

902 KAR 48:040. Lead-hazard abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

RELATES TO: KRS 211.180, 211.9063, 211.9071, 217.801, 40 C.F.R. 745.227

STATUTORY AUTHORITY: KRS 211.090(3), 211.9075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9075 requires the Department for Public Health to promulgate administrative regulations relating to lead-hazard detection and abatement. This administrative regulation establishes the lead-hazard abatement permit application process, including application and permit fees, permit requirements and procedures, and the standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

Section 1. Work Practice Requirements and Methodologies. Lead-hazard detection and abatement activities shall comply with:

- (1) The work practice standards and procedures established by this administrative regulation;
- (2) Documented methodologies recognized in federal EPA rules identified in 40 C.F.R. 745.227;
- (3) Equivalent methodologies; or
- (4) Local ordinances.

Section 2. Lead-Hazard Inspections.

- (1) A lead-hazard inspection shall be conducted by a certified lead-hazard inspector or risk assessor.
- (2) The sites and components specified in subsection (3) of this section shall be:
 - (a) Selected according to technical methodologies specified in Section 1 of this administrative regulation;
 - (b) Tested for the presence of lead in paint; and
 - (c) Excluded from testing if the inspector or risk assessor determines that the components were:
 1. Replaced or built after 1978; or
 2. Not coated with lead-based paint or similar coating.
- (3) The sampling scheme shall be:
 - (a) For a single residential dwelling or child-occupied facility, interior and exterior components with a distinct painting history; and
 - (b) For a multifamily dwelling or child-occupied facility, additional components with a distinct painting history in common areas.
- (4) Paint shall:
 - (a) Be sampled under the technical methodologies specified in Section 1 of this administrative regulation; and
 - (b) Tested in the following manner:
 1. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate adequate quality control procedures; and
 2. Paint chip samples that have been collected shall be analyzed by an EPA-recognized laboratory to determine if they contain hazardous levels of lead.
- (5) A certified lead-hazard inspector or risk assessor shall prepare a lead-hazard inspection report that shall include:
 - (a) Date of each lead-hazard inspection;
 - (b) Address of building;
 - (c) Date of construction;
 - (d) Apartment numbers, if applicable;

- (e) Name, address, and telephone number of the owner of each residential dwelling or child-occupied facility;
 - (f) Name, signature, and certification number of the certified lead-hazard inspector or risk assessor who conducted the inspection;
 - (g) Name, address, and telephone number of the firm or individual employing each lead-hazard inspector or risk assessor, if applicable;
 - (h) Name, address, and telephone number of the laboratory that conducted an analysis of collected samples, if applicable;
 - (i) The testing method, testing device, or sampling procedure employed for paint analysis, including:
 - 1. Quality control data; and
 - 2. If used, the serial number and radioactive materials license number of the XRF device;
 - (j) Specific locations of each painted component tested; and
 - (k) The results of the lead-hazard inspection expressed in terms appropriate to the sampling method used.
- (6) A copy of the lead-hazard inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

Section 3. Lead-Hazard Screens.

- (1) A lead-hazard screen shall be conducted by a certified lead-hazard risk assessor.
- (2) For a residential dwelling or child-occupied facility, the lead-hazard risk assessor shall:
 - (a) Collect background information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to a child;
 - (b) Conduct a visual inspection to determine if deteriorated paint is present;
 - (c) Test for the presence of lead on each surface with deteriorated paint determined to have a distinct painting history;
 - (d) Collect paint chip and dust wipe samples using the technical methodologies specified in Section 1 of this administrative regulation;
 - (e) Collect at least two (2) composite dust wipe samples from each room where children are most likely to come in contact with dust, as follows:
 - 1. One (1) from the floors; and
 - 2. One (1) from the window troughs or sills;
 - (f) For a multifamily dwelling, collect one (1) additional sample from each common area where children are most likely to come in contact with lead dust;
 - (g) Submit paint chip or dust samples to an EPA-approved laboratory for analysis;
 - (h) Prepare a lead-hazard screening report that shall include:
 - 1. The applicable component information required for a complete lead-hazard risk assessment identified in Section 4 of this administrative regulation; and
 - 2. If warranted, recommendations for a follow-up lead-hazard risk assessment and other appropriate action; and
 - (i) Submit to the department, within thirty (30) days from the completion of the assessment, a copy of the lead-hazard screening report.

