



## Change to Wisconsin Department of Health Services Lead Regulation

Below is a summary of a current matter that KPH Construction and KPH Environmental are dealing with involving the General Mitchell Airport's Noise Management Program and the Wisconsin's Department of Health Services Division of Public Health (DHS), Lead and Asbestos Section. KPH Construction and KPH Environmental are respected construction and environmental companies, with many years experience helping clients deal safely with hazards on their projects. We are looking to clarify the state law regarding lead paint while maintaining safety for homeowners. This issue also affects all other owners, contractors and consultants in Wisconsin that work on properties with lead paint.

KPH was hired to be the consultant for the asbestos and lead paint for General Mitchell International Airport's (GMIA) Airport Area Noise Management Program (NMP). As the consultant, KPH conducted limited investigations for both lead and asbestos as it related specifically to the NMP sound treatments regarding new doors and windows. The lead and asbestos work related to the construction was completed by state certified and licensed contractors.

On February 21, 2014, KPH and Dean Jacobsen (an employee of KPH) were cited and fined for failure to adhere to the DHS 163.14 regulations for conducting and reporting lead investigations. The notices of non-compliance and subsequent administrative hearings with the DHS have contended that KPH knowingly and willingly chose to disregard the DHS 163 regulations in conducting our work. On the contrary, KPH, alongside our client and NMP counterparts, sought clarity from the DHS during the early stages of the Program for the expectations from their department with regards to lead activities. At that time it was stated by DHS that if one were to assume all materials were lead containing and work was conducted in a lead safe manner no testing was required. The NMP modified its structure to contractually require all contractors to follow lead safe renovation procedures in all cases, regardless of the whether lead paint was present.

Additionally, while not required by DHS, KPH was required by contract and directed by our client GMIA to collect paint samples for quality control, but not for purposes of dictating where lead safe renovation would be required. With this understanding from the DHS, and with the NMP having directed the contractors to work lead safe regardless of any lead investigations conducted, KPH was caught off guard to receive the notice of non-compliance and fines citing failure to comply with DHS regulations. KPH has done nothing wrong and has worked throughout this project and all projects to ensure that building owners and occupants are not exposed to hazards, including lead.

Having dealt with this matter over the past several months, it is clear to KPH that the lead regulation is poorly written and is not clear on this topic. The impact to KPH has been both financial and contractual in nature.

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The Notices of Non-Compliance outline financial forfeitures required in addition to the legal fees incurred in our defense. Contractually, when pursuing government work, KPH is required to disclose any citations, which then puts us at a disadvantage when being considered for a contract.

KPH has been fighting the citations and is working with Wisconsin legislators to change the lead regulation that will help to provide clarity. In light of this situation, KPH has been working with members of the Wisconsin legislature and with their help has drafted changes below to the State of Wisconsin statutes:

**SECTION 1.** 254.18 (title) of the statutes is amended to read:

**254.18 (title) Lead hazard reduction in dwellings and premises; renovations.**

**SECTION 2.** 254.18 of the statutes is renumbered 254.18 (1).

**SECTION 3.** 254.18 (2) of the statutes is created to read:

**254.18 (2)** If the presence of lead-bearing paint of a lead hazard is assumed and a renovation of a dwelling, unit of a dwelling, or premises is performed in a lead-safe manner, any person who performs sampling or testing of a surface in the dwelling or premises relating to that renovation is not required to comply with any requirements established by the department for a lead inspection.

This law change will allow consultants to do limited lead paint sampling as long as lead safe renovation procedures will be used during remodeling. Current law requires inspectors to complete a full inspection and report of the building if they collect even 1 sample. This change will clarify the law, remove a gray area, and move the law back towards its original intent. It will also make this part of the lead statute clearer for consultants and contractors while protecting homeowners and their families from lead exposure.

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