UIC Law Review

Volume 24 | Issue 4 Article 4

Summer 1991

Preventing the Silent Epidemic from Crippling Our Children: Recommended Revisions of the Illinois Lead Poisoning Prevention Act, 24 J. Marshall L. Rev. 843 (1991)

Carolyn H. Eckert

COMMENT

PREVENTING THE "SILENT EPIDEMIC" FROM CRIPPLING OUR CHILDREN: RECOMMENDED REVISIONS OF THE ILLINOIS LEAD POISONING PREVENTION ACT

There is a silent epidemic debilitating the children of this country.[1] The Centers for Disease Control ("CDC") has deemed lead poisoning as the "number one environmental problem facing America's children."[2] Lead poisoning can cause death, brain damage, and permanent kidney damage.[3] One reason that children are at a greater risk of lead poisoning than adults is because lead is much more efficiently absorbed in children.[4] Society has been aware of the dangers of lead poisoning for at least 2000 years.[5] The

1. Commentators have deemed lead poisoning a "silent epidemic." Mahoney, *Four Million Children at Risk: Lead Paint Poisoning Victims and the Law*, 9 STAN. ENVTL. L.J. 46, 46 n.1 (1990) (citing Stein, *An Overview of the Lead Abatement Program Response to the Silent Epidemic* in LOW LEVEL LEAD EXPOSURE: THE CLINICAL IMPLICATIONS OF CURRENT RESEARCH (H.L. Needleman ed. 1980)).

2. Hilts, *U.S. Opens a Drive on Lead Poisoning in Nation's Young*, N.Y. Times, Dec. 20, 1990, at A1, col. 4 (quoting Dr. William Roper, Director of the Federal Centers for Disease Control ("CDC")).

3. Gilligan & Ford, *Investor Response to Lead-Based Paint Abatement Laws: Legal and Economic Considerations*, 12 COLUM. J. ENVTL. L. 243, 244-45 (1987). For a discussion of the effects of lead poisoning see *infra* notes 31-39 and accompanying text.

4. Hammond, *Metabolism of Lead*, in LEAD ABSORPTION IN CHILDREN: MANAGEMENT, CLINICAL, AND ENVIRONMENTAL ASPECTS 19 (J. Chisolm & D. O'Hara ed. 1982). Although children absorb lead at a far greater rate than adults, the toxic effects of lead occur at virtually the same level in adults as in children. *Id.*

Children are also more susceptible to lead-poisoning because they engage in more hand-to-mouth activity. CENTERS FOR DISEASE CONTROL, PREVENTING LEAD POISONING IN YOUNG CHILDREN 3 (1985) (hereinafter PREVENTING LEAD POISONING). For a discussion of the hand-to-mouth activity of children see *infra* note 13.

5. Lin-Fu, *The Evolution of Childhood Lead Poisoning as a Public Health Problem*, in LEAD ABSORPTION IN CHILDREN: MANAGEMENT, CLINICAL, AND ENVIRONMENTAL ASPECTS 2 (J. Chisolm & D. O'Hara ed. 1982). Nicander, a second century B.C. physician-poet wrote about the effects of lead poisoning. Hair & Polin, *Lead Poisoning* 46 AM. JURIS. PROOF OF FACTS 2d 145, 146 (1986). Some researchers argue that the behavioral outbursts which a majority of Roman emperors exhibited were due to lead poisoning. *Id.* Throughout the 18th and 19th

problem, however, has gained the public's attention only in recent decades.[6] Recently, the Department of Housing and Urban Development ("HUD") estimated that the number of children requiring medical treatment for excessive amounts of lead in their blood is almost 200,000.[7] Moreover, between four and six million children are at risk from low levels of lead which can pose a great threat to their health.[8] Most importantly, lead poisoning is a preventable disease.[9]

The primary method of preventing lead poisoning[10] is abate-

---

centuries it was common for female lead workers and wives of male lead workers to suffer from sterility, miscarriages, stillbirth, and premature delivery. Lin-Fu, *supra*, at 2. In addition, the infant mortality rate was extremely high in these families. *Id.*

6. Hilts, *supra* note 2, at A1, col. 4. Congress first addressed the nation's concern regarding the dangers of lead-based paint in 1971 with the passage of the first Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act of 1971, Pub. L. No. 91-695, 84 Stat. 2079 (1971) [hereinafter LPPPA]. Only in the last fifteen years have scientists researched the effects of low levels of lead in a child's body. Conservation Law Foundation of New England, Inc., A SILENT AND COSTLY EPIDEMIC: THE MEDICAL AND EDUCATIONAL COSTS OF LEAD POISONING IN MASSACHUSETTS 15 (1988) [hereinafter A SILENT AND COSTLY EPIDEMIC]. *See generally* Jaroff, *Controlling a Childhood Menace: Lead Poisoning Poses the Biggest Environmental Threat to the Young*, TIME, Feb. 25. 1991, at 68-69 (addressing the public's growing awareness of the pervasiveness of lead poisoning in our nation's young).

7. Hilts, *supra* note 2, at A16, col. 3-4.

8. *Id.* For a discussion of the effects of various levels of lead in the body see *infra* notes 31-39 and accompanying text. For a discussion of the treatment available for persons suffering from lead poisoning see *infra* notes 50-54 and accompanying text.

9. Conservation Law Foundation of New England, Inc., FACT SHEET ON CHILDHOOD LEAD POISONING IN MASSACHUSETTS (1988) [hereinafter FACT SHEET].

10. The chief source of lead comes from lead-based paint. *See, e.g.*, Gilligan & Ford, *supra* note 3, at 243 (main source of childhood lead poisoning is lead-based paint in poorly maintained residences); Mahoney, *supra* note 1, at 47 (prime sources of children's exposure to lead are lead-based paint and household dust). Household dust also contains lead which children ingest through hand-to-mouth activity and by teething on items such as window sills. Charney, *Lead Poisoning in Children: The Case Against Household Lead Dust*, in LEAD ABSORPTION IN CHILDREN: MANAGEMENT, CLINICAL, AND ENVIROMENTAL ASPECTS 80 (J. Chisolm & D. O'Hara ed. 1982). Dust bearing lead occurs from a number of sources. Often, however, the prime source of this lead is lead-based paint. *Id.*

Another source of lead is soil, from either leaded gasoline exhaust or industrial exposure. Shafer & Shafer, *Lead Poisoning*, 31 MED. TRIAL TECH. Q. 227, 231-32 (Fall 1984). Lead particles leach into the soil from atmospheric lead. *Id.* at 231. Leaded gasoline, the burning of coal, and industries which burn battery casings, mine lead and/or engage in smelting are all sources of atmospheric lead. *Id.* at 231-32. For a further discussion of atmospheric lead see Fromes, Baron, Wegnam, & O'Rourke, *Characterization of the Airborne Concentrations of Lead in U.S. Industry*, 18 AM. J. INDUS. MED. 1 (1990).

ment[11] of lead-based paint that remains on the walls of much of the housing stock in this country.[12] Children who eat lead-based paint chips,[13] or teethe on paint and dust covered surfaces unwittingly ingest harmful amounts of lead into their developing bodies.[14] Although in 1977 the federal government effectively prohibited the use of lead-based paint on interior walls of residences,[15] both legislation and litigation have done little to mandate the abatement of existing lead-based paint.[16] Furthermore, the Illinois legislature has only minimally revised its Lead Poisoning Prevention Act

11. This article will use the term abatement to refer to either the covering or removal of lead-based paint. For an analysis of the different abatement methods see *infra* note 173.

12. Gilligan & Ford, *supra* note 3, at 245. To prevent the effects of lead poisoning it is necessary to remove the source of lead from the child's environment. *Id.* Removing the child from the source of lead could also prevent the lead poisoning. However, this remedy is highly impractical considering the pervasiveness of lead-based paint and the difficulty in detecting its presence. *Id.* It is important that the lead-based paint itself is not viewed as the single evil, but that slum landlords who permit the lead-based paint to reek havoc are also an evil to be contended with. W RYAN, BLAMING THE VICTIM 23-24 (1971).

One of the most distressing problems with lead poisoning is that it frequently reoccurs. Gilligan & Ford, *supra* note 3, at 245 n.7. Most children who undergo chelation therapy return to the same home where they originally ingested the lead, or their families move to another residence that also contains lead-based paint. *Id.* Moreover, it is likely that if a physician diagnoses a child as having an elevated blood lead level, his siblings will also reveal elevated blood levels upon screening. W. RYAN, *supra*, at 24. For a discussion of the locations where lead-based paint is likely to be found see *infra* notes 44-45 and accompanying text.

13. Comment, *Lead Paint Poisoning: The Response in Litigation*, 19 ST. LOUIS U.L.J. 244, 245 n.14 (1974). Paint chips have a lemony flavor which exacerbates the problem. *Id.* Part of the normal development in children between six months and twenty-four months of age includes exploring their environment through hand-to-mouth activity. *Id.* Most children begin teething around the age of six to seven months which increases the likelihood that they will chew and suck on anything that fits into their mouth. *Id.* Unfortunately, courts have not understood the normal hand-to-mouth activity of children. *Id.* In one case the court stated that "[s]uch gastronomic culinary impulses are to say the least, abnormal and unexpected " Montgomery v. Cantelli, 174 So. 2d 238, 240 (La. App.), *aff'd mem.*, 176 So. 2d 143 (La. 1965). The danger of ingesting lead is compounded in about twenty percent of all children who have "pica," which manifests itself in the "habitual, purposeful and compulsive search for [the] ingestion of unnatural, nonfood substances." Comment, *supra*, at 245.