Section 4. Lead-Hazard Risk Assessments.

- (1) A risk assessment shall be conducted by a certified lead-hazard risk assessor.
- (2) A lead-hazard risk assessor shall:
 - (a) Collect samples using a methodology specified in Section 1 of this administrative regulation;
 - (b) Conduct a visual inspection of a residential dwelling or child-occupied facility to:
 - 1. Locate deteriorated paint;

2. Assess the extent and causes of the deterioration of paint;
 3. Inspect for other potential sources of lead hazard; and
 4. Observe any chewable, friction, or impact surfaces;
- (c) Collect information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to children;
- (d) Test every surface coated with visibly-deteriorated paint for the presence of lead;
- (e) For a residential dwelling, collect dust wipe samples, either composite or single surface, from the interior window sills and floor, where children are most likely to come into contact with dust in the living area;
- (f) For a multifamily dwelling, collect additional dust wipe samples in the following locations:
1. Each common area adjacent to the residential dwelling or child-occupied facility from which samples have been taken; and
 2. Each common area in the building;
- (g) For a child-occupied facility, collect dust wipe samples in the following locations:
1. Each room, hallway, or stairwell; and
 2. Other common areas;
- (h) Collect soil samples at the following locations:
1. Exterior play areas where bare soil is present;
 2. Dripline or foundation areas where bare soil is present; and
 3. The rest of the yard where bare soil is present;
- (i) Submit collected paint chip, dust wipe, or soil samples to an EPA-recognized laboratory; and
- (j) Prepare a lead-hazard risk assessment report.
- (3) The information provided in a report shall include:
- (a) Date of assessment;
 - (b) Address of each building;
 - (c) Date of construction of buildings;
 - (d) Apartment numbers, if applicable;
 - (e) Name, address, and telephone number of each owner of each building;
 - (f) Name, signature, and certification number of the lead-hazard risk assessor conducting the assessment;
 - (g) Name, address, and telephone number of the firm or individual employing each lead-hazard risk assessor, if applicable;
 - (h) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;
 - (i) Results of the visual inspection;
 - (j) Testing method and sampling procedure for paint analysis employed;
 - (k) Specific locations of each painted component tested for the presence of lead;
 - (l) Diagram or floor plan showing testing locations;
 - (m) Data collected from on-site testing, including:
 1. Quality control data; and
 2. If used, the serial number of the XRF device;
 - (n) Results of laboratory analysis on:
 1. Collected paint;
 2. Soil; and
 3. Dust wipe samples;
 - (o) Other sampling results;
 - (p) Background information collected described at subsection (2)(c) of this section;
 - (q) The history of any previous lead-hazard inspection or analysis for the presence of lead, lead-hazard assessments, or other lead hazards found in the residence, that have

been given consideration, as a part of the present lead-hazard determination;

(r) A description of:

1. The location, type, and severity of identified lead hazards associated with paint; and
2. Other potential lead hazards;

(s) A description of interim controls or lead-hazard abatement for each identified lead hazard, including:

1. Description of interim controls or lead-hazard abatement options; and
2. Recommendations for addressing the lead hazard; and

(t) If the use of an encapsulant or enclosure is recommended, a suggested maintenance and monitoring schedule is required.

(4) A copy of the lead-hazard risk assessment report shall be submitted to the department within thirty (30) days after the completion of the assessment.

Section 5. Lead-Hazard Abatement Permit Application.

