



## 2011 LEAD SUMMER STUDY REPORT

Prepared for:

Senate Education, Health, and Environmental Affairs Committee

House Environmental Matters Committee

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## **PREFACE**

House Bill 1033 (Chapter 610, Acts of 2011), directed the Maryland Department of the Environment to conduct a study to evaluate ways to reduce the incidence of Lead Poisoning among Maryland's children through assessment of:

(1) current lead poisoning data, including housing and at-risk population data from the United States Census, related to affected and non-affected properties for the purpose of identifying the populations most at risk in the State;

(2) lead poisoning data collection methods for affected properties—those subject to Maryland's current law codified in Title 6, Subtitle 8 of the Environment Article (the "State Lead Law")—and non-affected properties (those properties not subject to the State Lead Law), including identification of data gaps and methods to fill them;

(3) outreach to, and education of, owners and tenants of non-affected properties;

(4) the potential for expanding the applicability of the current Reduction of Lead Risk in Housing law to non-affected and noncompliant properties;

(5) long-term funding for lead poisoning prevention activities; and

(6) other issues the Department determines relevant to reducing the incidence of lead poisoning in affected and non-affected properties.

A report on the results of the study was due to the General Assembly by December 31, 2011, in accordance with § 2-1246 of the State Government Article.

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## **EXECUTIVE SUMMARY**

A Lead Summer Study Group (the “Study Group”) was convened and met seven times: July 7<sup>th</sup>; August 11<sup>th</sup>; September 1<sup>st</sup>; October 6<sup>th</sup>; November 3<sup>rd</sup>; November 18<sup>th</sup>; and December 1<sup>st</sup>.

There were four subgroup meetings on funding: September 21<sup>st</sup>, October 13<sup>th</sup>, November 10<sup>th</sup>; and December 20<sup>th</sup>. The discussions and recommendations were shared with the Study Group or are included in this report.

After detailed and in-depth discussions, the Study Group focused on a number of issues. These issues were grouped into the following categories with the following results:

### **Child Blood Lead Testing**

The Study Group reviewed blood lead data by target zip codes that have clusters of elevated blood lead levels for increased childhood blood lead testing. The Study Group believes that a more detailed and in-depth analysis requiring coordination with the Department of Health and Mental Hygiene (DHMH) will be necessary. The Study Group also discussed the possible lowering of the level of concern by CDC from the current 10 micrograms per deciliter (“ $\mu\text{g}/\text{dl}$ ”) to  $5\mu\text{g}/\text{d}$ . The Study Group agreed that it would be prudent to wait for a final action by the Secretary of Health and Human Services before discussing any change in Maryland.

*Recommendation: DHMH/MDE should review lead outreach and education and blood lead testing activities for the zip codes that contain the recurring clusters of elevated blood lead levels. These areas also coincide with clusters of blood lead levels at the  $5\text{-}9\mu\text{g}/\text{dl}$ . Targeted activities could reduce the incidence of elevated blood lead levels in these higher risk zip codes. MDE concurs with this recommendation. No legislation is needed.*

### **Federal Renovation, Repair, and Painting (RRP) Rule**

The Study Group considered the federal rule that requires renovation companies to be registered and follow lead safe work practices while doing renovation in pre-1978 constructed homes. Maryland has required accreditation for workers doing lead abatement; lead abatement includes lead risk reduction work in pre-1950 rental properties. The Federal rule is broader since it includes renovation in homes built pre-1978. Since the federal rule can be delegated to the States, the Study Group agreed in concept that Maryland should seek delegation in order that the federal requirements can be implemented and enforced by the Department of Environment. Some members of the Study Group expressed concern as to the scope of any State program. The Study Group recognized that there may be need for a transition from the federally implemented program to a State program, as well as adequate funding for this new program.

*Recommendation: MDE should seek delegation of authority from EPA to implement the RRP rule by regulation with adequate funding. MDE Concurrs with this recommendation. Legislation is required.*

### **Owner-Occupied Properties**

The Study Group discussed two means to address lead issues in owner-occupied houses, in addition to the RRP Rule. The Study Group recognized that there may be implicit authority for local health departments to issue abatement orders in owner-occupied houses in which children with elevated

blood lead levels (“EBLs”) reside. Baltimore City’s code gives its health department explicit authority to order such abatements. The Study Group agreed that other local health departments should have similar explicit authority.

A proposal to establish a dust test requirement, or some other quantitative clearance procedure, and disclosure of the results at the time a property is sold was also considered. This would provide important information about lead hazards to the future home owners. However, a requirement of this nature would add an average additional cost of \$350 to the transfer of property at a time when the real estate market is depressed. In addition, review of the 2010 EBL data indicated that identification of children with EBLs generally do not correspond to the time properties are sold.

*Recommendations: Seek explicit authority for local health departments to order lead abatements. Legislation would be required. MDE concurs with this recommendation.*

*Legislation would be needed to require lead dust testing at the time of sale. MDE recommends further discussion of this issue.*

### **Non-Affected Properties – 1950 to 1978 Rental Properties**

The Study Group considered expanding the properties subject to the State Lead Law to include rental housing built between 1950 and 1960, or in the alternative, all rental housing built prior to 1978. The property owners expressed concern about expansion of the universe of regulated properties, given the recent Court of Appeals decision striking the limited liability provisions of the State Lead Law. The Study Group also discussed the advisability of providing for expiration of risk reduction certificates, but concluded that a more detailed review would be required to assess an appropriate term for the certificates as it relates to the age of the property and EBLs.

*Recommendation: Consideration of an expansion of the universe of rental units subject to the State Lead Law should be revisited after DHMH and MDE conduct a more detailed review of the expanded blood lead testing data. Legislation would be required to expand the universe of properties subject to regulation. MDE concurs with this recommendation.*

### **Public Access to Rental Registry and Certificate Databases**

The Study Group discussed public access to the lead rental registry and lead certificate databases maintained by MDE. Providing public access to the rental registry and lead certificate databases would allow consumers to locate rental properties that are in compliance with the State Lead Law.

*Recommendation: MDE should consider making the online rental registry open to the public and continue to upgrade the databases. Funding will need to be identified for any database enhancements. No legislation is required. MDE concurs with this recommendation.*

### **Funding**

Funding issues were discussed by the Study Group. In addition, the Study Group met with representatives of paint manufacturers. MDE presented two fee options to the Study Group: (1) an increase in the annual per unit registration fee from the current fee of \$15 to \$46, if federal funds and State funds are eliminated; or (2) an increase in the annual fee to \$30 per unit, if State funds are reduced or eliminated.

With the paint manufacturers' trade group, MDE discussed the establishment of a 25 cent fee on sales of gallon containers of paint, imposed either at the retail level or manufacturers' level. Such a fee would generate approximate \$5.4 million per year. The revenues from this fund could be used to implement the RRP rule at the State level, provide funds for education and outreach and funds to local health departments to assist low income families with renovations necessary to comply with the abatement orders. The paint manufacturers' representatives expressed opposition to any fee on the basis that, for the most part, the current paint manufacturers did not manufacture lead-based paint. Instead, they favor tax incentives to promote replacement of windows.

*Recommendations: MDE recommends legislation to increase the rental registration fee to \$30 per unit and the inclusion of uncodified language requiring review of funding needs in two years or sooner if federal funding is reduced or eliminated.*

*MDE also recommends legislation establishing a fee of 25 cents per gallon-container of paint sold in Maryland at the retail or manufacturer level. The fee would be limited to paint sold to individual consumers, not to purchases of bulk quantities of paint purchased by contractors or to containers smaller in size than one gallon.*

*Legislation is required for both of these recommendations.*

### **Court of Appeals Decision**

The Study Group discussed the ramifications of the recent decision by the Court of Appeals striking the limited liability provisions in the State Lead Law, but decided that the Court's decision has implications that are beyond the scope of the Legislature's directive to the Study Group.

## **INTRODUCTION**

Childhood lead exposure remains a significant, widespread and preventable environmental hazard in Maryland. Children are at the greatest risk from birth to age six, a period when their neurological systems are developing. Exposure to lead can cause permanent neurological damage that may be associated with learning disabilities, decreased intelligence and behavioral problems. While lead poisoning crosses all socioeconomic, geographic, and racial boundaries, the burden of this environmental disease falls disproportionately on low-income families and those living in older, poorly maintained housing. Exposure to lead based paint chips and lead contaminated dust from deteriorated painted surfaces is now the primary cause of elevated blood lead levels in young children.

Since the implementation of Maryland's landmark lead paint risk reduction law in 1996, however, the incidence of childhood lead poisoning has steadily and markedly declined in the State (*See* Attachments 1 and 2). This decline has occurred State-wide, as well as in Baltimore City and the Lower Eastern Shore (Worcester, Wicomico, Somerset and Dorchester Counties)—the two areas of the State generally considered to be most “at risk” for childhood lead poisoning because of the high percentage of older pre-1979 housing units containing lead based paint (90% in Baltimore City and 53% on the Lower Eastern Shore).