14. Cataldo, Finney, Madden & Russo, *Behavioral Approaches to Lead Ingestion*, in LEAD ABSORPTION IN CHILDREN: MANAGEMENT, CLINICAL, AND ENVIRONMENTAL ASPECTS 103, 103 (J. Chisolm & D. O'Hara ed. 1982).

15. In 1971, the federal government prohibited the sale of paint containing more than one percent lead solids by weight. LPPPA of 1971, Pub. L. No. 91-695, 84 Stat. 2078 (1971). However, it was not until 1976 that Congress amended the LPPPA to prohibit the use of interior paint with more than 0.06% lead solids by weight. Disease Control Amendments of 1976, Pub. L. No. 94-317, § 204(c)(1), 90 Stat. 700, 706 (1976). Thus, since 1977 the use of lead-based paint has been prohibited in all residences. PREVENTING LEAD POISONING, *supra* note 4, at 5.

16. Mahoney, *supra* note 1, at 47.

("Act") since its passage in 1973.[17] Consequently, the present Act does not reflect the recent technological advances in screening for lead poisoning, testing for lead-based paint, and abating lead-based paint.[18] Illinois must, therefore, address this escalating problem and consider a complete revision of the Act.

In Part I, this comment will discuss the background of the lead-based paint poisoning dilemma. This part is further divided into four sections that detail the historical problems of lead-based paint, and the societal costs of the disease. Part II examines the federal government's attempt to alleviate the problems lead-based paint in publicly funded housing creates. Part III analyzes the present legislation in Illinois and the remedies currently available to injured parties, thereby illustrating the need for Illinois to revise the Act.[19] Finally, Part IV appeals to the Illinois legislature to completely revise the Act. The recommended revisions include testing of residences that are likely to contain lead-based paint, mandating abatement, and regular screening of children between the ages of six months to six years.[20]

BACKGROUND

A. How the "Silence" Began

Until the early to mid-1900's, paint manufacturers wishing to increase the durability, coverage, and brilliance of both interior and exterior paint used lead as the prime additive in paint.[21] The ma-

17. Lead Poisoning Prevention Act, ILL. REV. STAT. ch. 111 1/2, para. 1301-17 (1989) [hereinafter "Act"]. The Illinois Legislature approved P.A. 78-560 and set its effective date as September 6, 1973. *Id.* Most of the amendments to the Act were in 1975 and 1977. *Id.* However, the legislature did amend one section, 1309, of the Act as late as 1983. *See infra* note 103 for the text of ILL. REV. STAT. ch. 111 1/2, para. 1309 (1989).

In addition, while this comment was at press, both the Illinois House and Senate approved a bill that would strengthen the portions of the existing Act that address screening children for lead poisoning. *See* H.B. 2295, 87th Gen. Assembly, 1st Sess. (1991) [hereinafter H.B. 2295]. (amends portions of the current law, and incorporates a number of the suggestions this article makes for mandating more pervasive lead screening of children, and for the licensing of lead inspectors). Governor Edgar signed H.B. 2295 August 30, 1991. ILL. REV. STAT. ch. 111½, para. 1301-17 (1989), *as amended by* Act of Aug. 30, 1991, Pub. A. No. 87-0175 (1991).

18. For a discussion of the technological advancements relating to lead-based paint abatement see *infra* note 173. For a discussion relating to the methods available for testing paint to determine its lead content see *infra* note 165. *See infra* note 189 and accompanying text for an analysis of the screening techniques currently available to detect lead poisoning.

19. Often the most effective means to encourage citizens to engage in a certain activity is through legislation mandating the desired behavior. *Cf.* Comment, *supra* note 13, at 253.

20. This comment will address the problem of lead-based paint primarily in the private housing stock with minor references to public housing.

21. Gilligan & Ford, *supra* note 3, at 246.

jority of paint manufactured prior to 1940 contained nearly forty percent dry lead solids by weight.[22] By 1940, most of the lead paint industry recognized the danger of high lead content paint.[23] By 1955, the industry began voluntarily reducing the amount of lead solids in their interior paint to approximately one percent.[24] Although other compounds[25] have replaced lead as the additive in paint, high lead content paint remains under layers of new paint in older homes.[26] Spread throughout twenty-five to forty million housing units is an estimated three million tons of lead-based paint that remains accessible to children.[27]

Lead-based paint becomes accessible to children when the paint chips and peels, or when heat and humidity react with the paint creating lead dust.[28] As landlords or tenants repaint the walls of their residences, the total amount of lead contained in the combined layers of paint continues to pose a health threat to children.[29] Therefore, even if only the first few layers of paint contain lead, a child eating paint chips can ingest a high level of lead into his system.[30]

B. The Effects of Childhood Lead Poisoning

1. Effects of the Disease

Lead poisoning primarily begins with the ingestion of lead.[31]

---

22. *Id.*

23. Blum, *New York Suit: Get the Lead Out*, 11 National L.J., June 26, 1989, at 45, col. 1.

24. Gilligan & Ford, *supra* note 3, at 246. The paint industry began reducing (but not eliminating) the amount of lead in its paint in the 1940's because of their awareness of the problems relating to lead poisoning. Blum, *supra* note 23, at 45, col. 1. This issue has become the center of a number of personal injury suits targeting the paint manufacturers themselves. *Id.* For an example of such litigation see *infra* note 161-62.

25. The paint industry began to replace the lead, first with zinc and other opacifiers, and then eventually settled upon titanium dioxide. Gilligan & Ford, *supra* note 3, at 246.

26. *Id.* at 250. Thirty-three percent of the residences in this country were constructed prior to 1940. *Id.* Additionally, the construction of fifty percent of the housing units in this country occurred prior to any regulations restricting the lead content in paint. *Id.*

27. Pollack, *Solving the Lead Dilemma*, TECH. REV. 22, 24 (Oct. 1989).

28. Gilligan & Ford, *supra* note 3, at 251. Thus, contrary to popular belief, paint need not show signs of chipping and peeling to be dangerous, nor do children need to ingest paint chips to become ill. Mahoney, *supra* note 1, at 50. When owners renovate their premises, the danger of lead dust increases. Gilligan & Ford, *supra* note 3, at 251. *See generally* Charney, *supra* note 10, at 79-87 (discussing the dangers of lead dust).

29. Gilligan & Ford, *supra* note 3, at 251.

30. *Id.* A fingernail-sized chip of paint may contain as much as 250 milligrams of lead. Comment, *supra* note 13, at 245.

31. *See* Gilligan & Ford, *supra* note 3, at 251. For a discussion of how children may ingest lead see *supra* notes 13-14 and corresponding text. Lead is

Currently, the CDC defines an "elevated blood lead level" as equal to or greater than twenty-five micrograms of lead per deciliter of blood ("mcg/dl").[32] The effects of lead at this level in the body can include death, convulsive seizures,[33] blindness,[34] kidney disorders,[35] and behavior disorders.[36] Likewise, even low levels of lead[37] in children and adults may result in learning disabilities and lower intelligence test scores.[38] Moreover, any damage that a child has incurred due to lead toxicity is permanent.[39]

Finally, the effects of this disease are extremely costly for the poisoned individual[40] as well as for society.[41] Taxpayers are frequently left to foot the bill for the high costs of treatment for chil-

---

temporarily stored in the blood stream until it is either excreted or permanently stored in the bone and soft tissue. Pollack, *supra* note 27, at 25. The body only stores lead in the blood temporarily, and thus, the blood lead level only reflects recent exposures to lead. *Id.* The urine may also reveal lead. *Id.* Blood screening, however, is more accurate than testing the urine. Once in the blood, the excess lead that the body is not able to excrete is permanently stored in the bone and soft tissue of the body. Hammond, *supra* note 4, at 13-14. To date there are no treatment methods to remove lead from the body once it becomes permanently stored in the hard tissue of the body. Shafer & Shafer, *supra* note 10, at 239.

32. FACT SHEET, *supra* note 9, at 1. The definition of lead poisoning has continued to change as research reveals that lower levels of lead can cause severe damage to a child. *See* Pollack, *supra* note 27, at 24. In 1978, the definition of lead poisoning was 70 mcg/dl or higher. Gilligan & Ford, *supra* note 3, at 252. The CDC is in the process of establishing 10 mcg/dl as the level at which action should be taken. Waldman, *Lead and Your Kids*, NEWSWEEK, July 15, 1991, at 46.

33. Convulsive seizures may occur as a symptom of a high elevated blood lead level at or above 85 mcg/dl. Shaffer & Shaffer, *supra* note 10, at 232-33. Further, such seizures may be followed by coma and cardiorespiratory arrest. *Id.* High elevated blood lead level may also cause cerebral palsy in some children. Comment, *supra* note 13, at 246. For a further discussion of the effects of lead poisoning on a child's central nervous system, see generally Charney, *Subencephalopathic Lead Poisoning: Central Nervous System Effects in Children*, in LEAD ABSORPTION IN CHILDERN: MANAGEMENT, CLINICAL, AND ENVIRONMENTAL ASPECTS 35, 35-41 (J. Chisolm & D. O'Hara ed. 1982).

