

Lead Abatement Work Practice Standards Enforcement Manual

Purpose

The purpose of this Lead Abatement Work Practice Standards enforcement manual, per 701.311(8) RSMo, is twofold. The first is to identify violations of lead abatement work practice standards that may occur during an active lead abatement project. The second purpose is to respond to those violations with an enforcement activity, such as issuing a written notice, warning letter or Notice of Violation (NOV) and/or administrative penalties, referring for prosecution, and/or pursuing licensure restriction, suspension, revocation or denial.

This manual is divided into four categories: notification, minor, significant, and acute noncompliance. Each category represents a set of violations that range in severity and the potential to cause harm to public health and/or the environment. Each category includes the enforcement procedures the department will follow if a lead abatement contractor, supervisor, worker, risk assessor, lead inspector or project designer commits any of the identified violations.

LEAD ABATEMENT COMPLIANCE INSPECTIONS

Purpose and Overview

A Lead Abatement Compliance Inspection is an on-site assessment of an active lead abatement project that assures lead abatement work practices being performed are sufficient to protect the lead licensed individual, public health and the environment; and that lead abatement practices are performed as required by Missouri's regulations and laws.

A representative of the department shall conduct a compliance inspection at an unannounced time during the workdays and work hours indicated on the official project notification and/or re-notification form submitted to the department by the lead abatement supervisor. If a department representative attempts to conduct a compliance inspection and finds no one on the job site during the workdays and/or work hours indicated, the inspector shall verify whether the lead abatement supervisor submitted the required re-notification form(s). If the department did not receive a re-notification form, a warning letter and written notice will be sent to the lead abatement contractor.

At the conclusion of the compliance inspection the inspector shall discuss, with the lead abatement supervisor, any violations of the lead abatement work practice standards observed during the inspection and necessary corrective actions. At that time, the lead abatement supervisor will receive a copy of the compliance inspection report. An additional copy, along with a letter from the department, will be mailed to the lead abatement contractor.

Enforcement activities may be necessary and initiated during a compliance inspection if violation(s) that threaten public health, safety and/or the environment are observed at the job site. Such violations would include, but are not limited to, a lead abatement contractor failing to assure that his/her employees are properly licensed to conduct lead abatement activities or using any prohibited lead abatement work practice defined in 19 CSR 30-70.630(9)(B) Lead Abatement Work Practice Standards. In such cases, pursuant to 701.316 RSMo, all lead abatement work shall immediately cease and desist until necessary corrections are made to the satisfaction of the department.

In addition, enforcement activities such as the issuance of a Notice of Violation, administrative penalties and the restriction, suspension, revocation and/or denial of the lead abatement contractor's,

supervisor's and/or worker's license(s) shall be pursued dependent upon the harm or potential harm the violation(s) has or may have caused, the extent of deviation from the appropriate regulations and laws, the violator's previous compliance record, the nature of the violation (repeat and/or critical) and any other factors the department deems relevant.

Administrative penalties shall be assessed using a gravity-based assessment described in 19 CSR 20-70.650 Administrative Penalties.

REGULATORY TERMS AND DEFINITIONS

1. **Chronic:** A behavior or pattern of behavior that continues over a period of time or is marked by frequent reoccurrences.
2. **Compliance:** A regulated entity or individual's meeting or conformity with applicable regulations, notifications and licensure requirements, and laws.
3. **Compliance Inspection:** An on-site assessment of an active lead abatement project to assure compliance with applicable regulations, notifications and licensure requirements, and laws.
4. **Department:** Shall refer to the Missouri Department of Health and Senior Services.
5. **Director:** Shall refer to the Director of the Missouri Department of Health and Senior Services or a designee of the Director of the Missouri Department of Health and Senior Services.
6. **Emergency:** Any set of circumstances that constitutes an imminent health hazard or poses an immediate threat to human health, safety or the environment.
7. **Encapsulant:** A liquid coating or adhesively bonded substance applied to a surface to form a barrier between a lead-bearing substance and the environment.
8. **Encapsulation:** The application of an encapsulant.
9. **Enclosure:** The use of rigid, durable construction materials mechanically fastened to a substrate to act as a barrier between a lead-bearing substance and the environment.
10. **Enforcement:** A formal action taken against the regulated entity or individual for violating applicable regulations, notifications and licensure requirements, and laws. Such actions include, but are not limited to, Notice of Violation (NOV), warning letters, administrative penalties, cease and desist order and/or licensure restriction, revocation, suspension or denial.
11. **Imminent Health Hazard:** Any condition which presents an immediate, significant, threat or danger to health when there is sufficient evidence to show that a product, practice, or circumstance requires immediate correction based on the number of potential injuries and the nature, severity, and duration of the anticipated hazard.
12. **Lead Abatement Project:** The replacement, encapsulation, enclosure, or removal of a lead-bearing substance on a particular component within a particular location, which will remove or remediate the lead hazard(s) for at least twenty years. A "lead abatement project shall not include any measure involving a de minimis surface area of activity excluded from this definition by rule."

