



**TESTIMONY OF THE
NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG)
BEFORE THE
NEW YORK STATE SENATE COMMITTEE ON HEALTH AND THE
NEW YORK STATE SENATE COMMITTEE ON HOUSING, CONSTRUCTION, AND
COMMUNITY DEVELOPMENT
REGARDING CHILDHOOD LEAD POISONING IN NEW YORK STATE
NOVEMBER 30, 2021
ALBANY, NEW YORK**

Good afternoon. My name is Russ Haven and I am General Counsel for the New York Public Interest Research Group (NYPIRG). NYPIRG is a non-partisan, nonprofit, research and advocacy organization that works to strengthen democracy, enhance the rights of consumers and voters, and protect the environment and public health in New York. NYPIRG has a long history of leadership on lead poisoning prevention.¹

Thanks to the Committee Chairs, the Committee Members and staff for holding this incredibly important hearing. This hearing is a *very important and very timely*. You can decide to take decisive action to finally end New York's childhood lead poisoning epidemic. With your leadership, a new administration in place, and federal infrastructure funds in the pipeline, today you can begin to turn the corner and step up to finally address childhood lead poisoning in New York. Because this issue disproportionately affects communities of color and low income New Yorkers, this is not only a housing and public health issue, it is a civil rights, environmental and social justice issue.

Childhood lead poisoning is a preventable public health crisis. We urge you to create a public record of the devastating problem, the governmental and private sector responses to the problem and lead the way by enacting legislation that incorporates the successful components from New York City's landmark lead poisoning prevention law, and ensure adequate long term funding and predictable, effective enforcement of the law.

¹ In the 1990s, NYPIRG supported "universal screening" of young children for lead exposure and published the "Get the Lead Out" handbook to educate the public and push for stronger laws in New York. NYPIRG was at the vanguard of the successful campaign to adopt Local Law 1 of 2004, New York City's primary prevention law. As part of that work, NYPIRG sued the New York State Department of Health to obtain the state's data on elevated blood lead levels in children and mapped the incidence of childhood lead poisoning in New York City. From 2001-2009, NYPIRG co-chaired the *Coalition to End Lead Poisoning in New York State*, culminating with the passage of primary prevention legislation drafted by the coalition, but vetoed by Governor Paterson. NYPIRG successfully pressed the state to phase out lead in fishing weights (2003) and as auto and truck wheel weights (2010), helped lead the advocacy to require statewide testing of schools' drinking water supplies for lead (2017) and supported the legislation and regulation to adopt the federal Centers for Disease Control and Prevention's (CDC's) 5 ug/dL action level (2019).

Crisis and opportunity

For decades New York has largely failed poor children and their families when it comes to preventing exposure to the toxic metal lead. As a result of this failure of policy and political will New York has an epidemic of lead poisoned children who grow into adults with diminished prospects and too often a host of health and behavioral problems attributable to lead poisoning.

Lead is Toxic to Everyone and Particularly Devastating for Children

Lead is an element, number 82 on the Periodic Table (Pb) and a toxic metal. It has no beneficial use to the human body and there is no safe level of exposure. In addition to a long list of physical illnesses associated with lead exposure, lead interferes with cognitive development, robbing IQ and damaging the pre-frontal cortex, which oversees judgment, focus and impulse control. It is particularly harmful to children during their critical growth period in their earliest years as lead is readily taken up by the developing brain, impairing neural development. As a result, lead poisoned children are more likely to have behavior issues as children and in their adult lives, have reduced educational and employment prospects and greater need for educational services in school and social services as adults.

Even seemingly miniscule increases in the concentration of lead in a child's blood can have significant cognitive consequences, with the greatest impact on IQ occurs at concentrations lower than 10 µg/dL. Studies have found that "children's intellectual functioning at three and five years of age is inversely associated with blood lead concentrations, even when their peak concentrations remain below the CDC and WHO [2003] level of concern."² Additional studies have used population statistics and public safety data to note the correlation between early childhood lead exposure and rates of criminal activity.³ An article reviewing these studies found positive correlations between lead exposure and criminal activity in local, state and national surveys.⁴

Lead dust – an invisible powder that causes damages in parts per million and is easily ingested by young children crawling on the floor and exploring their home - is often the means of exposure for young children. The fact that lead dust is not visible makes it nearly impossible for parents to remove lead hazards through house cleaning.

New York's Childhood Lead Poisoning Epidemic

Based on the latest data from the state, researchers with the Mailman School of Public Health at Columbia University estimate that as many as "108,000 young children in the state may

² *Intellectual Impairment in Children with Blood Lead Concentrations below 10 mcg per Deciliter*, N Engl J Med 2003; 348: 1517-1526, April 17, 2003.

