

Written Testimony of

The Hon. Kathleen Patterson, D.C. Auditor
Office of the District of Columbia Auditor

prepared for the

Council Committee on Transportation and the Environment

Performance Oversight Hearing
on the
Department of Energy and the Environment

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The Office of the D.C. Auditor (ODCA) provides this written testimony to assist the Council of the District of Columbia in overseeing the performance of the D.C. Department of Energy and the Environment and the D.C. Housing Authority. I ask that the statement be include in the records, respectively, of the Committee on Transportation and the Environment and Committee on Housing and Executive Administration.

We offer this testimony during performance oversight hearings to share our concerns over ensuring that District residents live in safe, healthy housing and our hope that residents can count on their government to take action against unsafe and unsanitary housing conditions. My office released an audit on November 18, 2020, on the District’s response to lead-based paint hazards in both public and private housing entitled [More Urgency Needed to Fix Lead-Based Paint Hazards](#). A copy of the report is included with this testimony. For the audit, we reviewed DCHA’s inspections, maintenance, and lead remediation for lead-based paint hazards in public housing and DOEE’s enforcement process when lead-based paint hazards are identified in both public and private housing.

The discussion that follows includes performance questions for DCHA followed by performance questions for DOEE all related to lead-based paint hazards.

Lead-Based Paint Hazards in Public Housing:

On the public housing side, the audit raised significant concerns about the safety of residents in public housing from lead-based paint exposure:

1. Public housing currently sits outside of the District’s lead-based paint enforcement. The Council can fix this.

Our audit found that DOEE does not inspect for lead-based paint violations nor conduct enforcement in public housing (Finding 4, pg. 10). The Lead-Hazard Prevention and Elimination Act of 2008 stated that the Mayor shall enforce against owners “upon reasonable belief...that there is risk of a lead-based paint hazard....” The statute does not mention the District government and its independent agencies in the definition of an “owner.” DOEE has contended that the Act’s omission of DCHA properties was intentional. This legal ambiguity creates a loophole for public housing in the District’s local environmental enforcement framework. We thus issued the following recommendation:

- 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. (pg. 11)

DOEE submitted comments to the Council proposing this change in November 2019. Unfortunately, the change was not included in the recent Residential Housing Environmental Safety Amendment Act of 2020.

The ambiguity over DCHA being an “owner” contributed to a second report recommendation:

- Recommendation #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. (pg. 10)

In written comments to our report DCHA stated that it “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” (pg. 43). By this 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.

The Council can take action to clarify the law and ensure public housing residents receive the same protection from lead hazards as other residents.

DCHA’s Response to Lead-Based Paint in Public Housing:

During our scope which ended on May 31, 2019, we found that DCHA had not taken adequate steps to protect residents from exposure to lead-based paint. We believe that the performance hearings can be a valuable forum to follow up on DCHA’s responsibilities to protect residents from lead-based paint. We share four areas of concern:

1. Whether DCHA has adequately conducted interim controls throughout all units and common areas with lead-based paint hazards across public housing properties.

Our audit found that DCHA failed to complete interim controls to fix lead-based paint hazards within the required 90 days in 77% of units or common areas with children under age six where risk assessments were performed (Finding 1, pg. 6). In 2018, DCHA conducted risk assessments of a sample of units across its properties. HUD guidelines allow public housing authorities to review a sample of units in properties with five or more similar dwellings. The Federal Lead-Safe Housing Rule (LSHR) requires more rapid interim controls, i.e. within 90 days, for units and common areas with children under 6 because they are at particular risk from lead exposure but the LSHR also requires lead remediation within one year for other units with lead hazards identified by risk assessments.

Our finding was particularly concerning because we only looked at the units and common areas with children under six that were randomly sampled as part of DCHA’s risk assessment process, not all units in public housing. Our review therefore did not leave us with confidence that DCHA has undertaken prompt, adequate lead remediation throughout the wider universe of unsampled public housing units.

We thus made the following recommendations:

- Recommendation #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.

We are encouraged that DCHA in its written comments reported having a Lead Action Plan approved by the U.S. Department of Housing and Urban Development (HUD) in December 2019. However, as late as fall 2020, in 26% of the units and common areas we did examine, DCHA could not provide evidence of interim controls work or clearance examinations having been completed. We were concerned that DCHA in its written comments to our report stated that most of the draft report’s findings and recommendations were “largely moot, especially in light of DCHA’s current practices” but was unable to

provide documentation that all lead-based paint hazards where children under 6 live had been remediated.

