
More Urgency Needed to Fix Lead-Based Paint Hazards

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A report by the Office of the District of Columbia Auditor



Audit Team

Jennifer Bianca Browning, Auditor-in-Charge

Will Perkins, Analyst

Toya Harris, Audit Supervisor



Office of the District of Columbia Auditor

Kathleen Patterson, District of Columbia Auditor

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Executive Summary

Why ODCA Did this Audit

This was a discretionary audit conducted following media reports of lead-based paint in public housing and reports that children had been poisoned in homes approved by District of Columbia Housing Authority (DCHA) inspectors. ODCA audited DCHA and the Department of Energy and Environment (DOEE) for their compliance with and enforcement of local and federal lead-based paint exposure laws.

What ODCA Found

The audit found DCHA's response to its contracted lead risk assessments—a major initiative of the agency—suffered from poor execution. DCHA failed to clear units and common areas with identified lead-based paint hazards within time constraints and in roughly 1/4 of cases tested, did not provide evidence of lead-based paint interim controls work having been completed. Additionally, DCHA addressed only about half of its lead-related tenant complaints within time requirements and with proper documentation. DCHA also failed to comply with federal annual and unit turnover inspections requirements.

DOEE's submission of language to the Council of the District of Columbia (D.C. Council) adding explicit reference to DCHA in the Lead Hazard Prevention and Elimination Act is a promising step toward providing residents living in DCHA-owned public housing the same protection from lead-based paint hazards that other District residents currently have. DOEE responded promptly to lead-based paint complaints and if a lead hazard was identified, also issued the first Notice or an Administrative Order in a timely manner. Nevertheless, we found that DOEE's subsequent enforcement process was slow and failed to secure lead remediation in half of cases sampled during the audit scope.

What ODCA Recommends

DCHA should enforce the Lead Safe Housing Rule and the Lead Hazard Prevention and Elimination Act, including:

- Develop a plan to remediate remaining lead hazards identified during the 2018 risk assessment.
- Stabilize any reported deteriorated lead-based paint within 30 days.
- Conduct visual assessments for deteriorated paint every twelve months.
- Provide tenants at risk with a clearance report issued within the previous 12 months.

DOEE's Lead-Safe and Healthy Homes Division should improve its enforcement process, including:

- Request action to clarify the law to start enforcing lead remediation in public housing.
- Establish internal deadlines for each step of the enforcement process to reduce delays.
- Enforce deadlines for requesting extensions.
- Use authority to remediate lead hazards and issue liens, deny permits, issue multiday fines, and collaborate with other agencies as needed when an owner does not comply.

Background

The Health Risks of Lead-Based Paint

While the District had unsafe lead levels in drinking water in the early 2000s and the Flint, Mich., crisis received recent national attention, lead-based paint is the most common source of lead exposure to children.¹ Lead is a naturally occurring neurotoxin and was once a popular additive to paint. Although the U.S. Consumer Product Safety Commission (CPSC) banned the residential use of lead-based paint in 1978, existing lead-based paint remains a major source of lead exposure and poisoning. An estimated 35% of housing units nationwide have at least some lead present.² Lead-based paint hazards are more severe in older, dilapidated housing and the District has a particularly old housing stock. Eighty percent of all residential properties³ and at least 96% of conventional public housing units were built before 1978.

Lead poisoning occurs most commonly through the ingestion of lead-contaminated surface dust, which may not be visible to the naked eye. While intact lead-based paint with no dust is not in itself a cause of lead exposure, deteriorated lead-based paint that is chipping, peeling, or cracking can be hazardous if the paint or resulting dust is ingested.

There is no safe level of lead exposure for children or adults. Lead exposure in high doses in young children has been linked to brain and nervous system damage, slowed growth and development, and problems with hearing and speech. The Centers for Disease Control uses a “reference level” of five micrograms per deciliter ($\mu\text{g}/\text{dL}$) to identify the highest 2.5% of childhood blood lead levels. Even relatively low blood lead levels (less than 5 $\mu\text{g}/\text{dL}$) have been associated with decreased academic achievement, attention-related behavior problems, and antisocial behaviors. The prevalence of elevated blood lead levels is not uniform across groups; blood lead levels for Black and low-income children have been found to be higher nationwide, compared to white children and those living at or above the poverty line.

Rather than waiting to treat those who are poisoned, the American Academy of Pediatrics emphasizes “primary prevention” to reduce or eliminate the myriad sources of lead in a child’s environment to prevent lead exposure in the first place as the “most reliable and cost-effective measure to protect children from lead toxicity.” Children can still live safely in homes and apartments with lead-based paint if it is kept stabilized and well-maintained.

1 American Academy of Pediatrics. “Prevention of Childhood Lead Toxicity”. *Pediatrics*. 2016;138(1):e20161493, see <https://pediatrics.aappublications.org/content/138/1/e20161493>

2 U.S. Department of Housing and Urban Development, “American Healthy Homes Survey: Lead and Arsenic Findings”, published 2011, https://www.hud.gov/sites/documents/AHHS_REPORT.PDF.

3 National Center for Healthy Housing. District of Columbia 2019 Healthy Housing Fact Sheet, see https://nchh.org/resource-library/fact-sheet_state-healthy-housing_dc.pdf

The District’s Lead-Based Paint Law

The Lead Hazard Prevention and Elimination Act of 2008⁴ is the District’s “primary prevention”⁵ law meant to reduce the risk of exposure to lead-based paint hazards. The law requires that dwelling units, common areas of multifamily properties, and child-occupied facilities constructed prior to 1978 be maintained free of lead-based paint hazards.⁶ The law also requires that, upon reasonable belief that there is a lead-based paint hazard in a dwelling unit, accessible common area, or child-occupied facility constructed before 1978, the Mayor shall take action which may include a risk assessment, clearance examination, or visual examination of the relevant property.⁷ The Mayor may order property owners to perform any action considered necessary to protect the health and safety of occupants.⁸ The Department of Environment and Energy (DOEE) has been delegated authority to enforce this law.⁹

Public Housing and the Lead Safe Housing Rule

In 1999, the U.S. Department of Housing and Urban Development (HUD) published the Lead Safe Housing Rule¹⁰ (LSHR) as directed by the federal Residential Lead-Based Paint Hazard Reduction Act of 1992¹¹, also known as Title X. The LSHR consolidated requirements for lead-based paint disclosure, evaluation, and hazard reduction activities for all federally owned or assisted target housing, that is, units constructed before 1978 not reserved for the elderly or persons with disabilities. All public housing authorities were required to conduct lead-based paint evaluations no later than September 15, 2000, and if lead-based paint was found, complete lead risk assessments to identify any lead hazards in all multifamily residential property before March 15, 2002.

Since these risk assessment requirements were enacted, however, HUD’s funding for the capital needs of public housing authorities has declined, on average, 2% percent per year. Nationwide, the capital needs of public housing authorities exceeded HUD’s Public Housing Capital Fund by approximately \$26 billion in 2020. In federal fiscal year 2018, the capital fund received \$2.8 billion nationally, an increase of \$800 million over fiscal year 2017. Federal fiscal year 2019 added \$2.8 billion to the capital fund, along with \$2.9 billion in fiscal year 2020.

The District of Columbia Housing Authority (DCHA) was established in 2000 as an independent authority, charged with implementing the U.S. Housing Act of 1937 in the District.^{12,13} DCHA is one of the largest landlords in the city with more than 6,800 units of conventional public housing across 41 public housing

4 D.C. Law 17-381; codified at D.C. Official Code § 8-231.01 *et seq.*

5 Committee on Public Works and the Environment Committee Report on Bill B17-0936, the “Lead Hazard Prevention and Elimination Act of 2008”, filed November 25, 2008.

6 D.C. Code § 8-231.02 (a).

7 D.C. Code § 8-231.03 (b).

8 D.C. Code § 8-231.03 (c).

9 Mayor’s Order 2009-113, June 18, 2009 ([56 DCR 6861](#)).

10 24 CFR Part 35, Subparts B-R.

11 Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d). The Residential Lead-Based Paint Hazard Reduction Act is Title X of the Housing and Community Development Act of 1992, Pub. L. 102- 550. II.

12 District of Columbia Housing Authority Act of 1999, Law L13-105, effective from May 09, 2000.

13 D.C. Law 13-105. DCHA is the successor agency to the Department of Public and Assisted Housing (DPAH).

properties.¹⁴ DCHA properties house more than 12,000 residents, 84% of whom are categorized as “extremely low income,” living on up to 30% of the area median income. DCHA released its 20-year Transformation Plan in 2019, identifying 14 properties with approximately 2,600 units as being in “extremely urgent” condition along with an overall capital need of \$2.2 billion just to stabilize its full portfolio.

When he became the Executive Director of DCHA in 2017, one of Tyrone Garrett’s first initiatives was to request a review of the agency’s environmental practices and develop a plan to address any deficiencies. Despite LSHR requirements that had been in place for 15 years, DCHA found that its available records did not “provide enough detail to definitively confirm which components of DCHA buildings have lead-based paint.” DCHA submitted its initial Lead Assessment Action Plan to HUD on April 6, 2018, which included plans to reorganize its risk management and environmental compliance department, conduct environmental inspections, provide notifications to residents, train staff, and develop a public awareness campaign. The plan gained final HUD approval on December 26, 2019.

14 DC Housing Authority, “Our People, Our Portfolio, Our Plan: District of Columbia Housing Authority 20-Year Transformation Plan”, published August 28, 2019; page 16, <https://www.dchousing.org/doc.aspx?docid=2019082815333321425>.

Objective, Scope, and Methodology

Objective

1. To determine whether DCHA remediated lead hazards identified in public housing through complaints, inspections, or risk assessments within required timelines.
2. To determine if the District is properly conducting inspections to identify lead hazards in public housing.
3. To determine whether DOEE's enforcement process results in the timely remediation of lead hazards, reducing lead exposure risks to DC residents.

Scope

For our review of DOEE's enforcement process, we examined the period from October 1, 2017 to June 30, 2019. For our review of DCHA's programs to address lead-based paint, our audit scope was one month shorter from October 1, 2017 to May 31, 2019 at DCHA's request in order to conclude our review before the launch of a new IT system in June 2019.

Methodology

To complete this audit, ODCA interviewed DCHA and DOEE staff. We reviewed Federal and District laws and regulations; agency-specific policies and procedures; and agency records. To examine different aspects of DCHA's operations dealing with lead-based paint in public housing, we reviewed:

- Clearance reports to show that DCHA had effectively remediated lead hazards after risk assessments across public housing properties in a sample of units and common areas where there were children under the age of six.
- DCHA's records documenting responses to work orders after residents made a maintenance complaint about components of their unit that had lead-based paint.
- DCHA's annual and unit turnover inspection forms to determine if DCHA was conducting inspections in a timely manner.

To examine DOEE's enforcement process for lead-based paint hazards, we reviewed:

- Records of DOEE's response to lead-based paint complaints, including in public housing.
- DOEE's enforcement actions in response to lead hazards identified during inspections, including Notices and Administrative Orders, as well as clearance reports submitted to DOEE.

A more detailed description of our methodology can be found in Appendix A.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

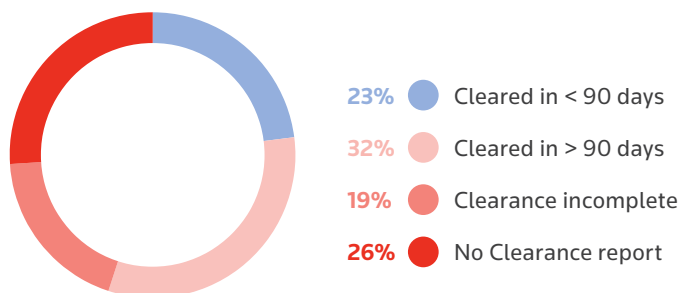
Finding 1

DCHA failed to remediate within 90 days most lead-based paint hazards identified in units and common areas where children under the age of six lived.

