

§1296. Emergency provisions

A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint not subject to the licensing and certification requirements of this chapter shall take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project. Activities that may result in the release of lead to the environment include, but are not limited to, removal of lead paint by using open-flame burning or torching, machine sanding or grinding without high-efficiency particulate exhaust control, uncontained hydro blasting or high-pressure washing, abrasive blasting or sandblasting without containment and high-efficiency particulate exhaust control and using heat guns operated above 1,100 degrees Fahrenheit. If the commissioner finds, after investigation, that any location at which lead dust, lead chips or other lead-contaminated wastes are or were handled or otherwise came to be located may create a danger to public health or the safety of any person or to the environment, the commissioner may order the person responsible for the lead dust, lead chips or lead-contaminated waste to cease the activity immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger. The commissioner may also order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [PL 2001, c. 576, §1 (AMD).]

An order issued under this section must contain findings of fact describing, insofar as possible, the site of the activity and the danger to the public health or safety. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure. [PL 2005, c. 330, §25 (AMD).]

The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. The board shall hold the hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order within 15 working days after receipt of the application. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [PL 2005, c. 330, §25 (AMD).]

A person who fails without sufficient cause to undertake abatement or remedial action promptly in accordance with an order issued pursuant to this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action. [PL 1997, c. 375, §14 (NEW).]

The commissioner may initiate enforcement action under section 347-A in lieu of issuing an order under this section. [PL 2009, c. 501, §13 (NEW).]

The Attorney General may commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. [PL 1997, c. 375, §14 (NEW).]

SECTION HISTORY

PL 1997, c. 375, §14 (NEW). PL 2001, c. 576, §1 (AMD). PL 2005, c. 330, §25 (AMD). PL 2009, c. 501, §13 (AMD).

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