The Lead Paint Bill

by Julia Vitullo-Martin
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Catalina Pena and her two sons. High lead levels were found in their Washington Heights apartment.

To many advocates in health and social services, lead contamination poses an unacceptable threat to the welfare of young children, particularly in low-income neighborhoods. To many housing advocates, lead is but one of several serious health-related dangers common to poorly maintained, deteriorated buildings. These two different points of view are at odds in the contentious debate over the City Council's Childhood Lead Poisoning Prevention Act of 2003. The bill, which the City Council passed into law on Monday, December 15, holds landlords responsible for the presence of lead paint and lead dust and sets up a stringent schedule for inspection, removal, and clean-up.

In support of this bill, many advocates urge the eradication of lead wherever it is found -- particularly in the older buildings of what has come to be called the " lead belt ," which runs from Bedford-Stuyvesant, East Flatbush, Williamsburg, and Fort Greene north into Jamaica, Queens.

These largely minority lead-belt neighborhoods have a disproportionately high rate of childhood lead poisoning . Indeed, nearly all of the city's children identified as suffering from lead poisoning -- which can cause immune-system and neurological deficiencies as well as amnesia and kidney disease -- are black, Hispanic, or Asian, and most are from low-income households.

Many housing developers, however, including distinguished nonprofit groups like Phipps Houses and the Settlement Housing Fund , oppose the bill, saying that it will reduce investment in low and moderate-income neighborhoods. They argue that the rehabilitation of older housing stock, which contain many health hazards, should take priority over any single issue, even one as serious and explosive as lead.

What's more, they fear that in making landlords solely responsible for the existence of lead-based paint, the bill is setting excessively high and misplaced legal standards of liability. Tenants and tort lawyers will have a clear path to sue property owners, even those who are not at fault.

They maintain that the 1999 law, called Local Law 38 , basically worked well.

It eliminated the 1982 law's hazardous directive to abate intact lead paint while adding powerful provisions for safe work practices in lead removal. It required owners of buildings constructed before 1960 to determine if children under age six lived there and to conduct annual inspections for lead paint hazards if they did.

Local Law 38 was struck down in October 2000 by New York State Supreme Court Judge Louis York, who agreed with the Coalition to End Lead Poisoning and the New York Public Interest Research Group that the City Council had passed the law without the state-mandated review of what its environmental effects might be.

PAST SUCCESSES

Most everyone agrees that the national lead clean-up of the 1970s -- that banned leaded gasoline, lead oxide in paint, and lead in pipe solder, food storage cans, pottery, and toothpaste -- has been an environmental success story. The steep declines in the incidence of childhood

lead poisoning back this up.

The federal government's official "level of concern" â€“- the level of lead in children at which parents are advised to seek medical treatment for the youngster â€“- has dropped steadily. In 1960 parents were urged to have children medically treated if the lead level in their blood tested at 60 micrograms per deciliter or more. Many children in those high-lead days tested at these levels. By 1985, children were treated if they tested at 25 micrograms. In 1991, the Centers for Disease Control and Prevention (CDC) reduced the level to 10, where it has basically remained.

Yet many experts are uneasy. Most people retain about 70 percent of all the lead they've ever ingested, says Roger Bason, an environmental consultant and adjunct professor at Columbia University. In this way, it resembles calcium rather than the many toxins that the body eliminates. A child's relatively small size and rapid metabolism exacerbate the problem. So you really do want to avoid it, Bason says.

But the problem was never really lead chips, says Bason, as the City Council's 1999 law assumed. It was paint dust, which can be created constantly by swinging doors and opening and shutting windows. That dust then gets on things, and because small children put so many things in their mouths, they can then ingest the lead.

Most everyone agrees that the bill before the council has taken an important step by identifying lead dust. But what is the best way of ameliorating the problem and improving the health of young children?

LANDLORD LIABILITY

No one contends that landlords did anything illegal, immoral, or even stupid to create the existing problem. Until 1960 lead-based paint was used routinely as an interior and decorative paint -- even on children's furniture, playpens, and toys -- in houses, schools, and playgrounds.

Nonetheless, if a child is tested and found to have elevated blood levels in his or her blood, the council bill declares landlords responsible for that lead content regardless of the real reason for the problem, a claim more important to litigation than to a child's health. The Department of Health says that of New York City's roughly 5,000 cases of children with elevated lead levels ,

some 1,250 involve a foreign-born child. Of children with the most serious condition, less than half could be confidently traced to paint, rather than to the many other potential causes, including contaminated dishes and pottery.

But, of course, the source of the lead is the entire game. A child in an otherwise lead-free apartment who is eating hot food off traditional Mexican plates may well become ill, with no landlord responsibility. But the council bill assumes --and stipulates as legal fact -- that any elevated lead level is due to lead paint in the residence.

Further, Commissioner Thomas Frieden testified that the bill inadequately distinguishes between apartments with high and low risks of lead paint exposure. Forcing removal of lead paint in relatively safe buildings can do more harm than good by exposing children to hazards where none had existed, he said. That is because intact lead paint is susually not a problem, but the danger of lead often lies in its disturbance.

The bill even establishes a presumption that lead paint is present in all pre-1960 apartments unless the landlord proves otherwise. As Joseph Strasburg, president of the Rent Stabilization Association, wrote in the New York Post, the bill's "presumption" clause makes it hard for a property owner to fight a lawsuit even if there is no lead paint in the apartment. He says that city data show that more than 75 percent of presumptive lead paint violations in the past two years were issued in error.

NO REHAB AHEAD

Under the bill, any rehabilitation will trigger lead testing. This, combined with high liability, could be catastrophic for the ongoing rehabilitation of the city's housing stock, particularly in poorer neighborhoods. In many cases, under the bill, existing paint would have to be stripped.

"If you create a regimen by which it's impossible to renovate, you're going to do enormous damage," says Michael Lappin, president of the Community Preservation Corporation , the consortium of banks that has financed much of the housing rehabilitation in older neighborhoods. "The council's liability standards will make it very hard for even the most responsible owners to defend themselves. This bill will be a Petri dish for law suits, which will have the effect of jeopardizing insurance for rehabilitation in older neighborhoods."

Carol Lamberg, executive director of the Settlement Housing Fund, which operates 22 buildings providing over 7,500 units of affordable housing, said, "This bill is unworkable on its face. The schedules set up for removal are much too tight, much tighter than anywhere else. Plus, if we can't get insurance we will have to shut down."

That, says Lappin, could be disastrous for the health of children. "Health-related renovations don't just involve paint," he points out. "Renovations that replace plumbing and correct fire and safety violations are every bit as important as paint issues."

The housing producers fear that renovation with tenants remaining in occupancy, which is how most moderate rehabilitation is done, will become almost impossible under the bill because of the requirement that existing paint be removed. Frank Braconi, executive director of the Citizens Housing & Planning Council, notes that their "alarm is born of the reality that they have to schedule these rehabilitation with real contractors, real lawyers, real families."

The bill's advocates scoff, saying that landlord groups had opposed the 1999 bill as well.

This much is clear, however: The millions of dollars that will now be put into lead clean-up will not be invested in basic housing rehabilitation. Increasing the costs of rehabilitating apartments for current residents will deter investment and reduce the amount of rehabilitation actually done. If rehabilitation is slowed down or even halted, more children will live in lead-contaminated apartments -- precisely the opposite of what the bill's sponsors hope to achieve.

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