

ALAMEDA COUNTY LEAD POISONING PREVENTION PROGRAM

**JOINT POWERS AUTHORITY
MEETING MINUTES**

June 28, 2007

Attendance:

Voting Directors: Ken, Bukowski, Henry Chang, Jr., Beverly Johnson, Betty Olds

Non-Voting Directors: Alice Lai-Bitker, Gwen Hardy

Alternates: Rubén Briones, Nancy Templeton

Staff: Mark Allen, Paul da Silva

Others:

Absent:

The meeting was called to order at 9:45 a.m.

1) **Open Forum**

No public comment.

2) **Director's Report**

Mr. Allen provided the JPA Board of Directors with the following information:

- An update on unsafe renovations. He indicated that CalOSHA, because of budgetary constraints, are not always capable of responding to calls related to unsafe work practices. He added that recently this agency did respond to such a call, resulting in fining the contractor in the amount of \$4,100 for four violations. Ms. Johnson suggested that the JPA could develop model ordinances to address this issue and present these to each respective CSA City Councils for consideration. In this manner, a more proactive, preventative posture can be taken rather than a punitive one.
- His attendance at the California State Department of Health Services Strategic Planning meeting held in Sacramento on June 25, 2007. He said one of the issues discussed is the development of a “tool kits” which would include ideas and projects for reducing lead hazards in place or under development in cities throughout the state. The tool kit will drawn upon innovative strategies being utilized in various California cities, and make these available to all interested parties. Inventive initiatives from San Diego and Los Angeles, for example, are to be included.

Ms. Lai-Bitker suggested that a strategic planning meeting take place with the JPA Board members, wherein three meetings could be combined, to address the issue of unsafe work practices. Mr. Chang requested that data and a preliminary analysis be developed by Program staff, which would among other things identify gaps. This information, he suggested, should be presented to Board members well before the meeting so that the Directors would have the opportunity to digest the information and focus on solutions during the work session. The second week of October was chosen as the meeting time for the strategic planning session.

Mr. Allen informed the JPA Board that:

- A Lead-in-Construction training was conducted by staff at the Program's office from June 13 to 21. He said a substantial number of the attendees of this training were City of Oakland Housing staff.
- The Bay Area Regional Lead Poisoning Prevention Programs (BARLPPP) held their quarterly meeting at the Program office last month. He said the significance of this particular meeting was that BARLPPP has agreed to support a Bay Area-wide lead awareness campaign, proposed by the ACLPPP. He said this campaign, which will be funded by lead programs from all nine Bay Area Counties, represents a dramatic improvement in collaborative planning in the Bay Area.

3) **Approval of Minutes (May 24, 2007)**

Action: The Board approved the minutes for May 24, 2007.

Moved: Mr. Chang **Seconded:** Ms. Johnson **Ayes** 3

4) **Program Operations Committee**

a) **Minutes (June 14, 2007)**

b) **Health and Housing Services Report**

Mr. Allen reviewed the Health and Housing Services Report. There were no questions regarding this report.

5) **Administration and Finance Committee**

a) **Minutes (June 14, 2007)**

6) **Announcements by Board Members**

Ms. Johnson announced to the JPA Board of Directors that the Food and Drug Association was closing possibly be drafted on behalf of the JPA Board and the Chair could sign it. The Board agreed to this and directed Mr. Allen to draft such a letter for the Board Chair's signature.

Ms. Johnson said that she and Ms. Lai-Bitker have been participating in Alameda Youth Collaborative meetings in the City of Alameda. She said that at one of its meeting, a group of young students from an Alameda charter school, Bay Area School of Enterprise, made a presentation to the Collaborative concerning an environmental project they had recently concluded. These students had carried out studies similar to the environmental justice project conducted by McClymonds/Excel students in West Oakland in May 2007. Ms. Johnson said their presentation was very interesting and suggested inviting these young adults to a future JPA Board meeting. Ms. Johnson also suggested the Board would benefit from more presentations by groups active around environmental issues with in the CSA. Mr. Allen agreed and said staff would follow up with an invitation to the students, and he also suggested that possibly guest presenters could be invited to Board meeting on a quarterly basis. Board members expressed support for this proposal.

Meeting adjourned at 10:35 a.m.

PROGRAM OPERATIONS COMMITTEE

MEETING MINUTES

July 12, 2007

Attendance:

Voting Directors: Ken Bukowski, Henry Chang, Jr., Beverly Johnson, Betty Olds

Non-Voting Directors: Gwen Hardy

Alternates: Rubén Briones

Staff: Mark Allen, Paul da Silva

Others: None

Absent:

1) **Open Forum**

No public comment.

