COMMON CAUSE GOES TO THE GRASS ROOTS

NEW JERSEY REPORTER

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State Struggles to Regulate Smelly Hogs

LEAD'S LEGACY

EFFORTS TO CLEANUP FALL SHORT

INSIDE STORIES

White Knights

Sometimes, funding is everything. Pinnacle Health Care Enterprises of Virginia had net losses of $4 million and loads of debt. Yet its president, Jack Mazur, a disbarred lawyer who had been charged with both securities and civil fraud, wore expensively tailored suits and drove top-of-the-line cars.

And right before the 1997 governor's race, state officials watched as Mazur's company effectively drove off with the assets of HIP-Health Plan of New Jersey, its health care centers and 200,000 patients.

Barbara Fitzgerald, a Statehouse reporter for the Associated Press, notes that Mazur and Pinnacle were a pair of unlikely "white knights" for an HMO that was losing money, but was not yet insolvent. But within a year after officials handed Pinnacle the keys, the financial condition of HIP-Health Plan of New Jersey had deteriorated so rapidly that it was clear the HMO was going to have to close its doors.

Fitzgerald's article focuses on the Whitman administration's decision to allow Pinnacle to take over HIP in what some lawmakers have characterized as a hasty move to stave off a messy HMO failure in the final stages of Whitman's reelection campaign.

She questions the state's failure to adequately investigate Pinnacle's background and impose adequate regulatory safeguards on the out-of-state firm.

Finally, she asks whether New Jersey state government might have been better off stepping in to take over HIP itself. That option was exercised by South Carolina this spring in an effort to avert the financial failure of an HMO that serves Medicaid patients.

Timing is also an issue in the campaign reform movement in New Jersey and nationally. Harry Pozycki, the outspoken "white knight" of New Jersey Common Cause, has drawn national attention with his grass-roots Citizen's Army and his efforts to push campaign finance and ethics ordinances through town councils and committees, *NJR* managing editor Richard Hartten points out.

Pozycki's town-by-town strategy represents a tacit admission that campaign finance reform has no chance of passage in the New Jersey Legislature. Thus comes [illegible] campaign finance reform finally appears to be making headway. Major campaign finance reform initiatives have been enacted in states like Massachusetts, Connecticut, Maine, Vermont and Arizona, and the Republican governors of New York and Wisconsin have proposed sweeping reforms.

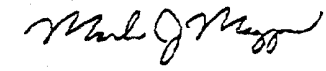
Ironically, the most outspoken proponent of campaign finance reform in the New Jersey Legislature in recent years has been Sen. John A. Lynch, D-Middlesex. Lynch and Pozycki just happen to be mortal political enemies. So much for natural alliances for campaign finance reform in New Jersey.

Our cover story opens with a conversation with Wayne Peters, an Irvington homeowner whose son recently became one of 2,071 children in New Jersey found to have elevated lead levels in their blood. But the story didn't end there for writer Lauren Otis. His reporting takes us inside the convoluted bureaucracy established to help residents protect themselves and their children from the insidious side effects of overexposure to lead.

While New Jersey led the nation in banning lead paint, our children continue to suffer permanent brain damage due to lead exposure. One problem is simply the age of our housing stock – more than 35 percent of New Jersey's housing stock was built prior to 1950, when house paint contained its highest lead concentration. Another is what Otis describes as "a dizzying array" of laws, regulations and programs governing lead screening, treatment and clean-ups.

The worst problem is found in Newark, where doctors sometimes keep children hospitalized for weeks waiting for their families to find a home that is not contaminated. And it's there, in New Jersey's largest city, where a solution may also be discovered.

Enjoy the issue.



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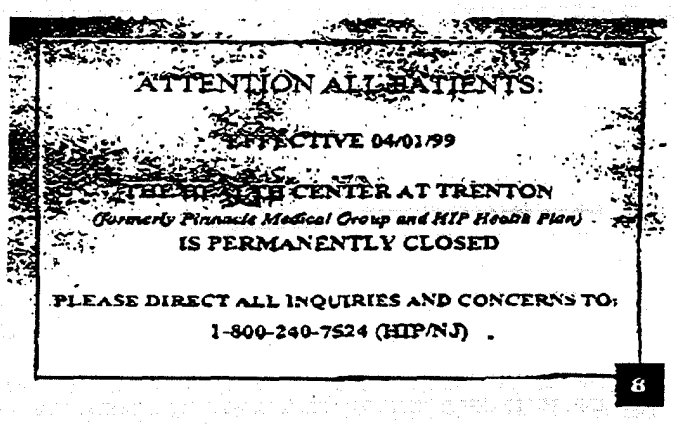

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LEAD CONTAMINATION: NEW JERSEY'S SILENT SCOURGE

Laws attacking lead contamination are strong, but enforcement and cleanup efforts fall short

