

**CHAPTER 66
TOXIC AND HAZARDOUS SUBSTANCES**

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**SUBCHAPTER 1
ASBESTOS HAZARDS REGULATIONS**

66-10. Definitions. In this subchapter:

1. ASBESTOS means any hydrated mineral silicate separable into commercially usable fibers, including but not limited to chrysotile (serpentine), amosite (cumingtonite-grunerite), crocidolite (riebeckite), tremolite, anthrophyllite and actinolite.

2. ASBESTOS ABATEMENT means to encapsulate, enclose, repair or remove asbestos containing material in order to eliminate an asbestos hazard.

3. ASBESTOS CONTAINING MATERIAL means any material that contains greater than 1% asbestos by weight, volume or other analytical method acceptable to the commissioner.

4. ASBESTOS PROJECT means any form of work performed in connection with the alteration, renovation, modification or

demolition of a building, structure or equipment as defined in 200-08 or contaminated soil which will disturb asbestos containing material in the following amounts:

a. Greater than or equal to 260 linear feet.

b. Greater than or equal to 160 square feet.

c. Greater than or equal to one cubic meter.

d. Any combination of material listed in pars. a, b and c which, when divided by the respective minimum project permit amount and totaled, equals or exceeds 1.0.

5. ASBESTOS PROJECT PLAN means a detailed description of the abatement project, including, but not limited to, a plan of operation, blueprints, diagrams or drawings. The plan shall include:

a. Information to indicate the location of materials containing asbestos.

b. Any environmental and occupational health control methods and techniques to be used in the abatement.

c. The level of training and certification of workers involved in the project.

d. The method by which the asbestos waste shall be disposed of.

e. Any other documentation or information pertaining to the abatement plan requested by the commissioner.

6. COMMISSIONER means the commissioner of neighborhood services or the commissioner=s designated representative.

7. DEPARTMENT means the department of neighborhood services.

8. FRIABLE ASBESTOS means asbestos or any material or product which contains more than 1% asbestos by weight and that can be crumbled, pulverized or reduced to powder, when dry, by hand pressure.

9. OPERATIONS AND MAINTENANCE PROJECT means asbestos work performed within one calendar year in a structure or group of contiguous structures in which individual jobs do not exceed asbestos project permit requirements, but it is expected that the total amount of removal within that calendar year will exceed permit requirements.

10. PERSON means any individual, firm, corporation or other legal entity.

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66-12. Asbestos Hazard Control. 1. FINDINGS AND INTENT. It is hereby found that exposure to airborne asbestos fibers and particles has been linked to various diseases. In the past, materials containing asbestos were used in buildings for fireproofing, insulation, soundproofing, decorative and other purposes. The predominant cause of asbestos becoming airborne is through the performance of building repairs, renovation and demolition, which causes the release of asbestos fibers, creating a hazard.

It is the purpose of this subchapter to safeguard the public health by requiring that renovation and demolition projects which disturb asbestos be conducted in accordance with procedures established under this subchapter. It is also the purpose of this subchapter to safeguard the public health through monitoring and surveillance to determine hazardous forms and levels of asbestos in the environment and control such conditions to eliminate the exposure of the hazard to individuals.

2. ASBESTOS DECLARED A NUISANCE. a. It is hereby declared that asbestos in the environment which exposes or may expose individuals to hazardous forms and concentrations is a public health hazard and constitutes a public health nuisance which must be abated.

b. Any person disturbing materials containing asbestos in any concentration shall provide reliable monitoring data which show that airborne fiber concentrations do not exceed hazardous levels.

3. ASBESTOS PROHIBITED. No person may create or allow to exist on property owned or controlled by the person asbestos which is or may become a form and concentration that is hazardous according to standards adopted by the commissioner.

4. ASBESTOS ORDERS. The department may test the air, surfaces, substances or objects for hazardous forms of asbestos. If the department determines that a hazardous form of asbestos is present upon a premises or location, the commissioner shall issue orders to remove or treat the source of asbestos in order to eliminate or prevent the hazardous conditions. Orders shall be issued to the owner of the property or a responsible party acting on behalf of the owner.

5. ASBESTOS PROJECT PERMIT AND PLAN REQUIRED. a. No person may conduct, require or allow an asbestos project without obtaining an asbestos project permit approved by the department.

b. Applications for asbestos project permits shall be made on forms obtained from and returned to the department of neighborhood services.

c. Any person applying for a permit under s. 200-24 shall, at the time of application, submit a statement from an asbestos inspector, contractor/supervisor, management planner or asbestos project designer, certified by the state of Wisconsin, declaring whether the work required will include an asbestos project. If an asbestos project is included as part of the work, the permit under s. 200-24 shall not be issued without the concurrent application and issuance of an asbestos project permit.

d. Any person applying for an asbestos project permit shall include with the application a copy of the "Notice of Intent", submitted to the Wisconsin department of natural resources, pursuant to ch. NR447, Wis. Adm. Code, as amended, as well as a project plan, as defined in s. 66-10-5.

e. Applicants shall pay the fee required in s. 60-9 at the time of application.

f. An applicant applying for a permit under s. 200-24 for the following purposes shall not be required to obtain an asbestos permit:

f-1. New building construction, including electrical and plumbing work.

f-2. Any work involving a one or two-family residential garage.

f-3. Work affecting one or 2-family buildings, except where boiler repair or replacement is involved and amounts listed in s. 66-10-4 are exceeded.

f-4. Category I (NESHAP) resilient asphalt roofing and siding products containing more than 1% asbestos by weight removed in a non-friable manner.

g-1. In this paragraph, "asbestos regulation" means any of the following:

g-1-a. Abatement industry standards in occupational safety and health administration (OSHA) regulations, 29 CFR 1926.1101, as amended.

g-1-b. Federal asbestos hazard and emergency response act (ASHERA) regulations, 40 CFR 763, as amended.

g-1-c. Control of asbestos emissions regulations, natural resources ch. NR 447, Wis. Adm. Code, as amended.

g-1-d. Asbestos certification and training accreditation regulations, health and family services ch. DHS 159, Wis. Adm. Code, as amended.

g-1-e. Asbestos hazard regulations in this subchapter.

g-2. An application for a permit may be denied or granted with conditions if any of the following conditions are met:

g-2-a. The applicant has been convicted of 3 or more violations of an asbestos regulation, all such convictions being on or after June 1, 1996 and no conviction being earlier than 24 months immediately preceding the application.

g-2-b. The applicant has committed repeated significant violations of asbestos regulations, as described in subd. 5.

g-3. The commissioner shall establish, maintain and, from time to time, revise a list of actions that constitute significant violations of asbestos regulations under this paragraph. The commissioner shall make the list readily available for inspection and review by the public.

