

West's Arkansas Code Annotated Currentness

Title 8. Environmental Law ([Refs & Annos](#))

▢ Chapter 4. Water and Air Pollution Control Act ([Refs & Annos](#))

➔ Subchapter 4. Lead-Based Paint-Hazard Act ([Refs & Annos](#))

§ 8-4-401. Title

The provisions of this subchapter shall be known and may be cited as the "Lead-Based Paint-Hazard Act".

§ 8-4-402. Legislative intent

In the interest of public health and safety and the environment and to qualify the Arkansas Department of Environmental Quality to adopt, administer, and enforce a program for licensing lead-based paint activities, training programs, procedures, and requirements for the licensing and certification of individuals and firms engaged in lead-based paint activities and work practice standards for performing such activities, the General Assembly finds that it is necessary to enact this subchapter.

§ 8-4-403. Definitions

As used in this subchapter:

(1)(A) "Abatement" means any measures or set of measures that results in the permanent elimination of lead-based paint hazards.

(B) "Abatement" includes, but is not limited to:

(i) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and removal or covering of lead-contaminated soil; and

(ii) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(C) Specifically, "abatement" includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation that provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(a) Shall result in the permanent elimination of lead-based paint hazards; or

(b) Are designed to permanently eliminate lead-based paint hazards and are described in subdivisions (1)(B)(i) and (ii) of this section;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards conducted by licensed consultants or contractors or individuals certified in accordance with this subchapter, unless such projects are

covered by subdivision (1)(D) of this section;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards conducted by licensed consultants or contractors or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by subdivision (1)(D) of this section; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

(D)(i) "Abatement" does not include renovations, remodeling, landscaping, or other activities when such activities are not designed to permanently eliminate lead-based paint hazards but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

(ii) Furthermore, "abatement" does not include interim controls, operations, and maintenance activities or other measures and activities designed to temporarily but not permanently reduce lead-based paint hazards;

(2) "Certificate" means a document issued by the Arkansas Department of Environmental Quality to any individual who satisfactorily completes such training and examination and meets any other applicable requirements established by the department;

(3) "Child-occupied facility" means a building or operation of a building constructed prior to 1978, visited regularly by the same child six (6) years of age or under on at least two (2) different days within any week, Sunday through Saturday period, provided that each day's visit lasts at least three (3) hours and the combined weekly visit lasts at least six (6) hours. Child-occupied facilities may include, but are not limited to, daycare centers, preschools, and kindergarten classrooms;

(4) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(5) "Consultant" means any person or other legal entity, however organized, that acts as an agent for the owner and performs lead-based paint activities and meets all other requirements established by the Arkansas Department of Environmental Quality;

(6) "Contractor" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities as an agent for the owner and meets all other requirements of the department;

(7) "Department" means the Arkansas Department of Environmental Quality;

(8) "Director" means the Director of the Arkansas Department of Environmental Quality;

(9) "Inspector" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to conduct inspections and meets all

other requirements established by the department. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing;

(10) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm^2) or more than five-tenths percent (0.5%) by weight;

(11) "Lead-based paint activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subchapter;

(12) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by TSCA Section 403;

(13) "License" means a document issued by the department to a firm or training provider that meets all applicable requirements as established by the department;

(14) "Project designer" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to plan and design or who plans and designs abatement projects;

(15) "Risk assessor" means an individual who has been trained by an accredited training program as certified by this subchapter or the Environmental Protection Agency to conduct risk assessments and meets all other requirements established by the department. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing;

(16) "Supervisor" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to supervise and conduct abatements and to prepare occupant protection plans and abatement reports and meets all other requirements established by the department;

(17) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities, unless any one (1) or more children age six (6) years or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling;

(18) "Training provider" means any person or other legal entity, however organized, that conducts courses for the purposes of certifying individuals for purposes of this subchapter and meets all other requirements established by the department; and

(19) "Worker" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency and meets to perform abatements and meets all other requirements established by the department.

§ 8-4-404. Criminal, civil, and administrative penalties

Any person that violates any provision of this subchapter or commits any unlawful act thereunder or violates any

regulation or order of the Arkansas Pollution Control and Ecology Commission shall be subject to the penalty provisions provided in the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq.