- Recommendation #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.

We are encouraged by DCHA's report of its continued collaboration with HUD and DOEE in its written comments. Risk assessments and clearance reports are technical documents often prepared by specialized contractors. Given that DCHA accepted incomplete clearance reports, we believe that DCHA could benefit from drawing on the HUD Office of Lead Hazard Control and Healthy Housing's and DOEE's technical expertise to ensure that work by external contractors doing risk assessments and clearance reports meets requirements.

2. Reports that lead-based paint repaired through interim controls is quickly deteriorating again and posing new hazards to residents.

Our audit did not examine how long interim controls work performed by DCHA to address lead-based paint hazards last. However, we have heard reports from DCHA staff and from advocates that paint quickly deteriorated again in some units that received interim controls, again posing a lead hazard. DCHA's interim controls work has been disrupted by the COVID-19 pandemic, but this is a potential issue that we flag to both DCHA and the Council when normal operations resume.

Much of the public housing stock nationally is in extremely poor condition and D.C. is no exception, which can have implications for the success of future lead remediation efforts. As DCHA stated in written comments, it does not have the funding it needs to fully repair all units (pg. 33). The poor condition of the units can affect the longevity of lead remediation efforts and risk wasting money on interim controls that do not last. The solution however cannot be to leave residents in unsafe and deplorable conditions.

3. Lead-related work orders existed in the context of a larger backlog of work orders.

Our audit found that DCHA failed to address nearly half (48%) of sampled lead-related work orders within 30 days and/or closed worked orders without proper documentation (Finding 2, pg. 9). An October 2018 internal DCHA audit of DCHA's open work orders over a six-year period found an "excessive" backlog. We are encouraged by DCHA's statement that their new Voyager 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. However, since DCHA reported in its comments that it is only responding to emergency work order requests given the risks with the current COVID-19 pandemic, any work order backlog will grow. Our recommendation #4 to "develop and implement a plan to reduce the backlog of work orders, including work orders related to lead-based paint" (pg. 8) will become even more relevant when the pandemic ends.

DCHA did point out that it faces budgetary challenges in meeting its capital needs. However, to both DCHA and the Council, we again note that the solution cannot be to leave public housing residents in horrible and potentially dangerous conditions.

4. When the COVID-19 emergency ends, DCHA needs a reliable annual and unit turnover lead-based paint inspection process.

ODCA found that DCHA failed to comply with federal and District laws requiring annual and unit turnover lead-based paint inspections (Finding 3, page 9). We appreciate that DCHA in its comments stated that it is working to comply with inspection requirements and that DCHA believes the new IT system Voyager should help with this effort. When the COVID-19 pandemic ends, we hope that DCHA will fully implement recommendations 6 through 8 and that annual and unit turnovers will happen on schedule.

Suggested Questions for DCHA:

1. Will DCHA commit to giving households that include children under six or a pregnant woman a clearance report when they move into a new unit as is required by District law?
2. Prior to the COVID-19 emergency, did you conduct risk assessments in all occupied units? If not, how did you determine where lead hazards exist, including lead dust hazards?
3. Did you complete interim controls and clearance reports for any lead hazards that were identified?
4. Can you update us on where DCHA is in implementing the Lead Action Plan?
5. What are DCHA's next steps in the implementing the Lead Action Plan when the COVID-19 pandemic subsides?
6. Given the poor condition of many units, what has DCHA done and what will DCHA do to check that interim controls are longer lasting and that paint does not again quickly deteriorate ?
7. After interim controls are completed and clearance reports are received, is there a process for inspecting units a few months later to ensure the interim controls have remained intact?
8. How do you address interim controls that fail after a short period of time?
9. What is the current backlog of all work orders and of work orders identifying lead-based paint? What is DCHA's plan to reduce this backlog when risks posed by the COVID-19 pandemic lessen?
10. If residents report maintenance issues to property managers or staff, do property managers and staff open work orders to address these issue? If not, why not?

DOEE's Lead-Based Paint Enforcement in Private Housing

In our audit, we found that DOEE is promptly responding to complaints and initiating enforcement when lead hazards are identified but also concluded that the enforcement process needs improvement. DOEE's enforcement process was slow and in half of cases reviewed, the enforcement process failed to secure lead remediation after 10.5 months on average. We are encouraged that DOEE is using the audit as a tool for improving lead-based paint related enforcement. While we will follow up formally with DOEE about compliance with this audit's recommendations at the end of this calendar year, DOEE reported in its written comments that the agency is already implementing or beginning to implement five (Recommendations #9, 10, 12, 13, and 15) of our 7 recommendations (pg. 28).