As the incidence of childhood lead poisoning in residential rental properties has declined, proportionally, the number of lead poisoned children living in owner-occupied homes continues to increase. Today, the majority of childhood lead poisoning cases occur in owner-occupied homes. Families with children under the age of five who live below the federal poverty level are at greatest risk for lead poisoning, as are populations in jurisdictions with a high prevalence of pre-1950 housing.

House Bill 1033 (Chapter 610, Acts of 2011), directed MDE, in consultation with members of the General Assembly, representatives of State and local agencies and other interested stakeholders (*See* Attachment 3), to conduct a study to evaluate measures to further reduce the incidence of childhood lead poisoning in pre-1979 rental and owner-occupied dwelling units. More specifically, House Bill 1033 directed MDE to:

- identify the most “at risk” populations in the State through review of current lead poisoning data, including rental and owner-occupied housing and “at risk” population data from the United States Census;
- evaluate lead poisoning data collection methods for rental and owner-occupied properties, identify existing data gaps and consider methods to fill the gaps;
- evaluate measures for outreach to, and education of, owners and tenants of dwelling units not subject to Maryland's Reduction of Lead Risk in Housing law;
- assess the potential for expanding the applicability of the current Reduction of Lead Risk in Housing law to residential properties not currently subject to the law;
- evaluate long-term funding mechanisms for lead poisoning prevention activities; and

- study any other issues the Department determines are relevant to further reducing the incidence of lead poisoning in residential properties currently subject to the Reduction of Lead Risk in Housing law and those not subject to the law.

## **STUDY GROUP DISCUSSIONS AND RESULTS**

### **I. Child Blood Lead Testing**

The 2000 Maryland Targeting Plan, designed to identify areas at risk for childhood lead poisoning, was developed based on identified methodologies and input from Maryland experts on childhood lead poisoning. After thorough analysis of possible predictors, the following four variables were found to be significantly associated with the risk of elevated blood lead levels: (1) percentage of pre-1950 housing; (2) median housing value; (3) poverty index; and (4) percentage of homes built between 1950 and 1980. These important variables were used to develop a statistical model to identify areas for targeted screening and outreach. The number of children tested for elevated blood lead by geographic area was controlled for in the model. In early 2004, the Department of Health and Mental Hygiene (DHMH) commissioned the Center for Health Program Development and Management at the University of Maryland, Baltimore County to evaluate and update the 2000 Maryland Targeting Plan. This testing plan is the one currently in use.

Blood lead testing rates in the State were discussed extensively by the Study Group. The Study Group noted that testing rates across the State are generally low (*See Attachment 2*). Even amongst children on Medicaid, for which testing is required, testing rates range from 50% – 70%; for children not enrolled in Medicaid and not residing in targeted ZIP codes, testing rates are generally much lower. This led to a discussion about whether the low testing rates in non-targeted populations might affect the current estimates of the number of lead-exposed children in the State. DHMH and MDE were encouraged to review available testing data to determine: (1) as many characteristics as possible of children with elevated blood lead (EBL) levels to understand where exposures may have occurred, and when the children had received screening tests; (2) screening rates for Maryland children in targeted and non-targeted ZIP codes; and (3) whether and how the targeting strategy that was last revised in 2004 should be revised again, particularly in light of more recent data from the Maryland Lead Registry.

Maryland’s lead poisoning prevention efforts have resulted in a dramatic reduction in the incidence of childhood lead poisoning. In contrast, other environmental health issues, such as asthma, are on the rise and multiple other home health hazards remain a threat. Consequently, MDE will continue efforts to prevent lead poisoning with an increasing emphasis on comprehensive, healthy housing approaches. These efforts will focus on the most “at risk” areas—Baltimore City and the Lower Eastern Shore.

The childhood blood lead registry maintained by MDE contains blood lead testing results for the period from 1993 to 2010. (2011 data is being collected, but will not be available until mid-2012). Display of this data in a mapped format shows that there are several areas of the State where clusters of elevated blood lead levels occur year after year (*See Attachment 4*). Those areas are: Cumberland, Hagerstown, northern Prince George’s County/southern Montgomery County, Baltimore County close-in suburbs of Baltimore City, Baltimore City, and the Lower Eastern Shore.

The federal Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP), which advises the Centers for Disease Control and Prevention (CDC), has prepared a resolution:

*“Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention”.*

Based on its conclusions that even blood lead levels below 10 µg/dl may be harmful to children, the ACCLPP is expected to recommend elimination of the use of the term “blood lead level of concern.” Instead, the ACCLPP will recommend the use of a reference value based on the 97.5<sup>th</sup> percentile of the National Health and Nutrition Examination Survey (NHANES)-generated blood lead distribution in children age 1-5 years (currently 5 µg/dl) to identify children with elevated blood lead levels. These lower levels currently impact approximately 450,000 U.S. children. In Maryland, 3,506 children under the age of 6 years had a blood lead level of between 5 µg/dl and 9 µg/dl in 2010. This is in addition to the 531 children who had a blood level greater than or equal to 10 µg/dl. The absence of a safe elevated blood lead threshold underscores the critical importance of primary prevention. The ACCLPP recommendations will be finalized and voted upon in January 2012.

**Recommendations:** DHMH/MDE should review lead outreach and education and blood lead testing activities in the zip codes that contain recurring clusters of elevated blood lead levels. These areas also coincide with clusters of blood lead levels in the 5-9µg/dl range. Targeted activities could prevent those levels from becoming further elevated in many children. Additional recommendations include:

- Performance of a review of blood lead data for the most recent 5 years, coordinated by MDE and DHMH, from children living in properties not subject to the Lead Reduction in Housing law to determine the source of the EBL;
- Review of testing rates in the various counties and health care systems;
- A review of the accuracy of capillary testing versus venous testing for blood lead levels under 10µg/dl; and
- In the event of a decision by CDC to lower the blood lead level of concern from 10µg/dl to 5µg/dl, performance of a review by MDE and DHMH of the impacts of lowering the level in Maryland on laboratories, local health departments, children, early childhood education, and property owners.

The results of these reviews should be shared with the Governor’s Lead Poisoning Prevention Commission.

## **II. Federal Renovation, Repair, and Painting (RRP) Rule**

In 2010 the Environmental Protection Agency (“EPA”) implemented the Renovation, Repair, and Painting (“RRP”) rule. This rule requires companies doing renovation work for compensation in a home built prior to 1979 that contains lead-based paint to be certified and to train its workers in lead safe work practices. The RRP rule mandates safe work practices in properties that are not subject to the State’s Lead Reduction in Housing law and regulations. Prior to the RRP rule there was a high likelihood that contractors performing maintenance and renovation work would not take appropriate precautions to prevent the spread of contaminated lead dust. Although the RRP rule is not as rigorous as Maryland’s Lead Reduction in Housing law, it does afford a level of protection in properties not currently subject to the State’s law, in particular owner-occupied housing and rental houses built between 1950 and 1978.

State implementation of the federal RRP rule will first require: (1) legislation providing MDE with the authority to regulate renovation and remodeling contractors; (2) additional funding between \$300,000 and \$350,000 per year as EPA is not offering additional funding above existing grant funds; and (3) five additional MDE staff in order to provide adequate oversight. Some members of the Study Group expressed concerns about the scope of the federal RRP rule. MDE believes that with proper resources, State implementation of the federal rule would be more protective of public health.

**Recommendation:** MDE should seek delegation of authority from EPA to implement the RRP rule by regulation and enhance the State rule by:

- requiring training of all workers consistent with existing training protocols;
- combining training for lead abatement projects and RRP work to eliminate the need for two separate courses;
- requiring a dust test at clearance for major renovation or rehabilitation of homes; and
- providing adequate funding for oversight of the program.

### **III. Owner-Occupied Properties**

As successful as the State Lead Law has been in reducing the incidence of childhood lead poisoning, there remains a substantial number of “at risk” children. On a State-wide level, beginning in 2005 and in each year since, children with EBLs living in properties not currently subject to the State Lead Law have outnumbered the percentage of children with EBLs living in properties subject to the law. In 2010, across the State, 60 percent of children with EBL have lived in properties not subject to the State Lead Law. (See Attachments 5 and 6). In the counties surrounding Baltimore City, the difference is substantial: 83 percent lived in properties not subject to the State Lead Law. In Baltimore City, however, those living in pre-1950 rental housing still outnumber those living in non-affected properties: 60 percent to 40 percent.

Unless a pre-1950 dwelling unit has been rendered lead-free, there is a 95 percent likelihood that the unit has lead paint. For units built between 1950 and 1960, there is 80 percent likelihood. In units built after 1960, the likelihood of lead paint drops off rapidly until 1978, when lead-based paint was banned for residential use.

The Study Group considered two broad areas under this topic: (1) authority for local health departments to issue abatement orders for homes where a child has been identified with an EBL; and (2) requiring a lead dust test at the time of sale of a property.