13. Licensed Lead Professional: Shall include lead inspectors, risk assessors, lead abatement workers, lead abatement supervisors, project designers and lead abatement contractors.
14. Multiple violation penalty: The sum of individual administrative penalties assessed when two (2) or more violations are included in the same complaint or enforcement action.
15. Multi-day violation: A violation, which has occurred on or continued for two (2) or more consecutive or nonconsecutive days. Each day shall be a separate offense.
16. Noncompliance: Deviation from or failure to meet applicable regulations, notifications and licensure requirements, and laws. Noncompliance can range from a single incident to chronic conduct. Noncompliance may result in a negative impact to public health and/or the environment. There are three types of noncompliance:
 - A. Notification Noncompliance is a failure to notify the department prior to the onset of a lead abatement project
 - B. Minor noncompliance reflects a violation of regulatory requirements where public health and/or the environment will not be negatively impacted to a significant degree. An example of minor noncompliance would include improper re-notification of changes in projects or incomplete information included on the lead abatement project notification.
 - C. Significant noncompliance reflects a violation of regulatory requirements where public health and/or the environment is or will be negatively impacted to a significant degree. An example of significant noncompliance would include work related issues such as inadequate use of 6-mil polyethylene (poly) or inadequate cleaning procedures.
 - D. Acute noncompliance reflects a violation of regulatory requirements that are immediately or imminently harmful to public health and/or the environment; or represent a failure by an employee of a lead abatement contractor to be licensed to conduct lead abatement activities. An example of acute noncompliance would include working without properly licensed personnel or using prohibited work practices that create immediate or imminent health hazards, such as open-flame burning or torching of lead-bearing substances.
17. Notice of Violation (NOV): The formal written documentation that reflects the deviation from or failure of the lead abatement contractor, supervisor or worker to meet applicable regulations, notifications and licensure requirements, and laws. A notice of violation shall include the corrective action(s) to be performed to achieve compliance.
18. Notification: A required package of information submitted to the department by the lead abatement supervisor at least ten (10) days prior to the onset of a lead abatement project. The notification shall include a completed Lead Abatement Project Notification form, as required by the department; full payment of the notification fee prior to starting the lead abatement project; and disclosure of any potential lead hazards to the owners and tenants of a dwelling by the Missouri licensed risk assessor who conducted the initial risk assessment (Occupant Protection Plan).
19. Referral: Submittal of a case to the department's Office of General Counsel for further legal enforcement action or the prosecutor's office for criminal sanctions.

20. Removal: A lead abatement strategy that refers to the elimination of lead based paint on a component, by use of sanding, scraping, mechanical planning/sanding or chemical strippers.
21. Replacement: A lead abatement strategy that refers to the elimination of a lead hazard by substituting a lead-bearing component with a similar non lead-bearing component.
22. Secure Area: An area that is not easily accessible to the public, such as a fenced area, out-of-sight from street, or a dumpster located near the worksite away from public sight.
23. Violation: The deviation from or failure of the licensed lead professional to meet applicable regulations, notifications and licensure requirements, and laws, which require corrective action(s).
24. Warning Letter: A formal letter issued by the department to notify the regulated entity or individual that minor noncompliance has occurred and that subsequent noncompliance may be subject to administrative penalties, cease and desist orders and/or licensure restriction, suspension, revocation or denial.
25. Written Notice: The department's Lead Abatement Project Compliance Inspection Report, which includes any and all violations, observed during a lead abatement compliance inspection, the necessary corrective actions and the timeframe allotted to make the corrections.

