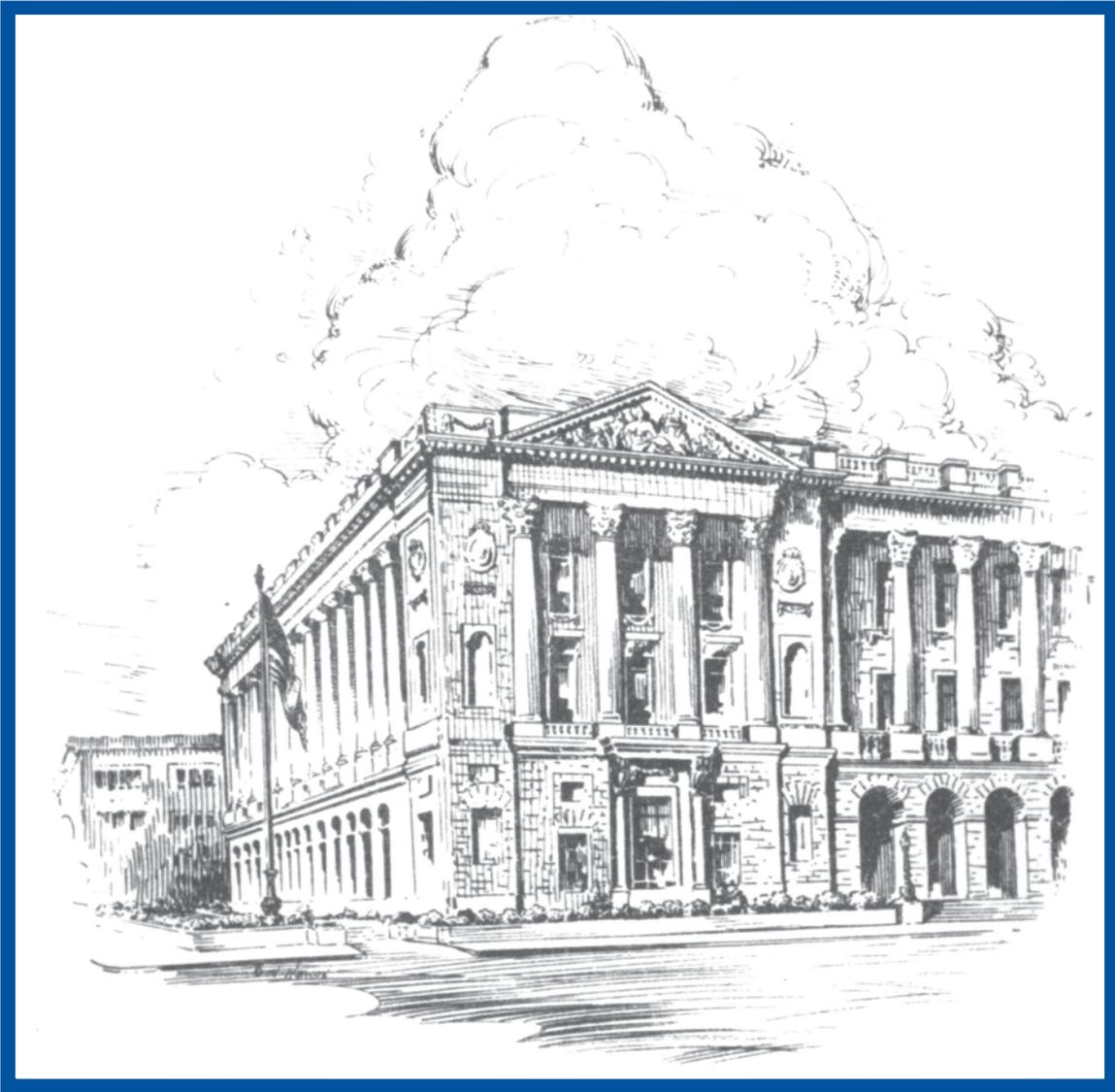


The Lead Court and Healthier Children

The Philadelphia Story 2008

Part Three



About PCCY

Public Citizens for Children and Youth (PCCY) serves as the region's leading child advocacy organization and works to improve the lives and life chances of its children.

Through thoughtful and informed advocacy, community education, targeted service projects and budget analysis, PCCY seeks to watch out and speak out for children and families. PCCY undertakes specific and focused projects in areas affecting the healthy growth and development of children, including child care, public education, child health, juvenile justice and child welfare.

