

MEMORANDUM

DATE: September 25, 2007

TO: Mr. David Walton, Hearing Officer
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 11 DE Reg. 280 [Lead Based Paint Hazards Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH) proposal to amend its lead based paint hazards regulations published as 11 DE Reg. 280 in the September 1, 2007 issue of the Register of Regulations. The standards comprehensively cover testing, training of abatement personnel, and abatement methodology. SCPD has the following observations.

First, the regulations are inferably derived from Federal or model standards which contain multiple references to "Tribal" authorities. See, e.g., §§2.6.4.1, 2.6.4.2, and 4.5.4.1. The Division may wish to consider deletion of some of these references since Delaware lacks Indian reservations.

Second, there is a "disconnect" between the regulation's standards for "play areas" and both actual practice and standards issued by other governmental agencies. The definition of "play area" in §1.4 is as follows:

"Play area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g. sandboxes, swing sets, and sliding boards), toys, or other children's possessions of play patterns, or information provided by parents, residents, care givers, or property owners.

[emphasis supplied]

This definition limits "play areas" to those with a soil base. Moreover, the abatement standards for play areas are limited to soil sampling:

4.1.4.4. A soil-lead hazard is present:

4.1.4.4.1. In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

4.1.4.4.2 In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e. non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

SCPD did not identify any standards contemplating assessment of play areas for lead-based paint, dust, or other non-soil based surfaces or substrate.

In contrast, the attached DSCYF day care regulations [9 DE Admin. Code 101] contemplate “no soil” play areas:

33.7 A licensee shall ensure that the protective surface of the outdoor play area beneath and in the fall zones of climbing equipment, slides, swings and similar equipment is of approved resilient material which absorbs falls.

33.7.1 The fall zones shall be between six (6) to twelve (12) inches deep as determined by the height of the highest climbing surface of the equipment and consist of wood chips, mulch, engineered wood fibers, sand, pea gravel, safety-tested shredded or unitary rubber or rubber like materials, or rubber mats; or

33.7.2.1 The use of shredded tires shall be permitted if the licensee obtains a guarantee from the supplier that the materials are free from steel wires or other contaminants and follows specific instructions from the supplier to determine the appropriate depth.

Apart from the State day care regulations, the federal Architectural and Transportation Access Compliance Board has issued ADA regulations contemplating non-soil based substrate in play areas. See attached excerpts from www.access-board.gov.

SCPD recommends that the Division consider the risks of lead in play area surfaces and substrate other than soil and adopt standards which are not limited to soil assessment in play areas.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendation on the proposed regulation.

cc: Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

P&I/11reg280 dph lead paint 9-07