

# ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



## Using the Resource Conservation and Recovery Act to Control Lead Hazards in Housing

Congress enacted the Resource Conservation and Recovery Act (RCRA) in 1976 to regulate the generation, transport, storage, and disposal of hazardous waste. Although RCRA has been applied primarily to hazardous waste generators and disposal facilities, EPA recently used the law to require property owners to address lead hazards in residential and commercial buildings. EPA's innovative use of the law highlights an untapped opportunity for citizens and advocates to force property owners to control lead hazards using RCRA's citizen suit provision.

### EPA Action Against Property Owners<sup>1</sup>

- In July 2000, EPA brought an action under RCRA Section 7003 (42 U.S.C. § 6973) to require former and present owners to control lead hazards at a 77 unit multi-family residential building in Washington, D.C. Section 6973 authorizes EPA to take action against any person who has contributed or is contributing to the past or present storage, handling, treatment, transportation, or disposal of hazardous waste that may present an "imminent and substantial endangerment" to human health or the environment. In its enforcement action against the property owners, EPA asserted that lead-based paint waste (paint chips and dust) constitutes a hazardous waste presenting an "imminent and substantial endangerment" to the health of the building's residents. EPA also alleged that the property owners contributed to the storage, handling, treatment, transportation, or disposal of lead-based paint waste by failing to maintain painted surfaces and allowing lead-based paint to accumulate at the property. In the Matter of 17<sup>th</sup> Street Revocable Trust, EPA No. RCRA-3-2000-001 (2000).
- In September 2001, EPA issued an order under RCRA Section 7003 to require property owners to control lead hazards at a commercial building in Fall River, Massachusetts. The building housed several businesses, including a dance studio whose clients were primarily children. In its order, EPA again asserted that lead-based paint waste (paint chips and dust) constitutes a hazardous waste presenting an "imminent and substantial endangerment" to the health of the building's tenants and children who may enter the building. EPA ordered abatement by a licensed lead-abatement contractor during which building access was to be restricted, followed by clearance testing. Order to Group I Management and M275, EPA No. RCRA-01-2001-0072 (2001).

---

<sup>1</sup> For a copy of these actions or for more information about the use of RCRA in lead hazard control efforts, please contact the Alliance for Healthy Homes.

More.....

### Citizen Suits Against Landlords

In addition to empowering EPA and relevant state agencies to enforce the law's provisions, RCRA authorizes citizens to sue violators. Based on EPA's approach, it appears that citizens can use RCRA to force landlords to control lead hazards. With no case law precedent, it is vital that cases be brought strategically, with strong facts and sympathetic judges. Before proceeding, a citizen interested in bringing a RCRA suit should consider the following:

- **Suing landlords under RCRA:** Under Section 6972(a)(1)(B) any person may pursue a civil action against a past or present generator, transporter, owner or operator of a treatment, storage, or disposal facility who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an "imminent and substantial endangerment" to health or the environment. This language mirrors the enforcement provision relied on by EPA in its action against the Washington, D.C. property owners. The Administrative Order in 17<sup>th</sup> Street Revocable Trust is not clear regarding the landlord's status as a generator, transporter, or owner of a disposal facility, but presumably owners of properties with deteriorated lead-based paint and lead dust hazards would qualify as generators and/or owners of disposal facilities.
- **Remedies available:** RCRA's citizen suit provision grants courts the power to order injunctive relief, civil fines, and court costs. In ordering injunctive relief, a court could require a landlord to remove the cause of an "imminent and substantial endangerment," i.e., the lead-based paint hazards. Courts also may order landlords to pay civil fines up to \$25,000 per day to the government. Plaintiffs cannot recover monetary damages, but courts can award them costs and attorneys fees if they prevail.
- **Notice requirement:** Before filing a complaint under Section 6972, citizens must notify EPA, the state, and the defendant of their intent to sue. In the context of a suit against a landlord for lead hazards, 90 days notice likely would be required because the suit presumably would be based upon the defendant's contribution to the past or present handling, storage, or disposal of solid or hazardous waste (a shorter notice period applies to suits alleging violations of RCRA permits and standards). Issuing a notice of intent to sue may itself prove to be a strong impetus for rental property owners to take corrective action. This puts the property owner on notice in a very powerful way and may prove to be a more effective lever for action than tenant complaints or reports to a code enforcement agency.
- **A private individual may be barred from suing under Section 6972 if the EPA is undertaking an enforcement action.** The individual may intervene as a matter of right if the disposition of the enforcement action may impair or impede her ability to protect her interest, unless EPA can show that existing parties adequately represent her interest.

*This paper should not be construed as legal advice.*