

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Health

Regulation/Package Title: Ohio Administrative Code Chapter 3701-32 - Lead Hazard Abatement Activities

Rule Number(s): 3701-32-01 to 3701-32-19

Date: December 20, 2013 **UPDATED January 10, 2014**

**Rule Type:**

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

- 3701-32-01: The rule establishes the definitions for terms used in rules 3701-32-01 to 3701-32-19 and 3701-82-01 to 3701-82-03 of the Administrative Code.

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The rule has been amended by adding definitions for acronyms used throughout this Chapter, including USEPA for the United States Environmental Protection Agency, “HUD” for the United States Department of Housing and Urban Development, and ASTM for the American Society for Testing and Materials; adding a definition of “bare soil;” and removing “Type C family day-care home” from the definition of “child care facility” to align with statutory language.

- 3701-32-03: The rule sets forth prohibitions on unlicensed personnel performing lead abatement activities, clarifies federal and state conflicts of law. The rule further states when the director may issue cease work orders.

The rule has been amended to clarify that, in accordance with guidance from the United States Environmental Protection Agency, the use of chemical test kits for sampling when conducting a lead inspection or a lead risk assessment is not allowable.

- 3701-32-07: The rule sets forth the specific requirements for licensure as a lead risk assessor, including procedures a lead risk assessor may and may not perform. Additionally, the rule sets forth requirements a lead risk assessor must perform when performing lead activities, lead inspections, lead hazard screenings, and lead risk assessments.

The rule has been amended to remove a reference to “The American Society for Testing and Materials,” leaving the acronym ASTM.

- 3701-32-09: The rule sets forth the specific requirements for licensure as a lead abatement worker, including procedures a lead abatement worker may and may not perform.

The rule has been amended to require that, if issued, the lead hazard control order is now required to be included in the written pre-abatement plan. Additionally, there must be a designated lead abatement worker with knowledge of the work scope and is responsible for maintaining and providing all onsite paperwork present at the work site at all times when the designated lead abatement contractor or lead abatement project designer is not onsite.

This amendment is to allow inspectors to review paperwork while the contractor or project designer is en route to the project, rather than stopping work until the contractor or project designer is on-site.

- 3701-32-10: The rule sets forth the specific requirements for licensure as a lead abatement project designer, including procedures a lead abatement project designer may and may not perform. Additionally, the rule sets forth the responsibilities of a lead abatement project designer on a lead abatement project.

The rule has been amended to remove reference to “the United States Occupational Safety and Health Administration,” leaving they acronym OSHA.

If issued, the lead hazard control order is now required to be included in the written pre-abatement plan.

Additionally, there must be a designated lead abatement worker with knowledge of the work scope and is responsible for maintaining and providing all onsite paperwork present at the work site at all times when the designated lead abatement contractor or lead abatement project designer is not onsite.

This amendment is to allow inspectors to review paperwork while the contractor or project designer is en route to the project, rather than stopping work until the contractor or project designer is on-site.

- 3701-32-12: The rule sets forth the requirements for clearance examinations conducted on lead abatement and non-lead abatement projects. Specifically, the rule sets forth when clearance examinations are required, who may perform the examination, and how the clearance examinations are to be performed. Further, the rule sets forth when additional examinations are needed.

The rule has been amended to remove reference to “The American Society for Testing and Materials,” leaving they acronym ASTM.

The phrase “child care facilities or schools” has been added to paragraph (E); this was inadvertently not added during the previous five year rule review.

Soil sampling requirements for residential units and at child care facilities or schools are clarified.

“Lead hazard control order” is now spelled-out.

- 3701-32-13: The rule sets forth the specific requirements for manufacturers of encapsulant products used in lead abatement projects.

The rule has been amended to remove reference to “The American Society for Testing and Materials,” leaving the acronym ASTM. The acronym NVLAP has also been removed.

- 3701-32-14: The rule sets forth the recordkeeping requirements for both environmental lead analytical and clinical laboratories that are used to process samples from lead abatement projects, including information that is to be collected.