NOTIFICATION NONCOMPLIANCE

Failure to notify the department prior to the onset of a lead abatement project shall result in a fine of two hundred fifty (\$250) dollars imposed against the lead abatement contractor for the first identified offense, five hundred (\$500) dollars for the second identified offense, and thereafter, fines shall be doubled up to two thousand (\$2,000) dollars for each additional identified offense within the calendar year.

Violation: **Failure to notify the department prior to the onset of a lead abatement project prior to the onset of the lead abatement project.**

MINOR NONCOMPLIANCE

Minor noncompliance violations will result in the issuance of a written notice or warning letter; however, violations that are not corrected will be elevated to a Notice of Violation. If any minor noncompliance violation continues without the appropriate corrective actions being taken or the same type of violation is continually repeated and becomes excessive in number the department can assess administrative penalties and pursue the option of restricting, suspending, denying and/or revoking the licensed lead professional's license(s).

Administrative Penalties: Minor violations shall result in a written warning and no administrative penalty for the first identified offense, a notice of violation and no administrative penalty for the second identified offense, a notice of violation and an administrative penalty of twenty five (\$25) dollars imposed against the regulated entity or individual for the third identified offense, a notice of violation and an administrative penalty of fifty (\$50) dollars for the fourth identified offense, and thereafter, a notice of violation and an administrative penalty of one hundred (\$100) dollars for each additional identified offense within the calendar year.

Re-Notification Violation.

Violation: Failure of the licensed lead abatement supervisor and/or contractor to submit a lead abatement project re-notification to the department by telephone, facsimile or electronic mail within twenty-four (24) hours prior to implementing any changes from the original project notification.

Identification Violation.

Violation: Failure of lead abatement professionals to present, upon request, proof of licensure in the form of the photo identification badge issued by the department.

Documentation Violations.

Violation: Failure to submit a written occupant protection plan, to the department, for each lead abatement project.

Violation: Failure of the licensed lead abatement supervisor to provide a post-abatement project report, which includes the final clearance results to both the property owner and the department within twenty (20) business days of completing the abatement project.

SIGNIFICANT NONCOMPLIANCE

Significant noncompliance violations will result in the issuance of a written notice, warning letter and/or a Notice of Violation. In addition, dependent upon the harm or potential harm the significant noncompliance violation has or may have caused, the extent of deviation from the appropriate regulations and laws and the violator's previous compliance record the department can assess administrative penalties and pursue the option of restricting, suspending, denying and/or revoking the licensed lead professional's license(s).

Administrative Penalties: Significant violations shall result in a notice of violation with no administrative penalty for the first identified offense, a notice of violation and administrative penalties ranging from one hundred (\$100) to two hundred fifty (\$250) dollars imposed against the regulated entity or individual for the second identified offense, a notice of violation and an administrative penalty of two hundred (\$200) to five hundred (\$500) dollars for the third identified offense, and a notice of violation and an administrative penalty of five hundred (\$500) dollars for each additional identified offense within the calendar year.

General Abatement Violations.

Violation: Failure to use poly at least six (6) mil in thickness.

Violation: Failure to establish a regulated area using fencing, barrier tape or other appropriate barriers to prevent unlicensed and/or unauthorized personnel from approaching closer than twenty (20') feet from the replacement, enclosure, encapsulation or removal operation.

Violation: Failure to post signs at all entrances to the regulated area stating, "WARNING: LEAD AREA, POISON-NO SMOKING OR EATING" in bold lettering not smaller than two

(2”) inches tall with additional language that prohibits entrance to the regulated area by unauthorized personnel.

Violation: Failure to shut down any heating and cooling systems within the regulated area or failure to seal any vents with six (6)-mil poly to prevent lead dust accumulation within the system.

