Section 18 VAC 15-30-140, Subsection D has been amended to require an individual applying for a second interim license to retake and satisfactorily complete the initial training requirement, not just an 8-hour refresher. In conjunction with Section 18 VAC 15-30-100, the current regulations allow for an individual to take an 8-hour refresher to obtain subsequent interim licenses and never sit for or pass the third-party examination. There will be the cost to the applicant of having to retake the initial training, however, by requiring these individuals to successfully retake the initial training, they may be better prepared to take and pass the third-party examination, ensuring that only competent lead professional are performing work for the public.

Section 18 VAC 15-30-150 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-160, Subsection H has been added. The current regulations impose a late renewal fee on training programs that renew more than 30 days after the expiration date of the accreditation. The \$25 fee charged for late renewal is an agency-wide amount for all licenses, certificates, and accreditations. The fee amount was omitted in the current regulations. This will only impact training programs that renew late.

Section 18 VAC 15-30-170 has been revised to eliminate “grandfathering” for lead workers. Very few applicants have applied for licensure in the past two years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted, the Board feels the public interest is better met by requiring any new candidate to complete a Board-approved training course. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained before obtaining their license. Additionally, “for target housing, superstructures and public and commercial buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Section 18 VAC 15-30-180 has been revised to eliminate “grandfathering” for lead project designers. Very few applicants have applied for licensure in the past two years through grandfathering. Since only equivalent training taken prior to January 1, 1996 is accepted, the Board feels the public interest is better met by requiring any new candidate to complete a Board-approved training course. There may be a few applicants who are required to take additional training, however, this additional training should better ensure that they are sufficiently trained before obtaining their license. Also, due to EPA changes, the discipline name has changed from planner/project designer to project designer, and an experience requirement has been added. Additionally, “for target housing and public buildings” has been deleted from the section title since it is stated in Section 18 VAC 15-30-10 that these regulations are applicable only to target housing and child-occupied facilities.

Sections 18 VAC 15-30-190 “Interim certified supervisor . . .” and 18 VAC 15-30-200 “Certified supervisor . . .” were replaced in their entirety with new Section 18 VAC 15-30-205 “Licensed lead abatement supervisor.”

- For simplification, the requirements for both sections were combined since an individual applies for a Supervisor License, not an Interim Supervisor License. If his initial or refresher training is less than six months old, he will be issued an Interim License that expires six months from the date of training. If the training has gone past the six-month window, he will be issued an examination eligibility letter. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated.
- Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. The only economic impact would be on the applicant, who either did not receive sufficient training or needed to be retrained to work with potentially hazardous material. Public protection more than outweighs the economic burden of the applicant.
- Subsection D has been added to allow a licensed lead abatement supervisor to perform the duties of a licensed lead abatement worker since the worker training is included in the supervisor training course. By adding this subsection, the lead abatement supervisor would be spared the expense of attending a worker course and the expense of acquiring a lead abatement worker license should he obtain employment as a lead abatement worker.

Sections 18 VAC 15-30-210 “Interim certified inspector technician . . .” and 18 VAC 15-30-220 “Certified inspector technician . . .” were replaced in their entirety with new Section 18 VAC 15-30-225 “Licensed lead inspector.”

- EPA’s regulations replace discipline title “Lead Inspector Technician” with “Lead Inspector.” The requirements are the same, only the title changes.
- For simplification, the requirements for both sections were combined since an individual applies for an Inspector License, not an Interim Inspector License. If his initial or refresher

training is less than six months old, he will be issued an Interim License that expires six months from the date of training. If the training has gone past the six-month window, he will be issued an examination eligibility letter. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated.

- Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. The only economic impact would be on the applicant, who either did not receive sufficient training or needed to be retrained to work with potentially hazardous material. Public protection more than outweighs the economic burden of the applicant.

Sections 18 VAC 15-30-230 “Interim certified inspector/risk assessor . . .” and 18 VAC 15-30-240 “Certified inspector/risk assessor . . .” were replaced in their entirety with new Section 18 VAC 15-30-245 “Licensed lead risk assessor.”

- EPA’s regulations replace discipline title “Lead Inspector/Risk Assessor” with “Lead Risk Assessor.” The requirements are the same, only the title changes.
- For simplification, the requirements for both sections were combined since an individual applies for a Risk Assessor License, not an Interim Risk Assessor License. If his initial or refresher training is less than six months old, he will be issued an Interim License that expires six months from the date of training. If the training has gone past the six-month window, he will be issued an examination eligibility letter. Separate requirements were unnecessary and confusing. Also, just like Sections 18 VAC 15-30-170 and 18 VAC 15-30-180, grandfathering was eliminated.
- Subsection A.2 has been added to specify the acceptable fields of study for applicable undergraduate degrees. The current regulations are unclear regarding any fields of study.
- Subsection C has been added to require the applicant to retake the initial training before he can take the third-party examination for the third time. It is felt that if the applicant fails the third-party examination twice, the subject matter was not understood. The only economic impact would be on the applicant, who either did not receive sufficient training or needed to be retrained to work with potentially hazardous material. Public protection more than outweighs the economic burden of the applicant.

Section 18 VAC 15-30-250 has been amended to include current procedures that were not spelled out in the regulations. Additionally, language was added to specify the availability of the licensed lead abatement supervisor during each stage of an abatement project. There is no economic impact.