The rule has been amended to remove the acronyms ELPAT and CLIA.

- 3701-32-16.1: The rule sets forth the qualifications for essential maintenance and lead-safe renovation program training managers and instructors. The requirements include, but are not limited to, a minimum of two years classroom experience, an accredited degree in specific areas, or two years management experience involving environmental hazards training for training program managers; and twenty four hours of EPA authorized lead training, a degree in adult education, two years’ experience teaching adults, or two years construction industry experience for primary instructors.

The rule has been amended to remove reference to “The United States Environmental Protection Agency,” leaving the acronym USEPA.

- 3701-32-16.2: The rule establishes the duties of approved essential maintenance and lead-safe renovation training program providers and managers. These duties include, but are not limited to, providing facilities, materials, and issuing a unique course completion certificate for all training programs offered. Furthermore, the rule establishes the records retention and quality control plan requirements for approved training programs.

The rule has been amended to include the course completion certificate number of each trainee that attends an approved lead-safe renovation course.

- 3701-32-16.3: The rule establishes the course requirements for essential maintenance and lead-safe renovation training programs. The requirements include, but are not limited to, minimum classroom hours and hands-on training for lead inspectors, lead

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risk assessors, lead abatement contractors, lead abatement project designers, and clearance technicians.

The rule has been amended to clarify the requirements for the lead trainee program examination (test) to ensure test security and to the extent possible, reduce cheating.

- 3701-32-17: The rule sets forth the requirements on who may and how to perform essential maintenance practices, both internal and external, and to set forth the criteria under which to rebut a presumption that a residential unit, child care facility, or school built before January 1, 1950 does not contain a lead hazard.

The rule has been amended to remove reference to “the United States Occupational Safety and Health Administration,” leaving the acronym OSHA.

- 3701-32-18: The rule sets forth the requirements for a party to request a variance from rule 3701-32-03 to 3701-32-16 of the Administrative Code, including those requirements that must be met before a variance can be granted.

This rule has been amended to set one year limit on the time in which a variance to any rule set forth in Chapter 3701-32 can remain in effect.

No changes have been made to the following rules:

- 3701-32-02: The rule establishes the scope and applicability of Chapter 3701-32 and 3701-82 of the Administrative Code, including what license types are affected by which sections of Chapter 3742 of the Administrative Code.
- 3701-32-04: The rule sets forth the general requirements for an individual to be licensed under Chapter 3701-32 of the Administrative Code, including application, fees and exams. Additionally, the rule sets forth a procedure for individuals with similar licenses from other states to apply for an Ohio license.
- 3701-32-05: The rule sets forth the specific requirements for licensure as a clearance technician, including procedures a clearance technician may and may not perform.
- 3701-32-06: The rule sets forth the specific requirements for licensure as a lead inspector, including procedures a lead inspector may and may not perform.

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- 3701-32-11: The rule sets forth the specific requirements for lead safe renovator training requirements, including course requirements. Additionally, the rule prescribes work practice measures.
- 3701-32-15: The rule sets forth the recordkeeping requirements for individuals licensed under Chapter 3701-32 of the Administrative Code, including the timeframes that records are to be kept. The rule also prescribes information to be provided in a report prepared for a residential unit.
- 3701-32-16: The rule sets forth the application procedures for the approval of an essential maintenance or lead-safe renovation training program, including documentation and fees. Furthermore, the rule sets forth the criteria under which the Director may deny, suspend, or revoke a program approval.
- 3701-32-19: The rule sets forth the level of lead when lead-based paint and/or lead contaminated dust is present on various surfaces that is considered dangerous to human health.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Sections 3742.04 and 3742.50 of the Ohio Revised Code (“ORC”).

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

Yes. Title X of the Housing and Community Development Act, known as “The Residential Lead-Based Paint Hazard Reduction Act of 1992,” added Title IV, “Lead Exposure Reduction” to the Toxic Substances Control Act (TSCA). TSCA Title IV includes § 404 in which Congress calls for the United States Environmental Protection Agency (U.S. EPA) to authorize state and tribal lead hazard reduction programs. Subpart (g) of TSCA § 404 authorized the U.S. EPA to issue grants to states/tribes to develop and carry out lead programs in accordance with regulations promulgated under Title IV of TSCA.