DCHA conducted a portfolio-wide review of lead-based paint in its properties in 2018. This review, referred to as a risk assessment, identified lead-based paint hazards in units. Rather than inspect every unit, HUD guidelines allow public housing authorities to review a sample of units in properties with five or more similar dwellings. To address identified lead-based paint hazards, the LSHR requires that interim controls¹⁵ repairs for units where children under age six live or in common areas in their buildings be completed within 90 days of a lead-based paint evaluation.¹⁶ Following interim controls work, public housing authorities must perform clearance examinations to determine if units are free of hazards. Clearance examinations must be performed by qualified personnel and include a visual assessment, dust sampling, submission of dust samples for laboratory analysis, interpretation of sampling results, and preparation of a final report.¹⁷

DCHA failed to complete interim controls within 90 days in 33 of 43 (77%) units or common areas with children under age six where lead-based paint hazards were identified, as shown in Figure 2. Specifically, in 14 of 43 (32%) cases, all sampled hazards were cleared very late—in an average of 408 days—well after the deadline. In another eight of 43 (19%) cases, DCHA accepted contracted clearance reports that did not show that some or all the hazards identified in earlier risk assessments had been cleared. Last, in 11 of 43 (26%) cases, DCHA had no evidence of interim controls work or clearance having been completed well over a year after lead-based paint hazards were first discovered.

Figure 1: DCHA Lead Evaluation Response



Source: ODCA Analysis of DCHA Property Management Operations records

¹⁵ Interim controls temporarily reduce exposure to lead-based paint hazards through repairs like paint stabilization and specialized cleaning.

¹⁶ 24 CFR § 35.1120 (b)(1).

¹⁷ 24 CFR § 35.1340 (b).

DCHA demonstrated a lack of understanding of how to comply with the LSHR’s hazard reduction requirements by attempting, unsuccessfully, to relocate families living in five of its most derelict properties¹⁸ within 90 days, rather than fix the identified hazards as required by the LSHR.¹⁹ Further, DCHA accepted clearance reports that failed to address all hazards identified in their risk assessments samples. For example, the risk assessment for a multi-unit building in the Fort Dupont Dwellings property found lead-based paint hazards in three areas: the 1st and 2nd floor stairs and the basement. However, the building’s clearance report failed to include the hazards identified in the basement. Therefore, even though DCHA received a clearance report for the building that found no evidence of hazards, the basement—which had been found to have deteriorated paint less than 90 days before—was not cleared. DCHA is not in compliance with the LSHR and its requirements to clear identified lead hazards in public housing.

DCHA’s failure to act quickly and competently put children at additional risk of lead exposure. Some residences with young children were left for over a year without DCHA remediating known hazards. DCHA has left its residents exposed to lead-based paint hazards for an unacceptably long time, prolonging their risk of lead poisoning.

Recommendations

1. DCHA should develop and implement a plan to remediate remaining lead hazards identified during the risk assessment process including a process to effectively monitor contractors.
2. DCHA should develop and implement a plan to expand collaboration with the DOEE Lead-Safe and Healthy Housing Division and the HUD Office of Lead Hazard Control and Healthy Housing around risk assessment and clearance report requirements to improve compliance with the LSHR and the District’s Lead Hazard Prevention and Elimination Act.

Finding 2

DCHA failed to address nearly half (48%) of sampled lead-related work orders within 30 days and/or closed worked orders without proper documentation, making it impossible to verify that resident complaints were addressed.

The LSHR requires that public housing authorities respond to and stabilize any reports of deteriorated lead-based paint within 30 days.²⁰ DCHA refers to such reports or requests for maintenance support as work orders. HUD’s guidelines for ongoing lead-safe maintenance also advise property managers to modify their work order system to document whether work will disturb known or presumed lead-based paint and use a standardized lead-safe maintenance work order form. The LSHR also requires that authorities keep a copy of each notice, evaluation and clearance or abatement report for at least three

¹⁸ Benning Terrace, Fort Dupont Townhomes, Highland Dwellings, Langston Dwellings and Richardson Dwellings.

¹⁹ 24 CFR § 35.115 (a) (7) exempts unoccupied parts of properties not used for human habitation from the Lead Safe Housing Rule, but does not exempt common areas like entryways, hallways, corridors, passageways, or stairways of mixed-use properties.

²⁰ 24 CFR § 35.1355(a)(7).

years.²¹

In 12 of 25 (48%) randomly selected work orders labeled “lead hazard,” DCHA failed to respond within 30 days and/or closed the work order without proper documentation. More specifically, 10 of 25 (40%) sampled work orders were not closed within 30 days, including six closed without supporting documentation. The remaining two of 25 (8%) sampled work orders were closed within 30 days, but also lacked supporting documentation.

DCHA’s work order record-keeping practices were insufficient. Inspection documents used to categorize tenant complaints were often saved in hard copy at properties but not uploaded to the agency’s central database system. Further, staff at DCHA’s privately managed properties used filing systems and protocols separate from those used at DCHA-managed properties. The work order form used by DCHA was also out of compliance with HUD guidelines. The standard HUD form collects information on the equipment and supplies needed, work site preparation requirements, and whether clearance dust sampling must be conducted.²² DCHA’s work order form, on the other hand, only asks maintenance staff to record the tenant’s signature confirming that the work has been satisfactorily performed.

Additionally, an internal audit from October 2018 of DCHA’s open work orders over a six-year period, found an “excessive” backlog of work orders caused in part by inaccurate descriptions of maintenance issues as well as maintenance staff shortages, reassignments, and lack of specialized skills.

DCHA left residents at risk of exposure to potential lead-based paint hazards, including those who reported their concerns to DCHA management. Moreover, because DCHA closed some work orders without collecting documentation, it is impossible to verify that residents’ complaints were properly addressed.

Recommendations

3. DCHA should comply with Lead Safe Housing Rule (LSHR) requirement to stabilize any reported deteriorated paint within 30 days, document use of lead safe work practices, and supply clearance reports when required.
4. The DCHA Property Management Office should develop and implement a plan to reduce the backlog of work orders, including work orders related to lead-based paint.
5. The DCHA Property Management Office should develop comprehensive internal policies and procedures for the work order process, including a requirement to maintain all work order related documentation, from DCHA-managed properties and privately managed properties in a centralized location.

²¹ 24 CFR §35.175.

²² HUD Guidelines Chapter 6: Ongoing Lead-Safe Maintenance, Form 6.5, page 41, <https://www.hud.gov/sites/documents/LBPH-08.PDF>.

Finding 3

DCHA failed to comply with federal and District laws requiring annual and unit turnover lead-based paint inspections.

The LSHR requires public housing authorities to conduct ongoing lead-based paint maintenance, including visual assessments at unit turnover and every twelve months, to check for deteriorated paint and the failure of any previous hazard reduction measures (i.e. interim controls).²³ Additionally, the District's Lead Hazard Prevention and Elimination Act requires that owners of dwelling units constructed before 1978 provide a clearance report for households that include a child under age six or a pregnant woman²⁴.

In 51 of 60 (85%) randomly selected units, DCHA failed to provide proof that it conducted visual assessments for deteriorated paint every 12 months. Further, in 6 of 30 (20%) randomly selected units, DCHA failed to conduct a visual assessment for deteriorated paint on or before a household's move-in date. Additionally, DCHA failed to provide proof that all three randomly selected units occupied by families with children under the age six received a clearance report showing that their units were free from lead-based paint hazards—a violation of District law.

DCHA misinterpreted its responsibilities to conduct ongoing lead-based paint maintenance. First, DCHA believed that it was exempt from requirements to check for and fix deteriorated paint until after they completed their review of lead risk assessments. However, the LSHR only exempts units from maintenance requirements when a lead-based paint inspection or clearance report shows that there is no lead-based paint present.

Second, DCHA relied solely on its Uniform Physical Conditions Standards (UPCS) inspections to assess the status of each unit's paint. UPCS inspections²⁵ follow a checklist noting the conditions of various building systems, including paint on the walls,²⁶ and occur every 9-15 months. However, 50 of 60 (83%) randomly selected units failed not only to adhere to the Lead-Safe Housing Rule's every 12-month requirement but also failed to adhere to UPCS timeliness standards as well. Unlike privately-owned units receiving Housing Choice Voucher Program (HCVP) subsidies, DCHA did not formally monitor its compliance with UPCS inspections requirements.

DCHA's failure to comply with federal and local maintenance standards put its residents at increased risk of lead exposure. Long-term residents of the same unit did not receive annual visual assessments, leaving them vulnerable to potentially deteriorated lead-based paint. Given that at least 96% of the District's conventional public housing portfolio was constructed before 1978, and thus can be presumed to have at least some lead-based paint present, a large portion of DCHA's residents were left at risk. Residents moving into a new unit also were left at risk for lead exposure, including households identified as having children under age six. Without a clearance report that checks for hazardous lead dust which can be invisible to the naked eye, these young children were left at risk of exposure.

²³ 24 CFR § 35.1355 (a)(2).

²⁴ D.C. Code § 8-231.04 (b).

²⁵ Uniform Physical Conditions Standards are to occur "no earlier than 9 months and no later than 15 months from the date of the last required inspection".

²⁶ UPCS checklist.

Recommendations

6. DCHA Property Management Operations (PMO) should enforce Lead Safe Housing Rule (24 CFR 35 Section 35.1355 (a)(2)) requirements to conduct visual assessments every 12 months.
7. DCHA should provide to its tenants with household members considered at risk (children under age six or pregnant women) a clearance report issued within the previous 12 months in compliance with DC Lead Hazard Prevention and Elimination Act.
8. The DCHA Office of Audit and Compliance (OAC) should implement a quality control process for inspections conducted by Property Management Operations (PMO) for compliance with the Lead Safe Housing Rule, 24 CFR Part 35.1355 (a)(2).

Finding 4

DOEE does not inspect complaints made about public housing, leaving DCHA to monitor its own adherence to local lead laws in its properties.

DOEE handles complaints of potential lead-based paint hazards in public housing differently than those received from residents of privately-owned properties. For private properties, DOEE replies to complaints received within two business days and, if necessary, sends an inspector out to investigate the issue, potentially opening an enforcement case against the property owner. When a complaint comes in about public housing, however, DOEE forwards the complaint to DCHA to address on their own.

The Lead-Hazard Prevention and Elimination Act of 2008²⁷ states that the Mayor shall enforce against owners “upon reasonable belief...that there is risk of a lead-based paint hazard, in a dwelling unit, accessible common area, or child-occupied facility constructed before 1978.”²⁸ The statute includes several forms of property ownership in its definition section including the federal government but does not mention District government and its independent agencies.²⁹ Further, although DCHA’s establishing statute says it “shall have a legal existence separate from the District government,” the law also says DCHA is “an independent authority of the District government.”³⁰ This legal ambiguity creates a loophole for public housing in the District’s local environmental enforcement framework.

DOEE makes the case that the Act’s omission of DCHA properties was intentional, stating that “if the Council had intended to include these properties in the Act, then it seems it would have made this clear in the statutory text as it did for the federal government.”³¹

27 D.C. Law 17-381, effective March 31, 2009. Codified at D.C. Official Code § 8-231.01 *et seq.*

28 D.C. Code § 8-231.03 (b).

29 D.C. Code § 8-231.01 (30).

30 D.C. Code § 6-202 (a). Interestingly, courts have specifically ruled that “DCHA is a legal entity distinct from the District government,” see [Epps v. Gray](#), 62 F. Supp. 3d 77, 2014 U.S. Dist. LEXIS 104519 (D.D.C. 2014), and that “DCHA was an independent agency legally distinct from the District government”, see [Hoffman v. District of Columbia](#), 730 F. Supp. 2d 109, 2010 U.S. Dist. LEXIS 81461 (D.D.C. 2010).

31 Maxwell, Lauren W., DOEE Assistant General Counsel, “Applicability of Lead-Hazard Prevention and Elimination Act to Public Housing”, memorandum dated April 15, 2020.

As a result, District residents living in public housing do not currently receive the same protections from lead-based paint hazards as their neighbors who live in privately-owned properties—those who can contact DOEE if their landlord is unresponsive. Public housing residents have no recourse to local enforcement to help protect them if their landlord (DCHA) fails to address their concerns.