#### Authority to Order Lead Abatements

The Study Group considered the current provisions under the Health Article, which the members agreed, implicitly authorize local health officers to issue abatement orders for homes to address unhealthy conditions such as the presence of lead paint. In contrast, Baltimore City has explicit authority under the City Code to order abatements for homes with lead paint determined to have caused lead poisoning. There was some concern expressed about older homes that do not have a

clear chain of ownership title as the property may have been “handed down” to family members. This causes delays in the orders and may preclude financial assistance for repair of the property. The Study Group agreed that explicit abatement authority generally applicable to all counties would be helpful. The Study Group considered the advisability of issuing abatement orders for identified areas of concern within a home based upon a required risk assessment. The Study Group also considered providing for reversion of the abatement authority to MDE if the local agency failed to act within 30 days of issuing the abatement notice for owner-occupied or 1950 – 1978 rental properties. MDE already has authority for pre-1950 rental properties.

**Recommendation:** Seek legislation providing explicit authority for local health departments to order lead abatements. An abatement order could:

- Require a risk assessment to determine if, and where, lead-based paint is present in the home and require a remediation of areas where lead hazards are identified.
- Allow for alternative abatement methods as Baltimore City does, and consider legal assistance for families in need of a clear title.
- Provide a time period for local government to require the abatement or MDE could order the abatement.

#### Dust Test Requirement at Time of Sale of Property

The Study Group did not reach consensus on this issue. Advocates assert that there should be a lead dust using a dust wipe or other quantitative clearance procedure prior to sale of a home. This would provide information to the future residents of the home about the presence of lead. In contrast, realtors strongly believe that the added cost of a lead dust test would impact the sale of homes at a time when the real estate market is depressed. A testing requirement could add between \$300 and \$400 to the cost of each real estate transaction. Some members of the Study Group asked MDE to review the lead blood surveillance data and determine if there was a temporal relationship between the time when a child was poisoned and the time of sale of the home. The 2010 data does not indicate any relationship between EBLs and the time of sale. Most children poisoned in owner-occupied houses were living in homes that had been purchased by the family four or five years earlier. MDE does not have data to indicate if the homes where the children with EBLs lived had been remodeled or renovated prior to the lead exposure.

**Recommendation:** Continue to assess the need for dust testing at the time of sale.

#### **IV. Non-affected properties – 1950 to 1978 rental properties**

The Study Group discussed expanding the definition of properties currently subject to the Maryland Lead Law (defined as “Affected Properties”) to include rental properties built during the period from 1950 through 1978, the year when lead paint was banned for use in the residential market. Maryland law defines Affected Property as rental properties built prior to 1950. As stated in Part III of this report (“Owner Occupied Properties”), properties built between 1950 and 1960 have an 80 percent likelihood of containing lead-based paint. This likelihood declines rapidly for properties constructed after 1960 until 1978.

The Study Group discussed expanding the definition of Affected Properties to include either pre-1960 or pre-1978 residential rental properties. Expanding the existing Lead Law to include pre-1960

residential rental properties adds nearly 73,580 units to the universe of regulated properties. An expansion to pre-1978 rental properties would add nearly 318,017 units (Attachment 7). In 2010, 73 children with EBLs resided in post 1949 housing. This is 18.6 percent of the total number of new incidents for that year.

The Study Group discussed the potential liability ramifications of expanding the universe of regulated properties. Under the current law, lead based paint is presumed to be present in regulated properties. Without a change in the law, this presumption would also apply to this expanded universe of rental properties without the liability protection afforded by compliance with the Lead Law, which was recently struck down by the Court of Appeals.

**Recommendation:** The Study Group recommends that a determination on the merits of expanding the universe of regulated rental properties should be made only after a review of the lead data as recommended in Part I of this report to determine if an expansion is warranted.

#### **V. Public Access to Rental Registry and Certificate Databases**

The Study Group considered public access to the lead rental registry and risk reduction certificate databases. Consumer access to the rental registry and risk reduction certificate databases would allow consumers to search the data themselves and locate rental properties that are in compliance with the law. Public access would also indirectly help facilitate compliance since presumably property owners would want their rental properties listed as compliant.

The rental registry was recently migrated to an online registration and payment system. In the process, the database was updated and made to be more easily queried. These changes should improve the searchability of the registry and allow for timely identification of non-compliant properties. The risk reduction certificate database system requires enhancements prior to providing public access. The main obstacle preventing implementation of the database improvements is lack of funding.

**Recommendations:** MDE should consider making the online rental registry open to the public and continue to improve the databases. Funding will need to be identified for any database enhancements.

#### **VI. Funding**

A subgroup consisting primarily of rental property owners was established to consider funding issues, which were also discussed with the main Study Group. MDE provided the subgroup with budget and fiscal information and presented several options for enhanced funding (Attachment 7). The discussion focused on increasing the rental registration fee. In addition, the subgroup met with paint manufacturer representatives to discuss a possible fee on sales of paint.

During the early years of the lead poisoning prevention program MDE enjoyed adequate funding to operate its lead program and to provide assistance to the counties for case management and lead education/outreach. Since 2005, however, all revenue sources have steadily declined, particularly federal CDC and general funds. The CDC has reduced funding substantially while combining lead poisoning prevention funding with funding for healthy homes initiatives, thereby even further reducing the amount of funding dedicated for lead poisoning prevention programs. As indicated earlier in this Report, there is a critical need to expand the lead poisoning prevention effort to include properties not currently subject to the law. Any effort in this direction will require additional

funding, both to eliminate shortfalls in funding for the current program, as well as fund an expansion of the program.

During the next two years it is likely that both CDC and general funds will be cut further, and possibly eliminated altogether. Consequently, the lead program may need to rely entirely on special funds. In the absence of an expansion of the program to properties not currently subject to the law, this would require an increase in the current registration fees, or identification of alternative funding sources.

#### Rental Fee

Fiscal year 2010 expenditures for the Lead Poisoning Prevention Program (“Program”) were \$3.6 million. Assuming the scope of the program remains unchanged, in order to fund the program entirely from special funds, an annual registration fee of \$46 per unit would be needed. If federal funding were continued, a smaller increase in the annual registration fee to \$30 per unit would be needed to replace the loss of general funds.

#### Fee on Paint Sales

MDE met with paint manufacturer representatives to discuss a fee on paint sales in Maryland. MDE suggested that the revenue from such a fee could be used to fund implementation of the RRP rule and to provide outreach information and funding for low income families that would need to upgrade their homes to comply with a local health department abatement order. MDE suggested a fee of \$0.50 or \$0.25 on each gallon of paint sold in Maryland and imposed at the retail or manufacturer’s level. Based on national sales statistics, a 25-cent per gallon-container fee would generate approximate \$5.4 million per year. Several other states have either enacted or proposed fees on paint sales to fund lead paint related activities. The paint manufacturers’ representatives expressed their opposition to any fee. Instead, they favor tax incentives to promote replacement of windows.

**Recommendations:** Amend the Reduction of Lead Risk in Housing Act to increase the rental registration fee from the current fee of \$15 per unit to \$30 per unit and include an uncodified provision requiring review of funding issues in two years, or sooner, if federal funding is eliminated.

MDE also recommends establishment of a fee of 25 cents per gallon on sales of paint in Maryland, to be imposed either at the retail or the manufacturers’ level. The fee would be limited to individual consumer sales and would not apply to large bulk amounts of paint purchased by contractors or to sales of containers holding less than one gallon of paint.

### **VII. Court of Appeals Decision**

On October 24, 2011, the Maryland Court of Appeals issued a decision in the *Zi’Tashia Jackson, et al v. The Dackman Company, et al* case, holding the liability limitation under the qualified offer provisions of the law unconstitutional. The Court held that the unconstitutional provisions were severable from the remainder of the Law. Accordingly, MDE’s Lead Poisoning Prevention Program was not affected by the ruling. All current requirements for registration of pre-1950 rental properties and compliance with risk reduction standards remain in effect. Property owners who “opt-in” to the program may continue to do so; however, protection from tort liability no longer exists. Compliance with the requirements of the law may, however, be of value in demonstrating reasonable care on the part of the property owner. Property owners are being encouraged to seek the advice of counsel on how to proceed.

**Recommendations:** The Study Group recognizes that addressing the ramifications of the Court’s decision is beyond the scope of the Legislature’s directive to the Study Group and has broad implications for the future direction of the lead program. Accordingly, MDE declines to make a recommendation on this issue.