5.5. PROTOCOL FOR DEMOLISHING AND RENOVATING BUILDINGS. a. The commissioner shall adopt an asbestos inspection and sampling protocol for buildings to be demolished or renovated. The protocol shall be based on state and federal regulations and shall specify the minimum departmental inspection and sampling requirements prior to beginning demolition or renovation of buildings.

b. The commissioner shall make the protocol available upon request at the department and shall furnish a copy of the protocol to the legislative reference bureau.

6. OPERATIONS AND MAINTENANCE PROJECT NOTIFICATION REQUIRED. a. No person may conduct, require or allow an operations and maintenance project without filing prior written notice with the department.

b. A copy of the "Notice of Intent" submitted to the Wisconsin department of natural resources shall be supplied to the department.

c. If, during the course of the calendar year, any phase of the operations and maintenance project exceeds asbestos project amounts, an asbestos project permit shall be obtained.

7. PLAN REVIEW AND MONITORING. a. Asbestos project permit applications shall be submitted to the department for review at least 5 working days prior to commencement of project work. No asbestos project work may begin until a permit has been issued by the department.

b. Upon receipt of the application for an asbestos project, the department shall review the plans to determine if proper procedures will be followed. It may also view the site in connection with the application and also conduct any necessary monitoring or analysis.

c. Prior to issuance of the asbestos project permit, the applicant shall notify the department of the specific day and time that the work shall begin. The department may observe, monitor, sample and carry out any other necessary inspection to determine strict adherence to the approved plan of removal or treatment.

d. Following receipt of the applicant's notice under par. c, the department shall notify the fire department of the commencement and duration of the asbestos project and provide a description of the project. The fire department shall be granted access to any private property to observe, evaluate and monitor the removal or treatment of asbestos. The owner of the property or a responsible party acting on behalf of the owner shall notify the department prior to commencement of any ordered asbestos abatement work.

8. PERMIT SUSPENSION OR REVOCATION. a. If proper procedures and compliance with the approved plan are not followed or conditions result that create a hazardous environment, the commissioner may give written notice to suspend or revoke the asbestos project permit. When a permit is suspended or revoked, all work shall be stopped and the asbestos must be contained or sealed up pending correction of the violation and reissuance of the permit.

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b. Any decision of the commissioner under this subsection is effective unless the permit holder seeks a hearing on the decision under par. c.

c. Any person whose permit has been suspended or revoked may appeal the suspension or revocation by writing to the commissioner to request a hearing. Such letter shall be received by the commissioner no later than 5 calendar days following the permit action. After receipt of the petition, the commissioner shall schedule a hearing on the appeal within 10 working days.

d. The commissioner, after taking testimony, may affirm, revoke or alter the original action concerning the permit. If the person is not satisfied with the determination of the commissioner, he or she may request an administrative review of the commissioner's decision under s. 320-11.

9. ASBESTOS HAZARD VIOLATIONS. The following work practices shall be considered violations of this subchapter and may result in the issuance of a citation for each violation:

a. Removal, transport or storage of asbestos containing materials that have not been thoroughly wetted.

b. Failure to maintain continuous negative pressure in the asbestos abatement area, relative to the area immediately outside the critical barriers or containment walls, from the onset of abatement until final air clearance results of less than 0.01 fibers per cubic centimeter by phase contrast microscopy or 70 structures per square millimeter by transmission electron microscopy have been received. Deviations from these requirements, such as negative air glove bag removal, shall be clearly stated in the project plans. Where, due to ambient conditions, clearance results below 0.01 fibers per cubic centimeter cannot be obtained, the department shall be notified of such circumstances and the department shall determine whether or not further testing will be required. Air clearance test results must be submitted to the department within 10 working days of completion of the project.

c. Failure to monitor worker exposure to airborne asbestos fibers. At least one of every 4 workers in the containment area shall be tested each day. When statistically reliable monitoring data obtained under workplace conditions closely resembling typical processes, types of materials, control methods, work

practices and environmental conditions indicates that employee exposure will not exceed the action level or excursion limit, daily monitoring may be discontinued for those employees whose exposures are represented by such monitoring. Such monitoring data shall be available for immediate review at the abatement site. When all employees within a regulated area are equipped with supplied air respirators operated in the positive pressure mode, daily monitoring may not be required.

d. Presence in the abatement area of a person who is not wearing a proper respiratory protective device or protective clothing.

e. Failure to provide windows in the containment wall that afford an unobstructed view of the abatement work area. If the abatement plans clearly indicate that it is not possible to view the work area through any windows, the commissioner may omit this requirement.

f. Failure to provide, at a minimum, a 3-stage decontamination unit which is contiguous to the containment area and equipped with hot and cold or warm water and waste water filtration. Any deviation from this provision, such as remote or central decontamination units, shall be clearly specified in the asbestos project plans.

g. Conducting asbestos abatement activities without a permit, before the effective date of the permit or after the expiration date of the permit. Permit extensions shall be applied for and approved prior to expiration of the permit. An application to revise the start date of a project shall be submitted to and approved by the department prior to the start date specified on the original permit.

h. Failure to provide on-site emergency plans which include the means by which emergency assistance can be rapidly summoned to the abatement site. Clearly marked emergency fire exits shall be provided in each containment area.

i. Conducting abatement activities with employees who have not been certified by the state of Wisconsin to be asbestos workers. An asbestos supervisor certified by the state of Wisconsin shall be on the abatement site at all times during which abatement activities are in progress. Certification shall not be required for employees conducting abatement operations in any building owned by their employer.

j. Failure to secure the abatement site or post warning signs at all entrances to the abatement area.

k. Any action or failure to take action which may result in exposure of abatement workers, the public or the environment to asbestos.

L. Failure to comply with all the requirements of the asbestos inspection and sampling protocol for buildings to be demolished or renovated, under sub. 5.5.

m. Failure to clean abated surfaces, equipment used in abatement or the floors, walls and surfaces in the containment area so that they are free of asbestos containing residues prior to disrupting negative pressure in the enclosure or regulated area.

