

Lower Sioux Lead Program

1. Title of Program

This ordinance shall be known as and may be cited as the Lower Sioux Lead Program (Lead Program).

2. Definitions

- A. Community Council of the Lower Sioux Indian Reservation (Council): The five person elected governing body of the Lower Sioux Indian Community in Minnesota.
- B. Lead Program Terminology: The Lead Program herein incorporates by reference the federal definitions for lead-based paint activity terms (40 CFR 745.223 and 40 CFR 745.323) unless the term is otherwise defined in the Lead Program.
- C. Lower Sioux Indian Community in Minnesota (Community): A federally recognized Indian tribe organized under the Indian Reorganization Act of 1934 and recognized by the United States government as having jurisdiction and authority to govern the people within its boundaries.
- D. Lower Sioux Reservation (Reservation): The jurisdictional lands of the Lower Sioux Indian Community in Minnesota in accordance with Article II of the "Constitution and Bylaws of the Lower Sioux Indian Community in Minnesota."
- E. Office of the Environment for the Lower Sioux Indian Community (OE): The Community government's environmental office (developed jointly with the Upper Sioux Community in Minnesota) formed to develop tribal environmental regulatory capacity and herein delegated the responsibility to implement and administer the Lead Program.
- F. Target Facilities: All buildings, including target housing, on the Lower Sioux_ Reservation.
- G. Tribal Court: The Lower Sioux Indian Community Tribal Court.
- H. Tribe: A federally recognized Indian Tribe or Alaskan Native Village.
- I. Qualified Native American: Any enrolled member of a tribe.

3. Findings and Basis for Adoption

- A. Lead is a naturally occurring element that is toxic to humans when ingested or inhaled. Severe lead poisoning causes convulsions, mental retardation, seizures and sometimes death; low-level exposure to lead reduces intelligence, delays cognitive growth, impairs physical development and has been linked to anti-social behavior.
- B. Fetuses and children under age six are most sensitive to lead poisoning because their brains and nervous systems are still developing.
- C. Lead poisoning is the foremost environmental health threat facing children today, yet lead poisoning is completely preventable.

- D. The Community has determined that children living on Reservation lands may have blood lead levels exceeding the U.S. Center for Disease Control's action level.
- E. The source of the most intensive exposure to lead is deteriorating lead-based paint in buildings constructed prior to 1978. Pre-1978 target facilities exist on the Reservation. Exposure may be from within the target facility or outside soil. Exposure through other pathways, such as fallout from leaded gasoline and industrial sources, also exists as may undiscovered potential pathways.
- F. The Community needs clear and specific enforceable standards for lead hazard evaluation, testing, abatement and control for target facilities.
- G. The Community desires to exercise jurisdiction by receiving federal program authorization to administer and enforce the Lead Program. If Lead Program authorization is not awarded by August 31, 1998, EPA will administer and enforce the federal regulations on Reservation land.

4. Purpose, Intent and Incorporation by Reference

- A. Purpose: This ordinance provides a comprehensive approach to lead poisoning identification, measurement, control, abatement and prevention.
- B. Intent: The Lead Program is intended to be and at all times shall be construed to be at least as protective as the federal rules implementing the Toxic Substances Control Act, as those rules now exist and may from time to time be amended.
- C. To the extent that any federal laws, rules or standards are incorporated by reference, it is the intent of the Community that such incorporation include subsequent amendments to such laws, rules or standards without further action by the Council; provided, however, that the Council retains the authority to revise this ordinance, notwithstanding the subsequent enactment of such amendments.

5. Program Authority and Regulatory Means

- A. The Council is enacting the Lead Program ordinance under the power given to it by the "Constitution and Bylaws of the Lower Sioux Indian Community in Minnesota" as the elected governing entity for the Community.
- B. The OE is delegated authority to administer all activities required under the Lead Program and will report directly to the Council on Lead Program matters.
- C. The Council will interact with the Environmental Protection Agency and Indian Health Service as necessary to insure implementation of the Lead Program.

6. Accreditation of Training Programs

- A. Training programs must be accredited.
- B. Accreditation requires two elements:
 - 1. The training program must be accredited by EPA pursuant to 40 CFR 745.225 or through an EPA approved state or tribal lead program, and
 - 2. The training program's lead instructor is required to:
 - a. Complete a Training Accreditation Application Form,

- b. Submit proof of EPA or approved lead program accreditation, and
- c. Submit an accreditation registration fee of \$100.00 (\$50.00 for qualified Native American individuals or firms).
- d. The fee non-imposition requirement found in the Toxic Control Substances Act, Section 402 (a)(3)(b) is herein incorporated by reference.