3) **Director's Report**

Mr. Allen circulated the following to the Board of Directors:

- A draft letter, addressed to the FDA, requesting the agency not close its office in the City of Alameda. Board Chair Ken Bukowski signed the letter.
- An article from Leadnet.com reporting that lead from e-waste (computers and electronic goods) from the United States and Western countries is being discarded in China. The lead extracted from this waste is then manufactured into products to be sold in the U.S., such as leaded jewelry for children.

Mr. Allen informed the Board members that the Program was hosting two internship projects this summer:

- Students from McClymonds/Excel High School would be starting their internship with the Program on July 12. He said that these were two of the students featured in a news story around their environmental justice activities in West Oakland. He added that these activities are linked to Mayor's Summer Job programs for youths between 16 to 21 years of age in Oakland.
- Pediatric medical residents from Kaiser Permanente in Oakland will shadow the Program's Public Health Nurses to have a firsthand experience of case managing lead poisoned children. He added this program is designed to reinforce the message of lead screening, and hopefully will be implemented by these young medical providers in their professional practice.

4) **Health and Housing Services Report**

Mr. Allen and the JPA Board Members reviewed the Health and Housing Services Report. Mr. Allen indicated to the Board that Program staff was able to overcome most of the challenges faced during the last quarter of the fiscal year and increased noticeably the numbers of each objective to meet, if not exceed, the goal for the fiscal year 2006-2007. He added that there were only a few of the objectives that staff did not meet the objective, but as the report indicates, it was very close. There were no questions regarding these reports.

Meeting adjourned at 10:12 a.m.

ADMINISTRATION AND FINANCE COMMITTEE

MEETING MINUTES

July 12, 2007

Attendance:

Voting Directors: Ken Bukowski, Henry Chang, Jr., Beverly Johnson, Betty Olds

Non-Voting Directors: Gwen Hardy

Alternates: Rubén Briones

Staff: Mark Allen, Paul da Silva

Others: None

Absent:

1) **Open Forum**

No public comment.

2) **Director's Report**

Mr. Allen said that at the last Board meeting, the JPA Board suggested holding a strategic planning meeting during the second week of October, whereupon all three meetings would be joined so as to afford ample time for discussion. The Board opted to convene this meeting on October 17, 2007, from 10:00 a.m. to 12:00 p.m..

Mr. Allen updated the JPA Board of Directors on the Public Health Trust's (PHT) latest activities around the issue of lead-tainted Mexican candies. He said that the PHI has issued a Request for Proposals (RFP) for the development of materials to be used to conduct education and outreach activities to retailers, consumers and others about lead in certain Mexican candies. This RFP's is the second of three that will be issued by the Public Health Trust over the next six months concerning lead in food products. He said that the first was issued for projects to monitor the sale of specific candy and soda bottles in California communities. The third, to be issued in the fall of 2007, will be for the development and implementation of outreach and education programs, using the materials developed under the second RFP.

He said that there is a possibility that PHT will be contacting the JPA Board of Directors to participate in the certain public media events that are being discussion in connection with these RFPs.

Ms. Johnson said people need to be made aware of dangerous products on the market as they are very trusting and assume that what is available is safe. Mr. Bukowski said that he had found a website which provided a list of recalled products. Ms. Johnson said possibly the Lead Program could provide a link to this site. Mr. Allen said staff would follow up with Mr. Bukowski to identify the site. If that site was the Consumer Product Safety Commission's (CPSC) website, it is presently accessible from the Program's website.

Meeting adjourned at 10: 22 a.m.

Staff Report

Water and Abrasive Blasting and Other Unsafe Work Practices July 26, 2007

Background

At its June 14, 2007 meeting, JPA Directors Johnson and Olds raised questions concerning the authority of local municipalities to prevent the creation of lead hazards through water or sand blasting of residential properties with lead based paint.

Director Johnson specifically asked whether a local ordinance was required to prevent this practice, while Director Olds has repeatedly raised the issue of water blasting as one of her concerns in the City of Berkeley. Program staff responded by stating it would investigate and prepare a response for the Board. In addition, staff noted that Title 17 of the California Code of Regulations (CCR) was presently being revised to strengthen the prohibition against the creation of lead hazards without containment.

Authority

The authority for local agencies to act in cases of water or particle blasting of lead based paint lies in the Federal Clean Water Act, California Title 17 CCR, and California Senate Bill 460.

1) **The Federal Clean Water Act**, designed to prevent urban runoff as a source of pollutants in the San Francisco Bay, requires Alameda County and its 14 cities to apply for a National Pollutant Discharge Elimination System (NPDES) permit. The permit process requires local jurisdictions to implement stormwater pollution prevention plans using best management practices (BMPs). All four CSA cities as well as the County of Alameda have adopted these best practices which are designed to “prevent harmful pollutants from being washed by stormwater runoff into local water bodies.”