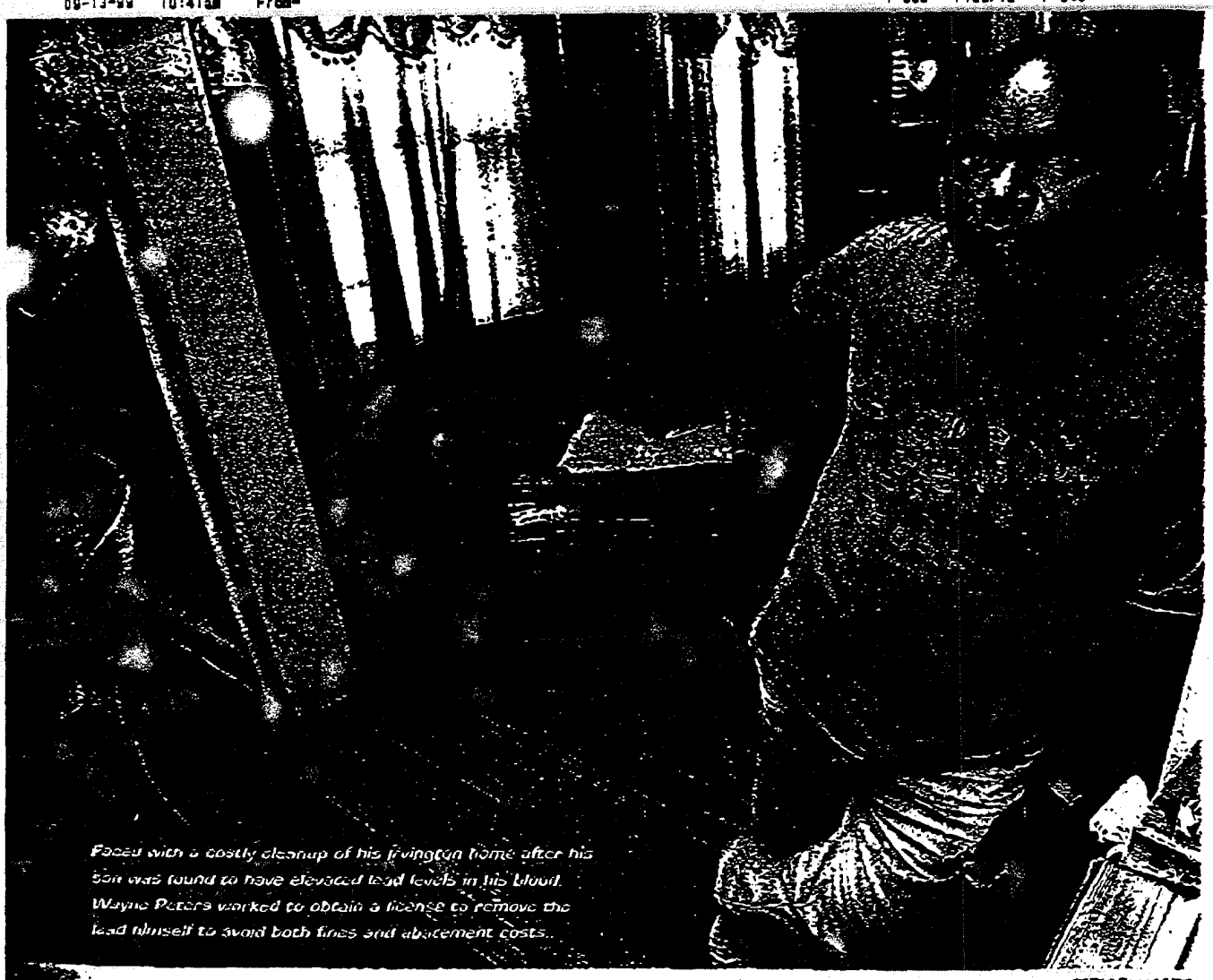
BY LAUREN OTIS

Wayne Peters knows about the cost of lead firsthand. For 10 years, he has lived in Irvington with his family in the top apartment of a two-family house he owns. In December 1997, his son Collin was found to have elevated levels of lead in his blood. The source was determined to be dust from the window moldings and sills in the apartment. Peters was faced with a costly decision — pay lead abatement contractors licensed by the state upwards of $7,500 to replace his 16 windows, or pay steep fines for doing nothing.

But Peters, who runs a modest carpet cleaning business and makes money on the side as a handyman, found a unique way out — he studied for and obtained his own official designation as a lead supervisor so he could do the work himself, at a fraction of the cost. He knows his creative solution is not an option for most. "Other people in my situation who cannot be handy and correct the situation themselves, they are left to the mercy of the system," he said, adding, "A lot of people can barely pay for the monthly water bill, now they have to pay $5,000 to get the lead out."

In the 27 years since a law banning lead paint in the state went into effect — six years prior to a national ban — New Jersey has assembled a dizzying array of laws, regulations and programs governing lead screening, treatment and clean-ups. Through the state Department of Health and Senior Services and Department of Community Affairs, New Jersey spends about $6 million annually, much of it obtained through federal grants, on identifying and combating lead poisoning and removing lead hazards. Many municipalities allocate money in addition to what they receive from the state.

While New Jersey's laws and regulations are among the most stringent in the country, pervasive lead hazards and thousands of continuing cases of children with unhealthy levels of lead in their blood around the state indicate evidence that progress has been far too slow. Critics fault the state for failing to make resources available to implement its laws, for a lack of coordination between agencies, and for being slow in



Faced with a costly cleanup of his Irvington home after his son was found to have elevated lead levels in his blood, Wayne Peters worked to obtain a license to remove the lead himself to avoid both fines and abatement costs.

translating policy initiatives and legislation into working programs. The result has been frustration — for homeowners, health care advocates and lawmakers.

Rep. Robert Menendez, D-13, has sponsored federal legislation along with U.S. Sen. Robert Torricelli to improve lead screening of children covered by Medicaid.

"Many laws in New Jersey are good, but it is the enforcement provisions of the law and the actual enforcement of the law that is important. That is where New Jersey has failed," said Menendez, who dealt with lead hazards first hand as mayor of Union City between 1986 and 1992.

"This does not have the priority that it should have," said Menendez. "Many resources are devoted to curing disease, and I am all for that, but here's one we know what the cure is...We could save a lot of children and save a lot of money, whether on medical care, special education or elsewhere, we pay in a variety of ways. We know how to cure it but we are not dedicating, at a local or a state level, the resources to bring it off."

Peters questions the existing program. "Why would somebody wait until somebody's kid has a high lead level before taking action, then they take severe action against the parents themselves?" he asked. "One of the things the government should do is have some incentive programs, to get the lead out of the house." But when he turned to Irvington officials for help, Peters said he was told no abatement grant funds were available.

Barry Payden, as Neighborhood Preservation Program Coordinator for the town of

Irvington, acknowledged that limited funds allocated by Irvington for lead abatement were not available for Peters and directed him to a lead abatement loan program at Summit Bank. Yet Peters found even the discounted loan terms too expensive. "It is a Catch-22. We have people who need to have lead hazards abated," Payden said. "Unfortunately, as a town we don't have enough money to assist each and every one of them."