Founded in 1980 as Philadelphia Citizens for Children and Youth we changed our name in 2007 to better reflect our expanded work in the counties surrounding Philadelphia. PCCY remains a committed advocate and an independent watchdog for the well-being of all our children.

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COURTING HEALTHIER CHILDREN: THE LEAD COURT

The Philadelphia Story 2008

Part 3

IT'S WORTH REPEATING...

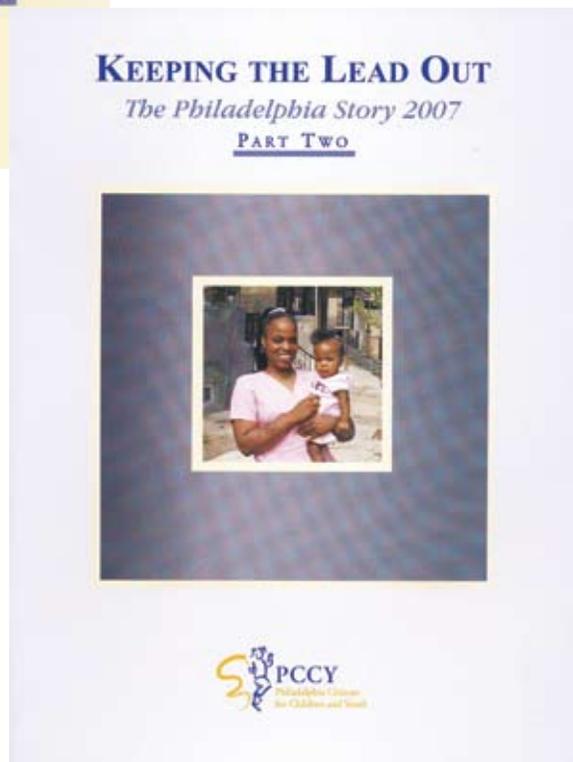
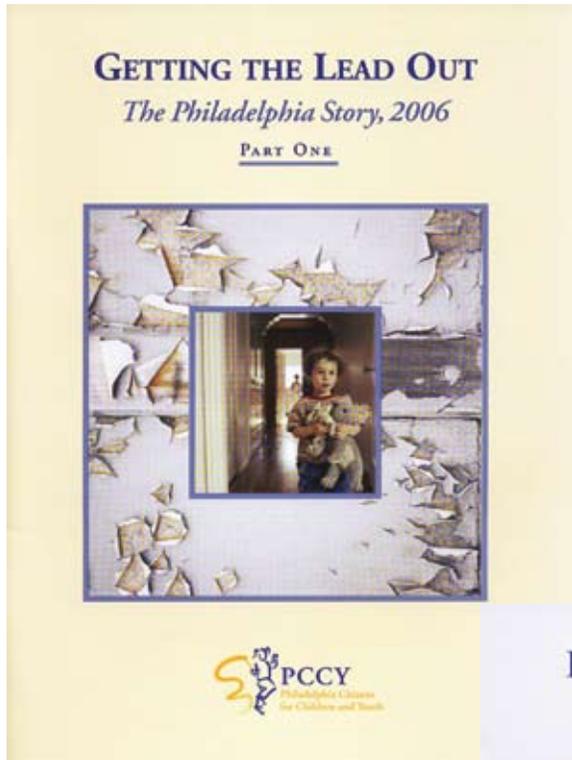
Philadelphia's success in getting the lead out of homes that have poisoned children has been remarkable.



It's a story that should be celebrated and replicated for the sake of children everywhere.

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INTRODUCTION

Since 2002, Philadelphia has taken major steps towards eliminating childhood lead poisoning, creating a safer environment for its children and families. City leadership has begun to view this permanently debilitating condition for what it is – entirely preventable – and has embraced a variety of large-scale strategies to eradicate lead poisoning. The City’s progress is particularly stunning considering the depth and breadth of the problem. Philadelphia is an old city with old houses; over 90 percent of its housing stock was built before lead paint was banned for residential use in 1978. Philadelphia’s efforts are paying off as measured by a dramatic decrease in the number of children poisoned and lead-infested houses made safe:

- In 2007, 2,246 children were found to have elevated lead levels – the lowest number of affected children identified in Philadelphia history and representing a 50 percent reduction since 2001.
- In fiscal year 2008, 564 properties were made lead-safe, more than four times the number cleared in 2001.
- Approximately 3,600 properties were made lead-safe between 2001 and 2008; some of these homes benefitted from primary prevention and had hazards remediated prior to any report of a violation, thus avoiding poisoning a child.