(1) The certified person who prepared the abatement plan shall submit:

- (a) An "Application for Lead-Hazard Abatement Activities";
- (b) An abatement plan with components as identified in Section 7(3) of this administrative regulation;
- (c) An occupant protection plan with components identified in Section 7(4) of this administrative regulation; and
- (d) The fee established by Section 6 of this administrative regulation.

(2) The department shall consider and render a decision regarding an application in accordance with KRS 211.9063(6).

(3) If an application is not approved, the applicant shall:

- (a) Be notified in writing of the deficiencies;
- (b) Correct the deficiencies indicated in the department's notice of disapproval; and
- (c) Submit to the department:
 1. The corrected application; and
 2. An additional application review fee.

(4) A lead-hazard abatement permit shall be valid for the dates of issuance, unless extended by the department for the following conditions:

- (a) Written request seven (7) days prior to expiration date by the lead-hazard abatement permit holder; and
- (b) Provision of the following information:
 1. Amended dates of abatement;
 2. An amended abatement plan, if applicable; and
 3. An amended occupant protection plan, if applicable.

(5) If the lead-hazard abatement activity has not been completed within the dates of issuance or permit dates extended, the lead-hazard abatement permit holder shall:

- (a) Apply for an amended permit; and
- (b) Pay the amended permit fee established in Section 6 of this administrative regulation.

Section 6. Application and Lead-Hazard Abatement Permit Fee Schedule.

(1) The fee for a lead-hazard abatement permit shall be:

- (a) For each single family dwelling or child-occupied facility, \$225;
- (b) For a multifamily dwelling, \$100 per residence;
- (c) Exterior abatement, \$125 per building; and
- (d) Soil abatement, fifty (50) dollars per project.

(2) Other fees required are:

- (a) Application review fee, fifty (50) dollars;
- (b) Amended permit, twenty-five (25) dollars; and

(c) Reinspection fee, \$100.

Section 7. Lead-Hazard Abatement and Occupant Protection Plans.

- (1) Lead-hazard abatement and occupant protection plans for small-scale projects shall be prepared by a lead-hazard supervisor.
- (2) Lead-hazard abatement and occupant protection plans shall be prepared by a lead-hazard project designer if:
 - (a) The project is a large-scale project; and
 - (b) The planned abatement activity creates additional lead waste material not considered low waste, such as:
 1. Filtered personal or commercial water;
 2. Disposable personal protective clothing; and
 3. Plastic sheeting.
- (3) An abatement plan shall include:
 - (a) Name and certification number of the lead-hazard supervisor or project designer who prepared the plan;
 - (b) Name and certification numbers of all lead-hazard personnel working at the site;
 - (c) Anticipated start and finish dates;
 - (d) Daily work hours at the project;
 - (e) Copy of job specifications relating to the project;
 - (f) Location of the site;
 - (g) Type of structure;
 - (h) Sequence of work activity;
 - (i) Lead-hazard abatement methods to be used;
 - (j) Diagram or floor plan showing:
 1. Containment locations, including fencing;
 2. Lead-hazard warning signs;
 3. Wash stations and waste locations; and
 4. Entrance and egress;
 - (k) Enclosure and containment methods and locations;
 - (l) Locations of rooms and components where lead-hazard abatement will occur;
 - (m) Reason for the selection of particular lead-hazard abatement methods for each component;
 - (n) If encapsulants are to be used, product usage information;
 - (o) Cleanup measures; and
 - (p) Name and address of the lead-hazard inspector or risk assessor conducting lead-hazard clearance testing.
- (4) An occupant protection plan shall be:
 - (a) Unique to the residential dwelling or child-occupied facility;
 - (b) Developed prior to the lead-hazard abatement; and
 - (c) A detailed, written description of the measures and management procedures that will be taken during the lead-hazard abatement to protect the occupants of the building from exposure to lead hazards.

Section 8. Lead-Hazard Abatement On-site Project Requirements.

- (1) In compliance with KRS 211.9063(5), a lead-hazard abatement activity shall not be conducted until the department issues a permit.
- (2) The abatement permit shall be kept at the lead-hazard abatement site until:
 - (a) Project is complete;
 - (b) Lead-hazard clearance is achieved; and
 - (c) The department has conducted the quality assurance inspection required by KRS 211.9063(6).