Joan Luckhardt of the New Jersey Task Force on Prevention of Lead Poisoning said the legislature has done better than the agencies. "After more than 25 years of addressing this, since the seventies, it seems we could have done this better," she added.

Menendez called lead poisoning "the sleeper disease" because "unless you know about it, you don't know it is there lurking, you don't know that your child is at risk." Lead can do serious and permanent damage to a child's brain without obvious and visible symptoms. When lead is absorbed into the human body, it affects the blood, kidneys and nervous system, causing learning disabilities.

Unlike other public health problems, lead can do serious and permanent damage to a child without obvious and visible symptoms.

But there are signs that lead's sleeper status could change in the very near future. Borrowing from the states' recent successful legal strategy against tobacco companies, the attorneys general of a number of states are considering filing civil suits against lead paint and pigment manufacturers for compensation of the public health costs their states have incurred as a result of combating lead poisoning and lead paint hazards. Several cities, including Newark, are looking at suing lead paint manufacturers themselves, modeling their legal strategy on the high-profile suits many cities around the country have filed against both gun manufacturers and tobacco companies.

Jack McConnell, whose Charleston, S.C. firm Ness, Motley, Loadholdt, Richardson & Poole has been involved in the state tobacco litigation, has been working with the Rhode Island Attorney General's office on a suit against lead paint manufacturers, which, he said, should be filed by the end of the summer. Additionally, the firm has contracted with the City of Newark to draw up a lead industry suit on its behalf (see Newark sidebar). "Another 10 to 12 state attorney general offices have contacted us and asked us to investigate the possibility of filing suit against lead paint and pigment manufacturers," said McConnell, who declined to name the states.

Roger Shatzkin, a spokesperson with the New Jersey Attorney General's office said, "We have been in contact with the Rhode Island Attorney General's office on this lead issue. The Attorney General is beginning to be briefed about it, he has had some conversations with a couple of different people and essentially it is under review."

Paint and pigment companies maintain that their voluntary reduction of lead levels in paint in the 1950s showed a good faith effort to minimize potential health hazards, and that any lawsuits are without basis. But, those who want to hold manufacturers legally accountable say that, similar to tobacco companies, the paint manufacturers knowingly withheld from the public knowledge of the toxic effects of their products. Critics cite industry communications, and knowledge which already had resulted in leaded paint being banned in much of Europe by the 1920s.

Jeff Miller, executive director of the Sparta, N.J.-based Lead Industries Association, says there is case law going back 10 years in favor of the paint and pigment industry, with no conspiracies or withholding of information from the public having been proved. Regarding the possibility of a new round of state and city suits, Miller said, "There has been a lot of talk, and maybe that is the attorneys' way of drumming up business," but he notes that, so far, no suits have been filed.

Sen. Torricelli has co-sponsored federal legislation which would pave the way for the U.S. government to sue lead paint manufacturers.

In the United States, lead has been banned from all such uses, with the result that blood lead levels in the general population have been significantly reduced. But the metal still poses a threat because, once present, it never leaves the environment by natural means. And medical research has determined that lead can damage children at even low levels of exposure. Removing the accumulated lead from the environment has been deemed unrealistic because its pervasiveness would make the cost astronomical. William Connolly, director of the division of codes and standards in the New Jersey Department of Community Affairs and chairman of an interagency task force on the prevention of lead poisoning in New Jersey, said, "My own personal estimate is $50 billion in New Jersey to get lead out of the environment."

Don Ryan, executive director of the Washington, D.C.-based Alliance to End Child Lead Poisoning, said lead hazards in housing from peeling paint and paint dust eclipse all other sources of exposure. The best proxy for the presence of potential lead paint hazards is the percentage of pre-1950 housing stock in an area, said Ryan. Leaded paint was used until 1978, paint with the highest concentrations of lead was manufactured before the 1950s.

In New Jersey, 35.2 percent of the housing stock is pre-1950, well above the national average of 26.9 percent, making the state a major repository of lead paint and lead hazards, Ryan said. "Every county in the state has more than 10,000 housing units built before 1950," according to the state Department of Health and Senior Services in its fiscal year 1998 report entitled "Childhood Lead Poisoning in New Jersey." The DHSS report states, "Because lead-based paint and other lead-containing substances are present throughout the environment in New Jersey, all children in the state are at risk."

One of the many complicating factors about lead policy is, "It is a highly politically charged subject, there is an argument whether it is a medical or social problem," said Dr. Steven Marcus, who is affiliated with Newark Beth Israel Hospital and is director of the New Jersey Poison Information and Education System. As a result, "Everybody can stand there and point their fingers in the opposite direction," he added.

Roughly 10 percent of the state's lead poisoning cases occur in upper income areas, when people renovate old houses, ac-

Unlike other public health problems, lead can do serious and permanent damage to a child without obvious and visible symptoms.

cording to John Weber, lead program coordinator with New Jersey Citizen Action But, the attitude that the disease lurks only in poor, urban, minority areas of the state where older housing has be left to deteriorate still predominates, he said.

The mother lode of New Jersey's lead problem is in Newark. Frequently, that city's travails overshadow problems elsewhere in the state According to the state health department, in fiscal year 1998 Newark alone had 656 children with elevated blood lead levels, 32 percent of the total 2,071 children with elevated levels in the state. Essex County, which houses Newark, had 1,016 or 49.1 percent of the elevated cases And Newark's struggle against lead has been in the spotlight.