In November of 2019, DOEE proposed amending the D.C. Code to address this issue. Specifically, DOEE, in an email to the staff of the D.C. Council Committee on Transportation and the Environment, proposed that the Council amend the introduced version of B23-407, the “Lead Hazard Prevention and Elimination Amendment Act of 2019,”³² to include reference to the District government and independent agencies in its definition of “owner.” As of this report’s publication, the Committee on Transportation and the Environment had not completed work on the bill following a public hearing held on November 18, 2019.³³

We commend DOEE for recognizing and seeking to correct this ambiguity in DC law but note that more than a decade has passed since the effective date of the Lead Hazard Prevention and Elimination Act of 2008, which had the stated intention of requiring that DOEE enforce lead laws on behalf of the District’s vulnerable residents.

Recommendation

9. DOEE should continue to advocate for the D.C. Council to expand the definition of “owner” to include the District government and its independent agencies like DCHA within its enforcement powers.

Finding 5

DOEE promptly responded to complaints and if a lead hazard was identified, issued an initial Notice or Administrative Order in a timely manner.

DOEE responded to 28 of 30 (93%) lead-based paint related complaints within two business days. Also, when a DOEE inspection identified lead hazards, DOEE issued an initial Notice of Lead-Based Paint Hazards (Notice) or Administrative Order to Eliminate Lead-Based Paint Hazards (Administrative Order) within 22 days on average of the inspection, under the target of 28 days in 30 cases reviewed.³⁴ The 28 day target allows time for DOEE to receive lead dust test results back from the lab, draft a detailed inspection report and Notice or Administrative Order, and have all documentation undergo a review process.

For both responding to complaints and issuing initial Notices or Administrative Orders, DOEE had clear deadlines, which appeared to be helpful in keeping the enforcement process on track. The DOEE

32 B23-407, <https://lims.dccouncil.us/Legislation/B23-0407>.

33 See Hearing Record for B23-390, the Urban Farming Land Lease Amendment Act of 2019; and B23-407, the Lead Hazard Prevention and Elimination Act of 2019, filed by Councilmember Mary Cheh on December 13, 2019.

34 One case was excluded from analysis because a multifamily letter was issued first.

Compliance and Enforcement Branch (CEB) also has a dedicated team of inspectors and a supervisor who worked to promptly respond to complaints and process Notices and Administrative Orders. District residents, with the exception of public housing residents, can rely on DOEE to promptly respond to complaints, inspect properties, and issue Notices or Administrative Orders when lead hazards are identified.

Finding 6

DOEE was slow to enforce lead remediation with potential risk to the health of District residents. In half of 31 cases reviewed, lead hazards remained 10.5 months on average after DOEE’s initial inspection.

ODCA reviewed case records for 31 enforcement cases and found delays at each stage of the process after the initial Notice or Administrative Order had been issued. The graphic below summarizes the average number of days a case was in each phase. Three teams at DOEE are involved in the enforcement process:

1. The Compliance and Enforcement Branch (CEB).
2. Program attorneys in the Office of the General Counsel.
3. The Office of Enforcement and Environmental Justice (OEEJ).

For a more detailed description of DOEE’s enforcement process, please see Appendix B.

Figure 2: DOEE Enforcement Process

DOEE Division	#of Days Given to the Owner to Respond to DOEE	Average Amount of Time in Phase
Inspection		
CEB	28 days*	Average 22 days for 30 cases
↓		
Notice or Administrative Order		
CEB	35 days	35 days
↓		
Extension/Follow-up Letter		
CEB	0–30+ days	Average 88 days (~ 3 months) for 28 cases
↓		
Enforcement Notice		
CEB, Office of General Counsel, OEEJ	at least 30 days	Average 99 days (~3 months) for 12 cases with an EN
↓		
Notice of Infraction		
CEB, Office of General Counsel, OEEJ	at least 30 days	Average 118 days (~4 months) for 10 cases

Source: Chart created by ODCA based on interviews with DOEE staff members and a review of DOEE records, policies and procedures.

* Number of days after the inspection that DOEE sets as a goal to send a Notice of Lead-Based Paint Hazards or an Administrative Order to Eliminate Lead-Based Paint Hazards

Overall, for the 31 cases reviewed, the enforcement process took an average of 7.5 months (235 days). For the 15 cases that were remediated and closed during the scope, this average was 4.5 months (144 days). However, 16 cases were still open on average for 10.5 months (320 days) when the audit scope ended.

The Compliance and Enforcement Branch (CEB) issued follow-up letters which added additional days to the enforcement process without a clear formal policy governing their use.

When an owner failed to respond by a Notice, Administrative Order, or extension deadline in 17 of 29 cases, CEB sent follow-up letters to remind owners to take the actions required by a Notice or Administrative Order. Follow-up letters are a tool to prompt nonresponsive owners and essentially give the owner more time to respond to a Notice or Administrative Order before a fine is issued. In 4 cases, DOEE issued follow-up letters although an extension had already been granted. Additionally, DOEE did not process these reminders quickly. It took CEB 19 days on average to send a follow-up letter after an owner failed to respond by a deadline, adding further time to the enforcement process. DOEE lacked formal policies and procedures for issuing follow-up letters including a requirement to send the follow-up letter within a certain number of days.

DOEE did not deny extensions even when they were requested late, prolonging the enforcement process.

The D.C. Code allows DOEE to grant extensions “in increments of a maximum of 30 days, in response to a timely written request for extension from the owner or tenant.”³⁵ The District of Columbia Municipal Regulations (DCMR) requires, among other things, that an owner request the extension at least five days before the next deadline. DOEE can grant the extension if it is made in good faith and if granting it will not endanger the health of the resident(s).³⁶

During our scope, DOEE granted extensions in 15 out of 29³⁷ cases reviewed, with most of those cases having multiple extensions. In total, 43 extensions were requested during the audit scope, including 23 late requests. DOEE appeared hesitant to deny an extension, even if it was requested late; 21 of the 23 late requests resulted in extensions. These 21 extensions added 2 months (61 additional days) on average to the process.

Finally, a review of documents revealed that the deadline for requesting an extension is not clearly communicated to owners. The Notice and the Administrative Order state that the extension must be requested by the Notice or Administrative deadline, not five days prior to the Notice deadline as required by the DCMR. The deadline is even more confusing because the Notice does not state an actual date for a deadline, mentioning only that compliance is required within 30 days of service of the Notice.

³⁵ DC Code § 8–231.03(d)(3).

³⁶ 20 DCMR § 3318.9.

³⁷ The total is 29 not 31 cases reviewed. Two cases were not included in this section because they received clearance reports on or around the initial Notice or Administrative Order deadline.

After owners failed to meet deadlines to remediate lead hazards, DOEE took nearly two months on average to fine owners through issuing an Enforcement Notice.

DOEE issues Enforcement Notices, i.e. fines, if owners fail to comply with a Notice or Administrative Order by the deadline or by an extension or follow-up deadline. Our sample had 12 such cases. In these 12 cases, DOEE took on average 55 days (almost two months) to issue an Enforcement Notice after the last deadline expired. The process to fine is lengthy. Three different teams are involved in issuing an Enforcement Notice: CEB prepares the Enforcement Notice; the program attorneys in Office of the General Counsel review it and then send it back to CEB for signoff; and OEEJ issues and sends it.

DOEE agency-wide enforcement guidelines also set a target for issuing an Enforcement Notice after 90 days of an infraction, i.e. an inspection identifying lead-based paint hazards. It took DOEE 188 days (roughly six months) on average to issue the Enforcement Notice after the inspection.³⁸ While DOEE issues Notices and Administrative Orders in lead-based paint hazard cases before resorting to fines, DOEE greatly exceeded the 90-day target for moving to a fine.

DOEE did not issue a Notice of Infraction (NOI) promptly in half of cases which delayed referral to the next level of enforcement by the Office of Administrative Hearings (OAH).

If an owner fails to pay the fine in an Enforcement Notice, the next step is for OEEJ to issue a Notice of Infraction (NOI). DOEE guidelines are to wait 30 days after the Enforcement Notice is issued before moving on to an NOI in order to allow time to receive the owner's response. A Notice of Infraction (NOI) was issued in nine of 12 cases following an Enforcement Notice. In these nine cases, it took DOEE on average 1.5 months (46 days) to issue an NOI after the 30-day waiting period. In six of these nine cases, DOEE acted quickly, issuing the NOI on average in nine days. However, in three of the nine cases, DOEE took 54, 114, and 194 days.

In the other three cases that received an Enforcement Notice, DOEE did not issue an NOI at all by the end of the audit scope even though on average 199 days (6.5 months) had passed after the 30-day waiting period. Therefore, in six of 12 cases that received an Enforcement Notice, there were significant delays at the NOI stage.

These delays at each stage of the enforcement process stem from several causes. DOEE lacks internal targets for completing each step to ensure the enforcement process is moving forward in a timely manner. Additionally, the enforcement process is not tracked in its entirety. There are multiple teams involved (CEB, program attorneys, OEEJ), and there is no single database where the entire enforcement process can be viewed and monitored.

Additionally, DOEE had an apparently lenient attitude toward owners. DOEE officials expressed concern that OAH may rule against DOEE if the owner presents a sympathetic case or DOEE appears to enforce too aggressively without enough outreach to owners. With regard to extensions, this leniency likely

³⁸ This average is from 10 of 12 cases that received Enforcement Notices. Two cases that had an ownership change were excluded from the calculation so as not to inflate the duration.

contributed to a hesitancy on DOEE's part to deny late extension requests even though the DCMR sets a deadline and further states that extensions should not be issued if it will endanger residents' health.

With a slow enforcement process, lead hazards remain in housing for many months, leaving residents at risk. A slow enforcement process may also contribute to owners thinking DOEE will not strictly enforce lead laws and regulations and thus reduce owners' voluntary compliance in the first place.

Recommendations

10. CEB, the Office of the General Counsel, and OEEJ should jointly examine the enforcement process to see where time can be saved, and steps eliminated and update internal procedures accordingly.
11. DOEE should establish deadlines for each step and team involved in the enforcement process and add an indicator to the PAR that gives information on the percentage of cases in which lead hazards are remediated in a given amount of time.
12. CEB should develop a formal policy to regulate the issuance of follow up letters. This policy should include who receives follow up letters, when a follow up letter should be issued, and a target for how long it should take to issue a follow up letter after a deadline has expired.
13. CEB should enforce deadlines for requesting extensions as required by the 20 DCMR 3318.9.

Finding 7

DOEE's enforcement process and penalties resulted in lead remediation in only half of cases reviewed.

The goal of District lead-based paint law is to eliminate lead-based paint hazards from residences, thereby removing health risks to residents. However, at the end of the audit scope, only 15 of 31 enforcement cases reviewed resulted in a passing clearance report demonstrating that lead hazards had been remediated. The other 16 cases were open an average of 10.5 months with no lead remediation concluded when our scope ended. The DOEE enforcement process in these cases failed to bring about lead remediation in a timely manner, leaving District residents living in housing with lead-based paint hazards for long periods.

As enforcement escalates to the Enforcement Notice stage, there is a shift in focus from hazard remediation to fines. OEEJ is responsible for issuing Enforcement Notices and NOIs which are standard agencywide. This means that when either is issued for lead hazards, it lacks the language stating the requirement to eliminate the lead hazard. Once an Enforcement Notice is issued, OEEJ's role is to assess a fine and collect payment or issue an NOI if the owner does not pay. Thus, an owner can pay a fine, which will close a case with OEEJ, but the lead hazard can remain at the property. The case will remain open with CEB, but if an owner pays a fine and does not remediate the lead hazards, CEB's response is to start the fine process again, working with program attorneys and OEEJ to issue a second Enforcement Notice for a greater fine. However, owners appear to be ignoring fines in general. In 9 of 12 cases where a fine was issued, the owner had not paid the fine by the end of the audit scope.

