INSIDE

Community Integration of Individuals with Disabilities

Addressing Labor Law Issues for Low-Income Workers

Privacy Issues Affecting Welfare Applicants

Sandoval's Retrenchment on Civil Rights Enforcement

New Environment Sampling and Right-to-Know Strategies for Housing and Tenants' Rights Advocates

Highlights from the Supreme Court's 2000–2001 Decisions on Federal Court Access
In the summer of 1997 a group of young adult volunteers from The Point, a community-based organization in the Hunts Point section of the Bronx, did some research. Concerned about steadily increasing asthma rates and knowing that trees help reduce air pollution, the volunteers set out to count the trees in their neighborhood. Their survey results were startling: Hunts Point had only one tree per acre. Just as startling was the powerful impact of this modest survey. By presenting “hard numbers” to the city council and private foundations, Hunts Point advocates won the planting of 1,000 new trees—a visible step toward continued revitalization of the community.\(^1\)

Before the survey, Hunts Point’s barren landscape had been readily apparent. However, until the volunteers documented, quantified, and presented to policymakers its conditions, no one was moved to act. By research standards, the Hunts Point survey was exceedingly simple. As a community-organizing tactic, however, the survey proved to be very potent, showing how members of distressed communities can document problems themselves and use limited data to bring about corrective action.

Likewise, environmental strategies, such as sampling and using right-to-know statutes, can be potent tools for advocates combating poor housing conditions. Many substandard properties pose serious environmental health hazards related to childhood lead poisoning, carbon monoxide poisoning, and asthma and other respiratory diseases.\(^2\) Documenting these hazards can give leverage to groups committed to tenants’ rights, affordable housing, lead poisoning prevention, asthma prevention, and other goals for healthy homes. Where housing code enforcement so far has failed to create decent and safe housing in most low-income communities, advocates for healthy housing can sample for and document housing-related environmental health hazards and can use right-to-know laws and strategies to win corrective action, including mandated hazard controls and increased block-grant allocations for housing rehabilitation.

In this article we describe a new approach to addressing substandard housing and promoting tenants’ rights by focusing on environmental health hazards often associated with poor housing conditions. Using lead hazards as a starting point, advocacy organizations can use right-to-know laws to collect data and to organize tenants to bring pressure on landlords to address hazardous conditions.


\(^2\) See Thomas Matte & David Jacobs, Housing and Health: Current Issues and Implications for Research and Programs, 77 J. URB. HEALTH 7, 11-16 (2000).
point, we discuss environmental hazard sampling tools that are now accessible to community groups, tenant organizations, legal services organizations, and others. We also discuss the potential power of invoking right-to-know laws, and we outline some local victories in making properties safe and communities livable. We then discuss some practical considerations in using environmental sampling and right-to-know tactics effectively and describe a new national resource for advocates that will supply technical assistance and training, problem solving, and information sharing.

I. Housing-Related Environmental Hazards Demand Attention

Scientists long have observed that indoor environmental health hazards typically pose far greater risks to human health than outdoor toxic exposures; this is a function of both the higher levels of toxics associated with confined spaces and the significant amount of time people spend indoors. Older properties in poor physical condition typically pose the most severe health hazards. For example, inadequate ventilation increases the concentration of indoor air pollutants such as radon and carbon monoxide and exacerbates moisture and humidity problems. Moisture causes paint deterioration, which leads to children being exposed to lead dust and lead-contaminated paint chips. Moisture also encourages growth of mold, mildew, dust mites, and microbes, which contribute to asthma and other respiratory diseases.

Because low-income families and families of color are much more likely to live in substandard housing, they are at a dramatically elevated risk for adverse health effects associated with indoor environmental hazards. For example, federal health data show that low-income children are eight times more likely than high-income children—and black children five times more likely than white children—to suffer from lead poisoning. Nevertheless, researchers, regulators, policymakers, advocates, and the media often overlook housing-related environmental hazards. A scarcity of data about housing-related environmental risks is partly responsible for this lack of attention. In sharp contrast to the wealth of publicly available data on ambient exposures and emissions from large and small point sources, almost no property-specific information is available about housing-related environmental health hazards.