Two additional points in the audit echo findings from our [Dahlgreen Courts case study](#) on housing code enforcement by the Department of Consumer and Regulatory Affairs – that the enforcement process was lengthy and District agencies seem reluctant to use additional statutory authority to enforce even in the face of landlords not paying fines. These appear to be two challenges that plague the District’s housing conditions enforcement more broadly. I also wish to highlight a third area for follow up: the new Lead Reduction Program.

1. The enforcement process under normal circumstances was slow. Transparency in tracking process length moving forward could help overall timeliness.

The second half of recommendation #11 (pg. 15) recommends that DOEE “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.” The current [Performance Plan FY2021](#) indicator (listed last under Objective 2) “percentage of properties with identified lead-based paint hazards that are issued and Enforcement Order or a Notice within 28 days of the property’s risk assessment” only captures the beginning of the enforcement process which our audit found that DOEE is doing well and quickly. Our report was issued in early FY2021 so we hope that DOEE adds an indicator to future Performance Plans and Reviews that captures the entire process, especially later stages which were slower. We know that enforcement is particularly challenging during the current pandemic, but an indicator that applies to the entire process could be more useful for tracking progress in the future. We are encouraged that DOEE noted in its comments to our report that it will take this recommendation under consideration.

2. Many owners appear to be ignoring fines and not remediating lead hazards promptly. DOEE has additional statutory authority it is not using to bring owners into compliance.

Our audit found that in 9 of 12 cases where a fine was issued, the owner had not paid the fine by the end of the audit scope.

The D.C. Code lists the following additional powers (pg. 16 of our report):

- 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.
- The mayor may do the lead remediation and charge the owner and issue a lien on all property owned by the owner.
- A fine up to \$25,000 may be imposed for each day of the violation.
- An owner can face imprisonment for up to a year for knowingly or willingly violating District lead laws.
- 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.

We are encouraged that DOEE is working with the Office of the Attorney General (OAG) to refer cases where owners continue to fail to comply to OAG. Our recommendation #14 (pg. 16) also expands beyond collaboration with OAG to using other powers:

- 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.

3. We hope DOEE's new [Lead Reduction Program](#) will help fill an important gap when low income owners cannot afford to remediate lead-based paint hazards.

During the audit scope, the Department of Housing and Community Development Lead-Safe Washington program had closed after HUD took back the funding. DOEE is now the recipient of the HUD lead hazard control grant funding under the new title, Lead Reduction Program. We hope the Lead Reduction Program can help families who have children under 6 who cannot afford to do the lead-based paint repairs or owners of multifamily properties who rent to income-eligible families. For owners living in their own homes who lack the resources to fix lead-based paint issues, we do not want an enforcement process that will impose an increased financial burden. Rather we want to get them resources to fix lead-based paint hazards and make their housing safe. The implementation of the Lead Reduction Program merits attention and oversight. The District must avoid the problems faced by Lead-Safe Washington which failed to enroll and remediate enough housing units.

Suggested Questions for DOEE:

1. Has the Lead Reduction Program launched? If so, what progress has been made so far? How many applications have you received?
2. How will DOEE address the difficulties faced in previous grants for the Lead-Safe Washington Program of ensuring residents who need it can make it through the application process and qualify? How will DOEE ensure that it is able to meet the targets for the number of units to be remediated?
3. How does DOEE plan to monitor that public housing residents are living in residences free of lead-based paint hazards?
4. Has DOEE used its additional authority such as multiday fines or working with other District agencies to deny permits for landlords who continue to not comply with lead laws?
5. How has DOEE adjusted its lead-based paint enforcement during the current COVID-19 pandemic? What if any portion is "on pause?"
6. Has there been a decrease in lead-based paint complaints or an increase since the pandemic began?
7. During the pandemic, has the District seen a decrease in the percentage of children receiving lead screenings on schedule?

(Background on final question: District law requires health care providers and health care facilities to screen children for lead once between six months and 14 months of age and a second time between the ages of 22 and 26 months (i.e. "Twice by Two"). If those milestones are not met, a child over the age of 26 months must be tested at least twice before the child attains age six.)

Thank you for considering these findings, recommendations, and questions. Please let ODCA know if there are additional issues from the lead-based paint audit on which you would like additional information.