Owners faced no serious repercussions beyond fines for not remediating lead hazards. A parking ticket may provide a helpful comparison. If a person receives a parking ticket and does not pay within 30 days, the fine not only doubles, but the person could face more serious repercussions if the ticket continues to be ignored. The person's car may be booted, or the person may not be able to obtain a driver's license or register a vehicle. Owners who fail to remediate lead hazards do not face similar escalating penalties.

For lead hazards, as with parking tickets, the D.C. Code allows for more serious repercussions in cases where the owner fails to remediate lead hazards than simply fining owners. The D.C. Code³⁹ lists the following additional powers:

- The District government can deny a license, registration, or permit relating to the use or occupancy of a child-occupied facility or dwelling unit if the owner is in violation of lead laws.⁴⁰
- The mayor may do the lead remediation and charge the owner and issue a lien on all property owned by the owner.⁴¹
- A fine up to \$25,000 may be imposed for each day of the violation.⁴²
- An owner can face imprisonment for up to a year for knowingly or willingly violating District lead laws.⁴³
- The mayor can request the Attorney General for the District of Columbia to commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief.⁴⁴

For most unresolved cases, DOEE is not using additional authority granted to it in the law that could potentially help increase timely lead remediation and reduce health risks to DC residents. For cases at two addresses reviewed, DOEE worked with the Office of the Attorney General (OAG) to amend the violations to existing OAG complaints against owners. While this collaboration is a positive sign, DOEE could also use its additional statutory authority to secure compliance and reduce risk.

Recommendations

- 14.** DOEE should use additional authority granted in the law to include remediating lead hazards and issuing a lien on the owner's property, denying rental permits to owners to ensure lead hazards are remediated, issuing multiday fines, and collaborating with other agencies as needed to use this authority. DOEE should establish internal policies as necessary guiding how and when this authority will be applied.
- 15.** OEEJ should include language when issuing an Enforcement Notice or a Notice of Infraction to remind owners that lead hazards need to be remediated and a clearance report submitted to DOEE in addition to paying the fine.

39 D.C. Code § 8-231.01 et seq.

40 D.C. Code § 8-231.02(c).

41 D.C. Code § 8-231.05(e). Given the delegation of authority from the Mayor to the Director of DOEE in Mayor's Order 2019-113, the Director may also take this action.

42 D.C. Code § 8-231.15(b).

43 D.C. Code § 8-231.16(a).

44 D.C. Code § 8-231.05(b)(3). Given the delegation of authority from the Mayor to the Director of DOEE in Mayor's Order 2019-113, the Director may also make this request to the Attorney General.

Conclusion

This audit raises significant concerns about the safety of residents in public housing in terms of lead-based paint exposure. During our scope, we found that DCHA had not taken adequate steps to protect residents from exposure to lead-based paint. At the beginning of our scope in October 2017, DCHA did not know the location of lead-based paint with certainty in public housing despite 96% of their properties being constructed before 1978 and federal law having required risk assessments to determine this by March 2002. DCHA did take corrective action and commissioned risk assessments to identify the location of lead-based paint and hazards. Our finding that DCHA failed to promptly remediate lead hazards in a sample of units with children under age six who are particularly at risk suggests that DCHA has not undertaken prompt, adequate lead remediation throughout the wider, unsampled public housing units. DCHA also failed to inspect residences for lead-based paint hazards as required, which is particularly worrying given that the units in general are in extremely poor condition. DCHA failed to promptly resolve or keep adequate records of work orders involving lead-based paint in public housing units in half of the work orders we reviewed. We recognize that DCHA has a challenging job and funding for public housing has been declining. However, by drawing on assistance from DOEE and HUD to comply with the Lead Safe Housing Rule and District Law, and by developing and implementing better internal policies and procedures, DCHA could make substantial progress in protecting residents from lead-based paint exposure.

We found that DOEE is responding to complaints and initiating enforcement when lead hazards are identified but the enforcement process needs improvement. At the end of our scope the remediation process had not been completed in half of the cases we reviewed. A strong and prompt enforcement process is key to protecting residents' health. DOEE can implement changes to speed up the process to bring owners into compliance and to use the full authority granted by the law to escalate penalties if owners fail to remediate lead hazards. To ensure all District residents receive the same protection from lead hazards, DOEE must also expand its enforcement to public housing.

Summary of Report Recommendations

Most of the recommendations in this report can help to advance DOEE and DCHA goals, as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>1. DCHA should develop and implement a plan to remediate remaining lead hazards identified during the risk assessment process including a process to effectively monitor contractors.</p>	Yes	Yes	DCHA 20-Year Transformation Plan Goal #1: Overhaul our portfolio to ensure that every resident has a clean and safe place to live.
<p>2. DCHA should develop and implement a plan to expand collaboration with the DOEE Lead-Safe and Healthy Housing Division and the HUD Office of Lead Hazard Control and Healthy Housing around risk assessment and clearance report requirements to improve compliance with the LSHR and the District’s Lead Hazard Prevention and Elimination Act.</p>	No	Yes	DCHA 20-Year Transformation Plan Goal #2: Operate as a high-performing organization.
<p>3. DCHA should comply with Lead Safe Housing Rule (LSHR) requirement to stabilize any reported deteriorated paint within 30 days, document use of lead safe work practices and supply clearance reports when required.</p>	No	Yes	DCHA 20-Year Transformation Plan Goal #1: Overhaul our portfolio to ensure that every resident has a clean and safe place to live.
<p>4. The DCHA Property Management Office should develop and implement a plan to reduce the backlog of work orders including work orders related to lead-based paint.</p>	No	Yes	DCHA 20-Year Transformation Plan Goal #3: Operate as an efficient and effective landlord.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>5. The DCHA Property Management Office should develop comprehensive internal policies and procedures for the work order process including a requirement to maintain all work order related documentation, from DCHA-managed properties and privately managed properties in a centralized location.</p>	No	Yes	DCHA 20-Year Transformation Plan Goal #3: Operate as an efficient and effective landlord.
<p>6. DCHA Property Management Operations (PMO) should enforce Lead Safe Housing Rule (24 CFR 35 Section 35.1355 (a)(2)) requirements to conduct visual assessments every twelve months.</p>	No	Yes	DCHA 20-Year Transformation Plan Goal #1: Overhaul our portfolio to ensure that every resident has a clean and safe place to live.
<p>7. DCHA should provide to its tenants with household members considered at risk (children under age six or pregnant women) a clearance report issued within the previous 12 months in compliance with DC Lead Hazard Prevention and Elimination Act.</p>	No	Yes	DCHA 20-Year Transformation Plan Goal #1: Overhaul our portfolio to ensure that every resident has a clean and safe place to live.
<p>8. The DCHA Office of Audit and Compliance (OAC) should implement a quality control process for inspections conducted by Property Management Operations (PMO) for compliance with the Lead Safe Housing Rule, 24 CFR Part 35.1355 (a)(2).</p>	Yes	Yes	DCHA 20-Year Transformation Plan Goal #1: Overhaul our portfolio to ensure that every resident has a clean and safe place to live.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>9. DOEE should continue to advocate for the D.C. Council to expand the definition of “owner” to include the District government and its independent agencies like DCHA within its enforcement powers.</p>	No	No	<p>FY20 Plan⁴⁵, Objective 2: Protect the public health of all District residents by improving the environment in areas related to air, soil, and indoor pollution.</p>
<p>10. CEB, the Office of the General Counsel, and OEEJ should jointly examine the enforcement process to see where time can be saved, and steps eliminated and update internal procedures accordingly.</p>	No	No	<p>FY20 Plan, Objective 2: Protect the public health of all District residents by improving the environment in areas related to air, soil, and indoor pollution. DC Lead Hazard Prevention and Elimination Act purpose: To eliminate lead-based paint hazards from properties built prior to 1978 as a primary prevention measure to reduce the risks of lead poisoning amount District residents, particularly children under 6 who are especially at risk.</p>

45 FY20 DOEE Performance Plan, <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/DOEE20.pdf>.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/ Entity or District-Wide Goal Advanced by Recommendation
<p>11. DOEE should establish deadlines for each step and team involved in the enforcement process and add an indicator to the PAR that gives information on the percentage of cases in which lead hazards are remediated in a given amount of time.</p>	No	No	<p>FY20 Plan, Objective 2: Protect the public health of all District residents by improving the environment in areas related to air, soil, and indoor pollution. DC Lead Hazard Prevention and Elimination Act purpose: To eliminate lead-based paint hazards from properties built prior to 1978 as a primary prevention measure to reduce the risks of lead poisoning amount District residents, particularly children under 6 who are especially at risk.</p>
<p>12.CEB should develop a formal policy to regulate the issuance of follow up letters. This policy should include who receives follow up letters, when a follow up letter should be issued, and a target for how long it should take to issue a follow up letter after a deadline has expired.</p>	No	No	
<p>13.CEB should enforce deadlines for requesting extensions as required by the 20 DCMR 3318.9.</p>	No	No	
<p>14.DOEE should use additional authority granted in the law to include remediating lead hazards and issuing a lien on the owner’s property, denying rental permits to owners to ensure lead hazards are remediated, issuing multiday fines, and collaborating with other agencies as needed to use this authority. DOEE should establish internal policies as necessary guiding how and when this authority will be applied.</p>	Yes (potentially)	Yes	
<p>15.OEEJ should include language when issuing an Enforcement Notice or a Notice of Infraction to remind owners that lead hazards need to be remediated and a clearance report submitted to DOEE in addition to paying the fine.</p>	No	No	

Appendices

Appendix A

Detailed Methodology

To conduct a review of DCHA's risk assessment process, we reviewed all 61 risk assessment reports that DCHA contracted for public housing properties to identify the location of lead-based paint in public housing units and any lead hazards. As allowed by HUD Guidelines, these risk assessments took a random sample of similar dwellings to check for lead-based paint rather than check every unit. We limited our scope to the sampled units and buildings to ensure we focused on hazards specifically identified by DCHA's contractors. We included only interior hazards rather than exterior hazards since timelines for the repairs of exterior hazards can be delayed by cold weather. We selected all the lead hazards identified by the risk assessments in units with children under six or in common areas in buildings with children under six for our sample because HUD requires that interim controls for those units and common areas be completed in 90 days. Our sample size was 43 lead hazards, 13 in units and 30 in common areas. We then requested and examined clearance reports from DCHA for all sampled lead hazards to ensure that lead hazards had been adequately cleared.

We also conducted a review of DCHA's annual and unit turnover inspection process. To examine annual inspections, we took a random sample of 60 units among DCHA's conventional properties constructed before 1978 and requested the two most recent inspection forms before our scope end date (May 31, 2019). We examined whether the inspections occurred within 12 months of each other. To review the unit turnover inspection process, we took a random sample of 30 units where a resident moved into a unit during our scope. We examined the unit turnover inspection form and the lease to ensure that the unit turnover inspection happened before or on the day that the resident moved in. If a child under the age of six moved into the unit, we also requested a record of a clearance report dated before their move-in date.

To conduct a review of DCHA's lead-related work order process, we took a random sample of 25 work orders initiated from a resident complaint related to a component of their unit that had lead-based paint between October 2018 to the end of our scope, May 31, 2019. Prior to the risk assessment results, DCHA did not have a comprehensive list of the location of lead-based paint in units. As the risk assessments were completed, the location of lead-based paint in units was coded in the central call center system. The system was designed so that if a resident called in a complaint about deterioration of or damage to a component with lead-based paint, the complaint would be tagged "lead hazard." The first work orders that used the location of lead-based paint and had the code "lead hazard" were from October 2018. We reviewed supporting documentation to determine the date that the work order was closed and whether it was within 30 days. We noted when documentation was lacking or incomplete.

To conduct a review of DOEE's response to lead-based paint complaints, we took a random sample of 25 complaints from all complaints received during our audit scope. We examined complaint records on site to see whether DOEE had responded to a complaint, i.e. at least contacted the complainant, within two business days of receiving the complaint.