Violation: Failure to clean all items within the regulated area by High Efficiency Particulate Air (HEPA) vacuuming and/or wet wiping with a cleaning solution and/or failure to then remove those items from the area or to cover those items with six (6)-mil poly and seal with duct tape.

Violation: Failure to place, at least, two layers of six (6)-mil poly on the floor at the base of the component and failure to extend at least ten (10’) feet beyond the perimeter of the component to be scraped, sanded or stripped.

Supervisor Violation.

Violation: Failure to have a licensed lead abatement supervisor on the job site at all times, including but not limited to, work site preparation, abatement activities, and post-abatement cleanup of work areas.

Component Replacement Violations.

Violation: Failure to wrap or bag the component completely in six (6)-mil poly and seal with duct tape to prevent loss of debris or dust.

Violation: Failure to clean by HEPA vacuuming the area of replacement prior to installing a new component.

Violation: After replacement, failure to clean the regulated area by HEPA vacuuming and wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again.

Interior Window Component Replacement

Violation: Failure to establish a critical barrier containment that covers the window on the exterior.

Violation: Failure to establish a five (5’) foot perimeter extending from the base of the interior window to be replaced.

Violation: Failure to remove items within the perimeter or failure to cover those items to large to remove with poly sheeting and seal with duct tape.

Violation: Failure to place, at least, one layer of six (6)-mil poly, or thicker, on the ground that extends five (5’) feet out from the base of the window.

Exterior Window Component Replacement

Violation: Failure to establish a critical barrier containment that covers the window on the interior.

- Violation:** Failure to establish a five (5') foot perimeter extending from the base of the exterior window to be replaced.
- Violation:** Failure to remove items within the perimeter or failure to cover those items to large to remove with poly sheeting and seal with duct tape.
- Violation:** Failure to place, at least, one layer of six (6)-mil poly, or thicker, on the ground that extends five (5') feet out from the base of the window ensuring that all ground plants and shrubs in the perimeter are covered.
- Violation:** Failure to thoroughly clean all equipment in the regulated area with a cleaning solution and/or vacuumed with a HEPA vacuum prior to removal from the regulated area.

Soil Abatement Violations

- Violation:** Failure to replace removed soil with fill material containing no more than one hundred parts per million (100) ppm of total lead.
- Violation:** Failure to till soil in to a depth which results in no more than four hundred (400) ppm total lead of the homogenized soil in child-accessible areas or to a concentration approved by the department.
- Violation:** If covering the soil, failure to use a use a permanent soil covering, such as pavement or concrete that separates the soil from human contact.
- Violation:** Failure to conduct soil abatement work practice standards in a manner that prevents lead contaminated soil from being blown from the site and/or from being carried away by water run-off or through percolation to groundwater.

Enclosure Violations

- Violation:** Failure to place, at least, one layer of six (6)-mil poly on the floor at the base of the component and failure to extend at least ten (10') feet beyond the perimeter of the component to be enclosed or encapsulated or the non-window component to be replaced.
- Violation:** Failure to label the surface to be enclosed (behind the enclosure), vertically and horizontally, approximately every two (2') feet with a warning, "Danger: Lead-based paint," in permanent ink.
- Violation:** Failure to apply the enclosure material directly onto the painted surface; or failure to apply a frame, onto the painted surface, constructed of wood or metal by use of nails, staples or screws.
- Violation:** Failure to use materials for the enclosure barrier that are solid and rigid enough to provide adequate protection.
- Violation:** Failure to use closure systems and adhesives designed to last at least twenty (20) years.

- Violation:** Failure to ensure that the substrate or building structure, to which the enclosure is fastened, is structurally sufficient to support the enclosure barrier for at least twenty (20) years.
- Violation:** Failure to seal seams, edges, and fastener holes with caulk or other sealant, providing a dust-tight system.
- Violation:** Failure to thoroughly clean all equipment in the regulated area with a cleaning solution and/or vacuumed with a HEPA vacuum prior to removal from the regulated area.
- Violation:** Failure to clean the installed enclosure and surrounding regulated area by HEPA vacuuming, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area.
- Violation:** Failure to begin cleaning at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area.