- (3) Only lead-hazard personnel shall be allowed on the lead-hazard abatement site during the time that lead-hazard abatement activities are being conducted.
- (4) All lead-hazard personnel shall keep the department-issued identification card in possession while on site.
- (5) The lead-hazard supervisor or project designer who prepared the lead-hazard abatement plan shall be:
 - (a) Available, within two (2) hours, to the lead-hazard abatement workers while lead-hazard abatement activities are conducted; and
 - (b) On site during:
 1. Work site preparation;
 2. The post lead-hazard abatement cleanup of work areas; and
 3. At the time of the departmental quality assurance inspection.
- (6) The lead-hazard abatement permit holder shall ensure that all lead-hazard abatement and post lead-hazard abatement activities comply with Section 1 of this administrative regulation.

Section 9. Specific Lead-Hazard Abatement Practices.

- (1) Soil abatement shall be conducted as follows:
 - (a) If soil containing a hazardous level of lead is removed, the lead-hazard abatement permit holder shall provide analytical information to the department that the replacement soil does not contain amounts over the established in Section 14 of this administrative regulation; or
 - (b) If soil containing a hazardous lead level is not removed, the lead hazard in the soil shall be considered abated when permanently covered soil is obtained by a method identified in Section 1 of this administrative regulation.
- (2) The following work practices used for lead-based paint removal shall be prohibited:
 - (a) Open-flame burning or torching; or
 - (b) Machine sanding or grinding, or abrasive blasting or sandblasting unless conducted using a high efficiency particulate air exhaust control that removes particles of three-tenths (0.3) microns or larger from the air at 99.97 percent or greater efficiency.
 - (c) Dry scraping unless:
 1. In conjunction with heat guns;
 2. Around electrical outlets; or
 3. In the treatment of defective paint spots that total no more than:
 - a. Two (2) square feet on surfaces within a room; or
 - b. Twenty (20) square feet on exterior surfaces.
 - (d) Use of a heat gun at temperatures that exceed 1,100 degrees Fahrenheit.

Section 10. Post Abatement Lead-Hazard Clearance Procedures.

- (1) Post abatement lead-hazard clearance procedures shall be performed according to a method identified in Section 1 of this administrative regulation.
- (2) Post abatement lead-hazard clearance shall be performed by a lead-hazard inspector or risk assessor.
- (3) Lead-hazard clearance after a nonabatement activity, such as renovation or remodeling, shall be performed by a lead-hazard inspector, risk assessor, or sampling technician.
- (4) A visual inspection shall be conducted before sampling to examine for deteriorated paint, dust, or debris.
- (5) Clearance sampling shall not take place if deteriorated painted surfaces or visible amounts of dust or debris are found during the visual inspection.
- (6) Sampling shall be conducted using single or composite dust wipe sampling as identified in Section 1 of this administrative regulation.
- (7)

- (a) The certified person who conducted the clearance shall compare the residual lead levels, as determined by the laboratory analysis from each dust wipe sample, with clearance dust levels established by Section 13 of this administrative regulation.
- (b) If the residual lead levels in a dust wipe sample exceed accepted clearance levels, each component represented by the failed sample shall be recleaned and retested until clearance dust levels have been met.
- (8) In a multifamily dwelling with similarly constructed and maintained residential units, random sampling for clearance shall be conducted in accordance with documented methodologies.
- (9) The person who conducted the lead-hazard abatement and post abatement cleanup in the residential dwelling shall not be provided knowledge of the units selected for the random sample.

Section 11. Lead-Hazard Clearance Report.