10. ASBESTOS ABATEMENT. a. The commissioner may use the authority delegated under ch. 17 of the charter to preserve the public health, and to summarily abate or remove a nuisance, and may assess the cost of such action, along with city costs, as a lien against the property and may be collected as a special charge in accordance with s. 17-12 of the charter.

b. An appeal may be filed to contest abatement charges. The written request for a hearing shall state the grounds for the appeal and shall be made to the administrative review appeals board within 30 days of the date of notice of the assessment.

11. DISPOSABLE CLOTHING. An asbestos project permittee, when conducting an asbestos project, shall keep on the premises a minimum of 10 suits of disposable clothing for asbestos work which shall be utilized by emergency medical personnel or fire department personnel responding to an emergency medical services call or by employees of the department of neighborhood services.

12. EXEMPTION. Subchapter 1 does not apply to the Milwaukee public schools.

66-19. Penalty; Enforcement. **1.** Any person who violates this subchapter or fails to obey an order of the commissioner to conform to this subchapter shall be liable upon conviction to a Class J penalty under s. 61-16. Each and every act of violation, disobedience, omission, neglect or refusal shall constitute a separate offense.

2. Citations may be issued for all violations of this subchapter with or without prior order or notice. The stipulation, forfeiture and court procedure set forth in s. 50-25 shall apply.

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SUBCHAPTER 2
LEAD POISONING PREVENTION
AND CONTROL

66-20. Purpose. 1. The federal centers for disease control and prevention report that lead provides no known biological benefit to human beings. Lead can produce adverse effects on virtually every system in the body. It can damage the kidneys, the nervous system, the reproductive system and cause high blood pressure. Very high blood lead levels cause devastating health consequences including seizures, coma and death.

2. Lead is especially harmful to the developing brains of fetuses and young children. There may be no lower threshold for some of the adverse effects of lead in children. A minute amount of ingested lead can cause elevated blood lead levels and irrevocable developmental damage to a young child. In addition, the harm that lead causes to children increases as their blood lead levels increase. Elevated blood lead levels in children can result in learning disabilities, behavioral problems and mental retardation.

3. Because of the risk that lead presents to the public health, especially to children, the purpose of this subchapter is to ensure the protection of public and environmental health through identification of lead hazards by a health department inspection and subsequent regulation of lead hazard reduction activities on premises which have received written health department orders. The subchapter is specifically intended to protect young children from exposure to lead-based nuisances. This protection will be achieved by first identifying lead hazards in a health department inspection, primarily those hazards resulting from the presence of lead-based paint, and subsequently regulating lead hazard reduction activities on premises which have received written health department orders as a result of the health department inspection.

4. To protect the children of this community, the health department may inspect a property whenever a child who lives in or visits the property is identified with a blood lead level at which the U.S. public health service, center for disease control and prevention, lead poisoning prevention guidelines recommend environmental intervention; a citizen reports to the health department the presence of a lead hazard

accessible to children; health department personnel identify a possible lead hazard accessible to children; or when community-level interventions are done in targeted housing constructed before 1978.

5. In general, the subchapter only applies to those residential and commercial properties where children reside or visit and in which a health department inspection has identified lead hazards. It is not the intent of this subchapter to regulate routine preventive maintenance activities unless those activities create a lead-based nuisance. It is not the intent of this subchapter to regulate routine preventive maintenance activities on residential or commercial properties when such activities do not create a lead-based nuisance. Specifically, it is not the intent of this subchapter to regulate any of the following activities if they do not create a lead-based nuisance:

a. Preventive maintenance including, but not limited to, repainting over or covering lead-based paint with nonlead-based paint and performing cleaning activities designed to maintain a no-lead hazard or reduced lead hazard condition.

b. Disturbing lead-based paint surfaces incidental to the performance of remodeling, renovation or repair activities where the intent of the project is not to reduce the hazard or potential hazard of lead exposure.

66-21. Definitions. In this subchapter:

1. **ABATEMENT** means any activity or set of activities with the intent to permanently remove, encapsulate, enclose or replace lead based nuisances to include all site preparation, specialized initial and preclearance cleaning and waste disposal associated with those activities.

2. **APPROVED** or **APPROVED BY THE COMMISSIONER** means those materials, products and work methods that are included on the descriptive lists prepared by the commissioner and made available to the public under s. 66-22-12.

3. **APPROVED LEAD HAZARD REDUCTION CONTRACTOR** means an individual, through state of Wisconsin certification, who can perform the safe and proper lead hazard reduction of lead based nuisances in dwellings, dwelling units, supplemental locations and premises.

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4. CHILD means any youth under 7 years of age.

5. CLEARANCE STANDARD means criteria set forth by the department for purposes of evaluating the effectiveness of lead hazard reduction activities.

6. COMMISSIONER means the commissioner of health or an authorized representative.

7. DEPARTMENT means the health department.

8. DUST-WIPE SAMPLING means department method for determining lead dust levels on the surfaces of dwellings, dwelling units, supplemental locations or premises.

9. DWELLING means any building or structure which is wholly or partly used or intended to be used for living or sleeping by human occupants including any appurtenances attached thereto.

10. DWELLING UNIT means any structure, vacant or occupied, all or part of which is designed for human habitation.

11. ELEVATED BLOOD LEAD LEVEL means a concentration of lead in whole blood at the current level set by the U.S. public health service, center for disease control and prevention.

12. 5-DAY HAZARD CONTROL means department-ordered cleaning of lead based surfaces for the purposes of immediately reducing lead hazards within 5 days following completion of a department lead hazard inspection and receipt of department orders. Acceptable methods of control include use of HEPA vacuums, wet wiping of surfaces.

13. HEPA VACUUM means a high efficiency particulate air vacuum or similar device capable of removing particles 0.3 microns or greater at 99.97% efficiency.

14. INTERIM CONTROL ACTIVITY means any activity or set of activities intended to temporarily reduce human exposure or likely exposure to a lead nuisance, including but not limited to initial and pre-clearance cleaning, temporary containment and minor repairs or maintenance activities such as painting.