---


4 See Matte & Jacobs, supra note 2, at 10–15.


9 Update: Blood Lead Levels, supra note 8.

10 Point sources are discrete pollution sources, such as individual factories or incinerators. In contrast, ambient, or nonpoint, sources are diffuse pollution sources, such as vehicle exhaust emissions in a region or polluted groundwater runoff into a river.
II. Lead Hazards: A Natural Starting Place

Lead poisoning offers a natural starting place for identifying and controlling health hazards in substandard housing. First, national data confirm that millions of homes contain serious lead hazards; no one has investigated or controlled most of them.11 Second, lead poisoning hazards often coexist with other environmental health hazards, which are interrelated in both cause and solution.12 Third, the federal lead disclosure law requires disclosure of known information about lead hazards in older homes and apartments; this law gives advocates an enforcement tool to invoke when property owners violate the law.13

In the past the lack of national standards for lead hazards in housing discouraged attention to lead risks. However, in January 2001, the U.S. Environmental Protection Agency, or EPA, established national standards for dangerous levels of lead in dust, soil, and deteriorated paint in housing.14 Although there are no federal requirements for testing or hazard control, except for federally assisted housing, these clear national standards provide an authoritative basis for determining the presence of a lead hazard in a particular property.

III. Evaluation Tools Now More Accessible

In the last two years the tools and protocols for identifying lead hazards in housing have become simpler and more accessible to community groups, tenant organizations, legal services organizations, and others. Because researchers have shown paint condition to be a strong predictor of lead poisoning risk in older properties, visual inspections can uncover peeling paint, maintenance problems, and code violations that signal health risks.15 Also, lead-contaminated dust, which can be invisible to the naked eye, is the most common pathway for...
children's exposure to lead and the strongest predictor of lead-poisoning risk.16 Collecting a limited number of dust samples, usually performed by wiping a measured surface area, and determining lead loading through laboratory analysis enable the screening of high-risk housing to set priorities for more extensive evaluations and hazard control.17

Unlike the surface-invasive testing for asbestos, lead, and some other hazards, collecting loose paint chips or lead dust samples using wipes poses little risk to samplers.18 More than one hundred EPA-recognized laboratories analyze lead in dust, soil, water, and paint chips.19 Cost reductions stemming from increased demand and price competition to $5 to $10 per sample make this evaluation tool more affordable to consumers and advocates than lead paint inspections or risk assessments, which cost $250 to $500 per unit.20

Another barrier to broader use of dust sampling also has come down. Before fall 2000, the extensive education, experience, and training requirements for certified lead professionals placed dust sampling beyond the reach of most community residents and small contractors. Recognizing that visual inspections and dust sampling are simple and straightforward, the EPA and the U.S. Department of Housing and Urban Development, or HUD, developed a one-day sampling technician training, which is readily accessible to community groups and legal services advocates.21

Four states—Maine, New Hampshire, Vermont, and Wisconsin—currently certify sampling technicians, and several other states are following suit.22 Minnesota also has passed legislation creating a certification program and will be developing implementing regulations.23 Sampling technicians certified in New Hampshire, Maine, Vermont, and Wisconsin also may work in any of the fourteen states in which the EPA administers the lead certification and training program.24 HUD recognizes


17 Licensed workers employed by state-certified lead assessment firms must perform more advanced evaluations, namely, lead paint inspections and risk assessments. Performing them requires more extensive training and usually some work experience and educational prerequisites.


19 For a list of lead analysis laboratories that the U.S. Environmental Protection Agency, or EPA, has accredited under the National Lead Laboratory Accreditation Program, see LeadListing: The National Lead Service Providers' Listing System, www.leadlisting.org (Lead Analysis Laboratories).