**VIII. Correspondence from public at large**

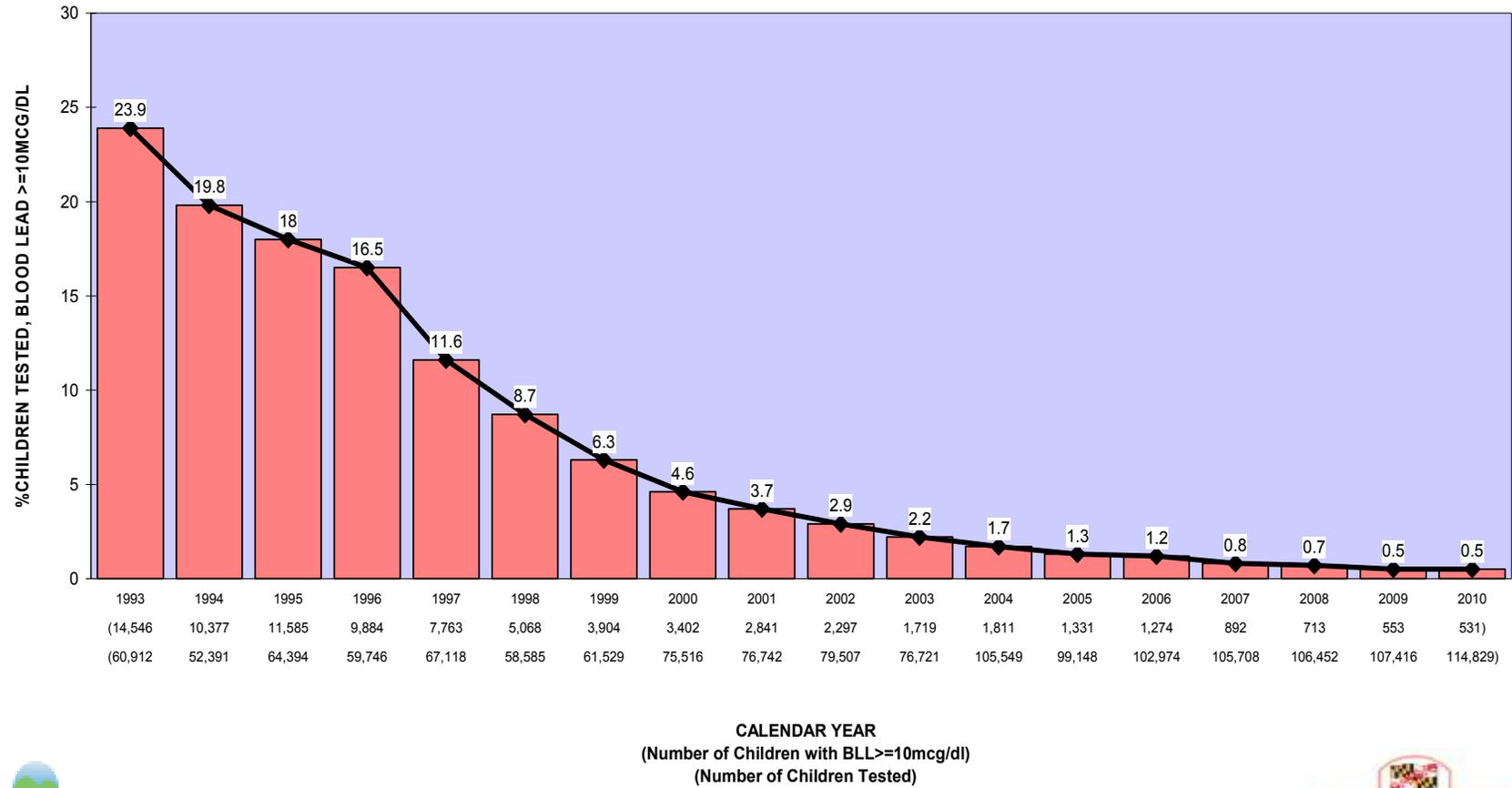
The Study Group meetings were open to the public at large. In addition to the members of the Study Group, other stakeholders attended the meetings and expressed their views. MDE also received comments in writing from members of the public. These comments were brought to the attention of the Study Group and were distributed. These are found as Attachments 9, 10, and 11.

**CONCLUSION**

Lead poisoning prevention will continue to be a high priority in Maryland. The stakeholders will continue to review and discuss the status of the lead poisoning program and advocate for effective public policies. At this time MDE is recommending legislative changes to the current law to allow for the delegation of the federal RRP rule; to provide local health departments with explicit authority to order abatements of all housing; and to provide for increased funding.

# ATTACHMENT 1

## MARYLAND DEPARTMENT OF THE ENVIRONMENT CHILDHOOD BLOOD LEAD SURVEILLANCE STATEWIDE 1993-2010



## ATTACHMENT 2

### Blood Lead Testing of Children 0-72 Months by Jurisdiction in 2010

County	Population of Children <sup>1</sup>	Children Tested		Number of Children with Blood Lead Level $\geq 10$ $\mu\text{g}/\text{dL}$					
				Old Cases <sup>2</sup>		New (Incident) Cases <sup>3</sup>		Total (Prevalent) Cases <sup>4</sup>	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Allegany	5,141	1,332	25.9	3	0.2	7	0.5	10	0.8
Anne Arundel	45,643	7,982	17.5	2	0.0	12	0.2	14	0.2
Baltimore	62,670	16,732	26.7	9	0.1	25	0.1	34	0.2
Baltimore City	57,937	19,702	34.0	85	0.4	229	1.2	314	1.6
Calvert	7,103	717	10.1	0	0.0	1	0.1	1	0.1
Caroline	2,584	870	33.7	3	0.3	6	0.7	9	1.0
Carroll	14,356	1,368	9.5	1	0.1	6	0.4	7	0.5
Cecil	8,245	1,302	15.8	1	0.1	0	0.0	1	0.1
Charles	12,418	2,042	16.4	0	0.0	2	0.1	2	0.1
Dorchester	2,346	774	33.0	1	0.1	4	0.5	5	0.6
Frederick	19,859	3,147	15.8	1	0.0	8	0.3	9	0.3
Garrett	2,555	517	20.2	0	0.0	1	0.2	1	0.2
Harford	21,745	3,176	14.6	0	0.0	8	0.3	8	0.3
Howard	25,645	2,631	10.3	1	0.0	2	0.1	3	0.1
Kent	1,286	277	21.5	0	0.0	2	0.7	2	0.7
Montgomery	83,089	20,961	25.2	4	0.0	26	0.1	30	0.1
Prince George's	80,358	21,595	26.9	11	0.1	42	0.2	53	0.2
Queen Anne's	3,709	573	15.4	2	0.3	2	0.3	4	0.7
Saint Mary's	8,847	1,659	18.8	0	0.0	0	0.0	0	0.0
Somerset	1,575	517	32.8	0	0.0	1	0.2	1	0.2
Talbot	2,482	692	27.9	1	0.1	2	0.3	3	0.4
Washington	11,503	2,544	22.1	3	0.1	6	0.2	9	0.4
Wicomico	7,246	2,342	32.3	4	0.2	5	0.2	9	0.4
Worcester	3,259	900	27.6	0	0.0	2	0.2	2	0.2
County Unknown		477		0		0		0	
<b>Statewide</b>	<b>491,598</b>	<b>114,829</b>	<b>23.4</b>	<b>132</b>	<b>0.1</b>	<b>399</b>	<b>0.3</b>	<b>531</b>	<b>0.5</b>

1. Adapted from the Census Bureau: "State Interim Population Projections by Age and Sex: 2000-2030"  
<http://www.census.gov/population/www/projections/projectionsagesex.html>.
2. Children with a history of an EBL (blood lead level  $\geq 10$   $\mu\text{g}/\text{dl}$ ). These children may have carried over from 2009 or had an EBL test in previous years.
3. Children with the very first EBL in 2010. These children were either not tested in the past or their blood lead levels were below 10  $\mu\text{g}/\text{dL}$ . This definition may not necessarily match the criteria for the initiation of case management.
4. All children with at least one blood lead test  $\geq 10$   $\mu\text{g}/\text{dL}$  in 2010. The selection is based on the highest venous or the highest capillary in the absence of any venous test.