The "cure" for lead poisoning has two focuses: Treating children and abating (removing or sealing in) lead hazards where they live — called secondary prevention — and identifying and abating lead hazards before they poison children — called primary prevention. Although primary prevention is the ultimate goal, because of the resources it would require, most states including New Jersey have to date concentrated on the more realistic goal of secondary prevention

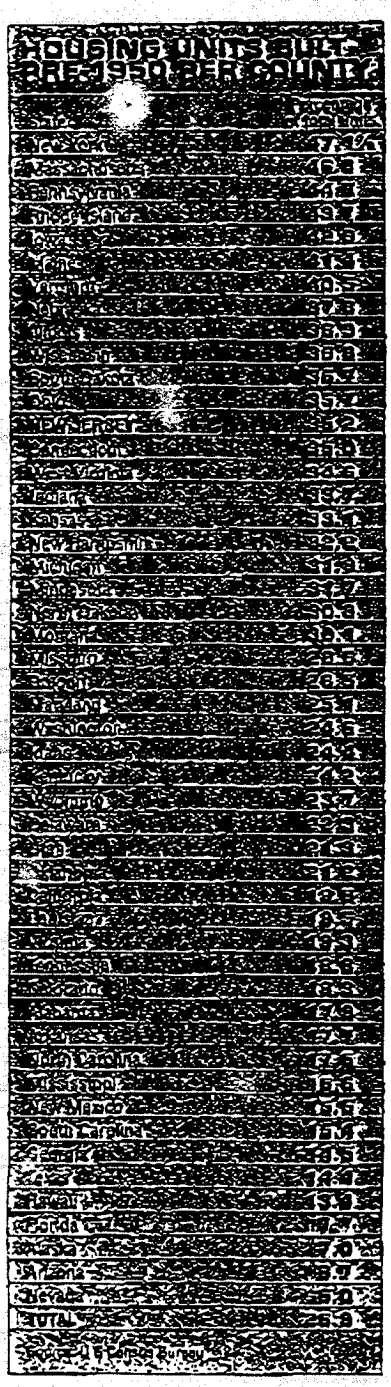
This doesn't sit well with those who observe and treat lead poisoning firsthand. "You need to prevent the problem before it happens," said Dr. Mofida Elsaify, director of the lead program at the University of Medicine and Dentistry of New Jersey in Newark. "Once you have lead poisoning it is irreversible." Dr. Elsaify said of the mental and physical impairments which result from children ingesting lead.

In American industrial society today medical experts assume that everyone has some lead in their body. In children younger than five, the U.S. Center for Disease Control currently considers a blood lead level above 10 micrograms per deciliter to be a "level of concern." New Jersey considers a blood lead level of 20 ug/dL or above to be an elevated level, requiring action by local health officials, although follow up testing and lesser action is required at levels above 10 ug/dL. Currently, the CDC states that even low levels of lead in a child's blood can result in permanent intellect reductions, emotional and physical problems requiring treatment or added attention, such as special education. At toxic blood lead levels, around 40 ug/dL or above, the only treatment is chelation therapy, a painful series of injections for leaching the lead out of a child's system.

Miller of the Lead Industries Association said too little attention is paid to how far

Lead Screening Laws Vary in Northeast

MASSACHUSETTS	
Percent of housing built pre-1950:	46.8
Reported children with blood lead levels exceeding 20 ug/dL (twice the federal standard):	823
Universal screening law:	Yes, for children under six
Lead level prompting investigation:	25 ug/dL
Dust-wipe test:	Not required
RHODE ISLAND	
Percent of housing built pre-1950:	43.7
Reported children with blood levels exceeding 20 ug/dL:	491
Universal screening law:	Yes
Lead level prompting investigation:	20 ug/dL
Dust-wipe test:	Required
NEW YORK	
Percent of housing built pre-1950:	47.1
Reported children with blood levels exceeding 20 ug/dL:	5,683
Universal screening law:	Yes, for children under six and pregnant women
Lead level prompting investigation:	20 ug/dL
Dust-wipe test:	Not required
PENNSYLVANIA	
Percent of housing built pre-1950:	44.8
Reported children with blood levels exceeding 20 ug/dL:	6,242
Universal screening law:	No
Lead level prompting investigation:	20 ug/dL
Dust-wipe test:	Not required
NEW JERSEY	
Percent of housing built pre-1950:	35.2
Reported children with blood levels exceeding 20 ug/dL:	2,071
Universal screening law:	Yes
Lead level prompting investigation:	20 ug/dL
Dust-wipe test:	Required



lead levels have improved in recent decades, and the industry's voluntary role in this success story. Noting that, currently, 4.4 percent of the children in America age five or under have blood lead levels at or above 10 ug/dL, Miller said that 10 years ago, 30 percent had levels at or above 10 ug/dL, and 30 years ago 75 percent did. "I'm in my forties. When I was a kid, everybody was above 10," he said.

"DHSS estimates conservatively that there are at least 6,000 children in New Jersey with elevated blood lead," its fiscal year 1998 lead poisoning report states, noting that early detection and prevention of lead poisoning for these children would result in potential savings of $7.8 million in medical costs and $20 million in public expenditures for special education.

New Jersey's record of passing laws to tackle its lead problem, as well as updating them when needed, has been a good one, said Kevin McNally, program coordinator, Childhood Lead Poisoning Prevention at the state Division of Family Health Services, an arm of the New Jersey Health and Senior Services Department. "We were certainly one of the first states to identify lead paint as a health hazard, and recognized it in passing a law in 1971," he added. "In New Jersey, what I would like to see done better is coordination between the health and housing sectors, particularly at the municipal departments."

A New Jersey law enacted in 1996 requires mandatory lead screening of all children in the state, at least twice, before they reach age six (previously, only children identified as at high risk were screened). If a blood lead level of 20 ug/dL or greater is found, the health department with authority over the child in question must, under Chapter 13 of the State Sanitary Code, send state certified lead inspectors to the child's residence to determine if a lead hazard is present. If a hazard exists, it must be abated by the property owner using state certified contractors, according to state mandated work practices. Local health officials are responsible for case management and ensuring that the abatement is completed.