- (1) After a lead-hazard clearance, the certified person shall prepare a report containing:
 - (a) Name of the lead-hazard inspector, risk assessor, or sampling technician conducting the clearance;
 - (b) Departmental certification number;
 - (c) Address of the property;
 - (d) Specified units and areas effected;
 - (e) Dates of clearance examination;
 - (f) Results of visual assessment;
 - (g) Results of dust wipe sample analysis;
 - (h) Name and address of laboratory used;
 - (i) Project activity information; and
 - (j) Lead-hazard reduction or abatement methods used.
- (2) A copy of the lead-hazard clearance report shall be submitted to the department within thirty (30) days after the completion of the lead-hazard clearance.

Section 12. Levels of Lead in Paint. The determination of lead-based paint shall be in accordance with 40 C.F.R. 745.227(h).

Section 13. Dust-Lead Hazards and Clearance Dust Levels. The maximum acceptable levels used for lead-hazard clearance or other evaluation after the disturbance of lead-based paint, or for determination of potential dust-lead hazards in a residential structure or child-occupied facility shall be:

- (1) In accordance with 40 C.F.R. 745.227 for interior components; and
- (2) Below 800 $\mu\text{g}/\text{ft}^2$ for exterior components.

Section 14. Soil Lead Hazards. The determination of a soil lead hazard shall be in accordance with 40 C.F.R. 745.227(h).

Section 15. Quality Assurance Inspection.

- (1) A lead-hazard abatement permit holder shall notify the department of the completion of the abatement services and clearance testing.
- (2) The department shall proceed in accordance with quality assurance inspection provisions of KRS 211.9063(6).
- (3) A lead-hazard abatement permit holder shall provide the department with access to the project unit to conduct a quality assurance inspection.
- (4) If a department inspector discovers visual dust or paint chips, or violative work practices and standards, the inspector shall:
 - (a) Not conduct sampling; and
 - (b) Notify the lead-hazard abatement permit holder that another inspection shall be conducted after:

1. Cleanup has been completed; and
 2. Another clearance is conducted.
- (5) If a dust wipe sample exceeds clearance levels:
- (a) The components making up the failed sample shall be:
 1. Recleaned; or
 2. Otherwise lead-hazard abated; and
 - (b) Another lead-hazard clearance shall be conducted.
- (6) For each failed inspection, the lead-hazard abatement permit holder shall pay a reinspection fee as established by Section 6 of this administrative regulation.

Section 16. Post-Abatement Report.

- (1)
 - (a) A post-abatement report shall be prepared by either the lead-hazard supervisor or project designer who prepared the abatement plan.
 - (b) The post-abatement report shall include the:
 1. Start and completion dates of lead-hazard abatement;
 2. Name and addresses of the lead-hazard supervisor or project designer preparing the report;
 3. Changes made to the occupant protection plan and the lead-hazard abatement plan;
 4. Name, address, and signature of each lead-hazard risk assessor or inspector conducting lead-hazard clearance sampling and the date of testing;
 5. The name of each recognized laboratory that conducted the analysis;
 6. Results of:
 - a. Lead-hazard clearance testing; and
 - b. Soil analysis, if applicable; and
 7. Suggested monitoring of encapsulation or enclosure plan according to a methodology identified in Section 1 of this administrative regulation.
- (2) The post-abatement report shall be submitted to the department within thirty (30) days after the completion of the lead-hazard abatement project.

Section 17. Recordkeeping. A report required by this administrative regulation shall be retained by the lead-hazard abatement permit holder, or other certified individual who prepared the report, for three (3) years.

Section 18. Administrative Hearings. An administrative hearing relating to the subject matter of this administrative regulation shall be conducted in accordance with 902 KAR 1:400.

Section 19. Incorporation by Reference.

- (1) "Application for Lead-Hazard Abatement Activities", 4/2021, is incorporated by reference.
 - (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Environmental Lead Program, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at <https://chfs.ky.gov/agencies/dph/dphps/psb/Pages/lead.aspx>.
- (28 Ky.R. 1288; 1875; eff. 2-7-2002; Crt eff. 1-11-2019; TAm eff. 3-20-2020; 48 Ky.R. 673; eff. 11-23-2021.)