34. Blindness may occur when the blood lead level is 85 mcg/dl or higher. Shaffer & Shaffer, *supra* note 10, at 237-38.

35. Lead can scar and shrink the kidneys, and can cause the kidneys to excrete rather than absorb substances. Chisolm, *Lead Poisoning*, 244 SCI. AM. 15, 19-21 (Feb. 1971).

36. Comment, *supra* note 13, at 246. The most common form of behavior disorder observed in children suffering from lead poisoning is hyperactivity. Shaffer & Shaffer, *supra* note 10, at 238.

37. Low levels of lead are generally levels ranging from 10 to 15 mcg/dl. Pollack, *supra* note 27, at 25.

38. *Id.* Toxicologists recently have estimated that damage may arise from levels of lead as low as 6 mcg/dl. *Id.*

39. *Id.* For an explanation of lead absorption into the hard and soft tissues of the body see *supra* note 31 and accompanying text.

40. Gilligan & Ford, *supra* note 3, at 254-56. For a discussion of the exorbitant costs of medical care for childhood lead poisoning see *infra* note 53 and accompanying text.

dren with elevated blood levels.[42] Moreover, a viable member of society is permanently lost due to the debilitating effects of this disease.[43]

2. *The "Silent Killer's" Most Likely Victims*

Impoverished children living in the inner-cities are at the greatest risk of suffering from lead poisoning.[44] Lead-based paint and its residues are most commonly found in the rental housing stock and especially in the low income neighborhoods of our cities.[45] Because children with elevated blood levels may not exhibit symptoms, a physician will detect the disease only with regular blood screening.[46] Unfortunately, doctors do not regularly screen for elevated blood levels.[47] Additionally, unless these children display symptoms of the disease, it is dubious whether a parent would

41. Gilligan & Ford, *supra* note 3, at 255-56. Even the effects of low level lead can lead to inattentiveness of the child in school which may in turn disrupt other students. *Id.*

42. *Id.* at 256. Because most of the children who suffer from lead poisoning also live in poverty, the sizable medical bills incurred from treatment are funded primarily by federal, state and local programs. *Id.* In addition, when private insurance companies pay the tab for treatment, it results in higher insurance premiums for the general public. *Id.*

43. Children who have suffered from even low levels of lead poisoning generally require special education due to their learning disabilities. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 9. In turn, these educational deficiencies will decrease a child's future productivity. *Id.* In addition, physical impairments caused by lead poisoning may prevent a child from being able to work a full eight hour day. Gilligan & Ford, *supra* note 3, at 256. Furthermore, children who suffer from severe lead poisoning are often permanently institutionalized, a cost that the whole society bears financially. *Id.* Society also loses a productive member. *Id.*

44. Mahoney, *supra* note 1, at 52. Black children suffer from elevated blood lead levels at a higher rate than white children. *Id.* Commentators suggest the race distinction is a reflection of the racial composition of the impoverished inner-city populations. *Id.* Over four million children under the age of six, of whom almost 50 percent are black and nearly 20 percent white, have blood lead levels of over 20 mcg/dl. *Id.* Middle-class and rural children are not immune to this disease. Lin-Fu, *supra* note 5, at 6. In addition, the Children's Hospital in Boston has reported that 40 percent of its recent cases of childhood lead poisoning are children in upper income level families. Waldman, *supra* note 32, at 46. These families often renovate old homes, which causes an increase in the amount of lead dust the children inhale. *Id.*

45. Comment, *Lead Paint Poisoning: Legal Remedies and Preventative Actions*, 6 COLUM. J.L. & SOC. PROBS. 325, 329 (1970).

46. Jurkowski, AN ASSESSMENT OF THE CHICAGO DEPARTMENT OF HEALTH'S ENVIRONMENTAL LEAD POISONING PROGRAM: JANUARY, 1989 TO JANUARY, 1990 2 (June 8, 1990). For a further analysis of different methods of screening to detect lead in the body see *infra* note 189 and accompanying text.

47. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 4. In 1986, physicians screened only 41% of the over four hundred thousand children, ages nine months to six years, who reside in Massachusetts. *Id.*

take his child to the doctor to have him screened.[48] Furthermore, the public is forced to pay for the results of erratic screening for elevated blood lead levels when these children are eventually hospitalized.[49]

C. Treatment for Elevated Blood Levels

Treatment for lead poisoning requires removing the lead from the blood by administering a chelating agent.[50] This is an agent that combines with the lead in the blood and causes the lead to be excreted in the urine.[51] This therapy is potentially dangerous, requiring numerous treatments,[52] and is extremely expensive.[53] Furthermore, chelation only removes lead from the blood and soft tissue while the lead stored in other parts of the body remains in the system.[54] The result is that any damage that has already occurred is permanent.[55]

D. The Cost of Preventing the "Silent Epidemic" from Striking

Preventing lead poisoning through abatement is a direct cost to

48. Gilligan & Ford, *supra* note 3, at 254. Unfortunately, once a child displays symptoms of lead poisoning, it is too late to reverse the effects of the disease. *Id.* For an explanation of the permanence and severity of this disease see *supra* notes 31-39 and accompanying text. The symptoms of lead poisoning are often very vague and are frequently confused with a number of other maladies. Comment, *supra* note 13, at 247-48. Further, it is possible for a child to have an elevated blood level and not display any symptoms. *Id.* In addition, the cost of screening can range between $400 and $600 per child. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 25.

49. For an explanation of the costly effect of childhood lead poisoning to society see *supra* notes 40-43 and accompanying text.

50. Shafer & Shafer, *supra* note 10, at 239-40. It is possible to administer the chelating agent orally. *Id.* However, it is most effective when injected directly into the blood stream. *Id.*

51. *Id.*

52. *Id.* During chelation treatments, renal toxicity is possible with the increase in white blood cells present in the urine. Graef, *Clinical Outpatient Management of Childhood Lead Poisoning*, in LEAD ABSORPTION IN CHILDREN: MANAGEMENT, CLINICAL, AND ENVIRONMENTAL ASPECTS 153, 161 (J. Chisolm & D. O'Hara ed. 1982). Thus, to prevent renal toxicity it is crucial that the child is kept well hydrated. *Id.*

53. Gilligan & Ford, *supra* note 3, at 245 n.6. In 1971, Congress found that permanent care for one child suffering from lead poisoning costs the individual a quarter of a million dollars. *Id.* at 255. In 1986, the average cost in Massachusetts for chelation treatment alone was $2,400 per lead poisoned child. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 11. Therefore, with approximately two thousand children a year suffering from lead poisoning in Massachusetts, the total medical costs for treatment were $4,800,000 each year. *Id.*

54. Pollack, *supra* note 27, at 25. For an explanation of the body's storage of lead see *supra* note 31.

55. Pollack, *supra* note 27, at 25.

the homeowner or landlord.[56] The cost of abatement will vary depending upon the method of abatement used.[57] Estimates vary dramatically, starting as low as $1,000 per dwelling unit.[58] Recently, the National Association of Housing and Redevelopment Officials ("NAHRO") estimated the cost for abatement at almost $8,000 per dwelling unit.[59] NAHRO's estimated the cost of testing for lead-based paint at $300 to $500 per dwelling unit.[60]

There is a great deal of controversy over forcing landlords to bear the cost of abatement due to the substantial costs involved.[61] Abatement, however, is a one time cost.[62] Because health care and societal costs are continuous, it is economically more efficient to compel landlords to abate lead-based paint than to leave the public responsible for paying for the effects of lead-based paint.[63]

---

56. Once an owner has properly abated a dwelling unit it becomes a permanently safe place for children to reside. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 8. Moreover, the one-time expenditure of abatement avoids the continuous costs of children being repoisoned by the lead. *Id.* Also, this prevents any new child on the premises from being exposed to lead-based paint. *Id.*

57. Gilligan & Ford, *supra* note 3, at 256. *See infra* note 173 for a discussion of the different abatement techniques available.

58. Mahoney, *supra* note 1, at 56.

59. *Id.* The wide range of estimated costs of abatement result from differing labor costs and materials. Gilligan & Ford, *supra* note 3, at 258.

60. Mahoney, *supra* note 1, at 56.

61. *Id.*

62. *See supra* note 56 for a brief illustration of the benefits attributable to the one-time cost of lead-based paint abatement.

63. Opponents of legislation requiring landlords to abate argue that such legislation will reduce the already shrinking affordable housing stock, and thus create more homeless families. Mahoney, *supra* note 1, at 59 n.95 *See generally* Comment, *Homelessness: A Historical Perspective on Modern Legislation*, 88 MICH. L. REV. 1209, 1230-35 (1990) (illustrating the dichotomy between the dwindling number of low cost dwelling units available and the increasing number of people forced to live on the street).

For a brief explanation of how abatement is merely a one-time cost for landlords see *supra* note 56 and accompanying text. The estimated costs for the needed remedial education for children suffering from low levels of lead poisoning will average about $3,100 a child or $6.2 million for only two thousand children. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 30. This already hefty price tag becomes exorbitant when added to the medical costs of treating patients suffering from lead poisoning. In addition, the number of lead poisoning victims will continue to grow at a staggering rate until lead-based paint is completely abated. Gilligan & Ford, *supra* note 3, at 245. *See supra* note 53 for a discussion of the medical costs of childhood lead poisoning.