15. LEAD-BASED NUISANCE means any lead based substance, surface or object which may reasonably contribute to an elevated blood lead level due to lead content, condition or location and which is accessible to children and is declared a public health nuisance as defined in s. 80-1-4.

16. LEAD BASED SURFACE means any painted or coated surface, having a lead content greater than or equal to .7 mg/cm² as measured by an x-ray fluorescence analyzer, or greater than or equal to .06% lead by weight as determined by laboratory analysis or other department field method.

17. LEAD HAZARD REDUCTION ACTIVITY means any activity or set of activities intended to permanently or temporarily reduce human exposure to lead based nuisance hazards through abatement or interim control of lead based surfaces, lead contaminated dust or lead contaminated soil.

18. LEAD HAZARD REDUCTION PROJECT means the application of any abatement or interim control activity designed to eliminate or reduce lead based nuisance as identified and ordered by the department, or as identified by the department and funded by the U.S. department of housing and urban development, including:

a. Defective or deteriorated lead based surfaces extending cumulatively over an area greater than or equal to 10 square feet which are damaged due to friction, impact, chipping, peeling, flaking or water or moisture damage.

b. Leaded dust that has accumulated in amounts greater than or equal to U.S. environmental protection agency lead in dust standards, as amended.

c. Lead in soil that has accumulated in amounts greater than or equal to U.S. environmental protection agency lead in soil standards, as amended.

19. OWNER means any person who alone or jointly or severally with others:

a. Has legal or equitable title to any dwelling, dwelling unit, supplemental location or premises; or

b. Has charge, care or control of the dwelling, dwelling unit, supplemental location or premises as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

20. PREMISES means any portion of a platted or unplatted lot, parcel or plot of land either occupied or unoccupied by any building or structure, equipment or property of any kind.

21. PREVENTIVE MAINTENANCE means any of the following activities if they do not create a lead-based nuisance.

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a. Interim control activities, including repainting over or covering lead-based paint with nonlead-based paint and performing cleaning activities designed to maintain a no-lead hazard condition.

b. Disturbing lead-based paint surfaces incidental to the performance of remodeling, renovation or repair activities where the intent of the project is not to reduce the hazard or potential hazard of lead exposure.

22. STANDARD TREATMENT means a department-approved lead hazard reduction method required for compliance with department orders.

23. SUPPLEMENTAL LOCATION means any dwelling, dwelling unit or premises where any person cares for, teaches, trains or supervises a child, including any structure adjacent to the dwelling unit of a lead poisoned child.

24. TARGET HOUSING means any dwelling constructed prior to 1978, except a dwelling for the elderly or persons with disabilities or any dwelling without a bedroom unless a child occupies or is expected to occupy the dwelling.

25. VISUAL EXAMINATION means an inspection by department staff of standard treatments conducted by trained or certified individuals, for the purposes of ensuring that work quality matches department specifications as set forth in the standard treatments.

26. WET-SCRAPED means the moistening of a surface to limit the creation of airborne dust during the removal of a coating containing lead, while containing all runoff of the wetting agent for proper disposal.

66-22. Lead Poisoning Prevention and Control Regulations.

1. PROHIBITED ACTS.

a. No owner or person may create or knowingly allow to exist in or on their property any lead-based nuisance, as defined in s. 66-21-15.

b. No person may apply lead bearing coatings having a lead content greater than or equal to 0.06% by weight, calculated as lead in the total nonvolatile content or any other coating material which would result in a lead based surface to:

b-1. Any exposed surface on the interior or exterior of a dwelling, dwelling unit, supplemental location or premises.

b-2. Any object to be used inside, outside or upon any exposed surface of a dwelling, dwelling unit, supplemental location or premises.

2. WARNING LABEL REQUIRED.

a. No person may store, sell, give away or accept any paint, coating material or object which has a lead content greater than or equal to 0.06% by weight, calculated as lead metal in the total nonvolatile content of the liquid, including any additives, or a finished surface that contains lead at a concentration greater than or equal to .7 milligram per square centimeter, unless such paint, coating material or object has a securely attached, prominently displayed and easily read label with the following wording:

WARNING!

Contains Lead!

Harmful If Consumed!

KEEP OUT OF REACH OF CHILDREN.

DO NOT APPLY WHERE

ACCESSIBLE TO CHILDREN.

b. The warning statement shall also be required on any accompanying literature, instructions or directions.

c. The warning label requirement does not apply to dwelling units.

3. EVICTION OR RETALIATION PROHIBITED. a. No non-owner occupant of a dwelling, dwelling unit, supplemental location or premises shall be evicted or otherwise retaliated against because of any of the following activities:

a-1. An occupant or someone on the occupant's behalf sought advice or services to guard household members from exposure to suspected or known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

a-2. An occupant or someone on the occupant's behalf cooperated with the city or other entity investigating possible lead-based nuisances or abating lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

a-3. An occupant or someone on the occupant's behalf arranged the abatement of known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

a-4. Any person made a complaint to the department about suspected or known lead-based nuisances at the dwelling, dwelling unit, supplemental location or premises.

b. It shall be presumed that any attempt to terminate the tenancy, increase rent or other charges, reduce services, refuse to renew a rental agreement, or to otherwise harass or retaliate against a non-owner occupant

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within 24 months of the activities described in par. a. is done in retaliation and is void. In order to overcome such presumption, it shall be shown by a preponderance of the evidence that such acts were based upon good cause. "Good cause" as used in this paragraph means that one is required to show a good reason for his or her actions, other than one related to or caused by the activities described in par. a., including but not limited to normal rental increases due to tax increases or increases in maintenance costs.

c. An occupant may be evicted if the occupant fails to pay rent other than a rent increase prohibited by this subsection, commits waste upon the premises, or commits a substantial violation of a written rental agreement.

d. Any person who violates this subsection shall be liable upon conviction to a Class J penalty under s. 61-16. Each and every act of violation shall constitute a separate offense.

