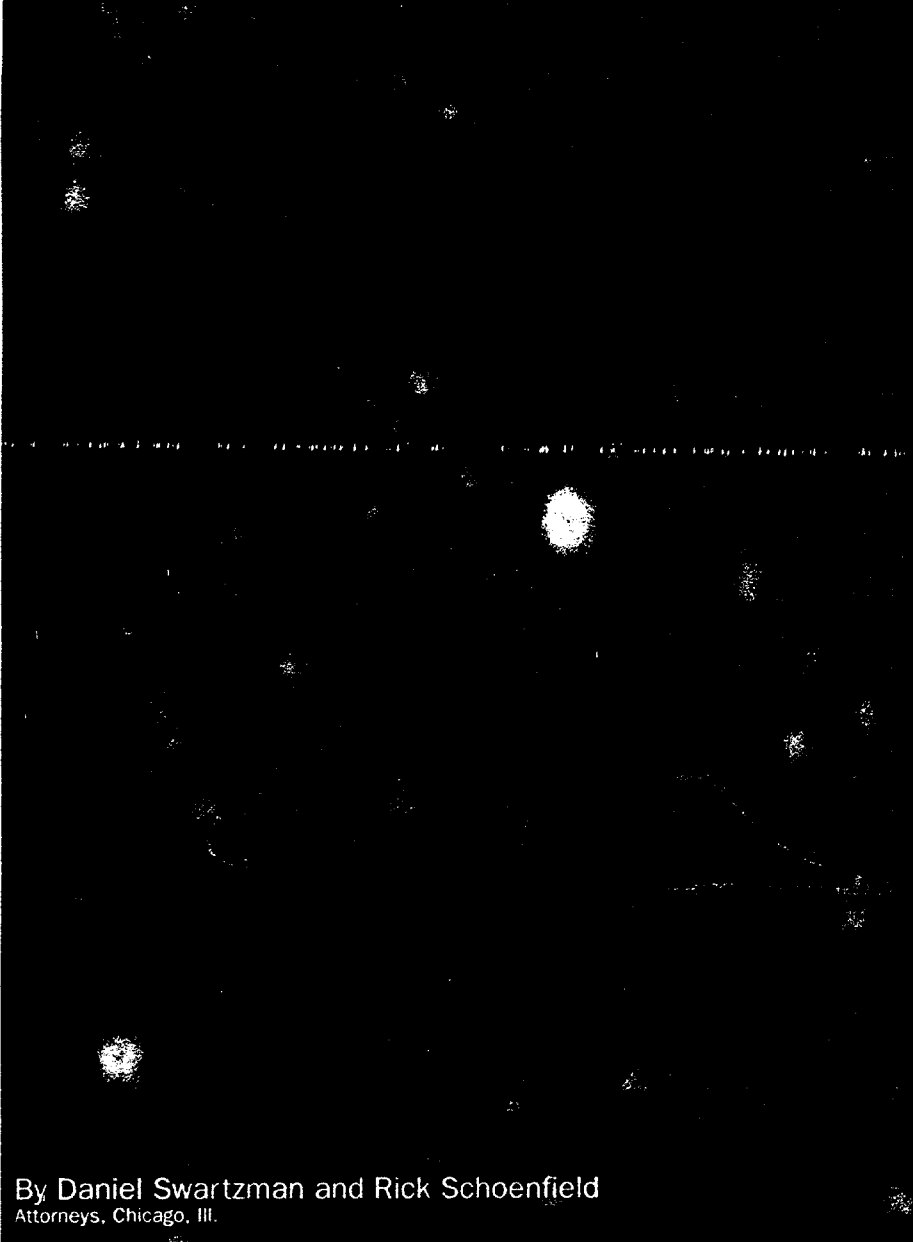




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Laws and regulations aimed at decreasing health dangers from lead in the environment are nothing new. European countries banned the use of lead in residential paint in the nineteenth century, and states around the U.S. followed suit a number of decades ago.

Of course, the U.S. Occupational Safety and Health Administration (OSHA) has, since 1978, had "general industry" regulations designed to protect workers from excess lead exposure in facilities where it is present in the workplace. These standards, however, do not apply to single-family homes or to the construction activities in residential and industrial property that might produce excess lead exposures.

Federal and state laws and regulations, usually aimed at lead in already-applied residential paint, have been developing rapidly in the last few years. However, the newest federal law on lead-based paint, the Residential Lead-Based Paint Hazard Reduction Act of 1992, promises to produce a nationwide program of technological mandates and worker protection standards, training requirements, lead disclosures upon property transfer and public information and awareness. And even though the name of this new law focuses on residential lead-based paint, the programs it establishes will also apply to employers.

The new law is commonly referred to as "Title X" because it was the tenth section of the Housing and Urban Development Act of 1992. It establishes sweeping federal response to preventing poisoning from lead-based paint. Its provisions mandate action by several organizations including:

- ▼ SHA
- ▼ HUD
- ▼ EPA
- ▼ National Institute of Occupational Safety and Health
- ▼ National Institute for Environmental Health and Safety
- ▼ U.S. Agency for Toxic Substances and Disease Registry
- ▼ U.S. Department of Health and Human Services
- ▼ Centers for Disease Control
- ▼ public housing authorities
- ▼ Indian housing authorities and
- ▼ the General Accounting Office

Technological Mandates and Worker Protection

Abating lead-based paint is still a relatively new industry without universally accepted work practices or technological approaches. Title X gives the EPA until early 1994 to produce guidelines for controlling lead dust and worker exposure from painting and remodeling activities.

develop an interim standard for protecting construction workers from exposure.

