

CHAPTER 6-13 TOXIC LEAD (Pb) PROGRAM

DEFINITIONS

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Definitions

(a) "Agency" means the Colville Indian Agency and the United States Department of the Interior, Bureau of Indian Affairs, Nespalem, Washington.

(b) "Abatement of lead in federally owned housing," PL 102-550 Sec 1013 (302a) requires the abatement of lead-based paint in federally owned housing.

(c) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before such agency is required by law prior or subsequent to the determination by the agency of the legal rights, duties, or privileges of specific parties. Contested cases shall also include all cases of licensing where a license is revoked, suspended, or modified, or which the granting of an application is contested by a person having standing to contest such a matter under the law.

(d) "Council" or "Business Council" means the Colville Business Council of the Colville Confederated Tribes.

(e) "Environmental Trust Department" (ETD) means the agency's department that regulates environment pollution and is delegated the responsibility to implement and administer the lead program.

(f) "Lead program terminology" means the Toxic Lead (Pb) Program herein incorporates by reference the federal definitions for lead-based paint activity terms (40 C.F.R. §§ 745.223 and 745.323) unless the term is otherwise defined by the lead program.

(g) "License" or "registration" or "permit" means the whole or part of any agency approval, registration, permits, or any form of permission by law to engage in any lead-based paint program activity.

(h) "License" or "registration" or "permitting" means the agency respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of license or registration.

(i) "Reservation" means all the land within the exterior boundaries of the Colville Indian Reservation established on July 2, 1872, by Executive Order, and to the fullest extent permissible by law, such other lands as have been or may be added to the reservation or held in trust by the United States for the Confederated Tribes of the Colville Reservation or its members (see Section 2-4-2 of the CTC).

(j) "Review Board" means a three-member board appointed by the Colville Tribes Business Council to review and rule on contested cases arising from the lead program. Appeals of ETD decisions shall be made to the Review Board in accordance with regulations and due process. The Review Board's decisions are final.

(k) "Target facilities" means a child-occupied facility or building or portion of a building constructed prior to 1978, visited regularly by the same child 6 years of age or under, on at least two different days within any week, consistent with 40 C.F.R. § 745.223.

FINDINGS AND BASIS FOR ADOPTION

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Findings

(a) The Council finds that pursuant to public health concerns supported by a recent survey to identify lead-based paint in housing on the reservation, showing significant numbers of structures with high lead levels in paint, it should implement a lead-based paint program.

(b) 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.

(c) Fetuses and children under age six are more sensitive to lead poisoning because their brain and nervous systems are still developing.

(d) Recent studies have indicated that children living on Colville Reservation lands may have blood lead levels exceeding the U.S. Centers 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. Exposures may be from within target facility or outside soil.

(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 Toxic Lead (Pb) Program. If the Toxic Lead (Pb) Program authorization is not awarded by August 31, 1998, the federal Environmental Protection Agency will administer and enforce the federal regulations on Reservation Lands.

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Basis for Adoption

(a) The federal government regulates lead poisoning and lead hazard reduction through:

- (1) The Lead-Based Paint Poisoning Prevention Act;
- (2) The Lead Contamination Control Act of 1988;
- (3) The Safe Drinking Water Act;
- (4) The Resource Conservation and Recovery Act of 1976;
- (5) The Residential Lead-Based Paint Hazard Reduction Act of 1992, and

(b) Implementing regulations of:

- (1) The Department of Housing and Urban Development;
- (2) The Environmental Protection Agency;
- (3) The Occupational Safety and Health Administration; and
- (4) The Centers for Disease Control.

(c) In 1992, Congress passed the federal Residential Lead-Based Paint Hazard Reduction Act, which requires that:

- (1) States/Tribes provide for the accreditation of lead-based paint activities training program, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors pursuant to standards developed by the Environmental Protection Agency;
- (2) Effective October 28, 1995, sellers and landlords of residential housing constructed before 1978 notify buyers and tenants of known lead-based paint hazards;

(3) Lead affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses, and women of childbearing age. Lead poisoning is one of the most common and preventable pediatric health problems today.

PURPOSE, INTENT AND ADOPTION BY REFERENCE

6-13-4 Purpose

(a) The purpose: This Code provides a comprehensive approach to lead poisoning identification, measurement, control, abatement and prevention.

(1) The Toxic Lead (Pb) Program is intended to be and at times shall be constructed to be at least as protective as the federal rules implementing the Toxic Substance Control Act, as those rules now exist and may from time to time be amended.

(2) To the extent that any federal laws, rules, or standards are incorporated by reference, it is the intent of the Council 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 Code, notwithstanding the subsequent enactment of such amendments.

PROGRAM AUTHORITY, ACCREDITATION, TRAINING, CERTIFICATION AND LICENSING

6-13-5 Program Authority and Regulatory Means

(a) The Council is enacting the Toxic Lead (Pb) Program Chapter under the power given to it by the Law and Order Code of the Colville Confederated Tribes and the Colville Tribal Constitution ratified in 1938.

(b) The Colville Confederated Tribes maintain Article 319 of the federal Clean Water Act (CWA) Treatment as a State (TAS) recognized by EPA in 1991.

(c) The ETD is delegated authority to administer all activities required under the Toxic Lead (Pb) Program and will report directly consistent with Tribes Plan of Operations to the Tribal Business Council on Toxic Lead (Pb) Program matters.

(d) The Council will interact with the federal Environmental Protection Agency and Indian Health Services as necessary to insure implementation of the Toxic Lead (Pb) Program.

(e) In accordance with any applicable provisions of the Tribal Code, Rules of Procedure, the Colville Business Council by rule shall direct the Toxic Lead (Pb) Program to establish a system to license businesses and individual persons in lead-based paint program activities required to be licensed under section 6-13-7. Such licensing shall include but not be limited to the requirements found in 40 C.F.R. § 745.226.