23 Act signed by governor May 29, 2001, 2001 Minn. Sess. Law ch. 205 (amending Minn. Stat. § 144.9505(1)(f)).

24 These fourteen states are Alabama, Arizona, Florida, Hawaii, Idaho, Montana, Nevada, New Mexico, New York, North Dakota, South Carolina, South Dakota, Washington, and Wyoming. For the EPA’s map enumerating the states with EPA-administered programs, see www.epa.gov/lead/authstatus.pdf.
a certification from any of these four states as qualification for post-nonabatement dust sampling conducted in any state except those that require that sampling technicians work under the supervision of other certified lead professionals.25

Legal services advocates and community group members need appropriate training to evaluate housing-related environmental health hazards of concern other than lead, such as carbon monoxide, mercury, mold, cockroaches, dust mites, pesticide residue, and radon. In most cases, low-cost evaluation tools and protocols are already available, or researchers, advocates, government agencies, and the private sector are developing them.26 In all cases, advocates and community group members must meet any federal, state, and local training and licensing requirements.27

IV. The Power of Right-to-Know Laws

Environmental right-to-know laws require the collection and public availability of information about substances hazardous to humans or the natural environment. In some cases, such laws require specified people to report information about hazardous substances to their control to a government agency. In other cases, they require the regulated party to notify directly a specific class of people at risk of exposure to the hazard.

Over the past decade, environmental groups, using data they collected and data from publicly available sources such as the EPA’s Toxics Release Inventory, have demonstrated the power of various state and federal right-to-know laws.28 For example, groups have used such data to oppose the siting of polluting facili-
ties, demand more protective regulations, press industries to reduce pollution and use safer technologies, and secure stronger enforcement of environmental laws. The federal lead paint disclosure law gives legal services advocates, community-based organizations, and tenant advocates the opportunity to apply the types of right-to-know tactics that environmental groups have used successfully to achieve control of health hazards in substandard housing.

Federal law requires owners of virtually all pre-1978 residential properties to disclose known information about lead-based paint and lead-related hazards to prospective tenants and buyers. The regulations require only the disclosure of known hazards; they mandate neither investigation nor remedial action. The penalties for noncompliance are substantial: up to $11,000 per violation and treble damages in civil suits for willful violations. Both the EPA and HUD have extensive enforcement authority and have aggressively prosecuted serious violations.

Unfortunately most families living in rental properties in high-risk areas have not benefited yet from lead hazard disclosure requirements. To the extent that owners have complied, the absence of property-specific data allows landlords simply to check the “Don’t know” box on disclosure forms and give tenants a generic brochure about lead paint hazards.

Property-specific data can transform the right to know from an empty promise into a powerful catalyst for action to improve conditions in substandard rental properties. A written report from an environmental laboratory documenting excessive levels of lead in dust or peeling paint is compelling evidence of the presence of a hazard. Similarly a photograph of a collapsing ceiling or a broken plumbing fixture vividly documents a serious code violation. When a tenant, community group, lawyer, or local government agency gives a landlord property-specific reports about lead-paint hazards, the landlord must correct the problem or disclose this information to prospective tenants; this then constitutes a self-admission of peeling paint or other condition that is a code violation in most jurisdictions.

While the disclosure of hazardous conditions in rental properties is certainly desirable, such disclosure does not benefit all consumers equally. Even when low-income families become aware of hazards, many have no real housing choices due to the severe shortage of housing that is affordable to low-income families.