Currently the Environmental Defense Fund has devised a plan to prevent lead poisoning through abatement of homes containing lead-based paint. Jaroff, *supra* note 6, at 69. The authors of this plan concede that it has a price tag of almost $10 billion over the next ten years; however, the plan will save $28 billion in medical expenses and other costs incurred from childhood lead poisoning. *Id.* For an illustration of the cost to society incurred from low levels of lead see *supra* notes 41-43 and accompanying text. Furthermore, Justice Van Artsdalen of the United States District Court of the Eastern District of Pennsylvania once stated that, "[t]o equate the admittedly real and grave danger of permanent brain damage to small children with the relatively modest addi-

II. THE FEDERAL RESPONSE TO THE "SILENCE"

Congress first passed the Lead Paint Poisoning Prevention Act ("LPPPA") in 1971.[64] This comprehensive law focused on the dangers of lead-based paint and the different methods available to address the problem.[65] To enable HUD to set regulations prohibiting the use of lead-based paint in residential buildings, the federal government included a definition of lead-based paint in the LPPPA.[66] After numerous amendments to the LPPPA,[67] the federal government currently defines lead-based paint as that paint which has a lead level of 0.06%.[68] However, the definition only delineates the amount of lead solids permissible in paint sold, and is not the standard used to determine whether an owner must abate the paint presently on his walls.[69]

The LPPPA includes two methods HUD may use to determine whether an owner must abate lead-based paint.[70] These methods are the medical approach and the housing approach.[71] The medical approach focuses on the problem of lead-based paint *after* a child is poisoned.[72] Thus, this method is not preventative.

In comparison, the housing approach is a preventative measure requiring systematic testing of units and abatement of lead-based paint *prior* to a child becoming ill.[73] The LPPPA of 1971 provided

---

tional cost of rehabilitating houses to free them from lead-based paint raises issues that no amount of rationalization or legal theory can justify on moral grounds." City-Wide Coalition Against Childhood Lead Paint Poisoning v. Philadelphia Hous. Auth., 356 F Supp. 123, 131 (E.D. Pa. 1973). In addition, Congress recently expressed their awareness that the health care and remedial care for lead poisoned individuals outweighs the cost of abating this health hazard. H.R. CONF. REP NO. 426, 100th Cong., 1st Sess. 244 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 3541.

64. LPPPA, Pub. L. No. 91-695, 84 Stat. 2079 (1971).

65. *Id.*

66. *Id.* In 1971, the government defined lead paint as paint containing more than 1% lead by weight of dry solids. *Id.*

67. In 1973, Congress changed the definition of lead-based paint to 0.5% lead by weight of dry solids. LPPPA, Pub. L. No. 93-151, § 6, 87 Stat. 565, 567 (1973). This amendment gave the Chairman of the Consumer Product Safety Commission the authority, after December, 1974, to determine the definition of lead-based paint within the range of 0.5% and 0.06% lead by weight of dry solids. Gilligan & Ford, *supra* note 3, at 247. The Chairman set the level at 0.06% in 1976, which remains the current definition of lead-based paint. Disease Control Amendments of 1976, Pub. L. No. 94-317, § 204(c)(1), 90 Stat. 700, 706 (1976).

68. 42 U.S.C. § 4841(3)(B)(ii) (1986).

69. Gilligan & Ford, *supra* note 3, at 250 n.35. State and local definitions of lead-based paint are necessary to create the standard for requiring abatement. *Id.* at 250.

70. Mahoney, *supra* note 1, at 54-55.

71. *Id.*

72. *Id.*

73. *Id.*

funding for both approaches.[74] Although in the application of the funding provisions of the LPPPA, the government granted funding solely to the medical approach.[75]

Unfortunately, HUD has also favored the implementation of the medical approach over the housing approach.[76] In 1973, Congress amended the LPPPA to direct HUD to set regulations requiring "procedures to eliminate as far as *practicable* the hazards of lead-based paint poisoning" in federally funded housing.[77] This amendment also made HUD responsible for enforcing the regulations.[78] When HUD published regulations pursuant to the 1973 amendments, they did not require the removal of all lead-based paint.[79] Because the regulations did not provide for the elimination of potential hazards of lead-based paint poisoning, HUD obfuscated implementing the preventative measures of the housing approach.[80]

In 1983, in *Ashton v. Pierce*,[81] residents of federally funded housing sued HUD to remove all of the lead-based paint in their dwelling units.[82] HUD's regulations required abatement of lead based paint only when it posed an "immediate hazard."[83] The claimants alleged that such a directive was inconsistent with the

74. Gilligan & Ford, *supra* note 3, at 261. Title I of the LPPPA granted money for education, screening and treatment programs. *Id.* at 259. Title II of the Act provided money for inspection and abatement programs for units found upon inspection to contain lead-based paint. *Id.* Both of these sections were repealed in 1982. *Id.* at 259 n.111.

75. *Id.* at 261. The government granted funds primarily to locate children with elevated blood levels. *Id.*

76. For an illustration of how HUD has favored the medical approach over the housing approach see *infra* notes 79-90 and accompanying text.

77. 42 U.S.C. § 4822 (1982) (emphasis added).

78. *Id.* However, there were problems from the beginning concerning the interpretation of the LPPPA and the manner of enforcement. Mahoney, *supra* note 1, at 65. Also, there was insufficient funding for HUD programs. *Id.*

79. Gilligan & Ford, *supra* note 3, at 264.

80. *Id.* at 264. For a discussion of the preventative character of the housing approach see *supra* text accompanying note 73. HUD's reluctance to promulgate strict regulations mandating preventative lead-based paint abatement stems from its desire to wait until safe and cost-efficient abatement methods are developed and proven effective. Pollack, *supra* note 27, at 24. This becomes a cyclical problem because generally the private sector will not invest in research and development if there is not a market for the new technology. *Id.* In addition, HUD is not willing to create the market by setting stricter regulations until the technology is available. *Id.*

81. Ashton v. Pierce, 716 F.2d 56 (D.C. Cir. 1983).

82. *Id.* at 59.

83. 24 C.F.R. § 35.24(b)(2)(i) (1981). HUD defined an "immediate hazard" as "paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose." *Ashton*, 716 F.2d at 59 (citing 24 C.F.R. § 35.3(i) (1981)). An applicable surface is one that is "readily accessible to children under seven years of age." *Id.* (citing 24 C.F.R. § 35.3). HUD only required the complete removal of paint only when the "paint film integrity of the applicable surface [could] not be maintained." *Id.* (citing 24 C.F.R. § 35.24(b)(3)(ii)).

mandate of the 1973 amendment to the LPPPA.[84] The United States Court of Appeals, District of Columbia Circuit, held that the regulations were invalid because they required abatement of only chipping and peeling paint, and thus not specifically focused on the prevention of lead poisoning.[85] These regulations failed to address the Congressional intent to include intact paint,[86] which also poses a hazard to children's health.

Subsequently, HUD published regulations that seemingly followed the holding of the *Ashton* court.[87] These new regulations included intact surfaces in their definition of lead hazards.[88] Nevertheless, HUD only required an owner to test and abate lead-based paint when a physician diagnosed a tenant child as having an elevated blood lead level.[89] Thus, HUD once again set regulations pursuant to the medical approach.[90]

Fortunately, in 1988, Congress amended the LPPPA to expressly require the housing approach.[91] The amended LPPA mandates that HUD focus its regulations upon the condition of the housing and not the condition of its inhabitants.[92] However, HUD has only recently begun to publish its new regulations pursuant to the 1988 amendments.[93] In addition, HUD guidelines are only applicable to public housing and housing purchased with the aid of federal funds.[94] Therefore, they have absolutely no effect on the lead-based paint remaining in the private housing stock.

---

84. *Ashton*, 716 F.2d at 59.

85. *Id.*

86. *Id.* at 63.

87. Mahoney, *supra* note 1, at 66. *See infra* note 88 for the complete cite of the 1986 HUD regulations.

88. Lead-Based Paint Poisoning Prevention in Certain Residential Structures, 24 C.F.R. § 35 (1986). However, these regulations only required testing of intact surfaces in a dwelling unit after a physician diagnosed a child residing in that unit as having an elevated blood lead level. *Id.* If no resident had lead poisoning, inspection of the dwelling unit could only be prompted by the presence of cracking and peeling paint. *Id.* Therefore, the 1986 regulations were consistent with the medical approach. Mahoney, *supra* note 1, at 67. For a discussion of the medical approach see *supra* text accompanying note 72.

89. Mahoney, *supra* note 1, at 66. For a discussion of when the 1986 regulations required testing of a dwelling unit see *supra* note 88.

90. *See supra* notes 70-73 and accompanying text for a comparison of the medical and housing approaches.

91. H.R. CONF. REP NO. 426, 100th Cong., 1st Sess. 244 (1987), *reprinted in* 1987 U.S. CONG. & ADMIN. NEWS 3541.

92. *Id.*

93. Hilts, *supra* note 2, at A1, col. 4. Unfortunately, it appears that once again HUD has set regulations that employ the medical approach. *Id.* The focus of the new regulations continues to be sick children rather than abating lead-based paint. *Id.*

94. 42 U.S.C. § 4822 (Supp. 1990). *See also Paints Cause Health Concerns*, 4 CONSULTANT NO. 5, 1 (Dec. 1990) (explaining that HUD regulations only apply to federally funded housing).