Section 18 VAC 15-30-260 has been rephrased for clarity. In Subsections B and D, dates in the past have been deleted. There is no economic impact.

Section 18 VAC 15-30-270, Subsection D has been deleted. Interim approvals were granted at the beginning of the licensing program. Since there is a substantial list of approved training courses, there is no longer a need to grant interim approval prior to an on-site audit. There is no economic impact.

Section 18 VAC 15-30-280 has been amended to reflect the elimination of interim approvals in Section 18 VAC 15-30-270. There is no economic impact.

Section 18 VAC 15-30-290 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-310 has been moved from Part VI, Training Program Accreditation to Part X, Standards of Practice and Conduct as Subsection C of Section 18 VAC 15-30-790. There is no economic impact.

Section 18 VAC 15-30-320 has been rephrased for clarity and for administrative purposes, and has been incorporated into Section 18 VAC 15-30-130 for ease of understanding. There is no economic impact.

Section 18 VAC 15-30-340 has been rephrased for clarity and to reflect changes in EPA's regulations. Additionally, language has been added to require principal instructor approval prior to teaching a training course. There is no economic impact.

Section 18 VAC 15-30-350 has been rephrased for clarity and to reflect changes in EPA's regulations. There is no economic impact.

Section 18 VAC 15-30-360 has been amended to remove "lead certification in another state" and "train the trainer courses" as recognized documentation for instructors. The Board felt that these qualifications for instructors were not relevant. There is no economic impact.

Section 18 VAC 15-30-370 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-380 has been modified to reflect training course requirements found in EPA's regulations. There is no economic impact.

Section 18 VAC 15-30-390

- Language has been added to indicate that hands-on skills assessment is not required for refresher training programs. There is no economic impact.
- Subsection E has been added to allow for a proficiency test, to implement this new EPA regulation provision. There is no economic impact.

Section 18 VAC 15-30-400 has been rephrased for clarity. Because of the inclusion of proficiency based training courses in Section 18 VAC 15-30-110, a different expiration date has been added for these training certificates. Subsection 7 has been added to ensure that only

approved training managers and principal instructors are facilitating board-approved training courses. There is no economic impact.

Section 18 VAC 15-30-420, Training program notification and training program participant roster requirements for accredited lead training programs were added to enable the Board to more closely monitor training activities and to be consistent with the Board's similar requirements found in the Asbestos Licensing Regulations. Should these additional requirements not be complied with, there is the potential for substantial economic impact to the training provider and the course participants because Subsection G states that training certificates will not be recognized from training providers that fail to notify or fail to provide a participant list.

Section 18 VAC 15-30-440 has been rephrased for clarity. There is no economic impact.

Sections 18 VAC 15-30-450 through 18 VAC 15-30-480 have been revised and rewritten to more accurately reflect EPA's regulations. There is no economic impact.

Section 18 VAC 15-30-490 has been rewritten since Project Designer is a new training course. In the current regulations, the Supervisor and Project Designer courses were one in the same since EPA had not developed a separate course for Project Designer. There is no economic impact.

Sections 18 VAC 15-30-510, Language was added to prevent persons performing post-abatement clearance from having any financial connection with the abatement contractor. The Board felt that this was a conflict of interest. There is no economic impact.

Sections 18 VAC 15-30-510, 18 VAC 15-30-511, 18 VAC 15-30-520, 18 VAC 15-30-540 through 18 VAC 15-30-550, 18 VAC 15-30-610, 18 VAC 15-30-620, 18 VAC 15-30-650, and 18 VAC 15-30-651 have been revised, added, or rewritten to more accurately reflect EPA's regulations. Sections 18 VAC 15-30-530, 18 VAC 15-30-560 through 18 VAC 15-30-600, 18 VAC 15-30-630, 18 VAC 15-30-640, and 18 VAC 15-30-660 through 18 VAC 15-30-680 have been repealed. There is no economic impact.

Sections 18 VAC 15-30-690 through 18 VAC 15-30-750 have been eliminated because the scope of EPA's regulations, and subsequently these regulations, has changed to include only target housing and child-occupied facilities. As previously mentioned, the demand for licensed lead professionals would decrease. However, the burden on property owners to engage the use of licensed lead professionals to perform interim controls, who generally charge higher fees for their services, whose purpose is to temporarily reduce lead-based paint hazards, would be reduced.

Section 18 VAC 15-30-790 has been rephrased for clarity. Subsection C has been added to allowed board representatives to monitor approved training courses. There is no economic impact.

Section 18 VAC 15-30-800 has been rephrased for clarity. There is no economic impact.

Section 18 VAC 15-30-810 has been rephrased for clarity.

- In Subsection A, language has been added to give the board the authority to revoke and suspend accreditation and licensure in addition to denial of same. There is no economic impact.
- Subdivision A.4 has been added to give the Board the authority to deny an application or to discipline a regulant for violating any federal or state regulation pertinent to lead-based paint activities. There is no economic impact.
- Subdivision A.11 has been added to hold the abatement contractor responsible for the actions and conduct of its lead abatement workers and supervisors. There is no economic impact.

Section 18 VAC 15-30-820 has been revised to delete “after notice and an opportunity for hearing” since this is part of the APA procedures referred to in Subsection B. There is no economic impact.

Sections 18 VAC 15-30-830 and 18 VAC 15-30-840 have been eliminated, as they are redundant with Section 18 VAC 15-30-160. There is no economic impact.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on families has been identified.