PCCY chronicled the City’s overall progress in reducing lead poisoning in our 2006 publication, *Getting the Lead Out: The Philadelphia Story, 2006 – Part One*. PCCY delved deeper into the City’s cutting edge primary prevention efforts, namely the Lead Safe Babies program, in a follow-up report entitled, *Keeping the Lead Out: The Philadelphia Story, 2007 – Part Two*.

This latest report highlights the contributions of another critical, systemic lead poisoning prevention strategy, the Philadelphia Lead Court. Initiated in November, 2002 as part of the City’s multi-faceted

and collaborative lead elimination plan, Lead Court was designed to provide the City with an efficient legal response to require property owners to remove lead hazards from properties that had poisoned a child. Shortly before Lead Court opened, the City had a backlog of 1,400 properties that had poisoned at least one child and were in violation of City code, but had no efficient, timely means of enforcing compliance.

Fast forward almost six years to July 2008 when the City reported that Lead Court has opened cases on nearly 4,000 individual properties, 2,311 of which (59 percent) had been made lead-safe! This achievement represents significant progress in Philadelphia’s efforts to eliminate childhood lead poisoning.

Progress, however, is not without its own set of challenges. The Court and the parties who come before it are dependent on the availability of adequate resources to make the homes safe for children. There is a subset of about 800-1,000 properties (21-25 percent) whose owners have appeared in Lead Court and failed to remove the lead hazards out of their properties. Lead Court had ordered the City’s lead program to complete the work in these homes, but neither the owners nor the City have the resources to complete the remediation in about half of these properties. Consequently, a smaller backlog still remains of properties that have never been made lead-safe. The second half of this report provides more specific details about available financial resources for remediation.

Lead Court has made great contributions but challenges remain. Property owners, the City, state and federal governments, and private institutions must redouble their efforts to keep Philadelphia moving forward and to protect its youngest citizens from the completely preventable fate of lead poisoning. Philadelphia has come so far in a relatively short amount of time; we cannot afford to fall behind now. The health and well-being of our children is at stake.

We can do this.

BACKGROUND

Eliminating children's exposure to lead is the number one way to treat and prevent lead poisoning.

For most of the City's history, the only method we had to identify homes with lead hazards was by finding a lead poisoned child living there. Typically, health care providers tested children for lead and reported poisoned children to the health department; the health department inspected their homes, identified the lead hazards (primarily from deteriorated lead-based paint sources) and ordered property owners to remove the hazards. (Repairs range from removing flaking and peeling paint spots and sealing areas with a fresh coat of paint, encapsulating windowsills, or replacing windows and doors.)

In most cases the owner completed the work, but in far too many cases no remediation work was done and children often continued to be poisoned. Thus, the poison spread as families moved from one home to another and additional families with young children became exposed to the danger.

For most of our history, Philadelphia was unable to enforce orders to rid affected properties of lead hazards, by 2001 accumulating a 1,400 backlog of homes in violation of compliance orders to make them lead-safe. Making matters worse, the Health Department documented that a significant subset of these properties were repeat offenders where at least two children at different points in time were poisoned by the same house, primarily because the owners never performed the remediation work – and usually did not disclose the presence of lead hazards to the new tenants/owner.

For many property owners – of rental units or owner-occupied – making a property lead-safe is no small undertaking. Primarily and critically, the work is expensive and out of the reach of many homeowners.

The lead program estimates that hazard reduction control work currently costs an average of \$10,000 per property within a range of \$5,000 to \$25,000 depending on the size of the property and the degree of the hazard. This represents a significant expense for many of the families and landlords involved. Furthermore, in some cases the property value will not allow an owner to recoup the cost of the work at time of sale; consequently, the owner is discouraged from undertaking the repairs. There can be additional financial costs and logistical issues related to relocating families while the work is being done as remediation temporarily creates more hazards that can further injure young children.

Many families and some rental property owners do not have the means to pay for lead remediation work. The City had received limited federal grant dollars in 1992 and 1995 to assist property owners to complete the work, but much more remained to be done. The lack of enforcement capabilities, coupled with a lack of private and public funding, were two critical factors contributing to the growth of the backlog and putting hundreds of Philadelphia's youngest citizens in harm's way.