Figures in the DHSS fiscal 1998 annual report on child lead poisoning indicate that the rapidity with which local officials are able to respond to lead hazards varies considerably. For fiscal year 1998, of 1,622 local health inspections required statewide due to elevated blood lead tests, 1,207 or 74 percent had been completed by the end of the fiscal year, June 30, 1998, according to the report. Of the 701 lead hazards found statewide, only 251 or 36 percent of abatements had been completed over the same period.

Of the counties with the highest incidences of lead problems for fiscal year 1998, Essex has completed 76 percent (624 of 826) inspections and 30 percent (94 of 316) abatements; Passaic has completed 82 percent (194 of 237) inspections and 46 percent (67 of 146) abatements, and Hudson has completed 52 percent (56 of 108) of inspections and 37 percent (17 of 42) abatements, by June 30, 1998 according to the DHSS. Other counties ranged from zero to 100 percent completion rates in both inspections and abatements.

New Jersey's rules were recently revised to incorporate up to date knowledge about lead hazard identification, such as the use of dust wipes for analysis, and only five other states in the country have a universal lead screening law for children on their books. John Weber of New Jersey Citizen Action, calls the screening and elevated blood lead level inspection/abatement requirements good, but like others in the state, has questions about their effective implementation.

The state Department of Health and Senior Services came under wide criticism earlier this year when the fiscal year 1998 report it released indicated that 13,596 children were screened the first year the universal screening law took effect, a dramatic drop from more than 17,000 screenings conducted in the prior year.

But McNally reports "a lot of misconception" about those statistics. The numbers did not reflect all the tests performed statewide, he said. The reported numbers included all state lab blood lead tests but many private labs reported only tests that turned up elevated blood lead levels, McNally explained.

"If private labs are reporting 1,000 elevated blood lead tests, that is the tip of the iceberg for all the tests they made, including those without elevated levels," McNally said (the fiscal year 1998 DHSS report lists 10,213 state lab tests, 85.5 percent of which had results of less that 10 ug/dL, and 3,383 private lab tests, 36.8 percent of which had results of less that 10 ug/dL). The problem will be resolved when a DHSS internet computer reporting system for labs that has been delayed is put in place this year, he said, and the DHSS annual report on child lead poisoning for fiscal year 2000 will be the first with complete reporting of testing data, as a result.

State Sen. Louis Bassano, R-Union, who sponsored the universal testing law in 1995

as well as an earlier bill setting lead abatement standards, said he pushed universal testing because the problem "is not just urban housing, it is where the housing is old." Old housing and lead hazards exist all over New Jersey, even in upper income suburban areas, and the only way to find them is through testing, he said. "I think you have to go with the universal testing first, until you find where the hot spots are," and then a more targeted approach can be pursued.

Bassano said he doesn't think further legislation is needed at present. Rather, "it is a matter of time, and lighting a fire under the Department of Health," as well as, perhaps, setting aside more money in the budget for lead programs, he said.

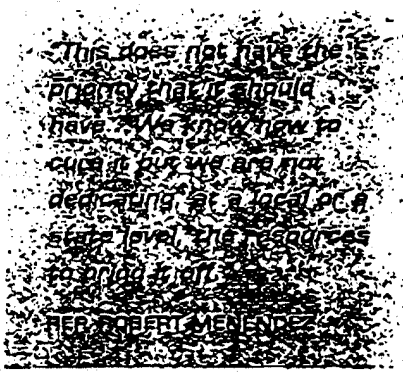
Yet, doubt remains over how close New Jersey can get to universal testing of its 600,000 to 700,000 children under age six. Noting that "screening is the one area where we could probably do the most good by doing better," Citizen Action's Weber says the change from fee-for-service health care to managed care has hamstrung the law since it was drafted.

"The HMOs will not pay the doctor to draw blood in their office, because they have this big contract with a lab. So, the doctor sends them to the lab, the lab isn't open at night, the lab isn't open on weekends and guess what happens? The child isn't screened for lead," said Weber.

Joan Luckhardt agreed, noting the need to make a separate lab appointment for a lead test, "whether or not you are poor, that is a lot to ask people to do, to find another time, take a day off, drag the kids to the clinic." Additionally, she said, rather than pay for one test before 18 months and one after, as required by state law, HMOs are "cutting the difference, doing one test at 18 months."

But Paul Langevin, president of the Association of Health Plans of New Jersey, said HMOs have less ability to alter physician behavior than people think. HMOs are well aware of the importance of screening for lead and the much higher costs down the road if a child with elevated blood levels isn't tested and identified, but many physicians "don't think screenings need to be done, when they may be necessary," he said.

McNally said the 1996 testing law incorporates no enforcement mechanisms for monitoring physician testing or for penalizing doctors who fail to test children for lead. "Some of the difficulties that have been encountered subsequently kind of confirms the sense that a lot of us had here that however well intentioned the law is, a physician mandate [for universal testing] without an enforcement mechanism — and there is no enforcement mechanism in the law — is difficult to achieve."



Dr. Wayne Yankus, a Midland Park pediatrician and immediate past president of the New Jersey Chapter of the American Academy of Pediatrics, said the NJAAP does not support the universal testing law, because it does not give doctors who do the testing any say and wastes valuable resources. The AAP does support testing targeted to high-risk areas, similar to CDC recommendations, he said. "In many, many practices we should test everyone, but where my practice is upper middle class — educated people who renovate and move out — it makes no sense to test universally," he added.

Of Bassano's rationale on first finding high-risk areas through universal testing and then targeting them, Dr. Yankus said, "Scientifically, that makes great sense, but who pays for it?"

He said the expense of abiding by federal blood handling regulations is why doctors don't draw and test blood in their offices. Doctors would test more for lead if the capillary, or finger stick blood lead test, that they can easily administer in their offices were more accurate, but it is not, he says, often resulting in false readings of elevated blood lead levels (in New Jersey, finger stick tests must be verified by a venous test involving drawing a full blood sample).