III. CURRENT REMEDIES UNDER THE LAW: A NEED FOR NEW LEGISLATION IN ILLINOIS

A. Where Landlords Fall Under the Illinois Act

Currently in Illinois, a landlord is not negligent for failing to abate lead-based paint unless he has violated the Act.[95] Because a number of specific events must occur before a landlord can be in violation of the Act, landlords rarely violate the Act.[96] First, the Illinois Department of Public Health ("Department") must find that one of the landlord's dwelling units contains lead-based paint.[97] A preliminary determination of lead-based paint is only made *after* a physician has diagnosed a child[98] as having an elevated blood lead level.[99] The physician then must report this diagnosis to the Department.[100] Only at this time *may* the Department inspect the dwelling unit and remove samples of paint for testing to make a final determination of the paint's lead content.[101] Thus, the Act treats children like "mine canaries," waiting for their health to signal when dwelling units contain lead-based paint.[102]

Once the Department has determined that the dwelling unit contains lead-based paint, the Department *may* do any combination of things.[103] One action the Department *may* undertake is to re-

---

95. ILL. REV. STAT. ch. 111 1/2, para. 1315 (1989). The landlord's "failure to remove paint as *ordered* will be considered prima facie evidence of negligence." *Id.* (emphasis added).

96. For an explanation of the myriad of events that must occur before a landlord's failure to abate will be considered evidence of negligence see *infra* notes 97-106 and accompanying text.

97. ILL. REV. STAT. ch. 111 1/2, para. 1309 (1989).

98. This comment will use the terms tenant and child interchangeably to refer to a tenant and his or her children.

99. ILL. REV. STAT. ch. 111 1/2, para. 1307 (1989). *See supra* notes 46-48 and accompanying text for a discussion regarding the improbability that a physician will screen for an elevated blood lead level.

100. *Id.*, para. 1307.

101. *Id.*, para. 1308. The Illinois Act provides in part:

> A representative of the Department, for this purpose, *may*, after notification that an occupant of the dwelling unit in question is found to have a blood lead value of the value set forth [by the Department], inspect dwelling or dwelling units, for the purposes of ascertaining that all surfaces accessible to children are intact and in good repair, and for the purposes of ascertaining the existence of lead bearing substances. Such representative of the Department, *may* remove samples or objects necessary for laboratory analysis, in the determination of the presence of lead-bearing substances in the *designated* dwelling or dwelling unit.

Id. (emphasis added). In addition, the Department may only inspect the dwelling unit in which the ill child resides. *Id.*

102. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 7.

103. ILL. REV. STAT. ch. 111 1/2, para. 1309 (1989). Once the Department determines that a dwelling unit contains lead-based paint the Department:

> 1) *May* cause to be posted upon the dwelling of the individual. a notice of the existence of such [lead-based paint], in a conspicuous place or places;

quire the landlord to remove the lead-based paint within thirty days.[104] Nevertheless, the Department may extend the time limit to one year.[105] Only after the expiration of this time limit, will the landlord's failure to follow the abatement order be considered as "*prima facie evidence* of negligence."[106]

Additionally, a landlord's failure to abate will only be evidence of negligence for any injury that occurs after the compliance period has run.[107] Thus, for all practical purposes the Illinois legislature did not bring landlords under the purview of the Act.[108] Therefore, a victim of lead-based paint poisoning must employ common law remedies to hold his landlord liable for his injuries.[109]

B. Negligence of the Landlord

1. Jumping the First Hurdle: The Landlord's Duty to Protect His Tenants from Lead-Based Paint Poisoning

Generally, a tenant begins an action against his landlord after his child has become ill.[110] This is usually the first time the tenant is aware that his apartment contains lead-based paint.[111] Consequently, such a tenant would most likely file an action alleging that

---

2) *May* inform the local health officers of the results of such determination and provide suitable recommendations for elimination of the problem areas;

3) *May* notify the homeowner, the occupant, that lead-bearing substances are present on the surfaces of the dwelling or dwelling unit and *may* constitute a hazard to the health of children;

4) *May* notify the owner of the dwelling or dwelling unit with instructions that these substances if accessible to small children, *shall* be removed, within a time period not to exceed 30 days However, the Department may extend the period of time for compliance the extension not to exceed one year.

Id. (emphasis added).

104. *Id.*

105. *Id.*

106. *Id.*, para. 1315 (emphasis added). Because the Illinois statute expressly considers a landlord's failure to act as merely evidence of negligence, a landlord cannot be held to a strict liability standard.

107. *Id.*

108. Telephone interview with Ira Belcove, attorney for Mayer, Brown and Platt, Chicago, Illinois (Feb. 8, 1991). Mr. Belcove has filed a complaint alleging that a Chicago landlord was negligent, under the Chicago Landlord-Tenant Ordinance, for failing to abate the lead-based paint on his premises that caused a number of tenants to contract lead poisoning. *Id.*

109. *Id.*

110. The cause of action of negligence requires that the plaintiff experience actual loss or damage. W PROSSER, J. WADE & V SCHWARTZ, TORTS: CASES AND MATERIALS 136 (8th ed. 1988) [hereinafter W PROSSER].

111. *See supra* notes 98-102 and accompanying text for an explanation that parents generally are not aware of the lead-based paint in their apartment until their child contracts lead poisoning.

the landlord was negligent.[112] Common sense dictates that because the tenant's illness is what led to the filing of a negligence suit, such litigation does not serve to prevent that particular child from contracting lead poisoning. Additionally, a plaintiff suing his landlord for negligence under the Act, will be unsuccessful unless he is able to leap two hurdles.[113]

The first hurdle that this plaintiff confronts is proving the landlord had a duty to protect a tenant from lead-based paint poisoning.[114] At common law, a landlord only had a duty to maintain the common areas of his apartment complex.[115] Thus, a landlord was only liable for injuries that occurred in the areas of his building that remained within his control.[116] The landlord's duty to his tenants is further limited to instances where the risk of injury from his conduct is foreseeable.[117] Consequently, a landlord is only liable for a tenant's injury if, by his neglect of a dangerous condition, the likelihood of such an injury was reasonably foreseeable.[118]

In *Montgomery v. Cantelli*,[119] the Louisiana Court of Appeals addressed the issue of whether a landlord was negligent when a child became ill from eating paint chips off the exterior door of the apartment building.[120] The landlord conceded that he would be liable for any injury that resulted from the intended use of the door.[121] However, the child's lead poisoning was a result of an "ab-

112. Tort law provides for compensatory damages which are "intended to represent the closest possible financial equivalent of the loss or harm suffered by the plaintiff, and restore him to the position he occupied before the tort." W. PROSSER, *supra* note 110, at 503. Thus, compensatory damages would pay for medical expenses, remedial education, and possibly future lost earnings that are a result of the child's lead poisoning. *Id.* at 508-10.

113. Often the first obstacle an injured party faces is finding an attorney who will take a lead poisoning case on a contingency fee arrangement or pro bono basis. Mahoney, *supra* note 1 at, 47.

114. Annotation, *Landlord's Liability for Injury of Death of Tenant's Child from Lead Poisoning Resulting from Peeling Paint*, 43 A.L.R. 3d 1268, 1269 (1973).

115. R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 3:13 (1980). Common areas are those areas used by all the tenants in an apartment building (e.g. common hallways, the entrance to the building, elevators, and stairways). *Id.*

116. *Id.*

117. Palsgraf v. Long Island R.R. Co., 248 N.Y. 339, 162 N.E. 99 (1928) (railway guard was not liable for injuries to woman hit by scale at the other end of the platform, when the guard pushed a passenger boarding the train, causing a wrapped package containing fireworks to fall and explode; the injury was not foreseeable).

118. Rahn v. Beurskens, 66 Ill. App. 2d 423, 429, 213 N.E.2d 301, 305 (1966).

119. Montgomery v. Cantelli, 174 So. 2d. 238 (La. App. 1965), *aff'd mem.*, 176 So. 2d 143 (La. 1965).

120. *Montgomery*, 174 So. 2d at 239.

121. *Id.*

normal and unexpected use of the property."[122] The *Montgomery* court held that the landlord was not liable for his tenant's injuries, because he did not have a duty to keep the premises lead free.[123]

Recently, in *Norwood v. Lazarus*,[124] the Missouri Court of Appeals held that a landlord was liable for a tenant's lead poisoning as a result of peeling paint on a commonly used porch.[125] In reaching this conclusion, the court found that the landlord was aware that the tenant's children played on the porch.[126] This fact coupled with the common knowledge that children often put things in their mouths, established that such an injury was reasonably foreseeable.[127] Therefore, the *Norwood* court imposed a duty upon the landlord to protect his tenants from lead-based paint.[128]

Today, most jurisdictions statutorily impose a duty upon the landlord to maintain the inside of the dwelling units as well as the common areas.[129] This type of legislation may provide a tort remedy if the landlord violates the mandate of such a statute.[130] In cases based upon this class of legislation, the issue is generally whether it was reasonably foreseeable that a child would ingest paint chips or suck on dust covered surfaces.[131] Courts are divided on this issue.[132] However, in a few recent cases, courts have deter-

---

122. *Id. But see* Garcia v. Freeland Realty, Inc., 63 Misc. 2d 937, 314 N.Y.S.2d 215 (1970) (court took judicial notice of the fact that normal childhood behavior includes children putting anything they can into their mouths).

123. *Montgomery*, 174 So. 2d at 240. Another court found that eating flaking and peeling paint in common hallways was an "extraordinary" use of the premises. Weaver v. Arthur A. Schneider Realty Co., 381 S.W.2d. 866, 869 (Mo. 1964). The landlord in this case conceded that he would be liable if a tenant had been injured by being hit by a falling piece of plaster from the ceiling or walls of the common hallways. *Id.* Nonetheless, the *Weaver* court held that an injury to a child as a result of eating these fallen pieces of paint was not reasonably foreseeable. *Id.*

124. Norwood v. Lazarus, 643 S.W.2d. 584 (Mo. App. 1982).

125. *Norwood*, 643 S.W.2d at 589.