TSCA § 404 (g) grants are non-matching, cooperative agreements which U.S. EPA has been issuing since Federal Fiscal Year (FFY) 1994. Grants are awarded based on a state/tribal application and demonstration of their desire first to create and then to maintain a lead-based paint training, certification and accreditation program which is at least as protective of human health and the environment as the federal regulations and which demonstrates adequate enforcement. States/tribes with U.S. EPA authorized lead hazard reduction programs,

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participating in the TSCA § 404 (g) grant program must have enabling legislation, program management resources and enforcement capabilities.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Chapter 3701-32 of the OAC requires that lead abatement worker take and pass a licensure examination. This is to comply with Section 3742.04 of the ORC, which requires licensure of lead abatement workers.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Lead can damage nearly every system in the human body, and has harmful effects on both adults and children. Lead poisoning is the greatest environmental threat to children in Ohio.

ODH Lead Hazard Abatement rules ensure that the public receives safe and proper lead abatement, detection, and analytical services by requiring those services to be conducted according to federal and state regulations, and by trained and licensed personnel. As of October 1, 1998, the lead program was authorized by the U.S. Environmental Protection Agency to administer and enforce the lead licensure and approval program in Ohio. The program licenses lead risk assessors, lead abatement contractors, lead abatement workers, lead inspectors, and lead abatement project designers. In addition, the lead program approves initial and refresher lead training courses for the following professionals: lead abatement worker, lead inspector, lead risk assessor, lead abatement contractor, and lead abatement project designer. The program approves abatement systems and products (encapsulants), clinical laboratories that analyze blood lead levels in humans and environmental lead analytical laboratories that analyze the amount of lead in the environment.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Successful outcomes are measured through administrative and on-site reviews of lead hazard abatement activities. On-site reviews are also conducted in the event that a complaint is received about the quality of work being performed. Results of an inspection are then used to gauge areas of emphasis for compliance assistance with contractors. Further evidence of success would be represented by the number of complaints received; the number of validated complaints; and a reduction in repeat offenses.

See Appendix A for specific outputs and outcomes.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

ODH program staff solicited comments on the current Chapter 3701-32 rules during presentations to stakeholders beginning in the summer, 2013, and followed-up with stakeholders when a stakeholder's meeting was scheduled for October 24, 2013. The following stakeholders either contacted ODH with comments on the current version of the Chapter 3701-32 rules or emailed ODH to register for the stakeholder meeting:

- Building Environment Council of Ohio
- East Akron Neighborhood Development Corporation
- Hina Environmental Solutions
- Cleveland Public Health Department, Lead Program

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Stakeholders were asked to give written comments on the current version of the rules prior to the stakeholder meeting. ODH took these comments, as well as discussion surrounding the rules, into account while drafting amendments to the rules for the public comment posting. Several changes suggested by stakeholders were incorporated into the rules now posted for comment.

There was general agreement during the stakeholder meeting that the Chapter 3701-32 rules being proposed were acceptable.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Numerous studies have been conducted to inform state and federal law in this area. Information regarding these studies can be found online through the below links.

- U.S. Centers for Disease Control and Prevention:  
<http://www.cdc.gov/nceh/lead/publications/>
- U.S. Environmental Protection Agency:  
<http://www2.epa.gov/lead/science-and-technology>
- U.S. Housing and Urban Development:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/researches](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/researches)
- U.S. Occupational Safety and Health Administration:  
<https://www.osha.gov/SLTC/lead/> (under "Health Effects")

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**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

As required by ORC section 3742.04, the Chapter 3701-32 rules provide the necessary framework for ODH to ensure that lead hazard abatement activities in Ohio are conducted in a safe manner by qualified personnel. These rules reflect current industry standards and ensure compliance with the aforementioned requirements of Title X and the TSCA.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Performance-based regulations were not considered as these rules set forth structural requirements consistent with state and federal law related to lead hazard abatement. Without such structural requirements, ODH cannot ensure that lead hazard abatement is performed by properly trained personnel in a safe and effective manner.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

ODH constantly reviews the regulations of other agencies to ensure there is no overlap.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

See Appendix A.