At the end of 2001, while the backlog of lead-infested properties continued to climb, many stakeholders began to realize that eliminating lead poisoning was possible and within our reach. PCCY and other advocates called on the City to put an end to the poisoning of children.

In early 2002, PCCY helped initiate a campaign for change. As a result of persistent advocacy efforts, renewed public commitments and political will, significant changes were undertaken to move the City towards eliminating the backlog and lead poisoning. (The changes are chronicled in depth in PCCY's report, *Getting the Lead Out – The Philadelphia Story*, 2006, Part One.) Several of the changes described in this report helped lay the foundation for the creation of a successful and well-functioning Lead Court.

Those changes included:

- City Departmental Collaboration – The Health Commissioner, John Domzalski, in collaboration with the Managing Director’s Office, formed the Lead Abatement Strike Team (LAST) to harness the capacity of all City health and housing agencies to eliminate childhood lead poisoning.
- Additional Federal investment – Starting in fiscal year 2003, Philadelphia began to consistently draw down substantial federal Housing and Urban Development (HUD) dollars for use in making homes lead-safe – to the tune of a total of nearly \$15.77 million through fiscal year 2009.
- Additional City investment – In its fiscal year 2003 budget, City Council allocated an additional \$1.5 million to the lead program to eliminate the backlog of homes by subcontracting with six certified Lead Abatement Contractors and expanding its capacity to make homes lead-safe.

WORKING TOGETHER: LEAD COURT

For years, PCCY, Community Legal Services and other advocates had urged the City to create a mechanism to enforce lead hazard violation orders. Philadelphia Lead Court is one of the first of its kind in the country dedicated to hearing cases about lead contaminated properties. With the formation of the Lead Abatement Strike Team and the City’s new capacity to better harness its existing power and resources, the Philadelphia Law Department led the way in the creation of a Lead Court designed to initiate action against property owners who were non-compliant with remediation orders issued by the Health Department.

The court heard its first case in November, 2002 after the Law Department issued citations to the 1,400 property owners on the backlog. Currently, the Health Department allows property owners 10 days from the time it issues a lead hazard violation to either remediate the property or document that they have a contract with a certified lead contractor and a date the work is scheduled to begin. If property owners have not remediated or scheduled their property to be remediated within those 10 days, the Health Department notifies the Law Department which sends a citation to the owner to appear in Lead Court.

Law and Health Department staff are assigned to attend Lead Court to provide background information on the cases to the presiding judge. Lead program staff re-inspect properties shortly before they are scheduled to appear in court in order to verify the owners’ progress to the judge. Lead program staff also speak with property owners before they appear in court to assist owners with their plans for remediation. If owners do not demonstrate adequate progress or do not attend their court date, the judge may levy fines to owners usually ranging from \$1,000 to \$5,000 per violation. The Law and Health Departments helped streamline the hearing process by creating a form the judge uses to document each property’s current state of remediation, expected completion date, next date to appear in court, fines levied, and judge’s orders for the Health Department to remediate the property and bill the owner. The lead program also performs a clearance dust wipe test in each property to verify that it is in compliance before the judge closes a case.

To keep up with the high volume of properties in violation, Lead Court initially convened three hearings each week with approximately 20 cases each session. Currently, Lead Court convenes for one session every other week with a range of 20-35 cases heard each session.

LEAD COURT MAKES A CRITICAL DIFFERENCE

Since Lead Court's inception through July 2008, the court has opened nearly 4,000 individual cases, with 2,311 properties (59 percent) made lead-safe! In seven years, the City has instituted a formal, successful, model mechanism to better ensure that properties are quickly made lead-safe and that children are protected.

A phenomenal success, Philadelphia's Lead Court is a prime example of how a confluence of forces inside and outside government along with commitment and collaboration can bring about powerful, effective system change to benefit the public good in big cities.

WHEN PROPERTY OWNERS DON'T DO THE WORK

With any large-scale change challenges persist, and one of the greatest facing the City as a result of the creation of Lead Court is how to handle properties that owners fail to make lead-safe after being ordered to do so.

Lead Court primarily functions to identify lead-contaminated houses in violation of City remediation orders and to ensure that owners act swiftly to make these properties lead-safe. Most property owners achieve compliance shortly after appearing in Lead Court, but a small segment does not. Some owners appear repeatedly over the course of a year or longer because although they may make some progress on remediation, it is too slow and /or the job is not completed. (Typically, the court averages 185 days or about six months for owners to complete remediation on their property.) Some of the children in these properties have temporarily moved out while the work is being done but some children remain, thus continuing to be exposed to lead hazards.