126. *Id.* at 588.

127. *Id.* at 587.

128. *Id.* at 589.

129. R. SCHOSHINSKI, *supra* note 115, at § 4:8.

130. *Id.* In addition, a landlord's breach of the implied warranty of habitability may lead to tort liability. *Id.* at § 4:8 (Supp. 1990). For a discussion of the implied warranty of habitability see *infra* notes 143-150 and accompanying text.

131. See *infra* notes 132-33 and accompanying text discussing the foreseeability of children eating paint chips.

132. Often courts find that children eating paint is unforeseeable; therefore a landlord cannot be held negligent for a child's lead poisoning. *See, e.g.*, Dunson v. Friedlander Realty, 369 So. 2d 792 (Ala. 1979) (court found it unrealistic to envision that a landlord would foresee children eating paint); Montgomery v. Cantelli, 174 So. 2d 238 (La. App. 1965), *aff'd mem.* 176 So. 2d 143 (La. 1965) (court found such "gastronomic culinary impulses" could not be reasonably foreseen by the landlord); Weaver v. Arthur A. Schneider Realty Co., 381

mined that such activity is foreseeable.[133]

2. Leaping the Second Hurdle: Proving the Landlord Had Notice of the Lead-Based Paint

Although courts are accepting the foreseeability of children eating pieces of paint, there is a second hurdle a plaintiff in Illinois must overcome when suing a landlord for negligence. A claimant must plead and prove that the landlord had notice of the lead-based paint.[134] Although this process appears conceptually simple, the Appellate Court of Illinois for the Second District in *Garcia v. Jiminez*, turned proving that the landlord had notice into an insurmountable obstacle.[135]

The *Garcia* court held that a landlord is not liable for a tenant's lead poisoning unless he had notice that the dwelling unit contained lead-based paint.[136] The *Garcia* court reasoned that to require any less would be to impose strict liability on the landlord.[137] Thus, a plaintiff demonstrates the existence of a dangerous condition by putting the landlord on notice that his premises contain lead-based paint, and this establishes that lead poisoning is a foreseeable injury.[138] The landlord's duty to remedy the condition only flows

---

S.W.2d 866 (Mo. 1964) (children eating paint chips in a common hallway was unforeseeable).

Some courts have determined that children eating paint chips is foreseeable. *See, e.g.*, Garcia v. Freeland Realty, Inc., 63 Misc. 2d 937, 314 N.Y.S.2d 215 (1976) (court took judicial notice of the fact that chipping paint is a health hazard to children because they eat them); Acosta v. Irdank Realty Corp., 238 N.Y.S.2d 713 (1963) (court held that it is foreseeable that children would put unusual things into their mouths).

133. Recently, courts have begun to accept that it is reasonably foreseeable for a child to put strange things into his mouth. *See, e.g.*, Hardy v. Griffin, 41 Conn. Supp. 283, 569 A.2d 49 (1989) (foreseeable that a child may eat paint chips); Garcia v. Jiminez, 184 Ill. App. 3d 107, 539 N.E.2d 1356, *cert. denied*, 127 Ill. 2d 615, 545 N.E.2d 109 (1989) (acknowledged the foreseeability of children putting paint chips into their mouths); Norwood v. Lazarus, 634 S.W.2d 584 (Mo. App. 1982) (common knowledge that children put anything in their mouths that they can get their hands on).

134. *Garcia*, 184 Ill. App. 3d at 112, 539 N.E.2d at 1359.

135. *Id.* at 112, 539 N.E.2d at 1359.

136. *Id.*

137. *Id.* The *Garcia* court, in its reasoning, relied on Niemann v. Vermilion County Hous. Auth., 101 Ill. App. 3d 735, 428 N.E.2d 706 (1981). In *Niemann*, a child was injured when her playmate hit her in the eye with a stick found on the defendant's property. *Niemann*, 101 Ill. App. at 736, 428 N.E.2d at 708. The court found that a stick was not an "inherently dangerous object." *Id.* at 740, 428 N.E.2d at 710. The court reasoned that "in order to allege a duty, the plaintiff must show that the innocuous object has combined with some other surroundings or circumstances which render it dangerous to children." *Id.* The court found that it is this dangerousness that makes the injury foreseeable and thus would establish a duty to the plaintiff. *Id.*

138. *Garcia*, 184 Ill. App. 3d at 112, 539 N.E.2d at 1359.

from the existence of this dangerous condition.[139] Unfortunately, a landlord is not on notice that his premises contain lead-based paint until a child becomes sick from eating paint on the premises.[140] Therefore, the element of notice is extremely difficult for a plaintiff to prove.

C. Other Remedies

1. Suit for Breach of Implied Warranty of Habitability

There are no cases in Illinois addressing the issue of whether a landlord has breached the implied warranty of habitability by renting premises containing lead-based paint.[141] However, it is doubtful that a plaintiff in Illinois would profit from such an action. All leases imply a warranty that the unit is safe and habitable.[142] Generally, dwelling units that conform with state and local housing laws are considered habitable.[143]

In *City of Philadelphia v. Page*,[144] the United States District Court for the Eastern District of Pennsylvania addressed the issue of whether selling homes containing lead-based paint constituted a breach of the implied warranty of habitability.[145] Philadelphia brought an action against HUD[146] for violating a municipal code prohibiting the presence of lead-based paint in federally funded residences.[147] The *Page* court held that HUD had breached its implied warranty of habitability by selling houses that contained lead-based paint.[148]

---

139. *Id.*

140. For the complete text of the section of the Act that illustrates when a landlord will be notified that his premises contain lead-based paint see *supra* note 101. Consequently, there is no remedy for the child whose lead poisoning alerted the landlord that the premises contain lead paint. In addition, it is doubtful that a tenant would be aware that the dwelling unit contains lead-based paint until his child has contracted lead poisoning. If a tenant is unaware of the lead-based paint, he is unable to notify his landlord about this hazard.

141. Note, *Legal Education for the Pro Se Litigant: A Step Towards a Meaningful Right to Be Heard*, 96 YALE L.J. 1641, 1652-53 (1987) (suggesting the presence of lead-based paint is a breach of the implied warranty of habitability).

142. Comment, *supra* note 13, at 256.

143. *Id.* A breach of the implied warranty of habitability is determined when the landlord is not in conformance with either local housing ordinances or general community standards of habitability. R. SCHOSHINSKI, *supra* note 115, at § 3:17.

144. City of Philadelphia v. Page, 363 F Supp. 148 (1973).

145. *Page*, 363 F. Supp. at 154.

146. Originally the suit was brought against the homeowners who in turn joined HUD as a defendant as the vendor and lender of the residences. *Id.* at 150.

147. *Id.*

148. *Id.* at 155.

In Illinois, to maintain an action for breach of the implied warranty of habitability, a plaintiff must plead and prove that the landlord had notice of the defects.[149] In lead poisoning cases an Illinois court will turn to *Garcia v. Jiminez*,[150] the only recent case in Illinois addressing the issue. Courts will apply the holding in *Garcia*, that a landlord must have actual notice of lead-based paint on his premises before he owes a duty to the tenants, to determine whether the landlord had notice of the lead-based paint.[151] Accordingly, a plaintiff in Illinois suing for breach of the implied warranty of habitability, must show that the landlord had actual notice of the lead-based paint. Thus, proving that a landlord breached the implied warranty of habitability is almost impossible.[152]

Furthermore, even if such a suit proves to be viable in Illinois, any actions brought under breach of implied warranty of habitability will only provide for contractual damages.[153] Hence, a court will determine damages by assessing the fair market value of the premises in their uninhabitable condition and calculating the difference between this figure and the actual rent paid.[154] Therefore, the tenant is only permitted to recover the amount of rent overpaid and will not receive any damages related to the lead poisoning injury.[155]

2. *The Injunction: Forcing the Landlord to Abate a Nuisance*

Although the injunction is a preventative measure for addressing the lead-based paint problem, under Illinois law it is not a maintainable action to force a landlord to abate.[156] One advantage in using an injunction in lead poisoning cases is that the plaintiff need not prove that the lead-based paint has already resulted in a child

149. *See, e.g.*, Abram v. Litman, 150 Ill. App. 3d 174, 501 N.E.2d 370 (1986) (asserting a claim for breach of implied warranty of habitability a tenant must show he gave his landlord notice of the alleged defects and the landlord had knowledge of these defects); Glasoe v. Trinkle, 107 Ill. 2d 1, 479 N.E.2d 915 (1985) (to recover for breach of the implied warranty of habitability a tenant must plead and prove he gave his landlord notice of the alleged defects).

150. Garcia v. Jiminez, 184 Ill. App. 3d 107, 539 N.E.2d 1356, *cert. denied*, 127 Ill. 2d 615, 545 N.E.2d 109 (1989).

151. *See supra* notes 134-39 and accompanying text for a discussion of the *Garcia* court's analysis of the notice issue.

152. *See supra* notes 134-40 and accompanying text for a discussion of the difficulty a plaintiff in Illinois faces in proving notice.

153. Comment, *supra* note 13, at 257. For a discussion of the ramifications of remedies governed by contract law see *infra* notes 154-55 and accompanying text.