6-13-6 Accreditation, Training and Education

(a) The Toxic Lead (Pb) Program shall develop accreditation programs for training providers in cooperation with the Wenatchee Valley College by memorandum of agreement and other approved EPA-approved accredited programs.

(b) Administrative rules are to be developed by the Toxic Lead (Pb) Program and adopted by the Council which provide for the accreditation of training programs and faculty engaged in lead-based paint program training.

(c) Training Program accreditation rules must meet the minimum requirements of 40 C.F.R. § 745.225.

(d) Develop and conduct education programs in cooperation with Indian Health Services and other tribal programs to screen blood levels, identify hazards, provide public lead education, including parents,

residential dwelling owners, and child care facility operators, about the dangers of lead-based paint hazards and of appropriate precautions that should be taken to reduce the possibility of childhood lead poisoning.

6-13-7 Certification and Licensing Procedures

(a) Persons and firms working lead-based paint activities as prescribed in 40 C.F.R. part 745 are to be certified in appropriate certification classification.

(b) EPA standards and requirements for certification by firms and individuals are prescribed in rules and regulations developed by tribal staff using EPA criteria for certification procedures as described in 40 C.F.R. part 745.

6-13-8 Licensing Required

(a) No person shall perform lead-based paint activities on this reservation or on lands off this reservation which are under tribal control unless the person is licensed in the appropriate lead-based paint discipline under section 6-13-7.

(b) No person required by this section to obtain a license shall fail to comply with provisions in this 1998 Code or any rules adopted pursuant thereto.

(c) No person registered to conduct a lead-based paint activity business may employ any individual to perform lead-based paint activities who is not licensed in the appropriate lead-based paint discipline.

6-13-9 Prerenovation Notification

(a) Upon promulgation of the federal rules applicable to this section, said federal rules shall be herein incorporated.

(b) All target facilities constructed prior to 1978 are subject to prerenovation notification requirements when one of the following conditions are met:

(1) The department becomes aware of proposed home improvement activities; or

(2) The home improvement activity requires notification to the community government under any other provisions of tribal or other applicable law.

(c) Upon notice of the proposed improvements, prerenovation lead hazard information will be mailed by first-class to the target facility.

(d) The federal prerenovation notification information content requirement (40 C.F.R. § 745.227) is herein incorporated by reference.

6-13-10 Enforcement Authority and Remedies

(a) Upon promulgation the Toxic Lead (Pb) Program 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 Chapter take place. The authority of the Toxic Lead (Pb) Program 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 Chapter.

(b) The Toxic Lead (Pb) Program, 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 Toxic Lead (Pb) Program:

(1) Issue Information and warning notices;

(2) Require that notices be posted on the affected premises;

(3) Issue orders that specific activity cease;

- (4) Refuse, revoke, or suspend the certification of individuals;
- (5) Refuse, revoke or suspend the accreditation of training programs;
- (6) Order the postabatement sample be submitted under procedures prescribed by the Toxic Lead (Pb) Program;
- (7) Take such other actions that is necessary to achieve compliance with the lead program.

(c) No application of sanctions or remedies shall occur without fair notice to and opportunity to be heard given to appropriate person in accordance with tribal policies and procedures and Review Board decision.

(d) No penalty or other remedy shall be imposed except upon reasonable notice and opportunity to be heard.

(e) Appeal of Toxic Lead (Pb) Program shall be made to the Review Board.

6-13-11 Enforcement and Compliance Performance

(a) Adequate enforcement personnel training in compliance with 40 C.F.R. §§ 745.225, 745;226 and 745.227.

(b) The Toxic Lead (Pb) Program will provide technical and compliance assistance to tribal members, tribal businesses, the tribal government and others for all aspects of the lead program.

(c) 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 Toxic Lead (Pb) Program will be tracked for appropriate response:
- (2) Inspection, monitoring and follow-up activities to lead-based paint will be conducted:
- (3) Compliance monitoring will occur to ensure compliance activities, testing and reporting have been performed.

6-13-12 Work Practice Standards

The federal practice standards for conducting lead-based paint activities (40 C.F.R. § 745. 227) regulating conduct for lead program inspections, lead hazard screens, risk assessments, and abatements are prescribed as a part of the rules adopted pursuant to this Chapter relating to work certification.

6-13-13 Expenditure Limitation

Funds collected will be used to maintain the Toxic Lead (Pb) Program. Fines will be imposed when other measures are exhausted. Authorization of expenditure limits and limits of payments of expenses from fees are limited to monies or other revenues, including miscellaneous receipts and federal funds, collected or received by the tribe to carry out provisions of this Chapter.

6-13-14 Administrative Structure

(a) The Environmental Trust Department shall perform all administrative activities necessary for the Tribe to meet the Toxic Lead (Pb) Program requirements and will report to the Business Council.

(b) All records shall be maintained by ETD electronically or in paper format.

6-13-15 Standing Advisory Committee

(a) An Advisory Committee shall be established by rule. The committee shall have representation from each group which has a responsibility in the implementation of this Chapter. The mission of the Standing Advisory Committee shall be to review program objectives, goals, evaluate, make recommendations,

provide support of lead implementation. Committee members shall include representing childhood lead program poisoning interests or other health related lead interest.

(b) The Advisory Committee shall meet at least two times per year and report meeting proceedings to the Tribal Council.

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Effective Date

This Chapter being necessary for the immediate preservation of the public peace, health and safety, and an emergency is declared to exist, and this Chapter takes effect on its passage.

(Chapter 6-13 Adopted 7/1/98, Resolution 1998-477)