

CLIENT NEWS BRIEF

Lead-Safe Schools Protection Act: The Continuing Duty to Address Lead

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Schools, colleges and other local and state agencies have a continuing obligation to address lead in the course of new construction, modernization and maintenance projects. Various provisions of California law found in the Lead-Safe Schools Protection Act, the Health and Safety Code and Title 17 of the California Code of Regulations ban the use of materials containing lead in new construction and require that public agencies use properly trained and certified personnel to plan for and address existing materials containing lead that will be disturbed during the course of modernization and maintenance projects.

Voters' approval of the Proposition 51 state school bond in November 2016 and of more than 200 school and community college district bond measures are contributing to a new wave of public works construction. When undertaking these projects, public agencies should remain vigilant in enforcing the ban on lead in their new construction projects and complying with current regulations to address existing materials containing lead in modernization and maintenance projects.

The Lead-Safe Schools Protection Act

Enacted in 1992, the Lead-Safe Schools Protection Act (the Act) implemented a program of prevention and protection for California public elementary and preschools and related day care facilities. The Act focuses on protecting the youngest students because lead is highly toxic and exposure is particularly dangerous for children ages six or younger.

The Act required the former Department of Health Services (now the Department of Public Health) to conduct a sample survey of California schools to identify risk factors to predict lead contamination. Risk factors included location in relation to high-risk areas, age of facilities and likely use of lead paint, numbers of children enrolled under the age of six and results of lead screening programs. Based on the survey results, which were released in 1998, the Department estimated that nearly 96 percent of schools had some lead paint, more than 18 percent had lead in drinking water at or above the federal action level and six percent had lead levels in soil that exceeded federal standards.

Lead hazards can include lead-based paint or paint presumed to be lead-based (applied before 1978) that is deteriorated or disturbed, lead-contaminated dust or soil or any other nuisance which may result in persistent and quantifiable lead exposure. Lead activities include abatement, hazard evaluation, construction work or any activity which disturbs paint known or presumed to contain lead, or creates a lead hazard. Lead-related construction work means any construction, alteration, painting, demolition, salvage, renovation, repair or maintenance of any public building, including preparation and cleanup, which by using or disturbing materials or soil containing lead may result in significant exposure to adults or children.



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Independent of the Act, provisions of the California Health and Safety Code provide that the Department or other local enforcement agency may order a public agency to abate or otherwise correct a lead hazard that exists or is being created on the public agency's property, and may issue a cease and desist order. Failure to comply with such an order can result in a fine of up to \$1,000 for the first violation, and up to \$5,000 and imprisonment in county jail for up to six months for each subsequent violation, in addition to other penalties and remedies allowed by law.

Takeaways

To comply with the Act, school districts must not use materials containing lead, including paint, plumbing and solders, in the construction of any new school facility or modernization or renovation of existing school facilities. Districts must also utilize trained and state-certified contractors, inspectors and workers in any abatement action.

For more information on the Lead-Safe School Protection Act or on public agency construction in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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