154. Comment, *supra* note 13, at 257 n.149.

155. *See supra* note 112 for an explanation of how tort damages provide a victim with compensation for his injuries.

156. *See infra* notes 159-62 and accompanying text for an explanation of why suing for an injunction to force a landlord to abate is not a viable action in Illinois.

with an elevated blood lead level.[157] In addition, to satisfy the knowledge requirement of the action, the plaintiff only need to prove he gave the landlord notice that lead-based paint is present in the unit and may cause lead poisoning.[158]

However, once again a plaintiff in Illinois is confronted with meeting the *Garcia* standard of proving notice, which is actual notice.[159] An additional drawback of this remedy is that the plaintiff must prove the landlord owed a duty to maintain a lead-based, paint-free unit.[160] The *Garcia* case remains the only authority in Illinois on the issue of whether a landlord owed a duty to a lead poisoned tenant.[161] Consequently, an injunction would be an ineffective weapon in Illinois' struggle to prevent childhood lead poisoning.[162]

---

157. Comment, *supra* note 45, at 331.

158. *Id.*

159. Garcia v. Jimenez, 184 Ill. App. 3d 107, 539 N.E.2d 1356 (1989). For an explanation of the standard the *Garcia* case set for proving notice see *supra* notes 134-139 and accompanying text.

160. Comment, *supra* note 45, at 331. Because this is not an action for damages, the court may be more willing to find a duty on the part of the landlord to keep the unit lead free. *Id.* In addition, if the landlord in question is not the person who originally applied the lead-based paint in the unit, it is more difficult to enjoin him to abate. *Id.*

161. For an analysis of the issue of when a landlord has a duty to maintain an apartment free of lead-based paint see *supra* notes 114-133 and accompanying text.

162. There are other possible remedies, however, which are not within the scope of this comment. A plaintiff could sue the paint manufacturers for negligence. *See supra* notes 23-25 and accompanying text explaining how paint manufacturers were aware of the hazards of lead in paint before the federal government banned the use of lead-based paint. *See also Lead Paint Firms Targeted in Suits*, 133 Chicago Daily L. Bull., Nov. 18, 1987, at 1, col. 2 (paint industry was aware that lead-based paint posed a threat to society as early as the 1930's). However, common sense dictates that such an action would not encourage landlords to abate because they would not incur any costs. *See Let the Lead Industry Pay for It, Cities Insist*, INSIGHT, Jan. 21, 1991 at 54 (Philadelphia is suing six paint manufacturers to help pay the costs of abatement).

A plaintiff may sue the city for failing to enforce its housing ordinance requiring a landlord to maintain lead free premises. *See, e.g.*, New York City Coalition to End Lead Poisoning v. Koch, 138 Misc. 2d 188, 524 N.Y.S.2d 314 (1987), *aff'd mem.*, 526 N.Y.S.2d 918 (1988) (motion to dismiss an action against New York City for failure to enforce its ordinances requiring landlords to correct "inherently dangerous instrumentalit[ies]" was denied); Stigler v. City of Chicago, 48 Ill. 2d 20, 268 N.E.2d 26 (1971) (city was not liable for citizen's lead poisoning for failing to enforce an ordinance that required a landlord to maintain good repair and habitable conditions in his residences).

IV RECOMMENDED REVISIONS OF THE ILLINOIS LEAD PREVENTION POISONING ACT

A. Systematic Inspection for Lead-Based Paint

It is crucial that Illinois revise the Illinois Lead Poisoning Prevention Act to implement a preventative approach to deal with childhood lead poisoning.[163] The first step to prevent the disease is to inform a landlord when his premises contain lead-based paint. Rather than using the current approach of determining which buildings to inspect by the health of its inhabitants, the new revisions will focus on the probability that a particular building contains lead-based paint.[164] Therefore, the Illinois legislature, in revising the Act, must order the systematic inspections of all dwelling units built before 1978.[165] To effectively implement such an order, the legislature must require landlords to submit to these inspections.[166]

---

163. For the differences between housing and medical approaches see notes 71-73 and accompanying text.

164. The recent amendments of the LPPPA assert that people can only assume premises lead-based paint free constructed or substantially renovated after 1978. 42 U.S.C. § 4822 (1988). *See supra* notes 77-91 and accompanying text for a complete discussion of the amendments to the LPPPA and the resulting HUD regulations.

165. See *supra* notes 15 & 164 for an explanation of the significance of the 1978 demarcation date. Currently there are two methods inspectors employ to inspect paint for lead. Pollack, *supra* note 27, at 26. The first procedure entails using a portable x-ray fluorescence analyzer ("XRF"). *Id.* An XRF is a handheld apparatus which uses radiation to stimulate fluorescent x-ray production from lead and then calibrates these x-rays. *Id.* Unfortunately, the XRF is inaccurate at levels below 2 milligrams per square centimeter. *Id.* at 27. Most regulations require the abatement of lead which measures 0.7 to 1.2 milligrams per square centimeter. *Id.* Commentators have suggested that the accuracy of the XRF could be improved if inspectors scrape the surface to be tested at wood level and then take a base reading. *Id.*

The second method more commonly used by inspectors is a chemical spot test using sodium sulfide. *Id.* Inspectors paint this solution on a small cut in the surface of the paint and if it turns black or dark grey the concentration of lead in the paint exceeds the usual regulatory cut off of 0.5%. *Id.* The problem with this test is that inspectors often interpret shades of grey differently, some finding a shade indicating the presence of lead below acceptable levels, while others find the same shade of grey to be above the 0.5% cut off. *Id.* HUD believes XRF is the more reliable method and will not permit its inspectors to employ the chemical spot test method of inspection. *Id.* Inspectors in Maryland combine both methods believing they will receive more accurate results in that manner. *Id.*

166. Common sense would prescribe that unless the landlord had a duty to permit inspectors to enter his premises, he may attempt to forestall abatement by refusing to submit to an inspection. Moreover, inspectors must be required to go through training and be licensed. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 35. This will help to insure that inspectors analyze the results of inspections in a uniform manner. CHICAGO DEPARTMENT OF HEALTH, THE MAYOR'S TASK FORCE ON LEAD POISONING 16 (1988) [hereinafter MAYOR'S

Clearly, even an army of inspectors cannot immediately inspect all the dwelling units constructed prior to 1978.[167] Thus, it is necessary to divide the housing stock into those dwelling units that should receive priority testing.[168] Although this comment is not recommending the medical approach as a preventative measure, locating and testing those buildings in which a child with lead poisoning resides is an effective first step.[169] This action will at a minimum aid in preventing future lead poisoning of other children on those premises.[170] The second group of landlords to submit to testing include those who own dwelling units with chipping and peeling paint.[171] The final portion of the housing which stock inspectors should test must be those remaining buildings built before 1978.[172]

B. Mandatory Abatement of Lead-Based Paint

Once an inspection of a dwelling unit reveals that the premises contain lead-based paint, the Act must require the landlord to abate. However, there are a number of theories as to the best method of abatement.[173] The method that the Department imple-

---

TASK FORCE]. *See supra* note 165 for the two different inspection methods available.

167. A 1988 Public Health Service report estimated that 42 million of the households in the United States contain lead-based paint. Jaroff, *supra* note 6, at 68. *See supra* notes 15 & 164 for an explanation of the 1978 demarcation.

168. THE MAYOR'S TASK FORCE, *supra* note 166, at 26. When a physician diagnoses a child as having an elevated blood lead level, the Department can presume the child's residence contains lead-based paint. *Id.*

169. By addressing those buildings in which a lead-poisoned child resides, the revised Illinois Act will prevent other children within that building from getting ill. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 7-8. Common sense dictates that if one dwelling unit contains lead-based paint, the probability that the rest of the building was painted with the same paint is very high. Therefore, the Illinois legislature must maintain the provision in the current Act that requires physicians to report to the Department the names and addresses of any children diagnosed with elevated blood lead levels. ILL. REV. STAT. ch. 111 1/2, para. 1307 (1989). With this information, the Department can designate emergency neighborhoods where there is a greater rate of lead poisoning, and order that these areas be tested first. *See* MASS. GEN. L. ch. 111, § 194A (Supp. 1990).

170. *See supra* notes 9-12 and accompanying text for an explanation of how abatement prevents future lead poisoning.

171. *See supra* note 13 and accompanying text for an explanation of the dangers of chipping and peeling paint.

172. *See supra* notes 15 & 164 for an explanation of the demarcation date of 1978.

173. The following is a description of the different methods of abatement available listed by increasing costs. First, the cheapest method of abatement is for the landlord to merely scrape loose, peeling, and chipping paint. Gilligan & Ford, *supra* note 3, at 256-57. For an explanation of why this is a poor method because intact paint is also a health hazard see *supra* note 28 and accompanying text. Second, a landlord could scrape and sand off all of the paint. Gilligan & Ford, *supra* note 3, at 257. The danger this method poses to children is that, unless a thorough cleaning proceeds the abatement, an inordinant amount of

ments[174] should insure that the landlord do the following: (1) completely remove all chipping and peeling paint,[175] (2) remove all lead-based paint from window sills,[176] and (3) abate all lead-based paint from the walls of the dwelling unit up to a height of five feet.[177] The Illinois legislature should enforce the abatement order through criminal penalties and civil liability.[178]

---

lead dust will remain in the residence. *Id.* at n.92. For a discussion of the dangers of lead dust see Charney, *supra* note 10, at 79-87.