To review DOEE's enforcement process, we chose to concentrate on lead-based paint hazards in residences. This audit did not examine the enforcement process for unsafe work practices or permits and certifications. In total, we reviewed a sample of 31 cases from a random selection process. We took a random sample of 25 cases from all cases that had received a Notice of Lead-Based Paint Hazard or an Administrative Order to Eliminate Lead-Based Paint Hazards, i.e. cases where an inspection had identified a lead-based paint hazard issued between October 2017 and May 2019. In order to ensure that we also examined cases where OEEJ was involved in the enforcement process, i.e. cases that received at least an Enforcement Notice, we randomly sampled 5 additional cases from all cases where OEEJ issued an Enforcement Notice for an infraction that occurred during our audit scope. However, the inspection for one sampled case happened two days before the end of our scope so we excluded it. In two different instances, we also split lead hazards at one address into two cases since DOEE handled exterior and interior hazards at the same address as two separate cases with different inspection dates. This expanded our sample by two additional cases and brought our total sample size to 31.

We reviewed case records for each enforcement case and recorded the dates that DOEE took different steps in the enforcement process and received responses from owners. Since we were looking at an entire process that started at different points in the audit scope and that in some cases continued after the audit scope, we use average duration times when reporting results in order to account for differing start and end dates and give a more accurate picture of how long different steps in the process took.

We also reviewed nine cases where a lead-based paint hazard had been identified in DOEE's database but where DOEE did not take an enforcement action. However, in all nine cases, DOEE provided a satisfactory justification as to why no enforcement action was needed, often because testing results concluded that there was no lead-based paint or dust.

Appendix B

DOEE Enforcement Process

For privately-owned housing, our review focused on the timeliness of DOEE’s response to complaints and DOEE’s enforcement process to bring about the remediation of lead-based paint hazards. When DOEE receives a complaint, a DOEE inspector in the Compliance and Enforcement Branch (CEB) will respond to the complaint, by contacting the complainant or going out directly to inspect the complaint. If an inspection identifies a lead-based paint hazard, CEB issues a Notice of Lead-Based Paint Hazards (“Notice”) for units that the owner is living in, i.e. owner-occupied or for rental properties, moves directly to issuing the Administrative Order to Eliminate Lead-Based Paint Hazards (“Administrative Order”) which is the enforcement step before a fine. Both require the owner to remediate the lead hazard and present DOEE with a clearance report proving that the lead hazard no longer exists. The clearance report must be prepared by a certified risk assessor after conducting a clearance examination.

An owner may request a 30-day extension to a Notice or Administrative Order. In some cases, CEB sends follow up letters to owners if they do not hear back from the owner by a deadline. If the extensions expire, CEB then works with program attorneys in the Office of the General Counsel and the Office of Enforcement and Environmental Justice (OEEJ), an office at DOEE which issues fines agency-wide, to issue an Enforcement Notice which is essentially a fine. If the owner does not pay the fine, OEEJ issues a Notice of Infraction (NOI). If the owner still does not pay the fine after the NOI, then OEEJ files the NOI with an administrative court, the Office of Administrative Hearings (OAH) which takes over the fine case from DOEE.

Agency Comments

On October 19, 2020, we sent a draft copy of this report to the D.C. Housing Authority (DCHA) and the Department of Energy and the Environment (DOEE) for review and written comment. DOEE responded with comments on October 26, 2020, and DCHA responded with comments on November 2, 2020. Agency comments are included here in their entirety, followed by ODCA's response.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Energy and Environment

October 26, 2020

Kathy Patterson
District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington, DC 20005

Subject: DOEE comments regarding ODCA's draft report titled "More Urgency Needed to Fix Lead-Based Paint Hazards"

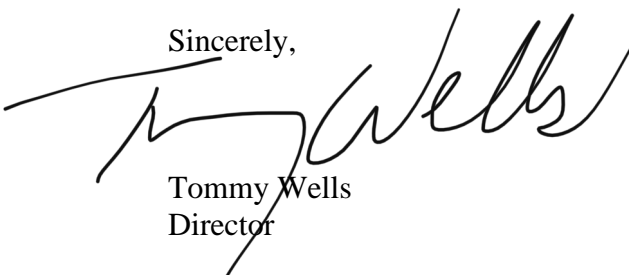
Dear Ms. Patterson:

The Department of Energy & Environment (DOEE) would like to thank the Office of the District of Columbia Auditor (ODCA) for conducting an audit on such an important topic impacting residents living in or regularly visiting pre-1978 buildings. DOEE is committed to continuing the reduction of exposure to lead in the District of Columbia and decreasing the number of lead poisoning cases by providing compliance assistance and issuing enforcement actions to property owners. These efforts cannot be completed solely by one agency. Instead, we need the ongoing collaboration of sister agencies, an increase in financial assistance for property owners to help comply with the District's lead law requirements, and continuing the holistic work to eliminate lead poisoning and other unhealthy environmental concerns from the District of Columbia's pre-1978 housing.

In response to ODCA's draft audit report titled "More Urgency Needed to Fix Lead-Based Paint Hazards," DOEE has reviewed the audit findings and recommendations and has taken them under consideration for developing policies for moving forward. The enclosed responses to each draft recommendation will provide clarity on how the agency plans to incorporate steps into office policies to enhance enforcement efforts.

Should you have any questions, please contact me or Mr. Collin Burrell, Deputy Director, Environmental Services Administration at (202) 535-2255.

Sincerely,



Tommy Wells
Director

Enclosure

DOEE'S RESPONSES TO THE RECOMMENDATIONS:

Recommendation 9:

DOEE should continue to advocate for the D.C. Council to expand the definition of “owner” to include the District government and its independent agencies like DCHA within its enforcement powers.

DOEE Response:

The proposed amendments for the Lead-Hazard Prevention and Elimination Act are under review with DC Council.

Recommendation 10:

CEB, the Office of the General Counsel, and OEEJ should jointly examine the enforcement process to see where time can be saved, and steps eliminated and update internal procedures accordingly.

DOEE Response:

The Lead Compliance and Enforcement Branch (CEB) has now specified time frames for processing of enforcement notices by the Branch in applicable SOPs. The revised SOPs received final approval on October 14, 2020.

DOEE is also considering eliminating the enforcement notice step for lead violations. CEB is working with OEEJ and Office of the General Counsel as to how and when they can implement that change, since the use of enforcement notices is currently standard for almost all enforcement programs at this time.

OEEJ is implementing a new system to track enforcement notices received for issuances. DOEE is examining additional methods to streamline the enforcement process.

Recommendation 11:

DOEE should establish deadlines for each step and team involved in the enforcement process and add an indicator to the PAR that gives information on the percentage of cases in which lead hazards are remediated in a given amount of time.

DOEE Response:

DOEE acknowledges the recommendation and CEB will take this under consideration which will involve modifying program and agency-wide QuickBase databases.

Recommendation 12:

CEB should develop a formal policy to regulate the issuance of follow up letters. This policy should include who receives follow up letters, when a follow up letter should be issued, and a target for how long it should take to issue a follow up letter after a deadline has expired.

DOEE Response:

On June 13, 2019, the CEB discontinued the issuance of follow up letters in the manner described in the draft audit report and started issuing them less frequently. The CEB has also now specified circumstances and time frames for issuance of follow up letters by the Branch in applicable SOPs.

Recommendation 13:

CEB should enforce deadlines for requesting extensions as required by the 20 DCMR 3318.9.

DOEE Response:

The CEB has now specified criteria for granting deadline extension requests in applicable SOPs, which addresses the timeliness of the request.

Recommendation 14:

DOEE should use additional authority granted in the law to include remediating lead hazards and issuing a lien on the owner's property, denying rental permits to owners to ensure lead hazards are remediated, issuing multiday fines, and collaborating with other agencies as needed to use this authority. DOEE should establish internal policies as necessary guiding how and when this authority will be applied.

DOEE Response:

DOEE acknowledges the recommendation and CEB, DOEE's Office of General Counsel, and District of Columbia's Office of Attorney General will take this under consideration and continue to use regulatory discretion.

Recommendation 15:

OEEJ should include language when issuing an Enforcement Notice or a Notice of Infraction to remind owners that lead hazards need to be remediated and a clearance report submitted to DOEE in addition to paying the fine.

DOEE Response:

DOEE is concerned about the timeliness of compliance with administrative orders issued for lead remediation. DOEE can add language to the "Inspector Comment" section of Enforcement Notices and Notices of Infraction reminding owners that lead hazards need to be remediated and a clearance report submitted in addition to paying the fine.

Also, DOEE is considering other steps that can be taken that may help ensure compliance with Administrative Orders specifically for the lead program, including withholding fine reduction offers until compliance is verified.

Recently, DOEE has referred several cases involving continued non-compliance with the lead requirements to OAG. OAG has relatively recently hired environmental attorneys to pursue cases, and OAG has expressed particular interest in lead cases.



District of Columbia Housing Authority

1133 North Capitol Street, NE Washington, DC 20002-7599
(202) 535-1000

Tyrone Garrett, Executive Director

November 2, 2020

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Ste. 900
Washington, DC 20005

Re: September 21, 2020 Draft Audit Report of the District of Columbia Housing Authority by the District of Columbia Auditor

Dear Ms. Patterson:

Please find enclosed the District of Columbia Housing Authority's Written Comments in response to the September 21, 2020 Draft Audit Report. It is our understanding that these Written Comments will be appended to the published Audit Report. We look forward to continuing our work with you and the District moving forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tyrone Garrett", is written over a light blue horizontal line.

Tyrone Garrett
Executive Director

Enclosures (1)

CC:

**District of Columbia Housing Authority’s Written Comments regarding
The District of Columbia Auditor’s September 21, 2020 Draft Audit Report**

Dated: November 2, 2020

The District of Columbia Housing Authority (DCHA) is dedicated to ensuring every resident of the District’s Public Housing has a safe and clean place to live. These Written Comments address the Office of the District of Columbia Auditor’s (ODCA’s) Draft Report and describe DCHA’s past and current efforts to address lead-based paint hazards in the District’s public housing. In most instances, DCHA had already begun the type of work anticipated by ODCA’s Recommendations and, in many instances, it was completed before this Draft Report. These Written Responses illustrate the status of DCHA’s current work to control and/or abate lead-based paint hazards in public housing.

I. Introduction

a. The District of Columbia Housing Authority (DCHA)

The District of Columbia Housing Authority is an independent government agency that provides affordable housing to extremely low- to moderate-income households in the District. DCHA serves 50,000 District residents through traditional affordable housing, tenant- and project-based housing vouchers, and mixed-income properties. Within traditional affordable housing, DCHA operates over 7,000 public housing units in approximately 41 properties owned by DCHA. Within the Housing Choice Voucher Program (“HCVP”), DCHA contracts with private property owners to supply an additional 14,000 units of low-income housing for the District’s residents. DCHA is committed to providing quality affordable housing, fostering sustainable communities, and cultivating opportunities for residents to improve their lives.

Public housing across the country, including in the District, has been chronically underfunded at both the federal and state or local level for decades. This funding crisis coincided with an aging housing stock and increased maintenance and compliance obligations that require resources far exceeding those available. According to the Public Housing Authorities Directors Association and the Council of Large Public Housing Authorities, the estimated backlog of urgently needed repairs—from structural damage and infrastructure to mold and lead-based paint, is likely between \$50 and \$70 billion today.¹ With regard to lead-based paint alone, the U.S. Department of Housing and Urban Development (“HUD”) estimates that 62,000 public housing units across the country require lead abatement.² DCHA is no exception. DCHA is in the unfortunate position of attempting to correct decades of underfunding with a budget that continues to fail to meet all of DCHA’s needs. DCHA has worked diligently to obtain funds from the District as well as the federal government at every opportunity and has

¹ Wiltz, Teresa, PEW TRUSTS, *HUD Spends Millions on Lead Abatement. Why are Public Housing Authorities Still Struggling?* (Dec. 17, 2019), available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/12/17/hud-spends-millions-on-lead-abatement-why-are-public-housing-authorities-still-struggling>

² *Id.*

also used its own reserves to the maximum extent permissible when necessary to prioritize addressing the District’s most urgent issues.