4. INSPECTION AND ORDER FOR LEAD HAZARD REDUCTION ACTIVITIES. a. The department may conduct an inspection of a dwelling, dwelling unit, supplemental location or premises on surfaces, substances or objects which the department has reason to believe constitutes a lead based nuisance and may also take samples of materials which are believed to contain lead for further laboratory analysis.

b. If the department is refused admittance to any dwelling, dwelling unit, supplemental location or premises to conduct an environmental inspection, the commissioner may apply for and obtain a special warrant pursuant to s. 66.0119, Wis. Stats., to gain access.

c. If the department determines that a lead based nuisance exists in or upon a dwelling, dwelling unit, supplemental location or premises, the department may:

c-1. Notify the occupant or the occupant's representative and the owner, that lead based nuisances are present and that they constitute a health hazard.

c-2. Issue written orders for lead hazard reduction activities to address those lead-based nuisances found to exceed allowable lead levels as provided in s. 66-21-18. The order shall state that the order may be appealed, the deadline by which the appeal must be filed and the entity to which the appeal must be made. An owner who is served an order may, prior to the time specified for compliance, submit a written appeal to the commissioner. The appeal shall state with specificity the reason that the appellant believes

the order was issued in error. The commissioner may affirm, reverse or modify the order and shall mail or deliver to the appellant his or her written determination stating the reasons therefore. Such determination shall be a final determination.

c-3. Post in a conspicuous place upon the dwelling, dwelling unit, supplemental location or premises a notice of the presence of a lead hazard.

d. An additional fee in the amount specified in s. 60-53 may be charged for any lead hazard reinspection necessary to determine compliance with an order issued under par. c-2 unless compliance with such order is found. A reinspection fee shall be charged against the real estate upon which the reinspection was made, shall upon delinquency be a lien upon the real estate, and shall be assessed and collected as a special charge for payment and settlement as provided in ch. 19 of the city charter. The department shall provide written notice of the reinspection fee to the owner. The notice shall state that the owner may appeal the reinspection fee under sub. 14 and shall specify how such appeal may be made.

4.3. ENFORCEMENT. If orders are not complied with by the expiration date, the commissioner may, in addition to other enforcement measures authorized by law:

a. Issue a citation pursuant to s. 66-29.

b. Refer the failure to comply to the commissioner of neighborhood services for issuance of a rent withholding notification pursuant to s. 200-22.

c. Provided the department has funds available, secure an appropriate court-issued warrant for entry to the premises to abate or remove the nuisance and use the authority delegated under ch. 17 of the city charter to summarily abate or remove a nuisance. The cost of the abatement, interim controls and relocation associated with making the property lead-safe shall be assessed and collected as a special charge on the property.

d. If the commissioner determines that the cost to abate the lead hazard would exceed 50 percent of the assessed value of such building divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin department of revenue for the city of Milwaukee, and the lead hazard cannot be controlled by interim controls, presume such repairs are unreasonable and refer the property to the commissioner of neighborhood services for an order to raze, pursuant to s. 218-4.

4.5. ORER TO DISCONTINUE OCCUPANCY OR USE. a. If in the judgement of the commissioner any dwelling, dwelling unit, supplemental location or premises is unsafe or unfit for human habitation due to the presence of imminent lead hazards as defined by Wisconsin statutes, the commissioner may refer the property to the commissioner of neighborhood services for a determination to issue an order for enforcement pursuant to s. 200-11-5 and 6.

b. Orders and placards shall remain effective until the required lead hazard reduction activity has been completed. No person may remove a posted order or placard, or occupy, use or enter a posted or placarded dwelling, dwelling unit, supplemental location or premises, except for the purpose of carrying out the required lead hazard reduction activity, without written permission from the commissioner of neighborhood services.

5. LEAD HAZARD REDUCTION PROJECT PERMIT REQUIRED. Except as otherwise provided in par. a, no person may conduct or perform work on a lead hazard reduction project without obtaining a lead hazard reduction project permit approved by the department. Permit-holders shall follow the interior and exterior lead hazard site preparation and reduction standards in subs. 6 to 10.

a. Permit and certification exceptions.

a-1. A permit shall not be required for:

a-1-a. Work involving repair to less than 10 square feet of lead-based nuisance.

a-1-b. Work involving repair to comply with a 5-day hazard control order.

a-1-c. Preventive maintenance.

a-2. On a lead hazard reduction project, the department may approve the use of non-certified workers on the project site if the workers do not participate in activities that create a lead based nuisance or that, intentionally or incidentally, disturb lead based paint. These activities include, but are not limited to repainting or siding application after lead-based paint hazards have been stabilized or building a new porch after an old porch has been safely removed. The department may require the oversight of such non-certified workers by a certified supervisor at a project site.

b. Applications. Applications for permits shall be made on forms obtained from and returned to the department.

b-1. Applicants are required to be state-certified as provided for in Wis. Adm. Code ch. DHS 163, as amended, and shall pay the fee required in s. 60-54, prior to the issuance of a permit.

b-2. An application to revise the start date of a project shall be submitted to and approved by the department prior to the start date specified on the original permit.

b-3. Permit extensions shall be applied for and approved prior to expiration of the permit. The department may charge a fee for a permit extension.

c. Posting of Permit. The permit shall be posted in a conspicuous location at the reduction site until the reduction has been completed.

d. Permit Denial or Granting with Conditions.

d-1. An application for a permit may be denied or granted with conditions if the applicant has been convicted of 3 or more project violations under par. h on or after November 18, 1998 and at least 3 convictions were on account of actions occurring within the 24 months immediately preceding the date of application.

d-2. Whenever a permit is denied or granted with conditions under subd. 1, the commissioner shall so notify the applicant in writing. The notice shall state that the applicant may appeal the decision under sub. 14 and shall specify how such appeal may be made.

f. List of Significant Violations for Public Inspection. The commissioner shall establish, maintain and periodically revise as necessary, a list of specific actions which constitute significant violations of under par. h. The commissioner shall make the list readily available for public inspection.

g. Permit Suspension. If proper procedures and compliance with the approved treatments are not followed or conditions result that create a hazardous environment, the commissioner may give written notice to suspend the lead hazard reduction permit. When a permit is suspended, all work shall be stopped and the lead hazards shall be contained or cleaned pending correction of the violation and reissuance of the permit. The notice shall state that the applicant may appeal the decision under sub. 14 and shall specify how such appeal may be made.

h. Lead Hazard Reduction Project Violations. The following practices shall be considered violations of this subchapter and may result in the issuance of a citation for each violation:

h-1. Conducting lead hazard reduction projects without a permit, before the effective date of the permit or after the expiration date of the permit.

h-2. Conducting lead hazard reduction projects with an employee or worker who has not