Encapsulation Violations

- Violation:** Use of an encapsulation work practice standard for lead abatement on any of the following surfaces and/or components: friction surfaces, deteriorated components, impact surfaces and deteriorated surface coatings that the adhesion or cohesion of the surface coating is uncertain/indeterminable or incompatible coatings.
- Violation:** Failure to select an encapsulant that is warranted by the manufacturer to last for at least (20) years and comply with fire, health and environmental regulations. Use of an encapsulant on surfaces that are not structurally sound, such as loose, chipping, peeling or chalking paint, or on surfaces that have not been cleaned and have dust accumulation.
- Violation:** Failure to prepare and/or apply an encapsulant according to manufacturer's recommendations.
- Violation:** Failure to conduct a test to determine the adhesive and cohesive properties of the encapsulant to the surface to be encapsulated prior to the general application.
- Violation:** Failure of a licensed lead abatement supervisor or a licensed project designer to inspect the entire encapsulated surface after the recommended curing time.
- Violation:** Failure to evaluate any unacceptable areas to determine if a complete failure of the encapsulation system is indicated or whether the system can be patched and repaired.
- Violation:** Failure to clean the regulated area by HEPA vacuuming, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area once the encapsulation is completed.
- Violation:** Failure to thoroughly clean all equipment in the regulated area with a cleaning solution and/or vacuumed with a HEPA vacuum prior to removal from the regulated area.

Interior Removal

- Violation:** Failure to close all windows within and below the regulated area.
- Violation:** Failure to construct a critical barrier containment.
- Violation:** Failure to use poly at least six (6) mil in thickness.
- Violation:** Failure to thoroughly clean all equipment in the regulated area with a cleaning solution and/or vacuumed with a HEPA vacuum prior to removal from the regulated area.
- Violation:** Failure to remove and use the top layer of six (6)-mil poly to wrap and contain the debris generated by the shift at the end of each work shift.
- Violation:** Failure to seal the six (6) -mil poly with duct tape and keep in a secured area until final disposal.
- Violation:** Failure to HEPA vacuum the remaining layer of six (6)- mil poly and add another layer of six (6)- mil poly on the remaining layer before abatement resumes.
- Violation:** Failure to clean the regulated area by HEPA vacuuming, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area once the encapsulation is completed.

Exterior Removal

- Violation:** Failure to use poly at least six (6) mil in thickness.
- Violation:** Failure to move all movable items twenty (20') feet from working surfaces; or failure to cover items that are not readily movable with six (6)- mil poly and seal with duct tape.
- Violation:** Failure to place, at least, one layer of six (6)-mil poly, or thicker, on the ground that extends ten (10') feet from the abated surface plus another five (5') feet out for each addition ten (10') feet in surface height over twenty (20') feet.
- Violation:** Failure to ensure the poly is securely attached to the side of the building with cover provided to all ground plants and shrubs in the regulated area; protected from tearing and perforating; can contain water, including rainfall, which may accumulate during abatement; and be weighted down to prevent disruption by wind gusts.
- Violation:** Failure to close all windows in the regulated area and all windows within and below twenty (20') feet of working surfaces.
- Violation:** Failure to cease work if constant wind speeds are greater than ten (10) miles per hour.
- Violation:** Failure to cease work and clean up if it begins to rain.
- Violation:** Failure to thoroughly clean all equipment in the regulated area with a cleaning solution and/or vacuumed with a HEPA vacuum prior to removal from the regulated area.

Violation: Failure to HEPA vacuum and clean the regulated area of lead-based paint chips, poly and other debris generated by the abatement project work at the end of each workday.

Violation: Failure to keep debris in a secured area until final disposal.

Post-abatement Clearance Violations.

Violation: Failure of a licensed lead inspector or licensed risk assessor to perform a visual inspection to determine if deteriorated lead-based painted surfaces and/or visible amounts of dust, debris or residue are still present following abatement and/or failure to eliminate these conditions if found prior to the continuation of the clearance procedures.