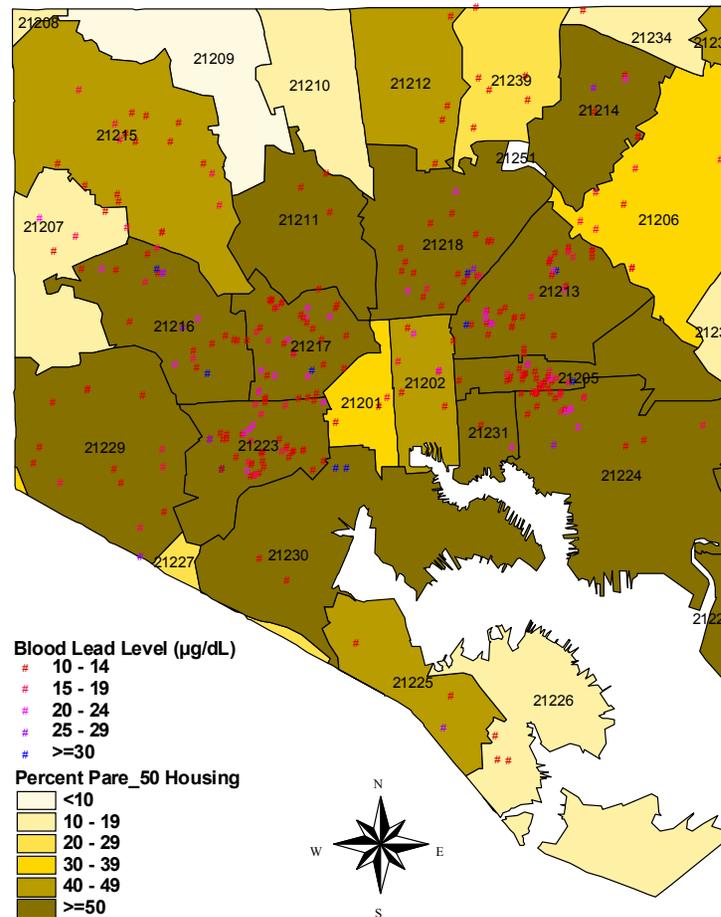
**ATTACHMENT 3**

**MEMBERSHIP**

<b>Members of the Senate of Maryland (2)</b>	<b>Lisa Gladden</b>	<b>Representative/s from the Maryland Association of Realtors (1-2)</b>	<b>Bill Castelli</b>
<b>(Minority Party Member)</b>	<b>Nancy Jacobs</b>		<b>Carolyn Cook</b>
<b>Members of the House of Delegates (3)</b>	<b>Nathaniel Oaks</b>	<b>Representative/s from the Maryland Lead Poisoning Prevention Commission (1-2)</b>	<b>Pat McLaine</b>
	<b>Doyle Niemann</b>		<b>Mary Vogel</b>
<b>(Minority Party Member)</b>	<b>H. Wayne Norman</b>		
<b>Representative/s from the Department of Health and Mental Hygiene (1-2)</b>	<b>Maura Dwyer</b>	<b>Representative/s from the Maryland MultiHousing Association (1-2)</b>	<b>Kathy Howard</b>
	<b>Clifford Mitchell</b>		<b>Bruce Campbell</b>
<b>Representative/s from the Department of Housing and Community Development (1-2)</b>	<b>Ed Landon</b>	<b>Representative/s from the Maryland Property Owners Association (1-2)</b>	<b>Alfred Singer</b>
			<b>Jeff Hutter</b>
<b>Representative/s from the City of Baltimore (1-2)</b>	<b>Olivia Farrow</b>	<b>Representative/s from a Lead Abatement Contractors Association (1-2)</b>	<b>Patrick Connor</b>
	<b>Genevieve Birkby</b>		
<b>Representative/s from the Apartment and Office Building Association (1-2)</b>	<b>Lesa Hoover</b>	<b>Representative/s from the Coalition to End Childhood Lead Poisoning (1-2)</b>	<b>Ruth Ann Norton Wes Stewart</b>
<b>MDE</b>	<b>Horacio Tablada</b>		
	<b>Alvin Bowles</b>		

# ATTACHMENT 4-1

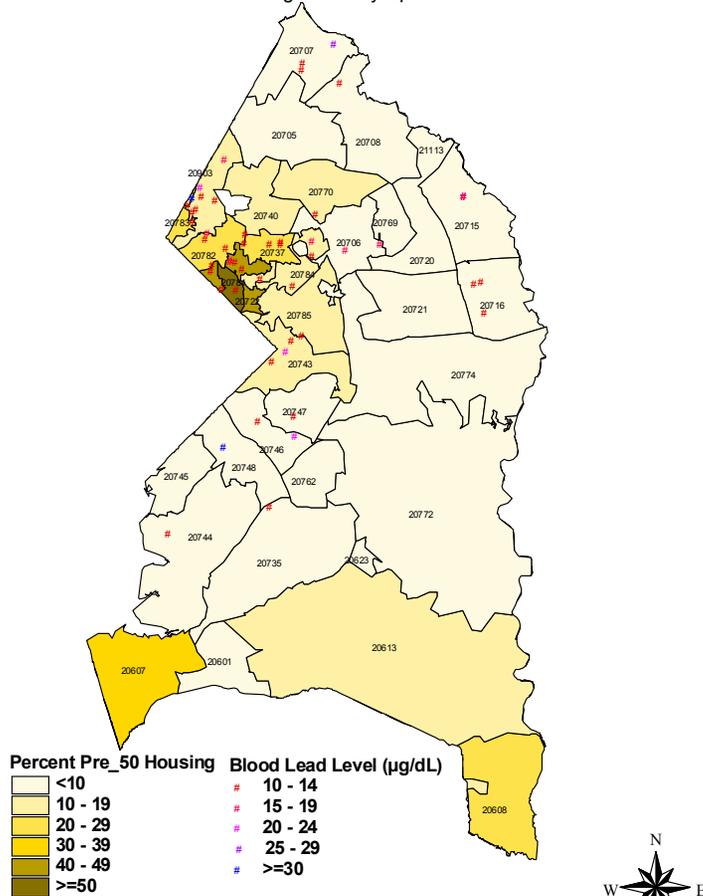
## MARYLAND DEPARTMENT OF THE ENVIRONMENT Lead Poisoning Prevention Program: Childhood Lead Registry Percent of Pre 1950 Housing Units and Distribution of Children 0-72 Months Tested for Lead in 2010 and had Blood Lead Level $\geq 10$ $\mu\text{g}/\text{dL}$ Baltimore City zip code



Source:  
Blood lead data: Childhood Lead Registry, Annual data calendar year 2010  
Housing data: US Census Bureau, 2000 census of housing and population

# ATTACHMENT 4-2

**MARYLAND DEPARTMENT OF THE ENVIRONMENT**  
**Lead Poisoning Prevention Program: Childhood Lead Registry**  
 Percent of Pre 1950 Housing Units and Distribution of  
 Children 0-72 Months Tested for Lead in 2010 and had Blood Lead Level  $\geq 10$   $\mu\text{g}/\text{dL}$   
 Prince George's county zipcode



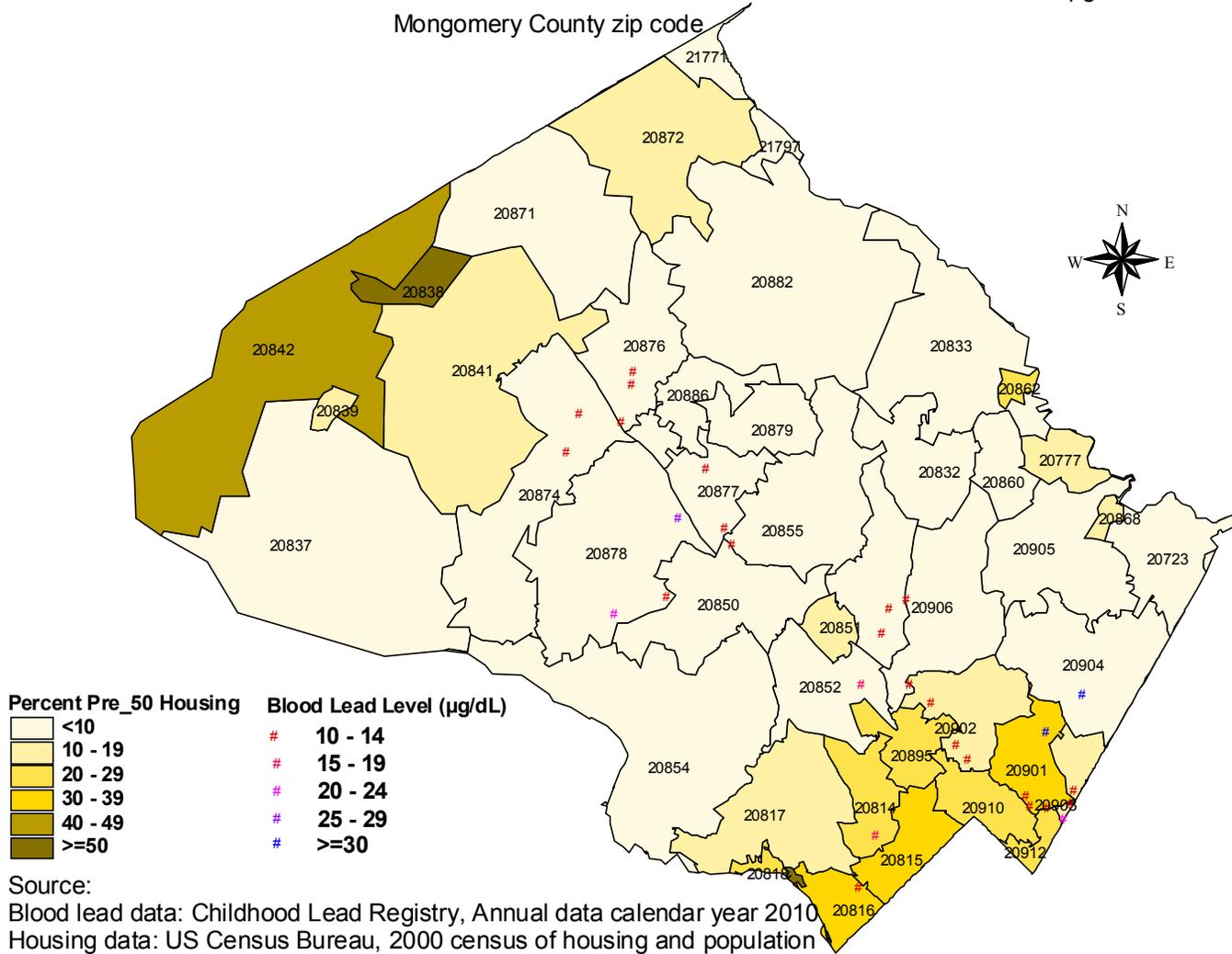
Source:  
 Blood lead data: Childhood Lead Registry, Annual data calendar year 2010  
 Housing data: US Census Bureau, 2000 census of housing and population