When there is little or no progress towards remediation the judge can order the City to undertake the work and charge the property owner, or assign a lien on the house if the owner is unable to pay. The judge is able to grant the lead program the legal authority to enter the property and complete the lead hazard remediation work. Since opening, Lead Court has ordered the Childhood Lead Poisoning Prevention Program to remediate between 800-1,000 properties, about 21-25 percent of the total cases that have appeared in court.

The primary reason owners of court-ordered remediated properties never bring their properties into compliance is that they do not have the money to do the work. The lead program estimates an average cost of \$10,000 to complete lead hazard remediation work in a home, an expense that few families can afford. The next section of this report provides more details about existing financial resources for remediation, challenges to accessing these funds and the need for additional funding to make more homes lead-safe.

RECOMMENDATIONS: LEAD COURT

The power of Lead Court to harness the City's capacity to ensure remediation on a broad scale continues to mark progress and save thousands of Philadelphia's children who live at high risk of being damaged by lead in their homes. Lead Court stands as a symbol and reality of a public strategy working to support families, improve neighborhoods and build and rebuild critical infrastructures. Before cases ever get to the court we must expand our prevention efforts to avoid having our children

become damaged by lead, and identify and commit increased energy and funding to develop more resources so parents can be informed of dangers and their homes made lead-safe.

The creation of Lead Court filled a vital role in protecting our children from lead poisoning. We must secure and continue to strengthen the powers of Lead Court to connect agencies, families and resources to assure that our children are protected from the dangers of lead.

FINANCIAL RESOURCES FOR COURT ORDERED REMEDIATION

Over the past several years, the City's lead program has been very successful in securing millions of dollars of grant funding from the federal Department of Housing and Urban Development (HUD) for lead hazard control work. The lead program reports that their staff starts a HUD grant application for every house with lead hazards they inspect – court-ordered or not. The lead program informs tenants and owners about the application and offers assistance to complete it. (Lead program and law department staff are present at every Lead Court session to provide owners with information and grant applications.)

In some cases, a property owner with a court-ordered remediation applies for a grant but is deemed ineligible for funds or the owner never applies for funds. Without personal funding from an owner or HUD grant funds,

the lead program has no other financial resources with which to cover the cost of remediating these properties.

The court then grants the City the authority to complete the remediation work, places a lien on the owner's property and collects payment from the owner at the time the house is sold. But often the City does not have the funding to remediate these houses in the first place; since Lead Court's inception at the end of 2002 through May 2008, 488 court-ordered properties have been disqualified for HUD funds, and the lead program has not initiated remediation efforts in any of these properties.

And nothing stands still. As these court-ordered properties wait to be made lead-safe, others are newly identified.

REASONS WHY PROPERTY OWNERS ARE DISQUALIFIED FOR HUD FUNDING

There are a variety of reasons why property owners have been turned down for HUD funds including: there is no longer a child under six years old living in the property; lack of income and home ownership verification and/or the property requires extensive repairs before the remediation work can be completed, and some of the application requirements are needlessly cumbersome. Policies can be streamlined and new resources need to be identified to ensure that every lead-infested property is made safe for the children living in them.

When the Child in the Home is Older Than Six Years Old

Many of the first properties the court ordered the lead program to remediate were among the 1,400 homes on the backlog accumulated years before Lead Court opened. By the time the owners of these properties were called into court and submitted their HUD applications, the children living in them had turned age six and older – and some had moved out. Because young children are at greatest risk for lead poisoning, HUD stipulates that its hazard remediation funds can be used only in properties where a child under the age of six lives. The lead program estimates that approximately 60 percent of

disqualified HUD applicants were turned down because they no longer had a child under six living in the household. However, because it does not have the capacity to track the status of these properties, the lead program can only estimate this number. Nor does the lead program have the personnel to re-inspect these properties and determine if the remediation work was finally completed by the owner and if a young child still lives there. The lead program estimates that 30-60 homes (10-20 percent) still have a young child living in them and need to be at the top of the list for remediation. At \$10,000 per property, the cost to the City would be between \$300,000 and \$600,000.