This standard will likely include a permissible exposure limit, allowable blood lead levels for workers, work practices, appropriate engineering controls, respiratory protection requirements and record-keeping mandates. Title X also authorizes establishing a national laboratory certification program so that labs analyzing materials for the presence of lead will have to demonstrate proper analytical techniques and quality assurance programs.

The law sets out how lead inspections and abatement are to be conducted in federally owned housing. It also enacts a new title of the Toxic Substances Control Act on "Lead Exposure Reduction" under which federal regulations on appropriate abatement techniques and controls will be promulgated.

Training Requirements

Currently, most people performing lead inspections, designing lead abatement jobs, or doing abatement contracting do not have to be formally trained in this work, although a few states do have such requirements. Title X sets up a national program for establishing a formal certification program on lead inspections and abatement. It mandates the EPA to establish a model training program, similar to the Model Accreditation Program developed in 1987 for dealing with asbestos in schools.

Part of the EPA's responsibilities will be to make sure that lead-based paint activities are conducted only by certified people who have received formal training from an EPA-approved training center. This requirement applies to inspections, deleading, paint abatement, lead removal and demolition of residential property and public buildings built before 1978, commercial buildings, bridges and any other structure or superstructure.

The EPA has designated five lead-training consortia around the country to offer its four current courses. These courses are:

- ▼ Lead inspection.
- ▼ Lead project design
- ▼ Abatement contractor/supervisor.
- ▼ Lead abatement worker.

Presumably, the model program will be similar to the EPA-approved curriculum. Again, following the intent of the law, it is likely that the EPA will establish the training

program and then delegate it to states for implementation.

Disclosure on Transfer of 'Target Housing'

The Residential Lead-Based Paint Hazard Reduction Act mandates disclosure of lead information on the transfer of any target housing, defined as residential property built before 1978. This covers single-family and multiunit dwellings, including apartment buildings. (Housing for the elderly and for the disabled is exempted, unless children are routinely present.)

EPA and HUD have been given two years (from November of 1992, when the law was signed) to develop regulations implementing this disclosure requirement. Sellers and landlords will not be required to test for lead, but they will be mandated to disclose in writing what they know about lead in the housing. Therefore, if a property owner finds out about the presence of lead by virtue of a test conducted by a prospective purchaser, all future buyers must be told of the inspection's results.

The contract for sale and the lease will have a 10-day "contingency clause" allowing the purchaser or lessee to have the property tested for lead and giving them the opportunity to withdraw from the deal if it is found. The potential seller, or landlord, must give the other party a copy of the "Lead Hazard Information Pamphlet" that will be developed by the EPA.

This disclosure requirement, coupled with mandatory blood screening programs being implemented around the country, are likely to make lead inspections and concerns an integral part of virtually every noncommercial real estate transaction within the next couple of years.

Public Information and Awareness

Implementation of the worker protection and the training requirements of the law might have some impact on public awareness of lead contamination problems. The disclosure on transfer requirement will stimulate such interest as it is designed to do. In addition, Title X mandates that a nationwide public awareness and education campaign be implemented by EPA.

All of these programs combined will have less impact on public attention to lead poisoning issues than will mandatory screening programs aimed at young children. For instance, the CDC has been the primary force in making children's blood lead levels a national issue. The program is

before entering elementary school, day care or nursery school. During the program's first three months, over 6,000 children were identified with elevated blood lead levels. And this does not take into account the hundreds of thousands of children who will be tested this fall before entering school. Media coverage of the expected results from later summer's testing should provide an extraordinary stimulus for public awareness.

Title X requires that the federal government conduct a number of studies on things like insurance availability, lead measurement and abatement techniques and health effects. These will also add to growing public awareness and concern over childhood poisoning from lead-based paint, soils, drinking water and plumbing fixtures.

As more poisonings are found, the likelihood of toxic tort lawsuits will increase dramatically. Title X encourages enforcement of its provisions by setting out public and private enforcement mechanisms. This holds out the possibilities of winging parties in private enforcement actions being awarded attorney fees and treble damages.

While it is too soon to predict a repeat of the asbestos litigation deluge in the lead litigation, it is not hard to imagine how mandatory screening programs, new federal disclosure regulations and awareness programs under Title X and new state laws and regulations could lead to a substantial number of lead-related tort cases. Everyone involved in a lead-related industry would do well to keep track of these developments and consult with counsel to engage in a preventative law program that can prevent or minimize future liability.

At a minimum, this program should audit past or present practices that might incur liability and compare regulatory developments with current standards and practices that might give rise to future liability. It also should analyze alternative measures to current practices and institute a thorough record-keeping program to establish bona fide movement toward protecting the health of workers, consumers and the public.

Everyone involved will need to monitor developing regulations and programs under the Residential Lead-Based Paint Hazard Reduction Act and watch for complementary, or possibly conflicting, court rulings. Title X is the newest law to hit the books addressing lead poisoning, but it certainly won't be the last.