Despite budget concerns, DCHA is in the process of overhauling its public housing properties, known as its Public Housing Portfolio, in order to provide safe public housing to meet the needs of District residents. Since 2017, at the initiative of DCHA’s then-new Executive Director Tyrone Garrett, DCHA has taken a hard look at its Portfolio to assess the properties’ conditions, compliance with federal standards, and the funding necessary to address any and all deficiencies. DCHA included environmental concerns such as lead-based paint hazards in that overall review. As part of its review, DCHA examined archived records from DCHA’s inception in the year 2000 through 2016, but was unable to definitively confirm which components of DCHA buildings had or have lead-based paint. Because these baseline lead-based paint evaluations were required by HUD, DCHA contacted HUD to establish a Comprehensive Environmental Plan to address and remedy these concerns. In April 2018, DCHA presented to the HUD Field Office its Lead Action Plan for approval and thereafter began conducting inspections of units known to have children residents under six years of age as well as risk assessments for all properties in the DCHA public housing program.

Lead-based paint hazards are just one aspect of the “hard look” DCHA undertook. In addition to lead-based paint, DCHA assessed its properties for other health and safety hazards, environmental concerns such as mold and pests, and building/structural damage. In 2019, DCHA estimated that it would need approximately \$2.2 billion to address the capital needs of all units in its Public Housing Portfolio—about 150 times the typical annual capital improvements funding HUD and the District provide. These funds are required to refresh the entire Public Housing Portfolio and to modernize and/or redevelop fourteen properties that DCHA identified as “extremely-urgent,” meaning the number of repairs needed were so extreme it was more cost-effective to re-develop rather than repair.³

Currently, the issues DCHA and Public Housing Agencies across the nation are facing are being exacerbated by COVID-19. Due to the District’s declared public health emergency that has been in place since March 2020, DCHA’s operations have been significantly modified to keep employees and residents safe, and work requiring DCHA employees to enter occupied units has been generally limited to the fulfillment of emergency work orders. DCHA has been unable to respond to many routine maintenance concerns that require access to units and common areas. DCHA’s modified operations due to COVID-19 remain in accordance with HUD’s suspended and modified regulations also in response to COVID-19. The impacts of COVID-19 on DCHA’s current operations are further described in Section V of these written comments, but DCHA is committed to fully resuming its operations in public housing when the public health emergency abates and the District so permits.

b. The Office of the District of Columbia (ODCA) Audit of DCHA

On February 8, 2019, almost one year after DCHA engaged HUD to develop a plan for lead-based paint hazard assessment and remediation, the Office of the District of Columbia

³ For example, DCHA’s 20-Year Transformation Plan (2019) shows the estimated annual costs at Benning Terrace for interim controls to encapsulate lead-based paint at \$3,135,775. In contrast, the long-term capital need for the 274-unit property was estimated to be \$33,086,205 in Fiscal Year 2019.

Auditor (ODCA) initiated a discretionary performance audit of “policies and practices to address lead-based paint hazards in the District of Columbia,” focusing on the Housing Choice Voucher Program. After the initial engagement interview and learning of DCHA’s lead-based paint efforts in public housing, ODCA modified the scope of the audit to focus on public housing and DCHA’s compliance with DC and federal laws relating to lead. ODCA’s audit and evaluation was intended to provide “valuable insight regarding whether an agency’s business practices are efficient, its policies and procedure are effective, its internal controls need to be improved, and its programs are delivering the intended results.” Despite being aware of DCHA’s efforts, chronic funding challenges, the overall condition of DCHA properties, and the many internal changes occurring at DCHA in response to DCHA’s ongoing efforts and communications with HUD, ODCA continued to conduct its audit and determined the audit period would begin October 1, 2017. DCHA requested that the audit period end on May 31, 2019 to allow DCHA to transition to a new automated work order maintenance and tracking system to better ensure that lead-based paint and other maintenance issues were handled and tracked in compliance with all requirements. ODCA granted this request.

Overall, the Audit Report’s findings and recommendations have provided a snapshot into the effectiveness of DCHA’s policies, internal procedures, and internal controls as they existed at a specific point in time. However, because DCHA had already initiated and was engaged in an overhaul of its own internal systems and procedures, the Audit Report does not offer valuable insight regarding whether DCHA’s current practices, procedures, and policies are effective and working as intended. Moreover, without contextualizing lead paint compliance within the Portfolio-wide obligations DCHA must address with insufficient funds, the Audit Report leaves the reader with a misimpression regarding DCHA’s ability to address all of the issues facing the Public Housing Portfolio. Nowhere is this more apparent than in ODCA’s conclusory and misguided statement that implementing ODCA’s recommendations comes at no cost. ODCA makes this bold assertion without having conducted any cost analysis, and well aware of the monumental funding needs DCHA faces. DCHA is disappointed that ODCA’s Audit Report failed to contextualize DCHA’s challenges with regard to the chronic underfunding public housing has faced—both in the District and federally. DCHA was hopeful that ODCA’s audit might identify new or additional opportunities for DCHA to more efficiently and effectively manage lead-based paint hazards in housing stock in need of much work. Unfortunately, the Audit Report’s recommendations have either largely been addressed as part of DCHA’s ongoing work with HUD or are too general to provide DCHA insight into opportunities to improve further.

Moving forward, DCHA is committed to continuing to improve its practices and internal procedures as it works to better the homes of its many residents. DCHA offers these written comments, many of which were offered directly to ODCA during the audit period, to put into perspective (i) DCHA’s HUD-approved Lead Action Plan, (ii) the current status of DCHA’s properties with regard to lead-based paint hazards and (iii) the current status of DCHA’s policies and internal procedures that relate to lead-based paint in response to ODCA’s Findings and Recommendations.

II. Background & HUD-Approved Lead Action Plan

In March 2018, DCHA presented the HUD Field Office with a Comprehensive Environmental plan to address lead-based paint hazards and formally submitted its initial Lead Assessment Action Plan for approval to HUD in April 2018. On May 7, 2018, DCHA began to conduct lead-based paint hazard inspections of units known to have children residents under six years of age and risk assessments for all properties constructed prior to 1978 in the DCHA public housing portfolio.⁴ On August 6, 2018, DCHA began conducting inspections of properties for senior and/or disabled residents. DCHA contracted with certified risk assessors to perform the lead-based paint inspection and risk assessments (evaluations). As part of these evaluations, certified individuals conducted a visual assessment of property components, interviewed property staff and residents, evaluated for lead-based paint, and took samples where required in randomly selected locations, per HUD guidelines. These dwelling units, common areas, and exterior sites were chosen at random, but in a manner that statistically ensured all units and areas of a property were represented in the evaluation. Contractors evaluated for lead-based paint using an X-ray fluorescence (XRF) lead-in-paint analyzer in each selected dwelling unit, basement, and common area. The results of the evaluation were applied to *all* similar buildings and dwelling units within a similar group of buildings through the entire property.

By December 2018, DCHA had completed risk assessments for all of the pre-1978 properties in the Public Housing Portfolio and had identified which properties contained lead-based paint hazards and the location of these hazards. Because the risk assessments use a sampling approach, in accordance with HUD regulations, the results typically overestimate lead-based paint hazards present and therefore lead to an overly broad response. Where the evaluations resulted in low numbers of lead-based paint hazards, it was recommended by contractors that additional evaluations may be cost-effective to more concretely define the nature, severity, source, and location of lead-based paint hazards. Ultimately, HUD endorsed this approach.

Where lead-based paint hazards were found, generally DCHA was required to control the hazards at the locations identified by the evaluations within one year and thereafter incorporate ongoing lead-based paint maintenance and reevaluation into regular building operations. In units and common areas where there were known children residents under six years of age, DCHA was to control these hazards within ninety days. For short-term control of lead-based paint hazards, interim controls (such as repairs, paint and varnish repair, removal of dust-lead hazards through cleaning, temporary containment, etc.) are permitted. For long-term control, HUD requires abatement of all lead-based paint hazards. Depending on the location of the hazard and the overall condition of the building, abatement can be cost-prohibitive.

By October 2018, DCHA had started to implement interim controls at properties that were found to contain lead-based paint hazards, prioritizing those units known to have children residents under six years of age.

⁴ Because lead-based paint was banned in 1978, buildings constructed prior to 1978 are presumed to contain lead-based paint and, therefore, may contain lead-based paint hazards. Buildings constructed after 1978 are presumed lead-free.

In accordance with HUD regulations, DCHA provided the Risk Assessment report to residents within ten days of receipt thereof. There were *no* lead hazards in twelve properties.⁵ At five properties, there were only lead dust hazards and these properties underwent full abatement once DCHA was able to locate lead dust abatement service providers who were certified in accordance with federal and District lead abatement standards.⁶ The remaining properties were found to have lead-based paint hazards in certain locations, but the extent and location of hazards varied greatly.

By February 12, 2019, DCHA completed interim controls for all units with known children residents under six years of age, except for those units in properties that were potentially planned for demolition/disposition or other rehabilitation in accordance with Section 18 of the U.S. Housing Act of 1937. Due to DCHA's limited resources, DCHA did not immediately implement interim controls at properties that had been identified as needing extreme/urgent repairs beyond lead-based paint, in order to determine whether those buildings would be demolished, disposed of, or receive other rehabilitation. Ultimately, DCHA did perform or is in the process of performing interim controls for all units and common areas in which there were known children residents under six years of age in accordance with the schedule permitted by DCHA's limited resources, regardless of whether the building was or now is planned for demolition/disposition or other rehabilitation.

HUD regulations do not require interim controls in units that are planned for demolition and will not be re-occupied in the future. Therefore, DCHA focused its already-stretched budget on relocating tenants outside of buildings where DCHA anticipated disposition/demolition or other rehabilitation work. Where tenants were unable to be relocated but properties were expected to be completely demolished and not re-occupied in the future, DCHA planned to conduct interim controls until residents were relocated in accordance with its HUD-approved Lead Action Plan and kept HUD apprised of the status of the properties planned for demolition/disposition or other rehabilitation. By December 13, 2019, DCHA had completed interim controls for units with known resident children under six years of age in three additional properties that were either planned for demolition/disposition or had otherwise received relocation services for tenants (Richardson, Benning, and Highland Additions).

In response to the lead-based paint evaluations at DCHA properties and the estimated costs associated with interim controls, abatement, and clearance work, HUD's Office of Lead Hazard Control and Healthy Homes strongly recommended DCHA conduct supplemental lead-based paint inspections in order to reduce the costs and scope of work for abatement. DCHA accepted the recommendation and began the supplemental inspections on December 16, 2019. Through the supplemental inspections, DCHA was better able to identify which units and which components of a given property were, in fact, lead-based paint hazards rather than rely on conservative assumptions based on extrapolation from the random sampling of the first-round Risk Assessments. Based on the supplemental inspections of fourteen properties, which included testing of 100 percent of specific components with very small percentages of initial positive

⁵ Regency House, Fort Lincoln, Marigold, Potomac Gardens Family, Potomac Gardens Senior, Sursum Corda, Hopkins Apartments, Lincoln Road, Greenleaf Extension, Elvans Road, Highland Dwellings, and Sibley Plaza.

⁶ Knox Hill, Judiciary, Colorado Apartments, Ontario Road, and Woodland Terrace Walk-Ups (confirmed during Round Two Risk Assessments)

readings in the original sample of units, DCHA will be able to spend fewer federal dollars on abatement.

On December 26, 2019, HUD accepted DCHA's Lead Action Plan. Under the Plan, DCHA focused on Section 18 properties (those to receive interim controls until demolition but no abatement), Rental Assistance Demonstration (RAD) and other properties (those to receive abatement). The Plan included prospective demolition/disposition applications and construction dates, abatement of lead-based paint hazards within five years of the Plan's approval, and monthly status reports provided by DCHA to HUD.

III. Current Status of DCHA Properties

As of the publication of ODCA's Report, DCHA has made significant progress in combating lead-based paint and lead-based paint hazards in DCHA's public housing properties, despite being underfunded and facing additional delays in 2020 due to COVID-19, which are discussed in more detail in Section V.