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been certified under Wis. Adm. Code ch. DHS 163, except as authorized in subd. a-2.

h-3. Conducting lead hazard reduction projects without having a lead supervisor certified by the state of Wisconsin on the lead hazard reduction site when reduction activities are in progress.

h-4. Failure to meet performance date criteria set forth on lead hazard reduction permits.

h-5. Failure to meet specifications of the standard treatments or equally protective treatments as mutually agreed upon between the owner and the department.

h-6. Failure to secure the lead hazard reduction site or post warning signs at all entrances or exits to the lead hazard reduction area.

h-7. Failure to provide department approved interior or exterior containment prior to or during lead hazard reduction projects.

h-8. Failure to properly decontaminate the areas undergoing lead hazard reduction by using a HEPA vacuum, washing with a general purpose detergent and rinsing with clear water.

h-9. Removal, containment, storage, transport or disposal of lead containing materials in an unsafe manner.

h-10. Subcontracting for an activity related to a lead hazard reduction project prior to final visual examination, clearance dust sampling and approval by the department.

h-11. Failure to be in compliance with all applicable local, state and federal laws and regulations, including Wis. Adm. Code chs. DHS 163 and NR 600 to 685, and federal resource conservation recovery act, environmental protection agency and occupational safety and health agency regulations.

6. HAZARD REDUCTION REGULATIONS. a. Signs to be Posted. Prior to the reduction of lead from any area in a dwelling, dwelling unit, supplemental location or premises, caution signs measuring 20 inches by 14 inches, issued by the department at the time the permit is obtained, shall be posted at all entrances and exits.

a-1. The signs shall read:

DANGER - LEAD PAINT DUST HAZARD.

a-2. Signs shall be posted at least one day prior to the commencement of the reduction activities, and remain in place for the duration of the project, unless otherwise authorized by the commissioner.

b. Notice to Occupants. The permittee shall provide written and oral notification of planned lead hazard reduction activities to occupants of a dwelling, dwelling unit, supplemental structure or premises.

c. Compliance with Other Laws. All lead hazard reduction activities shall be performed in compliance with all applicable local, state and federal laws and regulations, including Wis. Adm. Code chs. DHS 163 and NR 600 to 685, as amended, and federal resource conservation recovery act, environmental protection agency and occupational safety and health agency regulations, as amended.

d. Site Inspection. The commissioner may inspect and sample any dwelling, dwelling unit, supplemental location or premises at any time during the reduction process to insure compliance with reduction standards. Evaluation procedures including, but not limited to, visual examination, wipe sampling, soil testing, air sampling and x-ray fluorescence analysis may be used.

7. INTERIOR SITE PREPARATION.

a. Furnishings shall be removed from each room or area as it is prepared for reduction or covered with plastic at least 6 mils thick and sealed with tape. All furnishings remaining in the reduction area shall be HEPA vacuumed prior to unit reoccupancy.

b. All heating, ventilating, air conditioning openings and entrances to a reduction site, with the exception of the entrance used by workers, shall be sealed with plastic at least 6 mils thick and taped to prevent contamination by lead dust or particles. The entrance used by workers shall have 2 layers of 6 mils thick plastic attached at the top edges of the doorway and at opposite sides to form a z-door.

c. Where lead hazard reduction activity is in process, interior floors shall be covered with 2 layers of 6 mil plastic. However, the use of 6 mil plastic as an engineering control may vary according to projects and its application and placement is subject to department approval prior to and during the course of a lead based reduction project.

8. INTERIOR LEAD HAZARD REDUCTION STANDARDS. a. Initial Cleaning. Interior areas, including all interior surfaces, woodwork, wood trim, walls, ceilings, windows and floors and all exterior window sills and wells, identified as being in violation of sub. 1 shall be thoroughly cleaned with a HEPA vacuum and washed with a general purpose detergent within 5 calendar days of receipt of notice from the commissioner.

b. 5-Day Hazard Control. All surfaces in violation of sub. 1 which have had a preventive cleaning as provided in par. a and which are accessible to children, must be taped or covered until additional procedures to control the lead hazards have been concluded.

c. Permissible Methods. Permissible methods for the removal of lead-based coatings from all surfaces shall include the use of any of the following: wet scraping, a heat gun (less than 1,100° F), chemical strippers which do not contain methylene chloride and HEPA vacuum assisted electric planers. The affected areas can then be covered with non-lead based primer and paint, encapsulant or enclosure material such as vinyl or aluminum, to include caulking seams and edges and anchoring with mechanical fasteners.

d. Prohibited Methods. The removal of lead-based coatings by sanding, sandblasting, pressure washing, grinding, the use of an open flame torch, or strippers containing methylene chloride, vacuuming with non-HEPA-equipped household or shop vacuums, dry sweeping in areas that are not properly contained and sealed, or any method that allows leaded dust to become airborne, is prohibited. The department may approve exceptions to these prohibitions, contingent upon the existence of adequate engineering controls to eliminate lead exposure to occupants or workers.

e. Treatment of Surfaces of Dwelling Unit Interior Structures.

e-1. Dwelling unit interior structures must first be maintained or corrected to structurally sound and sanitary condition in accordance with the standards provided in ss. 275-33 and 34. All interior surfaces that are identified as lead based nuisances shall be treated with methods in accordance with par. c and shall be repaired to have structurally sound and smooth surfaces. Those surfaces must be HEPA vacuumed, washed with a general purpose detergent and then coated, covered or enclosed with a non-lead-based coating, encapsulant or material approved by the commissioner pursuant to department orders.

e-2. Floors having deteriorated lead-based surfaces shall be covered with vinyl tile, vinyl sheet goods, linoleum flooring or other approved materials. Chemical stripping of a floor shall be permissible.

e-2-a. Varnish or other approved sealants may also be used on floors having deteriorated lead-based surfaces, provided the floors are carpeted or covered in a manner approved of by the commissioner after they are sealed.

e-2-b. Wood floors having deteriorated lead-based surfaces from a varnish, stain, urethane or shellac finish may be treated with a sealant approved by the commissioner.

e-3. The lead-based surfaces of exterior window sills or wells (troughs) shall have all the lead-based surfaces removed to bare wood and then be stabilized with a non-lead-based primer and paint or be replaced with wood not covered with a lead-based surface or be enclosed with vinyl or metal. Any exterior window sill surfaces treated for lead hazard reduction shall be smooth and cleanable.