## **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

ODH has identified the following number of individuals impacted by Chapter 3701-32 (figures as of September 30, 2013):

Clearance technician.....	0
Lead inspector.....	9
Lead risk assessor.....	332
Lead abatement contractor.....	483
Lead abatement worker.....	468
<u>Lead abatement project designer.....</u>	<u>12</u>
 Total.....	 1,304

ODH has identified the following number of businesses impacted by Chapter 3701-32 (figures as of September 30, 2013):

Manufacturers of encapsulants.....	12
Environmental lead analytical laboratories.....	15
Clinical laboratories.....	82
Training Programs (EMP).....	36

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

Individuals regulated by Chapter 3701-32 are subject to costs associated with licensure, training, fines, time for compliance (documentation), submission of samples to a lab,

Businesses regulated by Chapter 3701-32 are subject to costs associated with an application, time for compliance (documentation), and submission of materials for testing to a lab.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a*

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***“representative business.” Please include the source for your information/estimated impact.***

Licensure fees associated with individuals regulated by Chapter 3701-32:

Clearance technician.....	\$250
Lead inspector.....	\$250
Lead risk assessor.....	\$250
Lead abatement contractor.....	\$500
Lead abatement worker.....	\$50
Lead abatement project designer.....	\$500

Additionally, each discipline must take and pass a licensure examination at a cost of \$70.

Clearance Technician<sup>1</sup>

- Estimated cost associated with preparation of a non-abatement lead activity report of up to 8 hours of time averaging from \$18.22 to \$20.01 per hour.

Lead Inspector<sup>2</sup>

- Estimated cost associated with preparation of a lead inspection report: Up to 8 hours of time at an average of \$23.34 per hour.
- Submission of paint chip to laboratory for lead concentration analysis:

Lead Risk Assessor<sup>3</sup>

- Estimated cost associated with preparation of a lead inspection report: Up to 8 hours of time at an average of \$23.34 per hour.
- Submission of paint chip and/or environmental samples to laboratory for lead concentration analysis (cost based on requested turnaround time):

See Appendix B

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<sup>1</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, codes for [Environmental Engineering Technicians](#) (17-3025) and [Environmental Science and Protection Technicians, Including Health](#) (19-4091).

<sup>2</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [Construction and Building Inspectors](#) (47-4011).

<sup>3</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [Construction and Building Inspectors](#) (47-4011).

#### Lead Abatement Contractor<sup>4</sup>

- Estimated cost associated with preparation of a pre-abatement plan: Up to 12 hours of time at an average of \$27.64 per hour
- Estimated cost associated with preparation of a lead inspection report: Up to 8 hours of time at an average of \$27.64 per hour.
- Estimated cost of notification to ODH prior to commencement of a project: Up to 8 hours of time at an average of \$27.64 per hour.

#### Lead Abatement Project Designer<sup>5</sup>

- Estimated cost associated with preparation of a pre-abatement plan: Up to 12 hours of time at an average of \$39.97 per hour
- Estimated cost associated with preparation of a lead inspection report: Up to 8 hours of time at an average of \$39.97 per hour.
- Estimated cost associated with preparation of a project report: Up to 8 hours of time at an average of \$39.97 per hour.
- Estimated cost of notification to ODH prior to commencement of a project: Up to 8 hours of time at an average of \$39.97 per hour.

Lead Safe Renovator Training (Initial and Refresher): \$195<sup>6</sup>

#### Encapsulant Manufacturers

- Estimated time for completion of application: Up to 4 hours of time at an average of \$22.26 per hour.<sup>7</sup>
- Application fee: \$500.

#### Environmental Lead Analytical Laboratories

- Estimated cost associated with reporting to ODH: Up to 1 hour of time at an average of \$18.95 per hour.<sup>8</sup>

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<sup>4</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [First-Line Supervisors of Construction Trades and Extraction Workers](#) (47-1011).