ATTACHMENT 4-3

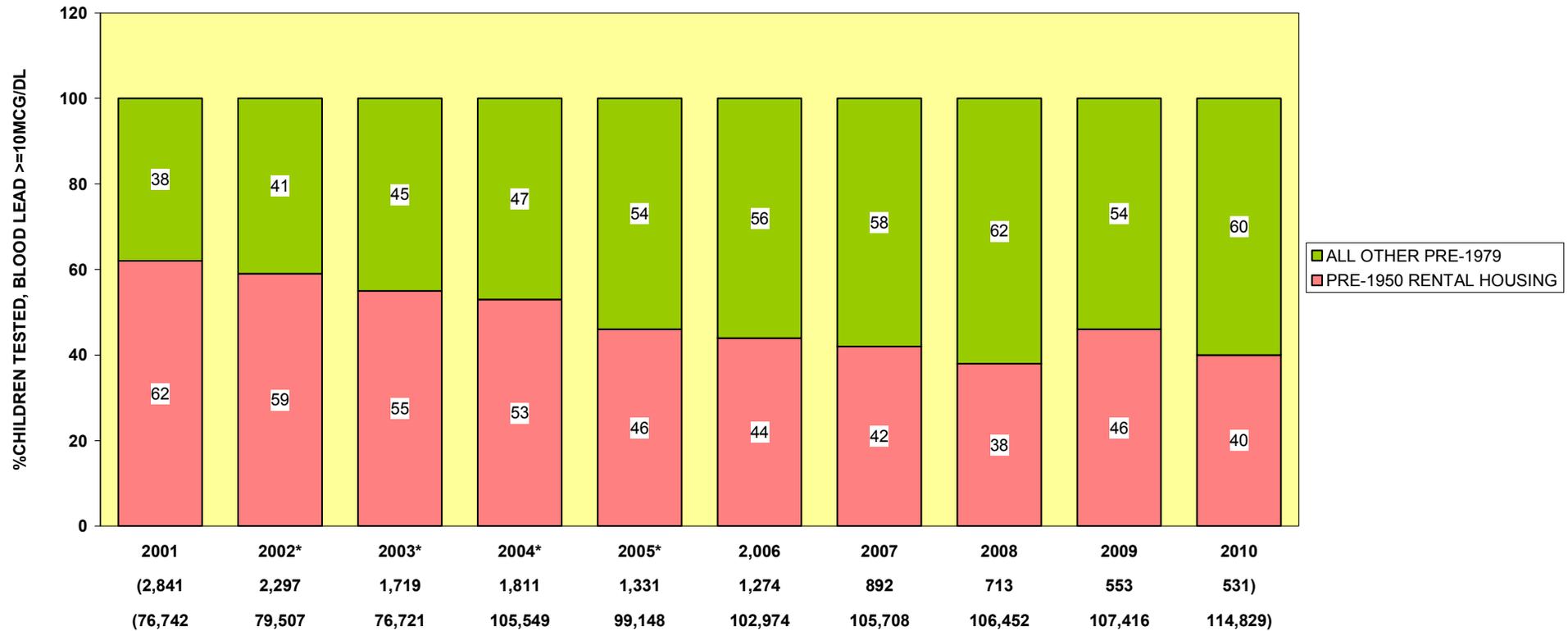
**MARYLAND DEPARTMENT OF THE ENVIRONMENT  
Lead Poisoning Prevention Program: Childhood Lead Registry**

Percent of Pre 1950 Housing Units and  
Distribution of Children 0-72 Months Tested for Lead in 2010 and had Blood Lead Level  $\geq 10$   $\mu\text{g/dL}$   
Montgomery County zip code



## ATTACHMENT 5

### MARYLAND DEPARTMENT OF THE ENVIRONMENT CHILDHOOD BLOOD LEAD SURVEILLANCE-HOUSING TYPE STATEWIDE 2001-2010



CALENDAR YEAR	2001	2002*	2003*	2004*	2005*	2,006	2007	2008	2009	2010
(Number of Children with BLL>=10mcg/dl)	(2,841)	2,297	1,719	1,811	1,331	1,274	892	713	553	531)
(Number of Children Tested)	(76,742)	79,507	76,721	105,549	99,148	102,974	105,708	106,452	107,416	114,829)



\* 2002-2005: ESTIMATED DIVISION BY HOUSING TYPE



ATTACHMENT 6

**Statewide Children (0-72 months of age) with a  
First Time Venous Blood Lead Level  $\geq$  10  $\mu\text{g}/\text{dL}$   
and  
Property Status of their Residence  
CY 2010**

<b>Property Status</b>	<u>BLL 10-14 <math>\mu\text{g}/\text{dL}</math></u>	<u>BLL 15-19 <math>\mu\text{g}/\text{dL}</math></u>	<u>BLL &gt;20 <math>\mu\text{g}/\text{dL}</math></u>	<u><b>Total</b></u>
<b><u>Affected</u></b>				
Rentals-Not Registered	48	12	12	<b>72</b>
Pre-1950 Rental-Registered	39	13	10	<b>62</b>
Construction Year Unavailable –Rentals*	9	0	1	<b>10</b>
<b>Subtotal</b>	<b>96</b>	<b>25</b>	<b>23</b>	<b>144</b>
<b>(40%)</b>				
<b><u>Non-Affected:</u></b>				
Owner Occupied	99	23	27	<b>149</b>
Post 1950 Rental	44	11	11	<b>66</b>
<b>Subtotal</b>	<b>143</b>	<b>34</b>	<b>38</b>	<b>215 (60%)</b>
<b>Total</b>	<b>239</b>	<b>59</b>	<b>61</b>	<b>359 (100%)</b>

\* Properties with construction year unavailable are assumed to be constructed prior to 1950.

Sources: STELLAR, MDE Rental Registry and Maryland Department of Assessments and Taxation Database

**ATTACHMENT 7  
FUNDING**

<b>Fiscal Year</b>	<b>MDE Expenditure</b>	<b>\$ to Local Hlth Depts</b>	<b>CDC \$ to BCHD</b>	<b>\$ to Contractor</b>	<b>\$ CDC to Wicomico Co.</b>	<b>Total Pass-Thru</b>	<b>MDE Portion</b>	
							<b>CDC Grant</b>	<b>TSCA Grant</b>
<b>1999</b>		<b>\$259,682.00</b>	<b>\$752,529.00</b>	<b>\$255,069.00</b>		<b>\$1,267,280.00</b>		
<b>2000</b>		<b>\$504,708.00</b>	<b>\$918,384.00</b>	<b>\$259,620.00</b>		<b>\$1,682,712.00</b>		<b>\$475,928.00</b>
<b>2001</b>		<b>\$522,767.00</b>	<b>\$950,138.00</b>	<b>\$255,070.00</b>		<b>\$1,727,975.00</b>		<b>\$494,389.00</b>
<b>2002</b>		<b>\$531,673.00</b>	<b>\$903,853.00</b>	<b>\$265,000.00</b>		<b>\$1,700,526.00</b>		<b>\$492,280.00</b>
<b>2003</b>	<b>\$4,099,644.00</b>	<b>\$520,136.00</b>	<b>\$860,909.00</b>	<b>\$266,938.00</b>		<b>\$1,647,983.00</b>		<b>\$375,061.00</b>
<b>2004</b>	<b>\$3,862,683.00</b>	<b>\$336,355.00</b>	<b>\$577,368.00</b>	<b>\$189,987.00</b>	<b>\$144,750.00</b>	<b>\$1,248,460.00</b>		<b>\$471,522.00</b>
<b>2005</b>	<b>\$3,879,691.00</b>	<b>\$277,622.00</b>	<b>\$732,095.00</b>	<b>\$250,000.00</b>	<b>\$144,750.00</b>	<b>\$1,404,467.00</b>		<b>\$280,440.00</b>
<b>2006</b>	<b>\$3,851,103.00</b>	<b>\$321,000.00</b>	<b>\$691,719.00</b>	<b>\$245,624.00</b>	<b>\$117,294.00</b>	<b>\$1,375,637.00</b>		<b>\$289,644.00</b>
<b>2007</b>	<b>\$3,563,553.00</b>	<b>\$289,302.00</b>	<b>\$542,000.00</b>	<b>\$250,780.00</b>	<b>\$104,000.00</b>	<b>\$1,186,082.00</b>	<b>\$547,751.00</b>	<b>\$243,444.00</b>
<b>2008</b>	<b>\$3,524,601.00</b>	<b>\$288,000.00</b>	<b>\$526,716.00</b>	<b>\$260,228.00</b>	<b>\$100,401.00</b>	<b>\$1,175,345.00</b>	<b>\$534,038.00</b>	<b>\$618,263.00</b>
<b>2009</b>	<b>\$3,587,171.00</b>	<b>\$333,000.00</b>	<b>\$527,715.00</b>	<b>\$270,415.00</b>	<b>\$101,400.00</b>	<b>\$1,232,530.00</b>	<b>\$538,493.00</b>	<b>\$282,171.00</b>
<b>2010</b>	<b>\$3,524,323.00</b>	<b>\$108,000.00</b>	<b>\$519,215.00</b>	<b>\$238,898.00</b>	<b>\$97,900.00</b>	<b>\$964,013.00</b>	<b>\$519,447.00</b>	<b>\$280,444.00</b>
<b>2011</b>	<b>\$3,584,237.00</b>	<b>\$90,000.00</b>	<b>\$456,058.00</b>	<b>\$246,065.00</b>	<b>\$90,000.00</b>	<b>\$882,123.00</b>	<b>\$445,452.00</b>	<b>\$357,756.00</b>