³ Mielke, Howard W., and Zahran, Sammy, *The urban rise and fall of air lead (Pb) and the latent surge and retreat of societal violence*, Environmental International, 43 (2012) 48-55.

⁴ Drum, Kevin, <http://www.motherjones.com/environment/2016/02/lead-exposure-gasoline-crime-increase-children-health/>, Feb. 11, 2016, last accessed, Aug. 7, 2017.

have lead poisoning at levels of or over 5 ug/dL.” This is the level at which intervention is required and colloquially children are considered lead poisoned.⁵

Even if actual numbers are substantially less than upper-bound projections, without doubt *thousands of children* are newly poisoned by exposure to lead in their environments in New York *each year*. While there may be multiple sources of lead exposure, in the overwhelming number of cases, it is lead from poorly maintained paint in their homes that creates the elevated blood lead levels. And most of these children are poor and live in communities of color.

Lead Paint Bans Leave a Toxic Legacy in Place

While other governments acted decades earlier, New York and most of the United States were slow to respond to the clear evidence of lead’s devastating effects.⁶ New York City banned the sale of lead paint in 1960; New York State followed suit a decade later in 1970; lead in gasoline was largely phased out in the 1970s; and the Federal government effectively ended the sale of lead in residential paint in 1978.⁷ Because lead in paint became popular in the 19th century and continued to be sold for residential use in the U.S. through most of the 20th century, a legacy of the toxic metal stubbornly persists in buildings throughout the state. Unless the lead paint is permanently removed, if not perpetually contained and maintained the lead remains readily available to poison.

Mario Cuomo’s Mixed Record

In 1992, Mario Cuomo was a third term governor with a strong track record on environment and public health issues. In early 1992 he proposed what was then an ambitious childhood lead poisoning bill: A “universal” screening law to ensure all children got two lead tests by age three and a surcharge at the corporate level on paint manufacturers equivalent to \$.25 per gallon of paint sold in New York to fund children’s lead programs. A screening law soon passed; the funding mechanism did not. During the same time period Mario Cuomo’s Insurance Department by regulatory action allowed property and casualty insurers to exclude lead paint coverage from their commercial liability insurance offered to landlords. As a result, the cohort of children who were living in rental homes from 1993 on may have had little recourse in the event they were injured by lead paint exposure – for example if the landlord had limited assets.

⁵ This is an upper bound projected limit using 2014 data, the latest data the state Department of Health makes available – a problem in and of itself. The 2014 data confirmed more than 10,000 screened children had elevated blood lead levels as confirmed through blood tests. *Eliminating Lead Poisoning in New York: A National Survey of Strategies to Protect Children*, Columbia Law School Health Justice Advocacy Clinic, October 2019. Accessed at https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/final_lead_poisoning_prevention_best_practices_report_october_2019_final.pdf.

⁶ For example, Belgium, Austria and France banned the sale of lead in interior paint in 1909. *Lead-Based Decorative Paints: Where are they Sold—And Why?*, Rebecca Kessler, Environmental Health Perspectives, April 2014. Accessed at <https://ehp.niehs.nih.gov/doi/full/10.1289/ehp.122-A96>.

⁷ See New York Public Health Law sections 1370-1376-a.

Neglect by Pataki and Paterson Administrations

The Pataki and Paterson administrations that preceded the last administration didn't exactly acquit themselves well with respect to lead poisoning prevention. The Pataki Administration basically mothballed the Advisory Council until the Bush Administration advanced a plan to end childhood lead poisoning by 2010; in order to get the modest federal funds, the Pataki Administration had to revive the Advisory Council and it paid lip service to its statutory role. Governor Spitzer – who had put out reports on the underwhelming performance of the state's lead screening program during his time as Attorney General - left little mark on the issue in his short tenure.

Governor Paterson has the distinction of having vetoed a comprehensive bi-partisan “primary prevention” bill, citing concerns about duplicating existing programs and its ~\$25 million price tag during a recession.⁸ That legislation, passed in 2008, was sponsored by Senator Joseph Robach (Republican) and Assemblymember David Gantt (Democrat) – both representing the City of Rochester, a lead poisoning hotspot. After the post-veto blowback, Governor Paterson established an interagency task force on childhood lead poisoning, released a report and slightly bumped up funding.⁹ The Department of Health developed a targeted pilot plan for primary prevention in areas with older housing and high levels of children with elevated blood lead levels, similar to its current primary prevention plan.