<sup>5</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [Environmental Engineers](#) (17-2081).

<sup>6</sup> Information from ODH approved Training Services International, available online at <https://www.tsitraining.com/courses.php?view=course&cdid=1960>.

<sup>7</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [First-Line Supervisors of Office and Administrative Support Workers](#) (43-1011).

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### Clinical Laboratories

- Estimated cost associated with reporting to ODH: Up to 1 hour of time at an average of \$18.95 per hour.<sup>9</sup>

### Essential Maintenance Training Programs

- Application Fee: \$750
- Estimated cost development of a quality control plan: Up to 12 hours of time at an average of \$27.64 per hour<sup>10</sup>

## **15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

These rules implement ORC Chapter 3742, which requires ODH to establish:

- Procedures to be followed in performing a clearance examination;
- Requirements for training and licensure;
- Fees for licenses;
- Procedures to be followed to prevent public exposure to lead hazards and ensure worker protection during lead abatement projects;
- Record-keeping and reporting requirements;
- Environmental sampling techniques for use in collecting samples of air, water, dust, paint, and other materials;
- Requirements for a respiratory protection plan; and
- Requirements under which a manufacturer of encapsulants must demonstrate evidence of the safety and durability of its encapsulants

### **Regulatory Flexibility**

## **16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

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<sup>8</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [Medical and Clinical Laboratory Technicians](#) (29-2012).

<sup>9</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [Medical and Clinical Laboratory Technicians](#) (29-2012).

<sup>10</sup> Costs for implementation derived from the United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, code for [First-Line Supervisors of Construction Trades and Extraction Workers](#) (47-1011).

Alternative means of compliance may be achieved through a variance. Variances may be granted for any of the requirements of this Chapter if the Director determines: that the requirement has been met in an alternative manner, that the strict application of the requirement would result in undue hardship, and that the granting of the waiver or variance would not jeopardize the health or safety of the public. The requirements for a waiver or variance are set forth in rule 3701-32-18 and are determined on a case-by-case basis.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

ODH is committed to the goal of ensuring that regulated customers have the opportunity to achieve compliance with ODH's procedural requirements. Therefore, when it is both feasible and appropriate, ODH will provide one (1) warning letter to a regulated customer who commits a first time or isolated violation of a "minor" paperwork or procedural requirement, such as failing to submit a timely and complete license renewal application or other required documentation to ODH. ODH will not impose a civil monetary penalty for such a violation, and will give the customer a reasonable amount of time to correct the violation, unless:

1. the violation constitutes a failure to comply with federal laws or regulations enforced by ODH, and the penalty is mandated by federal law;
2. the Director of Health or one of his designees has determined that the violation poses an actual or potential threat to the health, safety, or welfare of the general public;
3. the violation involves knowing or willful conduct that may result in conviction for a felony;
4. failure to impose the penalty would impede or interfere with the detection of criminal activity; or
5. the violation pertains to the assessment or collection of any monies owed to the state.

This Policy Statement should not be construed as a waiver of ODH's authority to enforce any law or regulation requiring a person or entity to obtain a valid permit or license before engaging in regulated activity, or enforce any other state or federal law.

This policy is available online at:

<http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>

**18. What resources are available to assist small businesses with compliance of the regulation?**

The lead program provides high efficiency particulate air (HEPA) vacuums for loan to the general public through health and housing agencies. The program also provides information and educational pamphlets about lead poisoning and its prevention upon request. The

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program conducts training sessions for lead professionals, training providers, landlords, tenants, real estate agents, remodelers, licensed personnel, medical personnel and the general public.

Additionally, ODH Lead Program staff is available to answer any questions anyone may have. Contact information is available on the ODH website:

[http://www.odh.ohio.gov/odhprograms/dspc/lp\\_prev/lp\\_prev1.aspx](http://www.odh.ohio.gov/odhprograms/dspc/lp_prev/lp_prev1.aspx)