
TITLE: Lead-based Paint under the Voluntary Action Program

**DATE
EFFECTIVE:** August 2005

HISTORY: Update VA30000.05.002 - Revision was necessary to reflect changes in the rule citations that became effective in March 2009.

KEYWORDS: Lead-based paint, lead, applicable standards, remedial activities, hazardous substance

**RULE/
AUTHORITY:** ORC 3746.04(B)(1) and (B)(2), 3746.12; OAC 3745-300-07(F)(1), 3745-300-08, and 3745-300-09

QUESTION: How is lead-based paint (LBP) addressed under the Voluntary Action Program (VAP) and what are the applicable standards for LBP remediation under the VAP?

ANSWER: Ohio EPA's statutory authority for standards under the VAP encompasses the levels of lead present in environmental media - namely soil, sediment, surface water and ground water. (See ORC 3746.04(B)(1) and (B)(2).) VAP applicable standards for lead in environmental media may be determined in accordance with OAC 3745-300-08 or 3745-300-09. These standards apply in situations where a release of LBP to environmental media has contributed to a complete exposure pathway, determined in accordance with OAC 3745-300-07(F)(1), between a receptor and the lead contaminated environmental media. Under this limited scenario, VAP standards may apply to the release of LBP from building exteriors to the environmental media and may require the removal of exterior LBP on a building to eliminate the source of lead contamination.

When a release to environmental media has occurred and a VAP applicable standard has been exceeded, the covenant not to sue (release of liability) issued under VAP, ORC 3746.12, would encompass the remedial activities needed to bring the property into compliance with VAP applicable standards. However, a VAP covenant not to sue (release of liability) would not encompass any LBP abatement that is not associated with a release to environmental media. Should a property owner choose to encapsulate or remove interior or exterior LBP at a building, for reasons which may be based on other state or federal requirements, a VAP covenant not to sue would not encompass that abatement.

BACKGROUND: Ohio EPA has not developed nor may readily incorporate applicable standards for LBP on building interior or exterior structures. Although no VAP standards exist for LBP abatement from building interiors or exteriors, VAP standards do exist for lead in environmental media. Alternatively, there are other applicable state and federal requirements that address LBP but are not encompassed under Ohio EPA's authority.

On the state-level, the Ohio Department of Health (ODH) regulates LBP to a limited degree. ODH's LBP program, at OAC Chapter 3701-32, regulates LBP on or in a particular "structure" (defined as any house, apartment, or building, used as an individual's place of residence or commonly used as a place of education or day-care center for children under six years of age). ODH's definitions of "place of education" and "day care facility" essentially mirror U.S. EPA's definition for "child-occupied facility" (defined as the same child visiting the facility at least two times each week for at least three hours each visit.)

On the federal level, U.S. EPA, the U.S. Department of Housing and Urban Development (HUD) and the Occupational Safety and Health Administration (OSHA) regulate LBP on or in structures within their respective jurisdictions. U.S. EPA's regulations, like ODH's program, pertain to only residential-type settings or facilities that are occupied by children 6 years of age or under. For example, U.S. EPA standards apply to LBP hazards in "target housing" or a "child-occupied facility". HUD's standards apply to HUD-funded projects. OSHA's standards limit the concentration of lead in workroom air at levels which generally apply to industrial or manufacturing operations.

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