By February 2020, interim controls had been completed for all units and common areas where there were known children residents under six years of age. And, in total, thirteen properties had interim controls completed in all occupied units. In accordance with the HUD-approved plan, the timeline for abatement at DCHA properties vary with properties anticipating complete abatement between 2020 and 2024. To date, DCHA has spent \$9.1 million on risk assessments and related interim control and abatement work. Because families may not be present in units or common areas where work is being completed, \$1.196 million was spent on relocation of residents.⁷

DCHA has continued to work in accordance with its HUD-approved Lead Action Plan and has kept HUD apprised of any delays in interim controls and abatement due to COVID-19 during its monthly status updates to HUD. To date, DCHA has completed interim controls for each of the 152 units with known children residents under six years of age that had not previously been completed within 90 days. DCHA has completed dust-only abatement at all five properties requiring dust abatement (Colorado Apartments, Judiciary House, Knox Hill, Ontario Road, and Woodland Terrace WU). DCHA has completed interim controls for 6 properties (Greenleaf Additions, Highland Additions, Kelly Miller Walk-Ups, LeDroit Walkups, Sibley Townhomes, and Park Morton). Abatement has been completed for two properties (Carroll Apartments and Kentucky Courts). Most recently, DCHA has also completed interim controls and related work at the following properties:

- 18 units at Richardson Dwellings;
- 11 units at Benning;
- 1 unit at Langston;

⁷ Relocation expenses, which are federally regulated, required DCHA to provide: (i) daily allowance, (ii) daily transportation allowance, usually in the form of an Uber card, (iii) information packets, (iv) snacks and water on moving days, and (v) assistance at the hotels, including daily visits by DCHA staff to address concerns.

- 5 units at Fort DuPont for families that were unable to utilize housing vouchers to permanently relocate;
- 36 units at Highland Add. (including an inspection of all units to identify whether all components were intact) using Lead Hazard reduction grant funds from HUD;
- 15 units at Claridge Towers (including an inspection of all units);
- 14 units, all common areas and exterior components for Carroll Apartments (including an inspection of all units);
- 43 units, all common areas and exterior components for Kentucky Courts (including an inspection of all units);
- 130 units, all common areas and exteriors at Park Morton (including an inspection of all units);
- 127 units, all common areas and exterior components at Kelly Miller walk-ups (including an inspection of all units);
- all common area components in James Apartments (no unit work required);
- abatement work completed at the Greenleaf Additions (no unit work required); and
- all exterior abatement work completed at Columbia Road.

Prior to restrictions due to COVID-19, DCHA completed annual inspections at 9 properties. And, as of the date DCHA reviewed ODCA’s Draft Report, DCHA had begun additional interim controls on outstanding exterior components.

IV. DCHA’s Current Efforts with regard to ODCA’s Findings and Recommendations

- a. DCHA has performed interim controls of lead-based paint hazards identified in units and common areas, especially those where children under six years of age live.

As of the date of this Report’s publication, DCHA has performed or is in the process of performing interim controls for all lead-based paint hazards identified in both units and common areas where there are known children residents aged under six years of age, in accordance with its Lead Action Plan. During the audit period, ODCA observed that “DCHA failed to complete interim controls within 90 days in 33 of 43 (77%) units or common areas with children under age six.” At the time of the audit period, DCHA was working within its limited to budget to complete interim controls as close as possible to 90 days from the date of a property’s risk assessment. Most of the units or common areas that received interim controls after the 90-day

period were in properties that were planned for demolition/disposition or other rehabilitation.⁸ At the time, DCHA was in the process of relocating these resident families into lead-safe units in order to most effectively deploy its limited resources and more permanently address the issue. Where residents were unable to be relocated, DCHA has since performed interim controls in the units and in common areas to which resident children under six years of age have access in accordance with DCHA's Lead Action Plan, including each unit and common area identified by ODCA in its Audit Report. These units and common areas have also passed clearance testing where lead-based paint hazards requiring interim controls exceeded *de minimus* levels in accordance with HUD regulations and DCHA's Lead Action Plan.

DCHA strongly objects to ODCA's improper and incorrect conclusion that by relocating residents to lead-safe housing, DCHA demonstrated a lack of understanding of federal regulations during the audit period. Throughout this process, DCHA remained in contact and engaged with HUD's Offices of Public and Indian Housing and Lead Hazard Control and Healthy Homes throughout the lead-based paint risk assessment process to identify and respond to identified lead-based paint hazards. HUD was well aware of DCHA's practice to relocate families. ODCA's finding characterizing this practice as a "lack of understanding" on DCHA's part improperly substitutes ODCA's judgment and legal interpretation for HUD's. To the extent ODCA's findings and recommendations interpret HUD regulations in a manner that is inconsistent with DCHA's HUD-approved Lead Action Plan, the ODCA's Audit Report fails to provide insight regarding how DCHA can improve its performance while complying with requirements established by the federal agency responsible for enforcing the law. Moreover, ODCA's conclusion fails to recognize the benefit to families being placed in residences with no lead-based paint hazards where possible. HUD has continued to guide DCHA in a direction that will ultimately benefit all of DCHA's residents and the District.

In response to its findings, ODCA made the following recommendations:

1. DCHA should develop and implement a plan to remediate remaining lead hazards identified during the risk assessment process including a process to effectively monitor contracts.
2. DCHA should develop and implement a plan for collaborating with the DOEE Lead-Safe and Healthy Housing Division and the HUD Office of Lead Hazard Control and Healthy Housing [sic] to improve compliance with the LSHR and the District's Lead Hazard Prevention and Elimination Act, particularly around risk assessment and clearance report requirements.

DCHA already engages in both recommended activities. As discussed above, DCHA developed a plan to remediate lead hazards identified during the risk assessment process, which it has already implemented. That plan, DCHA's Lead Action Plan, was approved by HUD in December 2019 after extensive collaboration with HUD. DCHA continues to engage with HUD monthly by providing a status report on DCHA's compliance with the LSHR and progress controlling lead-based paint hazards and engages directly with HUD's Office of Lead Hazard

⁸ One property not planned for demolition/disposition received interim controls in common areas at a later date because DCHA was required to relocate all tenants in the walk-up because of the location and scope of work needed.

Control and Healthy Homes (OLHCHH). Moreover, DCHA collaborated with HUD to the fullest extent practical in order to improve compliance with the LSHR. In August 2019, HUD awarded \$28 million to 38 Public Housing Agencies, including \$1 million to DCHA, to identify and reduce lead-based paint hazards in public housing units, especially those occupied by families with young children.⁹

DCHA also currently engages with DOEE. DCHA aided DOEE in its grant application to HUD in 2019 that led to HUD's award of almost \$3 million to DOEE.¹⁰ DCHA has not yet received any benefit from this grant, however. DCHA also provided a letter of support for DOEE's application for an EPA COVID-19 lead hazard grant in June of 2020. And through a Memorandum of Understanding, DOEE and DCHA work together to respond to reports of children with elevated blood lead levels ("EBLL"). DCHA has requested that ODCA provide more specific information regarding any opportunities for "expanded" collaboration between the agencies that it has identified. DCHA welcomes such opportunities but currently is not aware of any untapped resources available to tackle these issues collaboratively.

In the meantime, DCHA will continue to assess and respond to lead-based paint hazards in accordance with its HUD-approved Lead Action Plan and engage with DOEE where possible in accordance with its Memorandum of Understanding with DOEE. DCHA neither concurs nor disagrees with ODCA's first finding. DCHA understands the finding provides a snapshot of public housing at a specific point in time, but because this finding and related recommendations are outdated and lack context, DCHA finds them largely moot, especially in light of DCHA's current practices that are already consistent with the recommendations.

- b. DCHA is addressing lead-related work orders within 30 days and closing work orders with proper documentation

Prior to DCHA's restricted operations due to COVID-19, DCHA had 43 back-logged work orders identifying lead-based paint as of March 16, 2020. In response to an October 31, 2018 internal audit of DCHA's Work Orders, DCHA engaged in revamping and revitalizing DCHA's work order system. The October 31, 2018 internal audit—conducted by DCHA's own Office of Audit and Compliance (OAC)—had already brought to DCHA's attention areas of improvement when ODCA began its audit. Because the ODCA audit period overlapped with the DCHA OAC audit period, DCHA was already in the process of responding to findings and recommendations related to the Work Order system. Consequently, the ODCA Audit Report contemplates an outdated Work Order system no longer in use by DCHA.

DCHA transitioned to a new IT system in June 2019 to directly address deficiencies in the work-order response, maintenance, and tracking program that existed during both the ODCA and DCHA OAC audit periods. The previous system relied on outdated processes in Wizard that made it extremely challenging for DCHA to timely track work orders, maintenance work, and closure documentation. Although previous work orders relating to lead-based paint, such as

⁹ *HUD Awards \$28 Million to Clean Up Lead Hazards in Public Housing*, HUD Press Release No. 19-24 (Aug. 20, 2019), available at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_124.

¹⁰ *HUD Awards Record \$319 Million to Protect Families from Lead and Other Home Health Hazards*, HUD Press Release No. 19-145 (Sept. 30, 2019) available at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_145

those reviewed by ODCA during the scope of the audit period, were not added to the new IT system, these have been addressed or are currently being addressed in accordance with DCHA's Lead Action Plan.

However, under both the new and the old system, not all work orders labeled "lead hazard" are, in fact, lead hazards. This leads to an incorrect conclusion regarding outstanding "lead-related" work orders. Work orders that require repairs in a unit or common area near where lead-based paint was previously identified are considered possible "lead hazards" and labeled accordingly. Often, upon closer inspection of the required work, it is clear that the work either will not disturb lead-based paint or the work is in an area that did *not* have lead-based paint. For example, a work order for a sink's garbage disposal would likely be labeled as "lead-based paint hazard" due to the sink's proximity to a wall with known lead-based paint but an individual reviewing the work order would need to have familiarity with the property and the type of requested work in order to accurately identify this. DCHA is working to make this clearer for personnel, maintenance staff, and record-keeping purposes. However, in the meantime the system operates to conservatively designate work orders and as a result is over-inclusive in what it designates as involving a lead hazard.

Generally, DCHA receives an average of 126 work orders each day and has a limited number of maintenance staff, including foremen and mechanics, to work on these. Maintenance staff for lead-related work orders is further limited by the individuals who are certified to control or respond to certain lead-based paint hazards. DCHA's new IT system, Voyager Management System by Yardi, has increased the efficiency of filing work orders, completing work orders in a timely manner, properly closing work orders, and maintaining documentation related to work orders in a centralized location.

Voyager also has the potential to update how DCHA conducts inspections as the new system is capable of monitoring inspection statuses across all public housing properties, which can be easily accessed and viewed through an "Inspection Dashboard" and includes new inspection templates that are specifically designed to address the various types of inspections made in public housing, including lead-based paint hazards and Uniform Physical Conditions Standards (UPCS). Through the system, DCHA personnel will be able to assign and schedule mass inspections for one or more individual inspectors, confirm that inspections have occurred, and store and review results from each inspection. Inspectors are also able to electronically sync the results of their inspections while in the field. DCHA will also be able to send letters and notifications as needed based on the results of inspections, work-order responses, and more. DCHA's agreement with Yardi provides regularly—and at least quarterly—scheduled System/Functionality Updates that will introduce new industry-wide "best practices." Finally, DCHA is further benefited by the new system's ability to update and reflect HUD regulations. Yardi has an agreement with HUD to ensure that any changes by HUD to applicable regulations that would require modification to the Voyager software are effectuated timely and without additional cost to DCHA.

In response to ODCA's findings that DCHA failed to address or properly close 48% of sampled work orders that were purportedly "lead-related" within 30 days, ODCA made the following recommendations:

3. DCHA should comply with Lead Safe Housing Rule (LSHR) requirement to stabilize any reported deteriorated paint within 30 days, document use of lead safe work practices and supply clearance reports when required.
4. The DCHA Property Management Office should develop and implement a plan to reduce the backlog of work orders including work order related to lead-based paint.
5. The DCHA Property Management Office should develop comprehensive internal policies and procedures for the work order process including a requirement to main all work order related documentation, from DCHA-managed properties and privately managed properties in a centralized location.