## ATTACHMENT 8

# MARYLAND HOUSING ESTIMATES

2010	Maryland	
	Estimate	Margin of Error
<b>Total:</b>	2,127,439	+/-8,728
<b>Owner occupied:</b>	1,426,267	+/-12,068
<b>Built 2005 or later</b>	74,496	+/-3,945
<b>Built 2000 to 2004</b>	112,859	+/-5,499
<b>Built 1990 to 1999</b>	229,785	+/-7,073
<b>Built 1980 to 1989</b>	243,617	+/-6,987
<b>Built 1970 to 1979</b>	193,003	+/-6,496
<b>Built 1960 to 1969</b>	162,876	+/-5,129
<b>Built 1950 to 1959</b>	179,847	+/-5,670
<b>Built 1940 to 1949</b>	86,583	+/-4,016
<b>Built 1939 or earlier</b>	143,201	+/-4,603
<b>Renter occupied:</b>	701,172	+/-11,745
<b>Built 2005 or later</b>	37,027	+/-3,171
<b>Built 2000 to 2004</b>	38,231	+/-3,088
<b>Built 1990 to 1999</b>	76,864	+/-4,601
<b>Built 1980 to 1989</b>	102,749	+/-4,431
<b>Built 1970 to 1979</b>	134,433	+/-5,905
<b>Built 1960 to 1969</b>	110,004	+/-5,350
<b>Built 1950 to 1959</b>	73,580	+/-4,388
<b>Built 1940 to 1949</b>	42,756	+/-3,634
<b>Built 1939 or earlier</b>	85,528	+/-4,631

Source: U.S. Census Bureau, 2010 American Community Survey

## ATTACHMENT 9

Date: 10/28/11

TO: Lead Paint Poison Prevention Task Force and Distribution List

FM: Stephen H. Rogers, PE (Forensic and Structural Engineer), Home Inspector,  
BS UC Berkeley, 2MS Johns Hopkins, MS Naval War College

RE: Recommended Modifications to HB \_\_\_\_\_ as passed in 2011

### **Executive Summary:**

Due to the circumstances enumerated below, it is requested that the Task Force recommend to the Assembly and the Senate that they draft a bill to recall/delete the bill passed in 2011. In its place, it is recommended that the Task Force, with the Environmental Matters Committee, draft a new bill that would be heard and passed in the upcoming session (2012). It is recommended that the Penalty side of the bill be lessened and a "more positive and cooperative approach be taken". Argument and Recommendations are listed below:

### **Arguments/Background:**

1. I was out of town about 6 months last year and was unable to participate in the testimony before the lead paint bill came up. I tried for several months to meet with Del. Maggie MacIntosh with no success. On October 17, Del MacIntosh met with myself, Del McMillan, Mr Tablada (MDE) and his attorney, and Mr Neimann, Esq. The meeting was held in the Assembly Environmental Matter Offices. Del. MacIntosh's assistant was kind enough to provide me with a copy of the Bill and copies of the testimonies. Del McMillan obtained copies of the MDE Statistics on lead paint poisoning.
2. It is apparent that the government members and the legislative body are unaware of the burdensome costs of what they have formulated. At this time in an extended Recession, it is the wrong time to heap onerous costs upon the segment of the economy that supports working Americans in Maryland. I have read the testimony by the Realtors, Housing Associations and the Government entities. The private enterprise Sector (landlords) all testified against this bill. The Baltimore governments/Housing Authorities were all for it. Why was the private sector ignored? The major problem area and largest incidence of lead poisoning in Maryland is in Baltimore County, Allegany County and in owner occupied buildings. Not in rentals.
3. The legal premise that "a landlord is protected from liability by the state if the landlord is compliant" is not accurate or realistic. If a landlord does not have legal and medical assurance that a tenant has never has lead exposure before they rent, the landlord can be sued by a tenant carrying lead poisoning from a previous setting. The landlord can claim for summary judgment, but to do that a lawyer must be hired and paid, and the interim elements of the bill that must be complied (including costly relocation of the tenant) which are very expensive. The State is not going to pay the landlord's legal bills or relocation bills.
4. To have this task force (which is not a task force as explained by Mr Tablada) report out on Dec 31, 2011 and already have a bill passed and supposed to be effective on January 1, 2012, is an incongruity. It reeks of "ramming something through before it was properly examined".

### **Recommendations:**

- A. Remove existing bill because it is premature. All aspects and possible actions of effective reduction have not been examined and formulated into legislation. The Current Bill as written is defective as well as being unreasonably financially onerous. A Bill must be written to repeal the current Bill.
- B. Include in the NEW Bill the following more reasonable and more positive Bill with reduction in costs to owners and more effective targeting of high incidence areas first:

(1) Lead dust testing to be done every five years in rentals and owner occupied residences that have a construction date of 1950 or earlier.

THERE IS 225% MORE INCIDENCE OF LEAD PAINT CAUSED POISONING IN OWNER OCCUPIED PRE-1950 BUILDINGS THAN IN PRE-1950 RENTALS. TO FOLLOW THE 80-20 RULE OF MANAGEMENT, THE FOCUS SHOULD BE ON “THE MOST BANG FOR THE BUCK WITH THE MINIMUM EFFORT“. (ref: MDE STATISTICS). ALSO, THIS WILL REDUCE THE COMPLIANCE COST TO OWNERS/LANDLORDS WHILE CREATING AN ATMOSPHERE THAT WILL GET MORE COMPLIANCE. THE FIVE YEAR INTERVAL WILL ALSO ALLOW MDE MORE TIME TO DO THE LARGE JOB MORE THOROUGHLY WITHOUT HAVING TO HIRE MORE PEOPLE.

(2) Registered properties SHALL submit a “Risk Reduction Plan” that incorporates Visual Inspections, no lead paint abatement on the exterior of the subject buildings, and written signed statements that state no pregnant women or children 6 years old or younger will occupy the premises.---as an alternative to the existing previous law.

**THIS APPROACH WILL CUT THE INCIDENCE OF LEAD PAINT RELATED POISONING TO ZERO IN RENTALS.**

(3) Baltimore and Allegany Counties have most of the cases of lead poisoning, so focus the MDE enforcement action is those two counties for at least 5 years. At the same time, all Maryland Properties 1950 and older should be placed on the roles and sent notices. This can be done by doing a search of the DAT Property Database. AGAIN, USING THE BEST MANAGEMENT PRACTICES, FOCUS ON THE BEST REDUCTION RETURN OF EFFORT EXPENDED.

(4) Change the fines. The \$500 per day and \$25,000 per day/incident are outrageous. The fact that the fine is determined by **agency subjective judgment is dangerous**. All conditions that may create the need for fines must be spelled out as a binary Or yes/no condition.

THE OUTRAGEOUS FINE AMOUNTS POSSIBLE WILL NOT STAND THE “REASONABLNESS” TEST IN JUDICIAL REVIEW OF LEGISLATIVE AND AGENCY MATTERS.

(5) All tenants that want to rent a house or apartment built on or before 1950 shall have a medical doctor sign a statement on their behalf that states according to physical examination and blood tests, the subject person/s has/have no lead poisoning as of a certain date( and the date must be within 30 days of signing lease).

