



MEMO TO : North Dakota Home Inspectors

FROM : Terry L. O'Clair, P.E.
Director
Division of Air Quality *TLO*

RE : Lead-Based Paint Testing by Home Inspectors

DATE : December 26, 2018

FILE

In December 2018, the North Dakota Department of Health (Department), Lead-based Paint Program, received a question pertaining to home inspectors collecting paint chips for the presence of lead-based paint (LBP) as part of a home inspection and/or real-estate transaction. The Department would like to pass on the following information to all home inspectors on the regulations and training requirements to collect and/or test for lead-based paint in the State of North Dakota.

In the State of North Dakota, all individuals are required to be a ND-certified LBP risk assessor or inspector in order to collect lead samples (paint chips, XRF, dust wipes and soils) for any type of lead testing that is conducted on pre-1978 housing, apartment buildings, commercial facilities/buildings being renovated into housing units or child-occupied facilities; even if it is part of a home inspection, renovation or part of a real-estate transaction. In addition, it does not matter whether a full LBP inspection occurs or just one paint chip/dust wipe/soil sample is being collected, it's still regulated.

In 2002, 40 CFR Part 745, Subpart L "Lead-based Paint Activities" was adopted by reference by the State into the North Dakota Air Pollution Control Rule NDAC 33-15-24-02 "Standards for Lead-based Paint Activities"

40 CFR 745 contains in part the following requirements concerning Lead-based Paint Inspections:

Sec. 745.220 Scope and Applicability:

- (a) This subpart contains procedures and requirements ... for the certification of individuals and the licensing of firms engaged in lead-based paint activities and work practice standards for performing such activities. This subpart also requires that, ... all lead-based paint activities, be performed by certified individuals and licensed firms.

...

Sec. 745.226 Certification of individuals and firms engaged in lead-based paint activities target housing and child-occupied facilities.

...

- (5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in Sec. 745.227 after March 1, 2000, if that individual has not been certified by the department pursuant to this section to do so.

Sec. 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

...

- (b) Inspection.

- (1) An inspection shall be conducted only by a person certified by the Department as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

...

In addition, the U.S. Environmental Protection Agency defined in the LBP Regulations what type of LBP testing must occur as part of a real-estate transaction. Under

“40 CFR745.110 Opportunity to conduct an evaluation. (a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period ... to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.”

The act of conducting lead-based paint testing within the State of North Dakota without the proper certification and licensing is a violation of the North Dakota Air Pollution Control Rule NDAC 33.1-15-24-02.

In addition, the U.S.EPA has regulations pertaining to the use and reporting of results of LBP Swab test kits also known as Lead Swabs. These regulations can be found under the EPA LBP Renovation, Repair and Painting Program (RRP). Information on this program and regulations can be found by visiting the U.S.EPA website at: <https://www.epa.gov/lead>

If you would like to become a North Dakota Certified LBP Inspector or Risk Assessor, so you can offer to conduct lead-based paint inspections, you can find approved training courses at <http://und-eti.com/courses/cat-2-lead/>.

For additional information you can visit the Department's website at: <https://deq.nd.gov/AQ/Lead/> or if you have any questions, you may address them to Sandi Washek of the NDDH, Division of Air Quality at (701)328-5188.

SKW:csc