e-4. The lead-based surfaces of sash tracks of double hung windows shall either have all lead-based surfaces removed to bare wood and then be stabilized with a non-lead-based primer and paint or coating, or shall have single or double sash track liners installed with remaining exposed lead-based surfaces removed to bare wood and then stabilized with a non-lead-based primer and paint or coating. This requirement does not apply to non-deteriorated exposed exterior sash tracks that are not subject to friction and are protected from weathering.

e-5. The lower sashes of double hung windows which have deteriorated lead-based surfaces shall have all the lead-based surfaces removed to bare wood and then stabilized with a non-lead-based primer and paint or coating.

e-6. The upper sashes of double hung windows which have deteriorated lead-based surfaces of 20% or more of their coated surface area shall have all the lead-based surfaces removed to bare wood and then be stabilized with a non-lead-based primer and paint or coating. Upper sashes which have deteriorated lead-based surfaces of less than 20% of their coated surface area shall have all lead-based surfaces and glazing removed from deteriorated areas and then be stabilized with a new glazing material, non-lead-based primer and paint or coating.

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e-7. All other window component surfaces which have deteriorated lead-based surfaces shall have all deteriorated lead-based surfaces removed and then be stabilized with a non-lead-based primer and paint or coating. Any window component surfaces receiving lead hazard reduction shall be smooth and cleanable.

e-8. Lead based surfaces that are free of deterioration except for chalking may be washed and repainted with a non-lead based paint or coating. This does not apply to floors, exterior window sills, wells, troughs and double-hung window sash tracks.

e-9. Storm windows covering windows that have received lead hazard reduction shall be repaired to a weatherproof and waterproof condition with glass intact. All wooden storm windows with deteriorated lead-based surfaces shall have the deteriorated lead-based surfaces removed and shall be stabilized with a non-lead-based primer and paint or coating.

e-10. Complete window units or individual window components such as sashes may also be replaced with materials free of lead-based surfaces. A window trough insert may be used where an operational, intact and complete combination storm/screen window is present and a window trough lead hazard has been identified by the department. After replacement, any remaining exposed window surfaces must meet the requirements specified in subds. 3 to 8.

f. Final Cleaning. After the entire lead hazard reduction process has been completed, a final HEPA vacuum, wash with a general purpose detergent and rinse with clear water of all interior surfaces in the dwelling unit or supplemental location must be done.

g. Removal of Waste. At the end of the work day, all waste resulting from the lead hazard reduction process shall either be collected, contained or stored in a secure area, or shall be collected, contained and removed from the reduction site and be disposed of as provided in sub. 11.

9. EXTERIOR SITE PREPARATION.

a. Exterior lead hazard reduction work shall be performed in a manner that will prevent leaded waste from coming into contact with the ground or from entering the interior of the dwelling, dwelling unit, supplemental location or premises.

b. All windows and doors of the dwelling, dwelling unit or supplemental location shall be kept closed while lead hazard reduction is being conducted.

c. Six mil plastic to collect reduction waste shall be attached to and extend at least 6 feet from the foundation and at the base of the structure being worked on and in all cases adequate to contain any falling debris.

d. At the end of the work day, all waste resulting from the lead hazard reduction process shall either be collected, contained or stored in a secured area, or shall be collected, contained and removed from the work site and be disposed of as provided in sub. 11.

10. EXTERIOR LEAD HAZARD REDUCTION STANDARDS.

a. Treatment of Surfaces of Dwelling Exterior Structures. a-1. Dwelling exterior structures first must be maintained or corrected to a structurally sound, weatherproof and watertight condition in accordance with the standards provided in ss. 275-32 and 34.

a-2. Exterior surfaces that are identified as lead-based nuisances shall have the deteriorated lead-based surfaces removed in accordance with sub. 7-c and shall be repaired to be structurally sound, weatherproof, watertight and smooth surfaces. Exterior surfaces shall then be coated with non-lead-based primer and paint, aluminum, vinyl or steel siding or a covering approved by the commissioner pursuant to department orders.

a-3. When lead hazards have been identified on any portion of the exterior sill of an operational, intact and complete combination storm/screen window, the sill and window casing on the outside of the combination storm/screen portion of the window shall be identified and treated as an exterior lead hazard.

b. Treatment of Contaminated Soil. In the event of contamination of soil with lead particles, the commissioner may order that the soil be removed to a depth of 3 inches and be replaced with uncontaminated soil or be covered pursuant to department orders. Any contaminated soil shall be disposed of as provided in sub. 11.

11. CLEARANCE STANDARD.

a. Dust-Wipe Sampling.

a-1. Dust-wipe sampling and analysis shall be performed by the department.

a-2. Clearance dust-wipe levels must be less than the lead in dust standards established by the U.S. department of housing and urban development under the authority of the housing and community development act of 1992, section 403, and found at 60 Fed. Reg. 47,247 (1995), (to be codified).

a-3. The department shall conduct dust wipe sampling as promptly as possible after the department has been notified that lead hazard reduction activities have been completed, and shall make every reasonable attempt to conduct sampling within 5 working days.

b. Final Visual Examination.

Inspection shall be conducted by the department to determine full compliance with inspection orders prior to clearance dust sampling.

12. DISPOSAL OF LEAD HAZARD ABATEMENT WASTE. Waste generated from lead hazard reduction shall be disposed of in a manner that will not endanger the health or well-being of the occupants, neighbors or community and shall be in compliance with all applicable local, state and federal laws and regulations, including Wis. Adm. Code ch. DHS 163 and chs. NR 600 to 685, as amended, and federal resource conservation recovery act, environmental protection agency and occupational safety and health agency regulations, as amended. At no time shall lead dust be allowed to become airborne during disposal.