Because so many underprivileged children considered at high risk for lead poisoning are insured by Medicaid, the federal government requires that every child insured by Medicaid be screened by the states for lead. But a January 1999 General Accounting Office report found that states had a terrible screening record, managing to screen only 21 percent of Medicaid children for lead. The GAO findings were what prompted Rep. Menendez and Sen. Torricelli to sponsor legislation tying state Medicaid screening levels to a series of "carrots and sticks," as Menendez put it.

New Jersey ranked second highest in percent of Medicaid children who received a lead test, even though it screened only 39 percent, according to the GAO. Edward Rogan, a spokesman for the state Department of Human Services, which oversees Medicaid, said, "It looks like the compliance rates are coming up somewhat for lead screening. They are more like 45 to 50 percent."

In fiscal year 1995 Medicaid's medical service was moved from fee-for-service to managed care by the state, said Rogan. To remedy the situation, he said, "We will be building into our annual contract with HMOs a financial penalty for failing to screen children for lead." A 75 percent screening figure is the number which will likely be the cut-off, below which penalties will be levied, but details have not been fully worked out yet, he said. Screening every Medicaid child in New Jersey, as federal law requires, is the ultimate goal, but it would be unrealistic to be expected to go from 40 percent to 100 percent in one step, Rogan said.

Until a few years ago, New Jersey had no state program in place for helping homeowners and landlords with lead abatement. The state Department of Consumer Affairs received an initial $4.25 million grant from the U.S. Department of Housing and Urban Development in 1993 to start a program helping property owners conduct lead abatements as part of other renovations. The DCA received a second $6 million HUD grant in 1995, and is currently applying for a third.

Diane Kannane, supervisor of DCA's lead-based paint abatement program, says that although abatement of lead hazards is voluntary unless a child with an elevated blood lead level resides at a property, she has

found property owners receptive to DCA help in conducting proactive abatements.

Kinnane acknowledges that the DCA program can't hope to fully meet the need for lead work in the state. "There are 2.6 million housing units in New Jersey built before 1978. If we did modest work on those, say $10,000 a shot, that's a tremendous amount of money," she said. "We have to push a lot of the things that can be easily and effectively done," she added, such as pushing education and safe practices such as no dry sanding or burning of old paint in renovations.

"Right now, there isn't a tremendous amount of money out there to do lead work, and lead work in New Jersey is very expensive, as opposed to neighboring states," says Kinnane, because of the level of regulation in New Jersey, requiring certified contractors and state mandated work practices, like closing in the area where the work is done and cleaning up carefully afterwards.

Currently, "We are giving awards of about $200,000 to towns and counties, and with that they are doing eight to ten units. That doesn't seem like much but those are now ten lead-safe homes," Kinnane said.

The DCA has taken a long time to get even its current modest program going. "Our program really didn't get up and running until 1996," Kinnane said. "Compared to many of our state grantees, they have been one of the slower ones," said Ellis Goldman, director of the grant program in HUD's lead hazard control office. The New Jersey DCA's slow start can be explained by the fact that "they undertook a very ambitious program of involving their municipalities," and had to adopt legislation as well, said Goldman, adding, "Now that they are up to speed, we look forward to working with them."

To date, property owners have been pretty much on their own when it comes to paying for lead abatements. "Quite honestly, other than our funds, there hasn't been a lot of funding available to address the lead problem," Kinnane said.

Although property insurers are required to defend and indemnify property owners for liability in cases of lead poisoning in New Jersey, insurers routinely refuse to pay for lead abatement procedures, according to Steve Buch, a fulltime apartment owner and manager in Maplewood and board member of the New Jersey Property Owners Association. "I went through a lead abatement myself last year," he said. His insurer refused to pay any of the cost and then, this year, told him it was dropping him for lead liability coverage.

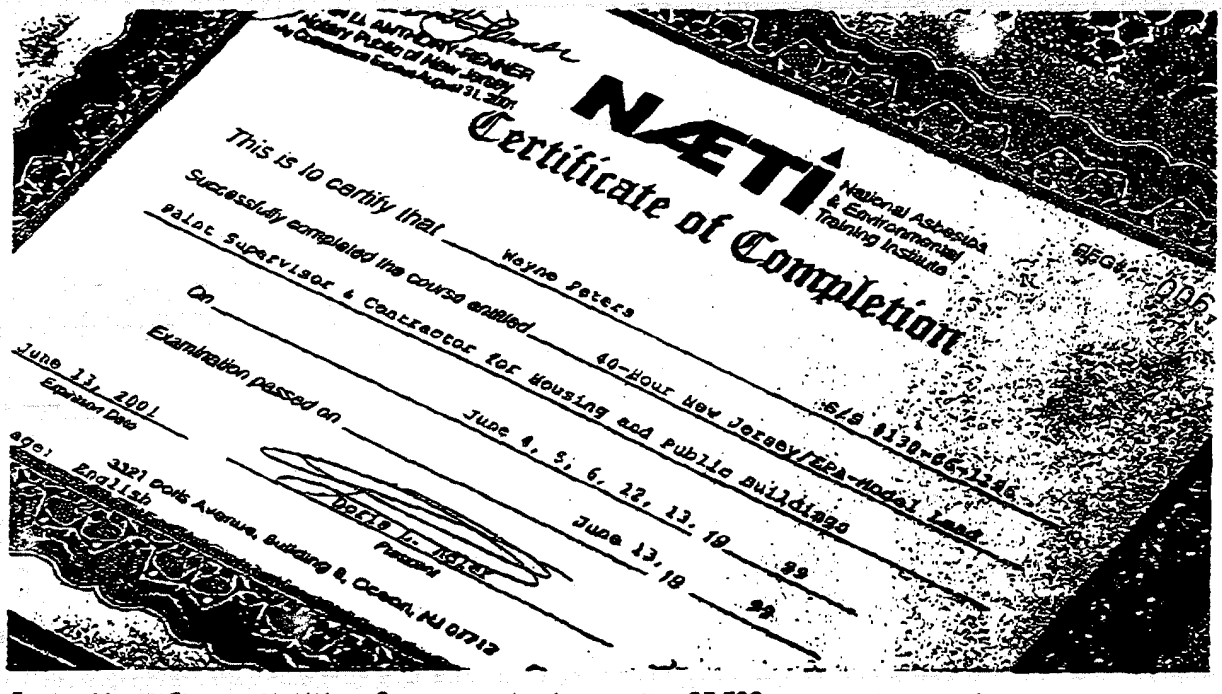
Buch said a new state law says, "If the owner proves the apartment is lead safe, according to the standards of the DCA, then the insurance carrier must offer him cover." The catch is, the state has yet to adopt lead-safe standards. "So, property owners are in a legal limbo," he said. He has had certain of his properties certified lead-safe by federal standards, Buch said, but there is no way of knowing whether New Jersey will ultimately adopt those standards.