Violation: Failure of a licensed lead inspector or licensed risk assessor to conduct clearance sampling for lead-contaminated dust and/or soil following the visual inspection and any post-abatement cleanup.

Violation: Failure of a licensed lead abatement contractor, if lead levels in a clearance dust sample exceed the clearance levels, to re-clean and test all the components represented by the failed dust sample until clearance levels are met.

ACUTE NONCOMPLIANCE

In most cases, acute noncompliance violations will result in the department referring an entity or individual for prosecution, as well as, assessing administrative penalties against the violator, lead abatement supervisor and/or contractor. In addition, dependent upon the harm or potential harm the acute noncompliance violation has or may have caused, the extent of deviation from the appropriate regulations and laws and the violator's previous compliance record the department can pursue the option of restricting, suspending, denying and/or revoking the licensed lead professional's license(s).

Administrative Penalties. Acute violations shall result in a notice of violation and no administrative penalty for the first identified offense, a notice of violation and an administrative penalty of two hundred fifty (\$250) dollars imposed against the regulated entity or individual for the second identified offense, a notice of violation and an administrative penalty of five hundred (\$500) dollars for the third identified offense, and thereafter, a notice of violation and an administrative penalty of one thousand (\$1,000) dollars for each additional identified offense within the calendar year.

Violation: Failure of any person or lead abatement contractor, conducting lead abatement activities, to include disclosure of any potential lead hazards to the owners and tenants of a dwelling by the Missouri licensed risk assessor who conducted the initial risk assessment in the written notification.

Any regulated entity or individual failing to inform the owners and tenants of a dwelling that information regarding potential lead hazards may be accessed via the Internet or disclosing any potential lead hazards to the owners and tenants of a dwelling is guilty of a class A misdemeanor.

Violation: Failure of the lead abatement contractor, in an emergency situation as defined by rule, to notify the department within twenty-four (24) hours of the onset of the project.

Violation: Failure of the lead abatement contractor, in an emergency situation as defined by rule, to submit the written notification and notification fee to the department no more than five (5) days after the onset of the project.

Any regulated entity or individual conducting emergency lead abatement activities without notifying the department or submitting notification or notification fees to the department is guilty of a class A misdemeanor.

Violation: Failure of the lead abatement contractor, upon completion of the abatement, to submit to the department written notification and the final clearance results report.

Any regulated entity or individual conducting lead abatement activities without submitting final clearance results to the department is guilty of a class A misdemeanor.

Violation: Failure of any lead inspector, risk assessor, lead abatement supervisor, lead abatement worker, project designer, or lead abatement contractor to cease and desist conducting lead abatement activities once such person's license, issued under section 701.312, RSMo, is under suspension or revocation.

Any regulated entity or individual who engages in a lead abatement project while such person's license is under suspension or revocation is guilty of a class D felony.

Violation: Falsifying any information provided to the department; lead licenses, renotifications, reports, or clearance results.

Committing the following licensure violation shall result in the department immediately issuing a cease and desist order against the lead abatement contractor, supervisor and worker(s).

Violation: Failure to be appropriately licensed, as set forth in sections 701.300 through 701.338, RSMo, and 19 CSR 30.70-110 through 19 CSR 30-70.200, while conducting lead abatement activities.

Any regulated entity or individual conducting lead abatement or clearance activities without being appropriately licensed, as set forth in sections 701.300 – 701.338, RSMo is guilty of a class A misdemeanor.

Insurance Violations

Violation: Failure of the lead abatement contractor to purchase and maintain liability and errors and omissions insurance.

Lead Abatement Work Practice Standards Violations.

Violation: Failure of the lead abatement supervisor, as well as the lead abatement contractor employing that lead abatement supervisor, to ensure that all abatement project activities are conducted in accordance with 19 CSR 30-70.600 through 19 CSR 30-70.630 and all federal, state and local laws, regulations or ordinances pertaining to lead-bearing substance activities.

Violation: Use of any prohibited lead abatement strategies defined in 19 CSR 30-70.630(9)(B) Lead Abatement Work Practice Standards.