Third, it is possible to burn the paint off with an open flame torch; however, this creates poisonous lead gas. Gilligan & Ford, *supra* note 3, at 257 n.93. Lastly, the best method, and the most expensive one, requires the landlord to partially renovate his premises. Pollack, *supra* note 27, at 27. This method requires workers to replace the woodwork around windows and replace baseboards. *Id.* To prevent lead dust from spreading throughout the residence plastic is placed over air ducts during abatement. *Id.* In addition, the area is thoroughly cleaned and wood floors are painted with polyurethane to seal in any remaining dust. *Id.* at 28. A less expensive method that is also quite effective is to encapsulate the paint on the walls and woodwork. *Id.* at 30. Landlords could cover the paint either with paneling, fiberglass, or other flexible materials. *Id.* at 31. Although, this is not the most aesthetically pleasing alternative, it is cheaper because it requires less labor, and less dust is created reducing clean up costs. *Id.*

174. Under the Illinois Act the Department promulgates regulations and guidelines in accordance with the mandate of the Act. ILL. REV. STAT. ch. 111 1/2, para. 1314 (1989).

175. *See supra* note 13 for a discussion of the dangers of chipping and peeling paint.

176. For an illustration of the need for landlords to abate lead-based paint from window sills see *supra* note 10.

177. Common sense dictates that some five and six year old children often have a reach of five feet; therefore, it is necessary to abate to this level to prevent lead-based paint from being within their grasp. For an explanation of children's hand-to-mouth activity see *supra* note 13.

178. The Illinois legislature should not provide for a strict liability standard in their revisions. Although it is possible to characterize the presence of lead-based paint as inherently dangerous, suits against landlords under a strict liability standard are rarely successful. Annotation, *Strict Liability of Landlord for Injury or Death of Tenant or Third Person Caused by Defect in Premises Leased for Residential Use*, 48 A.L.R. 4th 638, 641 (1986). An inherently dangerous element is one that has a high degree of risk that it may cause considerable harm. *Id.* Illinois courts have been reluctant to employ the strict liability standard against landlords especially for a tenant's lead poisoning. Garcia v. Jiminez, 184 Ill. App. 3d 107, 111-12, 539 N.E.2d 1356, 1359 (1989).

However, Massachusetts courts have recently interpreted their legislation to hold a landlord strictly liable for any injuries caused by lead-based paint. *See* Bencosme v. Kokoras, 400 Mass. 40, 507 N.E.2d 748 (1987) (landlord is strictly liable for tenant's lead poisoning if he fails to remove lead-based paint as required by law). *See also* Hardy v. Griffin, 41 Conn. Sup. 283, 569 A.2d 49 (1989) (tenant with lead poisoning was able to employ strict liability standard because city ordinance and state statute require landlord to maintain lead free premises).

Unfortunately, in *Ankiewicz v. Kinder*, 408 Mass. 792, 795, 563 N.E.2d 684, 686-70 (1990), while the Supreme Judicial Court of Massachusetts held that a landlord was strictly liable for a tenant's lead-poisoning according to the state statute, the court also held that the landlord could maintain a counterclaim against the tenant's mother for contribution. *Id.* The court reasoned that contribution was permissible because Massachusetts did not have parent-child tort

Undeniably, these revisions require landlords to expend a great amount of money.[179] It is clear that most landlords will be unable to meet the financial burden these revisions to the Act impose.[180] To avoid a further reduction in the affordable housing stock,[181] the revisions of the Act should include two financial aid programs for landlords. First, every landlord that voluntarily abates will receive a tax credit of $1,000 per dwelling unit.[182] Second, the establishment of a low interest loan program would help provide landlords with the means to abate.[183]

In addition, the revisions of the Act would include a provision that ensures a landlord that those persons who remove the lead-based paint ("deleaders") properly abated the premises in compliance with the new standards.[184] There is the risk that research will reveal more effective methods for abating lead-based paint.[185] Therefore, once deleaders have abated a dwelling unit, they must present the landlord with a certificate of abatement which he would record with the title to the building.[186] In turn, this certification

---

immunity and the child's mother should not have allowed her child to eat paint chips. *Id.* It is possible that strict liability could lead to a similar result in Illinois because under Illinois law parents are not immune from liability from their children. *See* Zawaski v. Franey, 149 Ill. App. 3d 1045, 501 N.E.2d 870 (1986) (parent-child tort immunity doctrine does not bar wrongful death action of minor child against surviving parent).

Courts upholding contribution actions fail to recognize that parents are often required to divert their attention when they are tending their children, and children can put paint chips in their mouth very quickly. Norwood v. Lazarus, 634 S.W.2d 584 (Mo. App. 1982). For a discussion of normal and abnormal childhood behavior that causes children to put things in their mouths see *supra* note 13. Moreover, a parent cannot, in practical terms, protect a child from lead dust. *See supra* note 10 and accompanying text for an explanation of the dangers of lead dust.

179. For an analysis of the cost of abatement see *supra* notes 56-60 and accompanying text.

180. MAYOR'S TASK FORCE, *supra* note 166, at 37.

181. *See supra* note 63 for a discussion of the danger that forcing landlords to pay for abatement may cause a decrease in the affordable housing stock.

182. *See* MASS. GEN. L. ch. 62, § 6(e) (1990) (statute provides a $1000 tax credit per unit or credit of the cost of abatement, whichever is the lesser amount, and the credit can be spread over a period of up to five years).

183. FACT SHEET, *supra* note 9, at 4. Additionally, the state could create a fund to provide grants and low interest loans to landlords from fines collected for housing code violations. MAYOR'S TASK FORCE, *supra* note 166, at 37.

184. For an explanation of the licensing of deleaders and certification of abatement see *infra* notes 186-87 and accompanying text.

185. Pollack, *supra* note 27, at 31. To insure that abatement methods employed by deleaders keep up with technology, the revisions should authorize a program that encourages research and development of new methods. *Id.* For an explanation of the need to protect from liability those landlords that have already abated their premises and received certification of abatement, see *supra* notes 186-87 and accompanying text.

186. First, certification of abatement assures a prospective landlord purchasing a building that those premises were abated. Mahoney, *supra* note 1, at 63. In addition, purchase prices could be adjusted depending on whether the former

will protect the landlord from any future liability arising out of a tenant's lead poisoning, because he will be able to prove he conformed with the abatement order.[187]

C. Routine Screening of Children

Lastly, because the primary goal of revising the Illinois Act is to urge the protection of children from lead poisoning, it is necessary to address the need for routine screening for elevated blood levels.[188] Rather than waiting until a child has symptoms of the disease to begin screening, physicians must routinely screen children ages six months to six years.[189] For example, children enrolled in day care centers should undergo screening upon entrance to the program. Moreover, the Department must order the screening of all children under six years old who live in a building where a child with an elevated blood level resides. Finally, the most effective method to insure the screening of children, is educating parents about the pervasiveness of lead poisoning.[190]

V CONCLUSION

Undeniably, the preventable disease of childhood lead poisoning is physically and mentally debilitating our children. It is a dis-

landlord abated the dwelling units. *Id.* at 56. *See also* MASS. GEN. L. ch. 62 § 6(e) (landlord must prove through a certificate that he abated his premises in order to claim tax credit). For a discussion of the tax credit see *supra* note 182 and accompanying text.

187. In essence certification will shift the blame to the deleaders. Mahoney, *supra* note 1, at 63. Thus, the revisions must include a requirement that deleaders be trained and licensed. *Id.* Not only will this insure that the abatement is performed properly, but it will also help protect the health of deleaders through training them in methods of preventing the inhalation of lead dust (e.g. wearing respirators and having blood levels monitored periodically). Pollack, *supra* note 27, at 30.

188. *See supra* notes 46-48 for a discussion of why a majority of children do not undergo screening for lead poisoning. *See supra* note 17 for a discussion of recent amendments to the Illinois Act which require more pervasive lead screening.

189. For an explanation of why children six months to six years are of the age when children are most likely to ingest lead, and thus need to be screened see *supra* note 13. In the past physicians tested a child's urine for evidence of lead poisoning. Comment, *supra* note 45, at 329. For an illustration of how lead is present in the urine see *supra* note 31.

Today children are screened for elevated blood lead levels through an erythrocyte protoporphyrin ("EP") test. A SILENT AND COSTLY EPIDEMIC, *supra* note 6, at 11. The EP test involves a finger prick blood test. *Id.* If the test reveals an elevated level of EP, then the same sample of blood is tested for lead. *Id.* However, to confirm lead poisoning physicians may take x-rays or examine a child's teeth for deposits of lead in the bones and teeth. *Id.* at 12.

190. Educating the public about the dangers of lead poisoning helps to make people more aware of what they can do to prevent the disease. *Id.* at 35. It is society's ignorance about the disease that helped to create the "silent epidemic." *Id.* at 35-36.

ease that results in death, severe mental handicaps, and produces learning disabilities even in mild cases. The people of Illinois can no longer deny that lead-based paint continues to be the cause of the majority of today's childhood lead poisoning cases. To prevent this epidemic from expanding, landlords must abate the lead-based paint remaining in their buildings. However, landlords will not undertake such drastic, and expensive, action unless Illinois forces them to abate. Now is the time for the Illinois legislature to revise the Illinois Lead Poisoning Prevention Act and end the silence of childhood lead poisoning.

Carolyn H. Eckert