LEAD ABATEMENT: THE PHILADELPHIA EXPERIENCE

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Lead poisoning in children is a matter of critical public health urgency, brought on by contaminated housing and made worse by its gradual deterioration. In Philadelphia, the combination of a large number of young children in low-income families and an old, poorly maintained housing stock has created ideal conditions for widespread poisoning in children of tender years. The effects of lead poisoning are permanent and irreversible, and it causes learning and behavioral problems as well as deficits in intelligence in children. Additionally, studies have shown that between 10% and 30% of incarcerated men were lead poisoned as children.

In 1998, the Pennsylvania Department of Health compiled a report containing blood lead information submitted by laboratories that performed blood analyses on children under the age of six years. The report revealed a staggering total of 17,618 lead poisoned children in Philadelphia. By comparison, the next highest number of lead poisoned children in the state was 466 in Delaware County. (A copy of the Report is attached).

In Philadelphia, children who suffer lead poisoning come to the attention of the Philadelphia Department of Public Health (DPH) when it receives information from a state certified laboratory that a child has an elevated lead level. DPH, through its Childhood Lead Poisoning Prevention Program (CLPPP), conducts an environmental evaluation of the child's home to determine whether it is the source of the child's elevated lead levels. If the property is found to be contaminated, DPH is authorized, pursuant to §6-403(4)(b) of the Philadelphia Code, to issue an order directed to the owner, the owner's agent or the occupant to eliminate the hazard within a time certain (usually 30 days), and in a manner consistent with DPH prescribed protocols. (A copy of the pertinent sections of the Code is attached).

In early 2002, the City, under the leadership of Mayor John F. Street, began taking aggressive steps to eliminate this public health problem. With the cooperation of the President Judge of the Court of Common Pleas for Philadelphia County, a special Lead Court was established to serve as the forum for the litigation of lead abatement

cases. At that time, there existed a backlog of some 1200 cases for which orders to abate had been issued, but for which no legal proceedings had been instituted.

Establishment of a special court to address a public health issue is not without precedent. In the early 1990s the City of Philadelphia experienced a serious increase in the incidence of tuberculosis. Many of the individuals infected with this disease were homeless and were resistant to treatment. In an effort to contain this problem, the City worked collaboratively with the court system to develop a special TB court. TB court has successfully provided a necessary forum to determine the most appropriate approach to treatment in the case of recalcitrant TB patients. In a number of cases, the court ordered in-patient treatment until the disease was no longer contagious and the patient was safely able to return into the community.

Lead Court began operation in November 2002. Since that time, over 300 cases have been heard, and approximately 800 cases have been filed. Of the cases that have been heard, many have been favorably resolved – either as a result of full compliance or by commencement of the abatement process. There are generally very few contests in these proceedings; interestingly, once the matters are brought into court, the owners or landlords express a willingness to comply. Lead court is scheduled three days per week, and each court list contains between 15 – 25 cases.

The action is initiated by the filing of a Complaint In a Civil Action In Equity. A Permanent Injunction is requested seeking the abatement of the subject property as well as appropriate fines and costs. The pleadings set forth the specific sections of the Code that have been violated by the existence of lead paint in the subject property, and they allege the existence of a serious health risk to young children. The pleadings also contain identifying information regarding the property owners and any tenants, known and unknown at the time of filing. They specifically cite to all possible remedies available to the City under the various codes including, but not limited to, the levying of fines; relocation of tenants at the owner's expense; the use of City funds to abate the hazard and recovery of those costs; and, the placement of a lien on the subject property in the amount of abatement costs and related expenses. The proposed orders that are submitted in these cases closely mirror the provisions and remedies of the Code. The litigants are provided

with certified orders on the day of the hearing. (Copies of prototype pleadings are attached).

It is not necessary that the lead infected child or children who served as a trigger for initiation of the action continue to reside in the subject property at the time of the hearing. Statistics indicate that a significant number of tenants are transient and by the time the court action is initiated, the family with the lead-poisoned child may have moved to another property. However, the fact remains that the original address was inspected and found to contain dangerous amounts of lead paint and should be corrected no matter who resides there at the time of the hearing.

It has been observed that the overall effect of this initiative is that owners are more proactive in eliminating the lead hazard. The specter of court action has provided a new impetus to get the work completed. Many owners want to comply but, because enforcement has been lax, they have made abatement a low priority. In the vast majority of cases, the owners have begun the work after the filing of the pleadings but before the court hearing. This suggests that the threat of court is a strong motivator. In some cases where the owners are recalcitrant, refuse to come to court, can't be clearly identified, or lack sufficient resources, the City will step in, with police assistance if necessary, and undertake performance of the necessary repairs.

The vast majority of the defendants in these proceedings are the actual property owners. Generally, the properties are either owner occupied or tenant occupied. A smaller number of defendants are people residing in the property, not as tenants, and without clear title. In the former categories, the City has the ability to broker agreements or request specific enforcement in an expeditious manner. In the latter group, the enforcement issue becomes complicated. In these instances, the City seeks to determine if the parties intend to remain in the property and become financially and legally (pursuant to order of the Court), responsible for the property. The scenario usually occurs where the titleholders are unknown or die, and either family members or friends take over financial responsibility for a property without securing legal title to it.

Many owner occupied properties belong to low income families. They have the option of performing the abatement work on their own. They may either do the work themselves or hire a state certified contractor to perform the work for them.

Alternatively, they may allow the City to do the work while they assume responsibility for the costs. In such case, they may work out a schedule of payment secured with a lien upon the property in favor of the City.

The primary motivation of the City is not punitive; rather, it is the elimination of a serious health hazard. To that end, flexibility and creativity have been evidenced in these proceedings and, as a result, the initiative is proving to be a success and, possibly, a national model.

Lead Court is far from the total solution to childhood lead poisoning. Yet, that initiative has already begun to enjoy a modicum of success by reducing a considerable backlog of abatement cases. Moreover, it has served to motivate some owners to bring their properties into compliance in an effort to avoid court ordered sanctions. In addition, Mayor Street's Neighborhood Transformation Initiative promises to make a significant dent in lead contaminated properties through the war on blight in the inner city. Much more must be done before the lead poisoning problem is eliminated, but Philadelphia has undertaken some very significant first steps toward accomplishment of that objective.