32 24 C.F.R. § 35.80, .82, .88 (2001) (requiring the disclosure of known hazards).
33 40 C.F.R. § 19.4 (2001) (EPA’s $11,000 civil penalties) (pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, all of EPA’s civil monetary penalties increased by 10 percent), available at www.access.gpo.gov/nara/cfr/waisidx_01/40cfr19_01.html; 24 C.F.R. § 30.65(b) (2001) (HUD’s $11,000 civil penalties), available at www.access.gpo.gov/nara/cfr/waisidx_01/24cfr30_01.html; id. § 35.96(c)–(d) (2001) (treble damages).
35 See 24 C.F.R. § 35.88–35.96 (2001). The Building Officials and Code Administrators International Code or equivalent state or local housing and building codes cover most jurisdictions. Deteriorated paint is a code violation in virtually all building and housing codes.
households in many communities. For communities at high risk, realizing the potential of the federal right-to-know law depends on community organizing or advocacy spurring corrective action rather than simply making tenants informed consumers. Fortunately several strategies, such as those we outline in the next section, are now within the reach of local advocacy groups.

V. Local Victories

The federal lead disclosure law is only one of many tools that gain power when owners, occupants, and advocates know property-specific information on maintenance deficiencies and health hazards. Community groups, tenant organizations, legal services organizations, and others may press for enforcement of state and local laws and use other organizing strategies to win corrective action. The successful experiences of local groups from around the country demonstrate different ways to use property-specific information in campaigns to make properties safe and communities livable.

- Advocates can notify local health department or housing or building code enforcement agencies about conditions in a specific property or neighborhood. For example, in 1997 advocates in Los Angeles, California, alerted health officials to illegal lead abatement work under way at a poorly maintained low- and moderate-income apartment complex. An enforcement action against the owner for violation of Proposition 65, a state toxics right-to-know law, resulted in a settlement that provided for lead hazard abatement and correction of code violations in all units, at a cost of $12 million to the property owner. The owner also placed $1.2 million in a trust fund at the California Community Foundation pending completion of the work. The interest on the trust fund is supporting community lead poisoning screening and education.

- If code enforcement agencies are ineffective or unresponsive, advocates can use media advocacy strategies to build public support for better code enforcement and more resources for hazard control. In 1999, for example, local lead poisoning prevention advocates alerted the Baltimore Sun to city health and housing agencies’ inadequate response to hazardous properties and lead-poisoned children. The resulting series of investigative reports and high-profile articles contributed significantly to local advocates’ campaign to win $50 million in new state and city commitments for enforcement and prevention as well as universal blood lead screening of young children in Baltimore, Maryland.

When a tenant, community group, lawyer, or local government agency gives a landlord property-specific reports about lead paint hazards, the landlord must correct the problem or disclose this information to prospective tenants.
department data highlighting lead poisoning "hot spots" to win enactment of a landmark 1999 ordinance requiring landlords in two high-risk neighborhoods to perform window treatments and paint stabilization. The city health department used the data to help secure $3 million in HUD funds targeted to controlling lead hazards in communities.

Advocates can use documentation of health hazards and code violations to secure legal remedies. In June 2000 tenant advocates in Minneapolis, Minnesota, convinced a housing court judge to place a nineteen-unit rental property in receivership to ensure the rapid correction of serious water leaks, moisture problems, and lead hazards. This case stimulated discussion among city officials and public interest attorneys about the expanded use of receiverships to reclaim dilapidated properties.

If property owners fail to disclose information about lead hazards, advocates can report violations to the EPA, HUD, and the U.S. Department of Justice. For example, in 1999 and 2000 these federal agencies announced settlements in cases that the Justice Department brought against six Washington, D.C., landlords who violated the federal lead disclosure law. The building owners ultimately committed $1.5 million for lead paint abatement and contributed $180,000 to community-based projects to protect children from lead poisoning.

VI. Practical Considerations

Unlike researchers who collect extensive

---


43 Telephone Interview with Amy Murphy, director, Milwaukee Health Department (Mar. 1999).


45 Telephone Interview with Greg Luce, attorney and director, Project 504, and tenants' attorney in receivership proceeding (Oct. 2000) (Project 504 is a nonprofit organization that provides legal representation regarding substandard housing conditions to low-income tenants).


data to develop a comprehensive description and detailed analysis of a problem, advocates need only data documenting code violations and health hazards sufficient to trigger corrective action. Local legal services organizations and other advocacy groups therefore must be clear about their strategic objectives in order to use environmental sampling and right-to-know tactics effectively.