The only private source of lead abatement funding in the state is the Summit Bank loan program as part of its Community Reinvestment Act obligation. The program started almost four years ago, when the bank was approached by Citizen Action, says Lewis Hurd, community development officer. Although it got off to a slow start, Hurd says Summit now makes three or four loans per month, averaging $9,000 to $10,000 each, and would like to increase the volume. Citizen Action's Weber said, "I am absolutely convinced that through that program we have gotten abatements to happen which would not have happened under any other circumstances."

New Jersey did convene an inter-agency task force several years ago, to look at ways the state could implement federal recommendations for primary prevention. The task force, disbanded this year, consisted of representatives from government, advocates for lead poisoning prevention, land-

CHILDREN WITH BLOOD LEAD TEST PERFORMED BY N-J-S-P-H-L LABORATORY, BY COUNTY

County	Percent exceeding 10ug/dL	Percent exceeding 20ug/dL
Atlantic	6.2	0
Bergen	1.3	.5
Burlington	3.7	.4
Camden	25.0	9
Cape May	11.9	.7
Cumberland	22.6	9.2
Essex	38.8	15.7
Gloucester	6.2	0
Hudson	18.3	1.7
Hunterdon	11.8	.9
Mercer	15.9	2.9
Middlesex	8.1	.8
Monmouth	5.6	.8
Morris	15.6	0
Ocean	2.4	.5
Passaic	17.6	3.4
Salem	10.1	.9
Somerset	10.5	0
Sussex	3.2	.6
Union	12.8	.7
Warren	3.7	.4
Total	14.5	2.8



Earning that certificate enabled Wayne Peters to avoid paying more than $7,500 to have lead removed from his Irvington home. Failing to remove the lead would have resulted in steep fines.

lords, attorneys and insurance companies, and was chaired by William Connolly, the DCA's director of the Division of Codes and Standards.

Connolly said that, ultimately, there was no agreement by task force members on policy recommendations, but that there was enough common ground to draw up a state strategy "to put together a system that would prevent rather than respond to childhood lead poisoning."

First, according to Connolly, it was agreed that owners of property built before 1978 should undertake essential lead-safe maintenance practices, including regular inspections, repairs and education of residents. For pre-1950 property, more rigorous dust wipe testing and lead-safe clearing should also be done, Connolly said. The practices would be included as part of the housing code, and enforced through inspections by state and local authorities, he said.

An "opt out" provision was drawn up, under which landlords who demonstrate that their property is lead-free, or draw up a custom lead-safe plan that receives housing approval, may avoid the maintenance procedures, Connolly said. Although many on the task force thought the opt out provisions gave flexibility to the guidelines, representatives of the property industry did not support them, wanting the state requirements to only target areas which research had shown had significant lead hazards, he said.

Additionally, access to insurance was examined, with recommendations for insurers to be required by the state to provide at least limited coverage for liability and expenses related to lead exposure and clean-up (such as relocation of tenants) for property owners who "self-certified" that they abided by the aforementioned lead maintenance practices and abated according to state rules, Connolly said. He noted that, to date, insurers appeared not to have declined to write lead liability on a wide scale in New Jersey, as they have in other states, but added, "I don't know if that situation is going to last."

The last piece of the puzzle addressed by the task force was the setting of appropriate practices for everyday routine housing maintenance and repair work, covering the proposed ban on dry sanding and burning off paint with a torch, plus containing and collecting dust and work refuse, and disposing of it appropriately, says Connolly.

The next step is to put the task force recommendations into the housing code, which, Connolly said, can be done through administrative rule making rather than legislation. He said, "We have not established a schedule for beginning the rule-making process." Other task force recommendations, such as a statewide lead-safe housing registry and a compensation fund of last resort for victims of lead poisoning who have no access to insurance to pay medical and other expenses, will require legislation.

The solutions are all complicated, time-consuming and expensive, but there seems to be no other way. "If there were easy answers," Dr. Marcus said, "There would be no lead poisoning anywhere."

Lauren Otis is a journalist based in Trenton.

NEWARK SEEKS

The City of Newark is, without doubt, the area of New Jersey most ravaged by lead poisoning. It houses 3 percent of the state's population and has nearly 33 percent of the cases of elevated child blood lead levels. Essex County, which encompasses Newark, accounts for almost half of the elevated blood cases in the state. Fifty-one percent of Newark's housing stock was built before 1950, when lead concentrations in paint were highest. With the busiest highways in the state passing through it and a history as a home to heavy industry, Newark for years received additional environmental lead from manufacturing and leaded gasoline exhaust fumes.

For years, Newark has been equally incapable of summoning the resources to effectively fight back against lead hazards within its borders, which is why the City of Newark was one of the first to give notice that it intends to sue lead paint and pigment manufacturers to recoup current and future costs borne by Newark in cleaning up lead-based paint, industrial lead, and caring for those poisoned by it.