§ 8-4-405. Applicability of water pollution provisions

All provisions of §§ 8-4-101--8-4-106 and 8-4-201--8-4-230 relating to water pollution shall apply to this subchapter, unless manifestly inconsistent therewith, including, but not limited to, the provisions of §§ 8-4-205, 8-4-212--8-4-214, and 8-4-218--8-4-229 relating to hearings before the Arkansas Pollution Control and Ecology Commission, notice, right to appeal, and procedure, and § 8-4-230 relating to variances and interim authority.

§ 8-4-406. Powers and duties of the department

The Arkansas Department of Environmental Quality shall be charged with the responsibility of administering and enforcing this subchapter and is given and charged with the following powers and duties:

- (1) To require and regulate training and examinations for individuals engaged in performing lead-based paint activities pursuant to this subchapter;
- (2) To establish standards and procedures for the licensing and certification of firms and individuals engaged in lead-based paint activities, and training providers engaged in training individuals for certification pursuant to this subchapter;
- (3) To enforce regulations necessary or appropriate to the implementation of this subchapter, including taking legal action in any court of competent jurisdiction;
- (4) To issue licenses and certifications to all applicants that satisfy the requirements of this subchapter and any regulations issued pursuant to this subchapter, to renew the licenses and certifications, and to suspend or revoke the licenses and certifications for cause and after notice and opportunity for hearing; and
- (5) To establish annual license and certification fees for firms, training providers, and individuals, and to recover the costs of processing license applications and the issuance of licenses and certifications, and to establish such other fees necessary to recover the costs of enforcing this subchapter.

§ 8-4-407. License required--Exceptions

- (a) Any consultant, contractor, or training provider shall obtain a license from the Arkansas Department of Environmental Quality to conduct lead-based paint activities prior to actively engaging in any lead-based paint-hazard activities in this state.
- (b) The application for a license shall be made in the manner and form required by the department. An application for license or renewal of a license shall be accompanied by proof of liability insurance coverage, except for training providers, in the form and amount required by the department, and proof of such training and examination as required by the department.
- (c)(1) The department shall license and certify all applicants for licenses and certifications under this subchapter that satisfy the requirements of this subchapter.

- (2) Licenses and certifications shall be valid for a period of one (1) year.
- (3) Licenses and certifications shall be renewable upon application and upon satisfying the renewal requirements of the department.
- (d) State and political subdivisions thereof shall be exempt, except for training providers, from the license requirements of this subchapter.

§ 8-4-408. Unlawful acts

It shall be unlawful for any person:

- (1) To conduct lead-based paint activities without having first obtained a license or certification, or both, from the Arkansas Department of Environmental Quality when acting as a contractor, consultant, training provider, inspector, project designer, risk assessor, supervisor, or worker;
- (2) To violate any provision of this subchapter or any regulation or order adopted or issued pursuant to this subchapter;
- (3) To knowingly make any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter or regulations adopted pursuant thereto, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any regulations adopted pursuant thereto; or
- (4) To participate in any lead-based paint-hazard activity contrary to the regulations or orders issued pursuant to this subchapter or contrary to the provisions of the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., the Arkansas Solid Waste Management Act, § 8-6-201 et seq., the Hazardous Waste Management Act of 1979, § 8-7-201 et seq., and the regulations promulgated thereunder, whether such person is required to have a license pursuant to this subchapter.

§ 8-4-409. Lead-Based Paint-Hazard Fund

- (a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Lead-Based Paint-Hazard Fund".
- (b) This fund shall consist of all moneys recovered pursuant to this subchapter and any other moneys received by the state as a gift or donation to the fund.
- (c) The Arkansas Pollution Control and Ecology Commission is hereby authorized to promulgate such rules and regulations as are necessary to administer the fees, rates, tolls, or charges for services established by this section. The Arkansas Department of Environmental Quality is directed to collect such fees, rates, tolls, or charges for the services delivered by the department in such manner as may be necessary to support this program as directed by the Governor and the General Assembly.

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