When There is Inadequate Proof of Income

The lead program estimates that another 15 percent of the court-ordered remediated properties fail HUD grant approval because the owner has not submitted adequate proof of income. HUD grants are targeted for families with low-incomes defined by HUD as up to \$37,150 for a family of four. The family with the poisoned child must meet this income guideline. So, if the family is the tenant living in a property, the tenant family is required to meet the income eligibility guidelines and not the landlord/owner. The lead program estimates that only five percent of families do not qualify for HUD grants because their income exceeds eligibility guidelines.

The lead program has tried a variety of strategies to make it easier for applicants to prove their income. Families have a choice of which documents to submit since the lead program accepts many different forms of income verification – paystubs, tax returns, proof of public assistance.

When families don't have copies of their documents lead program staff make home visits to collect these original documents and make copies for the application. Several years ago, the lead program allowed families to self-declare their income and the grant applications were completed much more quickly, but HUD notified the lead program that income verification from an outside source was required.

One solution could be allowing applicants to once again self-declare their income but give lead program staff access to income tax/IRS documents to verify the self-declared income. The Pennsylvania Department of Welfare allows verification of self-declared income in this manner for some families applying for children's public health insurance.

When There is Inadequate Proof of Home Ownership

The lead program estimates that another 10 percent of properties do not qualify for a HUD grant because the applicants cannot prove that they are indeed the owners; the property owner must consent to having the lead remediation work done. If the owner is a landlord, once the remediation work is complete, s/he must agree to offer the property for rent for at least three years to families with low incomes and with children under the age of seven.

HUD grant applicants must submit a copy of the signature page of the property's deed as proof of ownership. If the property owner cannot find the deed, the lead program accesses and prints an electronic copy from the Philadelphia Board of Revision of Taxes to keep on file.

For a subset of owners their name is not on the deed because the property was left to them by a deceased family member or friend whose name remains on the deed. In this instance, documentation from the deceased's will that the property was left to the occupant is sufficient proof of ownership. If there is no documentation, the current occupant must change the deed ("untangling the title") into their name. Changing the deed is often a lengthy and expensive undertaking. The current occupant must contact family members of the deceased, confirming that s/he is the rightful owner. The fees associated with this process are often too expensive for many of these families. Free legal assistance is available to help low-income occupants complete this process. The lead program does refer families to these programs but demand for these services exceeds the supply.



When the Home Needs Extensive Basic System Repairs

The remaining five percent of property owners ultimately get turned down for a HUD grant because their property requires extensive structural repairs before the lead hazard remediation work can start and the owner cannot afford to undertake this work. Broken home systems such as leaky roofs and faulty plumbing may have contributed to the creation of the lead hazards. If not repaired before the lead remediation work the damaged systems can undo the remediation work over time, causing new lead hazards in the future. The lead program can and does make more minor repairs such as patching a roof or minor plumbing work, but for larger jobs they refer owners to the Philadelphia Housing Development Corporation (PHDC). PHDC conducts basic system repair from a separate HUD grant for qualified, low-income property owners. Over the last several years, the lead program and PHDC have established a referral system to complete basic system repair on high-priority lead-poisoned housing.

Two significant obstacles still remain for obtaining basic system repair grant funding from PHDC. First, the lead program refers to PHDC only owners who have qualified for a HUD lead hazard remediation grant, but PHDC still requires these owners to complete a separate application for the HUD basic systems repair grant funds. The basic system repair grant application requires similar information and documentation as the lead application; the major difference is that owners must have their properties assessed for basic system repair needs. The system repair application process could be streamlined and expedited if PHDC would accept the HUD lead remediation application as the basis for its system repair grants.

Second, the most basic obstacle is that the demand for basic system repair work outstripped the supply even before the lead program/PHDC referral system was established. Because PHDC requires a separate application and many applicants understand there is a long waiting list for services, some owners do not start or finish a systems repair grant application. New resources must be identified to advance basic system repair in contaminated properties.

Lack of Application Assistance

Even if an owner is eligible for a HUD grant, completing the grant application can be complicated for some – particularly procuring the required verification documents. It is important to note that the lead program currently has the capacity to employ one HUD Grants Manager. The lead program processes about 650 applications each year on behalf of all property owners involved with the lead program – court-ordered and non-court-ordered property owners alike – as well as owners participating in Lead Safe Babies, the City’s primary prevention program. One HUD Grants Manager is not enough to help manage the hundreds of owners applying each year. Without adequate application support, owners slip through the cracks, their applications are never completed, and ultimately young children are the ones who suffer.