Screening of housing for lead hazards should begin with the highest-risk neighborhoods; local blood lead screening data where available usually can target these neighborhoods. Where adequate blood lead screening data are not available, resources such as the Environmental Defense Scorecard Web site can help advocates identify census tracts having the largest concentrations of high-risk dwellings, based on census data on housing age and poverty status of residents.49 Useful census information related to lead-poisoning risk factors also is available on the Web site of the Childhood Lead Poisoning Prevention Program of the Centers for Disease Control and Prevention.50 After advocates identify high-risk census tracts or neighborhoods, community groups, tenant organizations, legal services organizations, and others can perform systematic dwelling-by-dwelling sampling.51

Negative results of limited environmental samples must not be overinterpreted. While a single positive test result, such as a laboratory report on a chip of peeling lead-based paint or a lead dust wipe test, demonstrates the presence of a hazard, a single negative sample does not guarantee that the environment is safe. Confidence about safety increases with the number of dust tests; only a lead-paint inspection can demonstrate that a property is lead-free, and only a risk assessment can confirm a property’s lead-safe status.

When community groups, tenant organizations, legal services organizations, or other advocates identify a hazard in a residential property, they must inform the occupants. They also should inform the occupants about their legal rights, possible remedies, and day-to-day steps they can take to reduce their risk. If advocates identify extreme hazards, they must counsel occupants about emergency measures, including relocation to safe housing. Advocates should secure tenants’ consent before notifying landlords of data documenting hazardous conditions and must be prepared to protect tenants from retaliatory evictions and other illegal landlord actions.

Advocates and researchers must guard against allowing responsibility to shift from landlords and government agencies to tenants. Rental property owners have a legal duty to provide safe housing, and state and local governments have a responsibility to enforce housing codes and other laws. Advocates must design and carry out community initiatives to identify health hazards to spur landlords and government agencies to fulfill their obligations, not to substitute for their inaction.

VII. A National Resource to Assist Local Advocates

Community groups, tenant organizations, legal services organizations, and other advocates must design environmental sampling and right-to-know strategies to meet local needs and advance the advocacy objectives of community residents. However, because the complexities involved are likely to tax most small community-based organizations, outside technical assistance and advice are critical to advocates’ success. The Alliance to End Childhood Lead Poisoning, in collaboration with dozens of local advocacy organizations, has initiated the Community Environmental Health Resource Center.
to give technical assistance and training, help with problem solving, and coordinate information sharing.

In the coming months the center plans to develop sampling protocols for various housing-related health hazards; identify trainers; research federal and state licensing requirements; give guidance in interpreting sampling results; develop materials for notifying residents, landlords, and local agencies; and supply training and support for geographic information system mapping of housing hazards. It also plans to facilitate peer support among local groups; help link local groups with researchers; negotiate volume discounts with equipment suppliers and laboratories; give pass-through grants from large funding sources; evaluate local projects; and help publicize the results of local projects.

By adapting sampling and right-to-know strategies from the environmental movement to the housing and tenants’ rights arena, advocates can document serious environmental health hazards in distressed communities. They can use this information to win measures that can catalyze corrective action to ensure safe and affordable housing for low-income families; such action includes improved code enforcement, subsidies for hazard remediation targeted to properties with the greatest need, funding for interventions by contractors that employ residents from affected communities, and other relevant policy and program changes.

**Authors’ Acknowledgments**

We thank the National Institute of Environmental Health Sciences for supporting the development of an earlier version of this article and the Public Welfare Foundation for a grant to explore with local lead poisoning prevention advocacy groups the feasibility of addressing substandard housing conditions associated with environmental hazards to human health through limited environmental sampling used in conjunction with community organizing strategies that leverage right-to-know laws and enforcement of other environmental, health, and housing codes and laws. We also thank the many lead poisoning prevention advocates who participated from across the United States in meetings and working groups focused on these strategies.