With the exception of privately managed properties, DCHA has either already implemented each recommendation or is in the process of implementing the recommendation. As previously stated, DCHA is in compliance with the LSHR's requirement to stabilize reported deteriorated paint within 30 days. DCHA also has significantly reduced the backlog of work orders, including those related to lead-based paint, through DCHA's new IT system for the work order process in addition to trainings and other actions taken in response to the 2018 internal audit. The new IT system has also helped address proper document retention, closure requirements, and segregated responsibilities within the work order system to ensure work orders are properly closed.

As the new IT system was introduced in 2019, DCHA has continued to review and assess the system's effectiveness and will continue to make improvements to both the system and DCHA's policies and internal procedures related to work orders. DCHA neither concurs nor disagrees with ODCA's second finding. DCHA understands the finding provides a snapshot of public housing at a specific point in time, but because this finding and related recommendations are outdated and lack context, DCHA finds them largely moot, especially in light of DCHA's current practices that are already consistent with the recommendations.

- c. DCHA is working to comply with federal and District laws requiring annual and unit turnover lead-based paint inspections

Currently, DCHA is working in accordance with its Lead Action Plan to conduct visual assessments for properties identified as containing lead-based paint hazards. As of March 2020, DCHA had completed 9 visual inspections but has since been unable to perform additional inspections due to COVID-19 and the District's restrictions on in-unit visits. As detailed in Section V, this is consistent with HUD's revised regulations due to COVID-19.

DCHA is working to improve its efforts to conduct timely inspections. As discussed above, DCHA's new IT system—Voyager—also includes a scheduling option and calendar reminder option, in contrast to DCHA's old system reviewed by ODCA. As DCHA continues to improve the efficiency and use of this new system, these features will allow DCHA to stay on track with deadlines for inspections and unit turnover and provide comprehensive access to documentation related to inspections for each unit. ODCA's audit scope began approximately one year prior to DCHA's effort to ensure it had complete and accurate risk assessments and lead-based paint hazard evaluations for all of its properties. Therefore, the audit scope would not

include yearly visual assessments for most properties because those risk assessments began in 2018.

Although yearly inspections are currently suspended due to COVID-19, DCHA will resume all inspection-related work in full compliance with federal and DC law once DCHA can safely enter resident-occupied units and common areas.

In response to ODCA's findings based on DCHA properties prior to the implementation of the DCHA Lead Action Plan, ODCA made the following recommendations:

6. DCHA Property Management Operations (PMO) should enforce Lead Safe Housing Rule (24 CFR 35 Section 35.1355 (a)(2)) requirements to conduct visual assessments every 12 months
7. DCHA should provide to its tenants with household members considered at risk (children under age six or pregnant women) a clearance report issued within the previous 12 months in compliance with DC Lead Hazard Prevention and Elimination Act
8. The DCHA Office of Audit and Compliance (OAC) should implement quality control process for inspections conducted by Property Management Operations (PMO) for compliance with the Lead Safe Housing Rule, 24 CFR Part 35.1355 (a)(2).

DCHA and its PMO is already enforcing the LSHR and conducting visual assessments every 12 months. Where clearance reports are required under federal law, DCHA makes these available to residents. With regard to the clearance reports described in the DC Lead Hazard Prevention and Elimination Act, DCHA has no obligation to provide a "clearance report" as DCHA is not an "owner" within the meaning of the DC Lead Hazard Prevention and Elimination Act. However, because federal law requires DCHA to make disclosures regarding the presence of lead-based paint hazards, including the results of risk assessments and visual inspections, DCHA finds Recommendation 7 is accurately addressed by DCHA's compliance with the federal LSHR.

With regard to Recommendation 8, DCHA is open to the suggested quality control process and has plans to engage OAC to determine whether implementation is practical within DCHA's current budget. DCHA neither concurs nor disagrees with ODCA's first finding. DCHA understands the finding provides a snapshot of public housing at a specific point in time, but because this finding and related recommendations, with the exception of Recommendation 8, are outdated and lack context, DCHA finds them largely moot, especially in light of DCHA's current practices that are already consistent with the recommendations.

V. DCHA's Reduced Operations Due to COVID-19

On March 16, 2020, DCHA began operating under an agency-specific partial telework schedule with the intent to continue to deliver essential services and to keep critical systems and services operating. Because of this, the Property Management Operations Team (PMO) continued to address emergency work orders only, perform cleaning of all common areas throughout public housing properties, and address all necessary site maintenance. The HCVP

Department paused annual and bi-annual inspections; emergency and special inspections to be conducted by essential employees of the HCVP.

On April 10, 2020, HUD waived and established alternative requirements for various requirements of the Public Housing program. DCHA published an overview of the changes due to COVID-19 on April 24, 2020. This includes annual inspections, which are on hold until December 31, 2020. Annual inspections regarding lead-based paint hazards have also been suspended and will resume in accordance with HUD's and the District's directives. More generally, work requiring full rehabilitation of upgrades of units—work that requires many individuals and the relocation of residents, even if temporary—was all put on hold.

DCHA has, however, prioritized all emergency work orders (such as no electricity, no heat, no water, refrigerator or oven issues, roof and/or water leaks, floods, and non-flushing toilets in units with only one toilet) and is working continuously to ensure these do not result in a backlog once operations return to normal. As of May 8, 2020, there had been 2,105 emergency orders since the beginning of DCHA's modified operations due to COVID-19 and all had been addressed. During this time, DCHA also made over 3,600 wellness calls to residents.

With regard to lead, DCHA has remained in contact with HUD, providing monthly reports on DCHA's status in accordance with its Lead Action Plan. Due to the District's reduced operations and DCHA's inability to enter occupied units and common areas, DCHA requested an extension to the suspended interim control operations while the District remains in Phase II of its re-opening plan. Despite the extended period of time to address remaining lead-based paint hazards, DCHA has prioritized conducting interim controls in areas that require minimal or no contact with residents, primarily exterior components and interior common area components. As of the date DCHA reviewed ODCA's Draft Report, DCHA had begun interim controls on exterior components. DCHA anticipates resuming all work in accordance with its Lead Action Plan no later than 90 days after the District enters Phase III of re-opening.

VI. Conclusion

Overall, despite setbacks due to COVID-19 and budget concerns, DCHA is working tirelessly to improve the state of its Public Housing Portfolio. DCHA continues to control and abate lead-based paint hazards in accordance with guidance from HUD and DCHA's own HUD-approved Lead Action Plan. Through monthly status updates to HUD regarding lead-based paint hazards within DCHA's public housing units, DCHA is constantly updating and revising its plan to ensure it is making decisions that are cost-efficient for the District, compliant with federal lead laws, and safe and effective for its public housing residents.

ODCA's Audit Report illustrates DCHA's progress with regard to lead-based paint hazards in its Public Housing Portfolio since 2017 and also serves as a timely reminder to DCHA of the importance of continued improvement in efficiency, effectiveness, and quality control. Although DCHA has either already implemented or is in the process of implementing changes that address each of ODCA's recommendations, these recommendations provide additional support for DCHA's own requests for funding, resources, and internal development and change.

ODCA Response to Agency Comments

ODCA appreciates the responses to the draft report provided by DOEE and DCHA, including the commitment both agencies expressed to ensuring that all District residents are safe from lead-based paint hazards. Effectively enforcing District and federal lead laws is vital to protecting District residents from lead-based paint exposure and preventing childhood lead poisoning. Both agencies stated that they have already improved their processes in response to our findings, and we look forward to further engagement with them in the future.

We value DOEE's collaboration and commitment to making improvements to their enforcement process. In their response, DOEE detailed actions that they have already begun to put in place to address our report recommendations. We are encouraged that DOEE is using the audit as a tool for improving lead-based paint related enforcement. For Recommendation 9, we understand that amendments proposed by DOEE are currently under review by the D.C. Council. We encourage DOEE to continue to work with the Council to clarify DOEE's ability to enforce in public housing even if legislative changes are not made by the end of this year. We also are encouraged by the stated continued collaboration with the Office of the Attorney General on lead-related cases. We hope DOEE will continue to explore ways to use the full scope of their enforcement powers where appropriate, and we note that DOEE's response outlines that DOEE will take into consideration Recommendation 14.

DCHA stated it would have preferred that the draft report pay greater attention to its funding situation, including the nationwide trend away from investing in traditional public housing. And while it is true that DCHA's overall needs exceed their current budget capacity, the agency remains responsible for the safety and welfare of its residents, and thus must comply with District and federal standards for lead-based paint maintenance. Although DCHA states that most of the draft report's findings and recommendations are "moot, especially in light of DCHA's current practices," ODCA appreciates the attention DCHA has devoted to improvement and DCHA's report of the progress it has made since the end of the audit scope.

In response to our first finding, DCHA says it has "performed or is in the process of performing" interim controls in all units and common areas known to be occupied by children under the age of six. This audit evaluated DCHA performance between October 1, 2017 and May 31, 2019, but DCHA was able to submit additional documentation up to the time of publication. DCHA contends that "HUD regulations do not require interim controls in units that are planned for demolition and will not be re-occupied in the future". This is true only for *unoccupied* units,⁴⁶ not those currently inhabited by vulnerable individuals like children under the age of six.

Additionally, we are encouraged by DCHA's report of its continued collaboration with HUD and DOEE. DCHA in its response stated that "DCHA has requested that ODCA provide more specific information regarding any opportunities for 'expanded' collaboration." Given that DCHA accepted clearance reports that did not meet requirements and prove that all identified lead hazards had been eliminated, we believe that DCHA could benefit from drawing on HUD Office of Lead Hazard Control and Healthy Housing and

⁴⁶ 24 CFR § 35.115 (a)(6).

DOEE's technical expertise to inform their risk assessment and clearance report process, especially ensuring that work by external contractors meets requirements. We modified our second recommendation to highlight this and acknowledge DCHA's ongoing collaboration with HUD and DOEE:

2. DCHA should develop and implement a plan to expand collaboration with the DOEE Lead-Safe and Healthy Housing Division and the HUD Office of Lead Hazard Control and Healthy Housing around risk assessment and clearance report requirement to improve compliance with the LSHR and the District's Lead Hazard Prevention and Elimination Act.

In response to our second finding, DCHA states that it has introduced a new Voyager information technology (IT) system that has allowed it to more efficiently respond to work orders and maintain documentation. ODCA shifted its scope, at the request of DCHA, to not include the transfer to the new IT system. Any improvements made since May 31, 2019, occurred after the scope of this audit. That said, we are encouraged by DCHA's statement that the new IT system has helped improve DCHA's response to work orders, including work orders labeled "lead hazard," in a timely manner while maintaining proper documentation.

In response to our third finding, DCHA states it is working to comply with federal and District laws requiring annual and unit turnover lead-based paint inspections, although the COVID-19 pandemic has disrupted this work and annual inspections are on hold until December 31, 2020. We appreciate that the new IT system is helping to better manage inspections. However, we were troubled to see DCHA's response to Recommendation 7, specifically that "DCHA has no obligation to provide a 'clearance report' as DCHA is not an 'owner' within the meaning of the DC Lead Hazard Prevention and Elimination Act." This is a change of opinion from what DCHA wrote during the audit when DCHA said it looks to the relevant sections of D.C. Code and D.C. Municipal Regulations for "where DCHA is the owner." By this new logic, all District residents with children under the age of six are entitled to a clearance report *except* those living in DCHA-owned traditional public housing. ODCA appreciates that the D.C. Council and DOEE are working to amend local laws so that DCHA is explicitly included in the definition of "owner" moving forward.

We look forward to hearing more about the promising progress detailed in DOEE's and DCHA's responses to our report in our Recommendation Follow Up Report on audits to be published in fiscal year 2021.

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

Office of the District of Columbia Auditor
717 14th Street N.W.
Suite 900
Washington, DC 20005

Call us: 202-727-3600

Email us: odca.mail@dc.gov

Tweet us: https://twitter.com/ODCA_DC

Visit us: www.dcauditor.org



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