Those formally responsible for addressing this issue are: in Alameda County, the Director of Public Works; in the Cities of Alameda and Emeryville, the Directors of Public Works; in the City of Oakland, the Environmental Services Manager and the Chief of Building Services, in cooperation with the Fire Department’s Hazardous Materials Inventory and Response Program; and in the City of Berkeley, the City Manager. However, in Alameda and Oakland the prime responder is the Fire Department, and in Berkeley it is the Toxics Division of the Planning Department.

While clearly the standards adopted by the four CSA cities prohibits the flushing of paint chips (lead-based or not) and other debris into the storm drains, some municipalities are more explicit. For example, the City of Alameda allows only those discharges which are allowed by the East Bay Municipal Utility District (EBMUD), which has specific limitations on the amount of lead, arsenic, cadmium, mercury, and other toxins that can be in wastewater.

The City of Santa Cruz, however, states in its Storm Water Ordinance, “If water is used to remove paint or graffiti for building exteriors, walls, steps, signs, and other surfaces, the wastewater and paint particles may not be discharged to the street or storm drain system.

It adds, if blasting or sanding is used to remove paint or graffiti, the paint particles, blasting material, sand, or dust may not be allowed to reach the storm drain system.” The City of Santa Cruz requires

covering storm drains when using high pressure water or when “grinding or blasting old paint.” It further specifically states, consistent with EPA requirements, that wastewater containing lead based paint or mercury must be treated as hazardous waste.

2) **California Title 17, CCR**, finalized in January 1999, requires that anyone who “disturbs a lead-painted (or presumed) surface,” must “use containment to prevent migration of the lead-contaminated hazard to an area outside of the work area.” Title 17 defines “presumed lead-based paint,” as “paint or surface coating affixed to a component in or on a structure” before January 1, 1979.

3) **Senate Bill 460** (Ortiz), effective January 1, 2003, explicitly grants the authority to health departments, housing departments, building departments, environmental health departments, and the State Department of Health Services to act to prevent lead poisoning under both the state housing law and the state health law. SB 460 provides the above mentioned agencies the authority to issue orders to cease and desist, abate, and correct a lead hazard. SB 460 also allows the above agencies, acting under the State Health Law, to “presume” that pre-1978 residential and public structures contain lead based paint and therefore disturbing such presumed lead based paint without containment is actionable. The individual responsible for the infraction of creating a lead hazard is subject to a fine not to exceed \$1,000. (SB460 did not include such presumption in its amendments to the State Housing Law.)

4) **Assembly Bill 2861** (Ridley-Thomas), effective January 1, 2007, makes subsequent violations of a lead cease and desist order or an abatement order a misdemeanor, subject to a \$5,000 fine and/or six months imprisonment. The District Attorney’s Consumer and Environmental Protection Division, is the prosecuting agency in Alameda County.

Discussion

It appears that considerable authority exists under federal, state, and local law, to prevent the waste from water or particle blasting from entering the storms drains, and failure by an individual to cease and desist can result in civil and criminal penalties. In the case of lead based or presumed lead based paint, state law requires proper containment if it will be disturbed, regardless of the mechanism.

Under the federal clean water act, each jurisdiction has an “affirmative duty” to comply with the “best (stormwater) management practices.” However, water or particle blasting is a point of emphasis by local regulating bodies within the CSA cities and the unincorporated area of the County that needs to be assessed.

Furthermore, while one of the main focuses of SB 460 was to give local agencies, including housing and building departments, the authority to intervene to prevent lead poisoning, local building and housing departments remain resistant. Some local agencies cite lack of resources and higher priorities, and others deny that SB 460 even applies to municipalities without a companion local ordinance.

Conclusion

Each of the CSA municipalities and the County of Alameda have the authority to respond unsafe water, sand or particle blasting. However, the extent to which local agencies utilize existing authority would appear to be the issue. It is unclear to what extent regulating departments or agencies understand the importance of preventing lead based paint from exposing occupants and

workers, traveling to a neighbor's property, or migrating to the storm drains. Consequently, without either a clear understanding of the risk, or clear direction by policymakers, response will no doubt be uneven.

Recommendation

Staff recommends an assessment of each CSA city be conducted on the extent of the problem, the nature of the response, the role of the relevant agencies, and what steps are necessary to improve the response to the uncontained diffusion of toxic lead particles through water or particle blasting. Lead Program staff is prepared to provide whatever support it can to this effort.

Financial Impact

Undetermined at the present time.