Andrew Cuomo's Lost Opportunities and Failures of Omission

Andrew Cuomo became governor 11 years after his father left office and having headed up a nonprofit dedicated to providing transitional housing for low income families and having been the Clinton Administration Assistant Secretary (1993-1997) and then Secretary of the U.S. Department of Housing and Urban Development from 1997-2001. Due to his history in housing, there was reason for optimism that he would work aggressively to eliminate the childhood lead poisoning.

Unfortunately Andrew Cuomo's track record on childhood lead poisoning was a huge disappointment: The second Cuomo's administration advanced no new programs; it stalled funding;¹⁰ further reduced the role of the Childhood Lead Poisoning Prevention Advisory Council; was less transparent on lead poisoning than his predecessors; and *failed for seven years* to take regulatory action to lower the lead exposure action level to have New York match to the U.S. Centers for Disease Control and Prevention (“CDC”) level adopted in 2012.¹¹ A clear indication

⁸ The “Childhood Lead Poisoning Prevention and Safe Housing Act” [S.6350 (Robach)/A.6399-C(Gantt), Veto No. 176 of 2008.

⁹ The all-funds lead poisoning budget, including state funds for screening as well as prevention programs, was around \$16 million in Governor Paterson's last budget.

¹⁰ Again, responses to repeated requests by advocates to get a full picture of the state's programs and funding proved elusive.

¹¹ Ultimately it was up to the Legislature to act – despite clear and ample authority of the New York State Department of Health to reduce the action level on its own. After the Assembly passed legislation in March 2019

of the Cuomo administration’s disinterest in childhood lead poisoning is that the Department of Health has not posted lead testing data beyond 2014.

Over almost three full terms of the Cuomo administration, it’s been very difficult to determine the actual amount of the state’s spending on lead screening and primary prevention programs. A NYSDOH September 2017 presentation to the New York State Advisory Council on Lead Poisoning Prevention pegs the “primary prevention” budget for 2017-2018 at \$9.8 million with \$7.1 million for “lead poisoning prevention program,” for a total of \$16.9 million.¹²

The Cuomo Administration’s failures to provide updated data and to use its clear authority in the Public Health Law to match the CDC’s action level for lead-exposed children speaks volumes about how the Cuomo Administration viewed childhood lead poisoning over its tenure from 2011-2021.¹³

Lead Screening is *Not* Prevention

Since 1993, New York’s Public Health Law has required two blood lead tests for all children by age three. Testing, however, is of limited benefit.¹⁴ Because the effects of lead ingestion are both severe and generally irreversible, it has long been the consensus among public health experts and policy makers that primary prevention – *i.e.*, identifying and removing environmental lead hazards *before children are affected* – is critical. While New York City has had primary prevention laws in place since 1982, and Rochester (2005), Buffalo (2019), and Syracuse (2020) have stepped up, there is essentially no primary prevention law covering the remainder of the state, leaving vulnerable children and their families without viable and effective remedies, particularly in rental housing.

New York’s Oldest-in-the Nation Housing Stock is the Problem

Although the application of lead-based paint in residential dwellings, child care facilities, and kindergartens was banned by the Board of Health in New York City in 1960 and through legislation in New York in 1970, New York has the oldest housing stock in the nation, with more

[A.5779 (Ryan)], the Public Health Law was amended in the budget to reduce the action level from 10 ug/dL to 5 ug/dL. See Budget Bill S.1507-C/A.2007-C (Part P), Chapter 57 Laws of 2019.

¹² New York State Department of Health Powerpoint presentation to New York State Advisory Council on Lead Poisoning Prevention (September 28, 2017). It is not entirely clear that these two figures are combined or if the smaller is a part of the larger. If it is the larger combined figure, this amount is similar to Governor Paterson’s budget of a decade earlier. An August 2019 presentation to the Advisory Council by NYSDOH staff cites a “new investment” of \$13.8 million for the 2019-2020 budget, which coincides with significant workload increase as a result of implementation of the then new lower elevated lead level threshold and requirement for environmental intervention. Again, hopefully the hearing will clarify how much has been budgeted and how much actually spent on lead poisoning prevention programs over the past decade.

¹³ The NYSDOH surely has more recent data. For example, it included 2015 blood test data in the September 28, 2017 Powerpoint presentation to the Advisory Council, showing 9,300 confirmed children’s tests at 5 ug/dL or above.

¹⁴ “Primary prevention” refers to methods and strategies that prevent exposure to lead; “secondary prevention” includes approaches like blood screening, that help limit *further damage* from exposure.

than 3 million units built before 1950¹⁵, 41% of housing stock built pre 1950.¹⁶ Housing stock built before 1950 are the most likely to contain lead paint, the greatest source of childhood lead poisoning. Thus, New York's children are at heightened risk for being exposed to lead in their homes.