THE ATTORNEY FOR THE LEGISLATURE STATED THAT IF AN OWNER IS COMPLIANT WITH THE LAW, THEN THEY CAN ASK FOR SUMMARY JUDGEMENT AND HAVE LIMITED LIABILITY. THAT DOES NOT MEAN THE COST TO THE LANDLORD/OWNER IS NOT HUGE BECAUSE THEY STILL HAVE TO HIRE AN ATTORNEY AND GO TO COURT AND DO DISCOVERY, ETC. WITHOUT CERTAINTY OF NO CLAIMS, THE STATE’S POSITION IS NOT TENABLE. ALL OF THE LIABILITY IS ON THE OWNER/LANDLORD. UNLESS THERE IS A DISCLAIMER FOR ALL TENANTS/OWNER OCCUPIERS, **THEN THE WHOLE LAW FALLS APART LEGALLY.**

(6) Owner Occupants of 1950 or earlier buildings shall be required to state that they have had a Visual Inspection with Lead Dust testing once every five years, that they are keeping their premises free from dust, and that they are aware of the

danger of lead dust accumulation of the floors and in windows.

THERE ARE OVER 200% MORE LEAD POISONING CASES IN OWNER OCCUPIED BUILDINGS. TO NOT INCLUDE THESE RESIDENCES IN THE LAW IS MISSING A MORE DAMAGING SEGMENT OF RISK. THE FIVE YEAR FREQUENCY WILL SAVE COSTS IN THIS DIFFICULT MARKET.

(7) Buildings that have been completely renovated (gutted and new wiring, new wall coverings, new wood trim and floor replacement or refinishing, by virtue of a statement by the owner/landlord and having had a permit to do such work from the local jurisdiction), are exempt for any XRF or lead sampling and are to be considered "lead free". Exteriors not totally reconditioned/lead remediated, then are placed in a limited lead free status. When the exterior is sometime in the future replace/wrapped or other wise covered over and not exposed, then the property becomes "totally lead free" without testing.

THIS WILL SAVE COSTS AND RULE OUT REDUNDACY.

(8) Fines for not being compliant with the lead paint laws of Maryland may only be administered if:

A. Owner/landlord fails to acknowledge need for correction based on a claim against the owner/landlord which contains medical evidence of lead Poisoning damages.

B. Owner/landlord has not communicated with MDE to show measures that have been taken based on documented evidence of a medical damage claim.

C. Owner failed to register property and failed to have 5 year lead dust samples.

D. Fines shall only be administered after a written response to charges has been received from the owner/landlord and an administrative hearing has been held with claimant and owner/landlord in an attempt by the government to Settle the claim before fines.

E. Maximum fine allowed to be adjudged by MDE/Maryland Agency is \$5,000 one time on any Study Group of apartments or houses. A fine schedule shall be created by MDE and approved by the legislature showing a graduated scale from \$100 to \$5,000, based on specific law element CRITERIA violated.

NO ADMINISTRATIVE FINE SHOULD BE SO ONEROUS THAT IT PUTS AN ENTITY OUT OF BUSINESS. THE GOAL OF THIS STATUTE IS TO REDUCE RISK, NOT RUIN PEOPLE AND THEIR BUSINESSES. LEAD PAINT WAS USED AND NOT KNOWN TO BE A RISK FOR OVER HALF A CENTURY. MANY HOUSES DO NOT MEET CURRENT CODES EITHER. NEITHER CAN BE MADE TO COMPLETELY UPDATE TO RID IT OF PAST BEST PRACTICES.

(9) MDE shall, once every year, submit a report on the status of the numbers of lead paint related poisoning cases by County to the Legislature and Governor. When 50% of the counties has lead paint poisoning cases at or less than 0.1% of population, then this law shall be terminated by the legislature action to pass a bill to remove this law.

**All good Bills eventually need to be closed out when they have served their purpose WHILE UNDERSTANDING THAT OUT OF COMPLIANCE BUILDINGS WILL EVENTUALLY ALL BE DEALT WITH.**

(10) All testing and remediation costs shall be directly subtracted from State Income Tax Returns to reduce the Income line.

THERE MUST BE A VERY STRONG AND POSITIVE INCENTIVE.

(11) MDE to conduct annual public awareness campaigns to keep the pre-1950 Residences dust free and clean with focus on children and pregnant women occupied buildings.

THE PUBLIC AWARENESS SHOULD INCLUDE SOME OF THE  
TECHNICAL DATA OF THE “WHY” AND THE “HOW” TO REDUCE  
LEAD POISONING RISK. THE GOVERNMENT ENFORCEMENT  
AFTER THE DAMAGE IS DONE IS THE OLD STORY OF THE BARN  
DOOR OPEN AND HORSE GONE AND THEN YOU DECIDE TO CLOSE  
THE DOOR.

The new bill needs to be debated and commented on after each phase of revision in the Assembly contrary to the last  
Bill’s sequence.

I will volunteer my time to research and draft as necessary.

Respectfully submitted for consideration:

Stephen H. Rogers  
139 Eastern Ave  
Annapolis, MD 21403  
443-871-5610

Distribution List:

Speaker Mike Busch  
Del MacIntosh, Del McMillan  
Attny Neimann  
Director Tablada  
Task Force Members  
Testifiers  
Capital Gazette

## ATTACHMENT 10

Date: November 15, 2011  
To: H. Tablada  
From: Michael Weisner  
Re: Lead paint laws

Two major events that have occurred within the past two years, which require a complete review and overhaul of Maryland's lead paint regulations.

The EPA's Renovation, Repair & Repainting Rule became effective in March, 2010. It applies to repair work performed in all pre-1978 homes, requiring trained workers to use lead safe work practices to ensure protection of the occupants. These regulations effect all pre-1978 dwellings, not just pre-1950 rental dwellings. Since this law impacts all properties which may cause lead poisoning, these regulations should reduce the incidence of lead poisoning even more than current Maryland law. This is evident in the fact that more than half of all new cases of lead poisoning now occur in owner occupied dwellings.

The second event impacting residential properties occurred last month when the Maryland Court of Appeals struck down the limited liability portion of Maryland's lead paint law. Without a cap on liability, investors in rental properties face unlimited liability for lead poisoning which may occur in their property. To put it mildly, this is a major deterrent to investing in pre-1978 rental property. Vacant, abandoned, and foreclosed properties are likely to result when owners are faced with the limited returns generated by investing in residential rental property, the decline in value of real estate in general, and the potential for being wiped out economically if a child is accidentally poisoned. Even the cost of defending a suit is likely to wipe out small investors, even if they win the case.

In light of these major changes, Maryland's Reduction in Lead Risk in Housing Act should be significantly modified. While the children in Maryland require protection, there is no need for having duplicate sets of regulations to comply with. If all properties must comply with the broader Federal statutes, then there is no longer a need for Maryland to require separate licensing of workers and supervisors, nor is there a need to register rental properties, since compliance with the EPA law is mandatory.

With the likelihood of investors bailing out of rental properties, to the detriment of neighborhoods and housing affordability, Maryland should adopt the EPA's regulations as their own, and make it a priority to enforce compliance with the EPA's regulations. If Maryland wishes to encourage investment in affordable housing, it needs to start to at least make it less cumbersome and costly to provide it. The Reduction of Lead Risk in Housing Act has been very successful, but now is the time to move on to a broader, more efficient way to prevent lead poisoning, so children in all properties, not just rental properties, have the protection they deserve.

## ATTACHMENT 11

Date: November 16, 2011  
To: H. Tablada  
From: Michael Weisner  
Re: Maryland lead paint regulations

A tremendous amount of time, money and energy has been expended to make Maryland homes lead safe since HB 760 was passed by the state legislature in 1994.

The number of children tested annually has risen from about 70,000 in 1995 to above 110,000 in 2010. The number of children with elevated blood lead levels has steadily declined from approximately 12,000 in 1995 to 531 in 2010. This results are truly amazing and should be a source of pride for all who have contributed to making this happen.

Given this substantial decline in lead poisoning in our state, and especially in Baltimore City, has any study been made as to the outcomes of this dramatic reduction in lead poisoning? The reason this huge effort was made was because "Exposure to lead can cause long-term neurological damage that may be associated with learning and behavioral problems and with decreased intelligence". (From the report "Maryland Plan to Eliminate Childhood Lead Poisoning by 2010".)

There should now be statistical proof of better outcomes for our children, given the 98% decline in lead poisoning cases, as well as the sheer number, which had been running in excess of 12,000 new cases a year, to now just above 500. There should be empirical proof that children, especially in Baltimore City (which had the highest concentration of poisoned children), have less neurological damage, and therefore, the far fewer instances of behavioral problems and learning disabilities. Given all the data that is available, it should be easy to demonstrated that these types of behavioral issues have declined in proportion to, and corresponding with, this decline in lead poisoning cases. Please let me, and the general public, know of any case studies that have correlated this data and reached a definitive conclusion. It would be very satisfying to know that all the work that has been done to reduce lead hazards has had a positive impact on our children's future.