On June 16, 1999 the Newark City Council adopted a resolution to hire the law firm Ness, Motley, Loadholt, Richardson & Poole to draw up a lawsuit against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., Fuller-O'Brien, American Cyanimide Co., N.L. Industries, ARCO, The Lead Industries Association and any other lead manufacturers, successor companies or their insurers. Ness, Motley, a Charleston, South Carolina-based firm, has also been retained by the Rhode Island Attorney General's office to draw up a suit against lead paint and pigment manufacturers. The firm played an important role in tobacco industry litigation initiated by state attorneys general that resulted in a $240 billion settlement, and has also been involved in extensive civil litigation against manufacturers of asbestos products.

The Newark resolution states that with "staggering" problems and costs resulting from lead poisoning, and "permanent and devastating health problems for the children of the City of Newark," coupled with the fact that "the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in Newark," that "the City of Newark has decided to take action by instituting suit against the lead industry."

Ness, Motley and a local West Orange law firm Gordon & Gordon, have been retained on a contingency basis by Newark and will be paid 25 to 30 percent of the net amount of money collected from the suit, according to a contract drawn up by the City Council on June 15. They will litigate as the "City of Newark Lead Litigation Group."

Jeff Miller, executive director of the Lead Industries Association in Sparta, N.J., says he wasn't aware that Newark was preparing to file a lawsuit. He says until the city actually files one there is no reason to respond.

Several other cities are reported to be also looking at the possibility of suing lead paint manufacturers including Providence, R.I., Buffalo, N.Y. and New York City. Only the Rhode Island Attorney General has publicly stated that he intends to sue lead paint manufacturers, although Jack McConnell a Providence-based partner with Ness, Motley, says up to 12 other states have approached his firm about such a suit.

Repeated attempts to get comment on the suit, or on other aspects of Newark's lead problem, from the Mayor Sharpe James' office, including from Catherine Cuomo-Cecere, his Health and Human Services director, were unsuccessful. City Council President Donald Bradley also did not return repeated messages left at his office.

Much of the focus on lead poisoning in New Jersey has been on Newark, and over time the picture that has emerged has not always been a flattering one. Most recently, it was disclosed that Newark is down to a single certified lead inspector to cover its hundreds of lead hazard inspections and follow ups.

"That needs to change and quick," says John Weber, lead program coordinator for New Jersey Citizen Action. "There is no way one person can investigate the hundreds of new lead poisoning cases that emerge every year in Newark."

Cuomo-Cecere told the *Newark Star-Ledger* in June that the city "has experienced difficulty in recruiting" inspectors.

"Our position is to be encouraging Newark to make improvements based on our recommendations rather than highlighting their inadequacies," says Kevin McNally, program coordinator, Childhood Lead Poisoning Prevention with the state Division of Family Health Services. McNally says about $500,000 of the state health department's $2 million in state and federal funding for lead programs goes directly to Newark.

A SILVER BULLET

Newark also has received criticism for its lack of lead safe houses where children with elevated lead levels and their families could reside while their residence was abated. Around 1994 Newark received special HUD appropriations totaling over $1 million to build safe houses.

But, today, Newark has three safe houses with two dwelling units in each, which "is not enough," says Dr. Mofida Elsarty, director of the lead program at the University of Medicine and Dentistry of New Jersey in Newark. Dr. Elsarty says she has children who have been treated for lead poisoning in the hospital and are ready to be discharged but, "I have nowhere to put them after, their house is still filled with lead. Maybe a child is ready to be discharged from the hospital after five days but they stay there three or four weeks because we are looking for a home for him," she says.

Dr. Steven Marcus, affiliated with Newark Beth Israel Hospital and director of the New Jersey Poison Information and Education System, concurs. "We've got one kid in the hospital right now who has been here for over a month" because there is no housing or foster care to put him in, says Dr. Marcus.

"Newark is really a good example of the difficulties of coordinating services," says Dr. Marcus. Newark's situation highlights all the social as well and administrative difficulties of grappling with lead poisoning, where poor families and officials working with them are dealing with numerous other problems in addition to a poisoned child, he explains. "Newark doesn't exist because the poor families move all over, kids bounce all over the place that we treat," says Dr. Marcus, adding "I try to think of Newark as the greater Newark area."

Newark recently signed a contract with Beth Israel for Beth Israel affiliated nurses to help the city coordinate case management of lead poisoned children, says Marcus. McNally says this has resulted in "progress being made but there is certainly a lot more to be done."

Marcus says Newark officials "need to get out to the community, we need to be going almost door-to-door to educate people. Such education efforts can be as effective as medical intervention, teaching people how to keep their house clean, control lead dust."

In December 1997 Newark's health department, with state help, established the Newark Partnership for Lead Safe Children, to reach out to community groups, social service agencies, and other interested parties to begin to bring about a coordinated, collaborative approach to lead poisoning. Newark offers free lead screenings to residents. But all programs require funds and Newark's limitless need for money to grapple with its lead program is universally acknowledged. According to the Newark Partnership for Lead Safe Children, in fiscal year 1997 the city provided follow-up services for children with lead poisoning to a total of 3,224 children.

Ellis Goldman, director of the division of program management in HUD's office of lead hazard control, says Newark has applied in years past for direct grants from HUD for lead abatement, but has not been awarded any money (the special appropriation Newark received for creating lead safe houses was not part of the grant program and was attached by a member of Congress, Goldman says). Goldman says he cannot comment on why past Newark grant applications were turned down or on the status of a current HUD grant application the city has pending. HUD does factor in organizational expertise, soundness of approach, effective implementation and coordination as well as need when awarding grants, he says.

Suing the lead industry is an even bigger question mark at this stage. Old lead paint manufacturers have fended off attempts to hold them legally responsible for lead paint in the past, arguing that prior to bans on lead paint in 1978 (1972 in New Jersey) they withheld no damaging information about lead's toxicity, and there is no way to tie specific manufacturers to the anonymous coats of paint on old house walls. But a "market share" legal strategy —holding paint manufacturers responsible in proportion to their market share at the time — has made some headway in recent years.

— Lauren Otis

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