7. Individual Certification Procedures

- A. Lead-paint based activities can only be performed by certified individuals.
- B. Certification of individuals requires two elements:
 - 1. The federal requirements for Certification of Individuals (40 CFR 745.226), which are herein incorporated by reference, must be met, and
 - 2. The individual seeking certification is required to:
 - a. Complete a Certification Application Form,
 - b. Submit proof of meeting the federal requirements, and
 - c. Submit the required certification registration fee of \$100.00 (\$50.00 for qualified Native American individuals).
 - d. The fee non-imposition requirement found in the Toxic Control Substances Act, Section 402 (a)(3)(b) is herein incorporated by reference.

8. Pre-Renovation Notification

- A. Upon promulgation of the federal rules applicable to this section, said federal rules shall be herein incorporated by reference.
- B. All target facilities constructed prior to 1978 are subject to pre-renovation notification requirements when one of the following conditions is met:
 - 1. The Council becomes aware of proposed home improvement activities, or
 - 2. The home improvement activity requires notification to the Community government under any other provision of tribal or other applicable law.
- C. Upon notice of the proposed improvement, pre-renovation lead hazard information will be mailed by first-class mail to the target facility.
- D. The federal pre-renovation notification information content requirement (40 CFR 745.326(c)) is herein incorporated by reference.

9. Work Practice Standards

The Federal Work Standards for Conducting Lead-Based Paint Activities (40 CFR 745.227) regulating conduct for lead program inspections, lead hazard screens, risk assessments and abatements are herein incorporated by reference and must be met by all certified lead-based paint activity workers.

10. Enforcement Authority and Remedies

- A. The OE is authorized to enter and inspect, through consent or warrant, premises or facilities where Lead Program violations may occur, where training is conducted, or where other activities regulated by this ordinance take place. The authority of the OE includes, but is not limited to, the inspection of equipment, review of records, taking samples, and such other acts as may be reasonably necessary to enforce this ordinance._
- B. The OE, in addition to invoking other sanctions available to it, may invoke any of the following remedies to ensure compliance with and address any violation of the Lead Program:
 - 1. Issue Informational and warning notices.
 - 2. Require that notices be posted on the affected premises.
 - 3. Issue orders that a specific activity cease.
 - 4. Refuse, revoke or suspend the accreditation of training programs.
 - 5. Refuse, revoke or suspend the certification of individuals.
 - 6. Order that post-abatement samples be submitted under procedures prescribed by the OE.
 - 7. Take such other action that is necessary to achieve compliance with the Lead Program.
- C. The OE shall have the authority to impose a monetary penalty of \$500 for each violation of the Lead Program.
- D. The Council shall enter into a Memorandum of Agreement with the Region 5 Regional Administrator for certain criminal enforcement matters as required by the Toxic Substances Control Act.
- E. No application of sanctions or remedies shall occur without fair notice to and opportunity to be heard given to appropriate persons in accordance with tribal administrative rules.
- F. No penalty or other remedy shall be imposed except upon reasonable notice and opportunity to be heard.
- G. Appeals of OE decisions shall be made to the Lower Sioux Tribal Court in accordance with Tribal Court rules.

11. Enforcement and Compliance Performance

- A. Adequate enforcement personnel training is required and consists of two elements:
 - 1. The Community will maintain at least one staff member meeting tribal certification requirements as a lead inspector and risk assessor, and
 - 2. The Community will maintain at least one Community peace officer fully trained in case development and enforcement techniques.
- B. The OE will provide technical and compliance assistance to tribal members, tribal businesses, the tribal government and others for all aspects of the Lead Program.
- C. In order to insure technological capability and lead program compliance all OE ordered inspections, assessments and sampling activities are governed by Lead Program provisions. The OE must use tribally certified persons to perform lead-based paint activities and will use EPA recognized laboratories for all analysis activities.

- D. An enforcement and compliance performance system must be maintained and must consist of at least the following elements:
1. All tips and complaints made to the Community government will be tracked for appropriate response.
 2. A hazard targeting procedure will be developed using: blood lead level testing, target facilities data, notifications of commencement of abatement activities and other information.
 3. Inspection of lead-based paint activities will occur on a regular basis to insure Lead Program compliance.
 4. Monitoring of follow-up activities to lead-based paint activities will be conducted.
 5. Compliance monitoring will occur to insure compliance activities, testing and reporting have been performed.

12. Administrative Structure and Information Storage

- A. The OE shall perform all administrative activities necessary for the Community to meet the Lead program provisions and will report to the Council.
- B. All records shall be maintained by the OE electronically and/or in paper format. Information from the Lead Program will be integrated into the Lower Sioux Environmental Management Information System.

13. Statement of Resources

- A. The Council will devote and maintain adequate fiscal and personnel resources for the performance of, and to ensure compliance with, the provisions of the Lead Program ordinance. Including maintenance of the Community Peace Officer position and maintenance of OE personnel.
- B. The OE shall have the ability to promulgate reasonable rules and policies to carry out the duties imposed by the Lead Program.

14. Effective Date

The Lead Program is effective immediately upon adoption of this ordinance by resolution of the Council.