CONNECTING THE DOTS: LEAD COURT, REMEDIATION FUNDS AND PRIMARY PREVENTION

As we work to eradicate the lead danger in houses where children have been damaged, we must work proactively to stop kids from being poisoned in the first place. This is primary prevention and Philadelphia is once again on the leading edge of primary prevention practices nationwide with the implementation of the Lead Safe Babies program. Through this initiative the homes of pregnant women and families with newborns are tested for lead hazards, the goal being the removal of any identified hazards before the infant is exposed to them. (See PCCY's 2007 report, *Keeping the Lead Out: The Philadelphia Story, 2007 – Part 2*, for a detailed analysis of this program). Approximately 1,700 families are enrolled in Lead Safe Babies every year and about 17 percent of their homes have identified lead hazards present in them.

The good news is that the average cost to remediate these homes is lower than the cost to remediate homes of poisoned children. It costs closer to \$5,000 for each property and Lead Safe Babies families are eligible to apply for HUD grants. The bad news is that many Lead Safe Babies participants cannot afford to pay for remediation as they experience the same types of challenges as other property owners in regards to completing the HUD grant application. Consequently, hundreds of homes that were identified by a Lead Safe Babies visit have been disqualified for HUD funding.

We have identified hundreds of families with young children who are living in properties with known lead hazards and have very little capacity to do anything about removing them.

Young children living in these properties are at high risk for being poisoned – and we know it. Without action, these are the children who could very well eventually show up in Lead Court a few years down the road, poisoned by a home we knew was lead-infested but didn't do anything about. This cycle must not be allowed to start. More resources must be devoted to primary prevention activities to prevent infants in the Lead Safe Babies program from becoming future Lead Court cases.

At this time, Lead Court enforces compliance and helps to ensure that lead hazard remediation is completed in properties that have poisoned children. But these are after-the-fact steps; the damage has already been done. In Philadelphia and in most places across the country, children are used as “canaries in the mine” to detect lead hazards in a property. As a community, we must commit to finding and removing lead hazards in homes before any child is irreversibly injured by lead.

The creation of Lead Court filled a vital role in protecting our children from lead poisoning. We must secure and continue to strengthen the powers of Lead Court to connect agencies, families and resources to assure that our children are protected from the dangers of lead.

RECOMMENDATIONS

Recommendations: Support for Lead Hazard Remediation and Primary Prevention

1) Increase Funding

- Identify new public and private funding sources for the properties the court has ordered the Health Department to remediate.
- Expand the state and federal funding commitment for lead hazard remediation work.

2) Increase Lead Program Staff

- Add another full-time Lead Hazard Inspector at the lead program to inspect the 488 and counting court-ordered remediated properties that were disqualified for HUD grants, to determine if children under the age of six still live in the property and if the owner has completed the lead hazard remediation work since the property was last inspected. (There is a small backlog of properties waiting for remediation in the Lead Safe Babies program; this additional inspector is needed to assess these properties as well.)
- Add another full-time HUD Grants Manager to the lead program to assist applicants and process the hundreds of grant applications submitted each year.

3) Simplify the process for families to qualify for HUD Lead Hazard Control grants:

- Pursue a self-declaration of income option for grant applicants, in tandem with lead program staff obtaining access to income tax/IRS documents, to verify the self-declared income.
- Develop an alternative form of home ownership verification for owners with tangle title.

5) Increase the Philadelphia Housing Development Corporation's capacity to complete more basic systems repair work and simplify the application process for homes requiring lead hazard remediation work.

6) Increase the investment in primary prevention initiatives, such as Lead Safe Babies, that educate families about lead poisoning and its impact, and proactively removes lead hazards from their homes.

7) Require proactive inspections and remediation of lead hazards in rental properties every time a new tenant moves in and in owner-occupied properties at the time of sale – regardless of whether or not a child has been poisoned there. This would be enforced by an expanded jurisdiction of Lead Court.

Data for this report was provided by The Philadelphia Department of Public Health's Childhood Lead Poisoning Prevention Program and The Philadelphia Law Department's Health and Adult Services Unit.

Behind all of the discussion about Lead Court and the resources needed to make properties lead-safe are children – children at risk for being permanently damaged by lead.

Lead poisoning can be eliminated in Philadelphia.

We can do this.



A phenomenal success, Philadelphia's Lead Court is a prime example of how a confluence of forces inside and outside government along with commitment and collaboration can bring about powerful, effective system change to benefit the public good in big cities.





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