13. APPROVED MATERIALS, PRODUCTS AND WORK METHODS. The commissioner shall prepare and make available without charge to the public a descriptive list of the following specific materials, products and work methods:

a. Material approved by the commissioner for coating, covering or enclosing interior surfaces that are identified as lead based nuisances, as referenced in sub. 7-e-1.

b. Other materials approved for covering floors having deteriorated lead-based surfaces, as referenced in sub. 7-e-2-0.

c. Other sealants approved for use on floors having deteriorated lead-based surfaces, as referenced in sub. 7-e-2-a.

d. Manner approved by the commissioner for covering floors having deteriorated lead-based surfaces on which varnish or other approved sealants have been used, as referenced in sub. 7-e-2-a.

e. Sealant approved by the commissioner for treating wood floors having deteriorated lead-based surfaces from a varnish, stain, urethane or shellac finish, as referenced in sub. 7-e-2-b.

f. Covering approved by the commissioner for coating exterior surfaces that are lead-based nuisances, as referenced in sub. 9-a-2.

14. APPEALS. a. A person who seeks to appeal an order or permit decision of the department under this subchapter, other than an order under sub. 4-c-2, shall file a written appeal with the commissioner within 5 working days after the person has received written notice of the order or decision being appealed. The appeal shall state with specificity the reason that the appellant believes the order or decision was issued in error.

b. At the time of filing a written appeal under this subsection, the person affected by the order or permit decision may request and shall be granted a hearing on the matter before the commissioner. Within 10 days of receipt of the written appeal and request for hearing, the commissioner shall set a time and place for a hearing and shall give the applicant written notice thereof. The hearing before the commissioner shall be conducted in the following manner:

b-1. The hearing shall be commenced not later than 30 days after the date on which the appeal and request for hearing was filed, provided that upon written application by the appellant to the commissioner, the commissioner may postpone the date of the hearing for a reasonable time beyond such 30-day period if, in the commissioner's judgement, the appellant has submitted a good and sufficient reason for such postponement. The commissioner may also postpone the hearing to gather testimony and data.

b-2. At the hearing, the appellant and the department may each be represented by an attorney and present evidence, call and examine witnesses, and cross-examine witnesses of the other party. Such witnesses and the appellant shall be sworn by the commissioner.

b-3. The appellant's attorney may issue a request to compel the attendance of witnesses or the production of evidence. The request issued by an attorney shall be in substantially the same form as provided in s. 805.07(4), Wis. Stats., and shall be served in the same manner as provided in s. 805.07(5), Wis. Stats. The attorney shall, at the time of issuance, send a copy of the request to all concerned parties.

b-4. The commissioner shall take notes of the testimony and shall mark and preserve all exhibits. The commissioner may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the city.

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c. The commissioner may affirm, reverse or modify the original order or action of the department. Within 20 days of completion of the hearing conducted under this subsection and the filing of briefs, if any, the commissioner shall mail or deliver to the appellant his or her written determination stating the reasons thereof. Such determination shall be a final determination.

66-29. Penalty. 1. Any person who violates any provision of s. 66-22 or who fails to obey an order of the commissioner to conform to those provisions shall be liable upon conviction to a Class J penalty as provided in s. 61-16.

2. If a person continues in violation of an order, the person shall be liable for further prosecution, conviction and punishment upon the same order without the necessity of the commissioner issuing a new order.

3. Non-compliance of orders issued under s. 66-22-3-c-2, may result in the issuance of citations, as provided in s. 50-25.

SUBCHAPTER 3
COAL TAR SEALANT AND OTHER HIGH PAH
PAVEMENT SEALANT PRODUCTS
USE AND SALE PROHIBITED

66-30. Definitions. In this subchapter:

1. **COAL TAR SEALANT PRODUCT** means a material that contains coal tar, coal tar pitch, coal tar pitch volatiles, or any variation, and is for use on an asphalt or concrete surface, including a driveway, playground, or parking area.

2. **HIGH PAH SEALANT PRODUCT** means any pavement sealant product that contains greater than 1% polycyclic aromatic hydrocarbons (PAHs) by weight, including, but not limited to, coal tar, coal tar pitch, coal tar pitch volatiles, tar, fuel oil, petroleum, or asphalt.

3. **COMMISSIONER** means the commissioner of the department of public works or a designated representative.

4. **DEPARTMENT** means the department of public works.

66-31. Regulations. 1. USE. a. No person shall:

a-1. Apply any coal tar sealant product or high PAH sealant product on any public or private property within the city.

a-2. Allow a coal tar sealant product or high PAH sealant product to be applied upon property that is under that person's ownership or control.

a-3. Contract with any commercial applicator, residential or commercial developer, or any other person for the application of any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the city.

b. No commercial applicator, residential or commercial developer, or other similar individual or organization shall direct any employee, independent contractor, volunteer, or other person to apply any coal tar sealant product or high PAH sealant product to any driveway, parking lot, or other surface within the city.

2. **SALE.** No person shall sell, offer to sell, or display for sale any coal tar sealant product or high PAH sealant product within the city.

3. **SPECIAL SIGNAGE.** Any person who sells pavement sealcoat products shall prominently display, in the area where such pavement sealcoat products are sold, a notice that contains the following language: "The application of coal tar sealcoat products and high PAH sealant products on driveways, parking lots, playgrounds, and all other paved surfaces in the City of Milwaukee is prohibited by section 66-31 of the Milwaukee Code of Ordinances. Coal tar is a significant source of polycyclic aromatic hydrocarbons (PAHs), a group of organic chemicals that can be carried by storm water and other runoff into the City of Milwaukee's lakes and streams. PAHs are an environmental concern because they are toxic to aquatic life."

66-32. Exemptions. The commissioner may exempt a person from the requirements of s. 66-31 if a request for exemption is made to the commissioner in writing, including an explanation of why the exemption is needed for research or the development of an alternative technology, and if the commissioner determines that one or both of the following apply:

1. The person is conducting research concerning the effects of a coal tar sealant product or high PAH sealant product on the environment.

2. The person is developing an alternative technology and the use of a coal tar sealant product or high PAH sealant product is required for research or development.

66-33. Enforcement; Penalty.

1. **ENFORCEMENT.** The commissioner shall enforce this subchapter.

2. **PENALTY.** Any person who violates this subchapter or fails to obey an order of the commissioner to conform to this subchapter shall be liable upon conviction for a Class Q penalty under s. 61-23. Each and every act of violation, disobedience, omission, neglect, or refusal shall constitute a separate offense.

3. **CITATIONS.** Citations may be issued for all violations of this subchapter with or without prior order or notice. The stipulation, forfeiture, and court procedure set forth in s. 50-25 shall apply.

**For legislative history of chapter 66,
contact the Municipal Research Library.**

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[Pages 140-142 are blank.]