Three cities in New York made a national list for notably high levels in a review of more than 4 million blood test results of young children tested for lead across the country: Syracuse at 40.1 percent, Buffalo at 18.8 percent and Poughkeepsie at 14.9 percent.¹⁷ These findings were correlated with lower income levels and environmental factors such as residing in housing that contains lead contaminated dust.

Eliminate Childhood Lead Poisoning by Prioritizing Safe Housing and Primary Prevention

The track record of New York City in reducing childhood lead poisoning over the past two decades points the way for a state approach. The components for an effective primary prevention proposal include the following:

1. The state must enact a robust "primary prevention" childhood lead poisoning prevention law to end this epidemic; prevention should be prioritized over screening.
2. Provide long term, consistent and robust funding for primary prevention programs from general fund sources, contributions from the paint industry and by tapping other sources of funding, including economic and urban development streams. A program similar to Maine's program of charging paint manufacturers \$.25 per gallon of paint sold at the corporate level would generate \$12 million in New York.¹⁸ *New York should double that amount to \$.50 per gallon equivalent.*
3. Rental property owners must be subject to clear, enforceable maintenance standards and obliged to periodically inspect rental premises to ensure there are no lead hazards and use only trained, certified personnel and methods to paint, repair and renovate older properties.
4. Local health, housing and code enforcement agencies must play a critical role in preventing lead poisoning, including inspecting properties regularly.
5. The state should take responsibility for the training, certification and supervision of contractors to ensure lead safe work practices are used for home repairs and renovations that could disturb lead paint.

¹⁵ *Eliminating Childhood Lead Poisoning in New York State by 2010*, New York State Department of Health (2004), Table 3. <https://www.health.ny.gov/environmental/lead/exposure/childhood/finalplanscan.htm>.

¹⁶ *Lead Laws and Environmental Justice in New York*, Katrina Smith Korfmacher, Emily A. Benfer, and Matthew J. Chachere, *The New York Environmental Lawyer, New York State Bar Association*, Fall/Winter 2019, Vol. 39, No. 1. Accessed at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3492119.

¹⁷ *Blood Lead Levels in Young Children: US, 2009-2015*, Leland F. McClure, PhD, Justin K. Niles, MA, and Harvey W. Kaufman, MD, *The Journal of Pediatrics* (2016). Accessed at [https://www.jpeds.com/article/S0022-3476\(1630206-2/fulltext](https://www.jpeds.com/article/S0022-3476(1630206-2/fulltext).

¹⁸ Beginning on July 1, 2006, the state of Maine began collecting a \$.25/gallon fee on paint sold in the state. Companies were given two options; track the volume of paint sold in Maine or assume Maine's sales represent 0.45% of the company's national paint sales and pay the fee based on 0.45% of the company's national paint sales. Any company selling less than 1,800 gallons of paint per calendar year would be exempted from paying this fee.

6. The state should beef up the dust clearance standard to confirm that home contractors have done their work properly and safely.
7. The statutorily created Childhood Lead Poisoning Prevention Advisory Council must be strengthened to ensure that it plays a vigorous, central role in policy and includes the perspectives of parents, educators and public health advocates; the Advisory Council should have a timely opportunity to review and comment on proposed lead poisoning prevention budgets.
8. The lead poisoning liability waiver for rental housing insurance should be eliminated.
9. Provide support to qualifying rental property owners to make and maintain their properties as lead safe.
10. Require the state Department of Health to release an annual public report card detailing its progress in eliminating childhood lead poisoning, including the number of local inspections, findings and actions taken; lead screening program participation and test results.
11. Establish a statewide lead-in-housing hotline number and website portal so that New Yorkers outside New York City have a central point of contact to follow up on their concerns about lead hazards in housing and get their housing promptly inspected.
12. Establish a permanent state coordinated inter-agency Task Force on Childhood Lead Poisoning Prevention to ensure a multi-faceted response to the lead poisoning epidemic.
13. Ensure that lead hazard violations are addressed swiftly and effectively; if property owners fail to make required repairs, then government must step in to protect residents.

Conclusion

Your committees can play a path breaking role by creating a public record that establishes the facts on childhood lead poisoning in New York, including the scope of the problem, the essential problems with of poorly maintained older housing stock, the absence of enforceable laws and effective local laws for most areas of the state, and the opportunities to take the components of New York City's law and apply them for the rest of the state.

New York is now a *half a century* past its ban on the sale of lead paint. It is well past time to finally end childhood lead poisoning in the state. NYPIRG commits to working with you on this critically important public health imperative.