

CHAPTER 4760
POLLUTION CONTROL AGENCY
LEAD ABATEMENT IN SOIL

4760 0010 APPLICABILITY
 4760 0015 DEFINITIONS
 4760 0020 BARE SOIL STANDARD
 4760 0030 ABATEMENT METHODS FOR BARE SOIL
 4760 0035 DISPOSAL OF WASTE MATERIALS FROM ABATEMENT PROJECTS
 4760 0040 ABATEMENT CONTRACTOR DUTIES

4760 0045 LOCAL ENFORCEMENT
 4760 0050 VARIANCE
 4760 0500 SCOPE
 4760 0510 DEFINITIONS
 4760 0520 PRIORITY RANKING SYSTEM
 4760 0530 ABATEMENT PRIORITY LIST
 4760 0540 RESPONSE ACTION

NOTE These rules were originally numbered as parts 4750 0010 to 4750 0050, see the notice of adoption at 15 State Register, page 1847 That chapter already contained rules that were unrelated, therefore these rules are being renumbered editorially as parts 4760 0010 to 4760 0050

4760.0010 APPLICABILITY.

Parts 4760.0010 to 4760.0050 apply to any person who is performing abatement of lead in bare soil on residential property and playgrounds.

Statutory Authority: *MS s 116.07; 116.53; 144.878*

History: *15 SR 1847*

4760.0015 DEFINITIONS.

Subpart 1. Scope. For purposes of parts 4760.0010 to 4760.0050, the following terms have the meanings given them.

Subp. 2. Abatement contractor. "Abatement contractor" has the meaning given in Minnesota Statutes, section 144.871, subdivision 3.

Subp. 3. Agency. "Agency" means the Minnesota Pollution Control Agency.

Subp. 4. Bare soil. "Bare soil" means an outdoor area where soil is visible over a continuous area of one square foot or more.

Subp. 5. Commissioner. "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 6. Hazardous waste. "Hazardous waste" has the meaning given it in Minnesota Statutes, section 115B.02, subdivision 9.

Subp. 7. Person. "Person" has the meaning given in Minnesota Statutes, section 116.06, subdivision 8.

Subp. 8. Playground. "Playground" means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play.

Subp. 9. Residential property. "Residential property" means real property that contains a house, building, or other structure used or intended for use as human habitation. The term residential property includes all open areas on the real property that may be used by children as playgrounds and includes sidewalks, walkways, gardens, and driveways.

Statutory Authority: *MS s 116.07; 116.53; 144.878*

History: *15 SR 1847*

4760.0020 BARE SOIL STANDARD.

Bare soil on residential property or on playgrounds must not contain lead in a concentration of 3/100 of one percent (300 parts per million) or more by weight.

Statutory Authority: *MS s 116.07; 116.53; 144.878*

History: *15 SR 1847*

4760.0030 ABATEMENT METHODS FOR BARE SOIL.

Subpart 1. Applicability. The abatement methods prescribed in this part apply to any person conducting abatement of bare soil that has been determined to exceed the bare soil standard established in part 4760.0020.

Subp. 2. Abatement methods. Except as provided in subpart 4, item A, a person who is performing abatement of bare soil may elect either to cover the bare soil to prevent exposure or to remove the soil. Depending on which alternative is selected, the person shall comply with the requirements applicable to the alternative selected.

Subp. 3. Soil cover. Any person performing abatement of bare soil by covering the soil shall comply with the requirements in items A to C.

A. Living ground cover. If the person intends to cover the bare soil with sod or other living material, the person shall first till and rake the soil before laying the sod or other living material.

B. Impervious cover. If the person intends to cover the bare soil with concrete, asphalt, or other similar material, the person shall compact the soil prior to laying the concrete, asphalt, or other similar material.

C. Other cover material. If the person intends to cover the bare soil with sand, wood chips, or other nonliving, pervious material, no preparation to the bare soil is required prior to application of the sand, wood chips, or other material.

Subp. 4. Soil removal.

A. Any person performing abatement of bare soil must remove the soil if the soil contains visible paint chips.

B. Any person performing abatement of bare soil by removing the soil shall either remove the soil from the premises and dispose of it in accordance with part 4760.0035 or bury the soil on the property under clean soil that has been excavated from the premises. In the event the commissioner determines that burial of the bare soil on the premises would threaten the groundwater or cause other environmental damage, the bare soil must be removed from the premises and disposed of in accordance with part 4760.0035.

Subp. 5. Abatement implementation. A person who is performing abatement of bare soil, regardless of the method selected or required, shall comply with items A to D.

A. Children must be prohibited from playing or otherwise coming in contact with the soil being disrupted during abatement.

B. Soil that is removed must be properly stored or disposed of at the end of each work day.

C. Soil on steps and walkways must be removed and steps, walkways, and foundations must be hosed off with water at the end of each work day and before replacing soil or new sod each day.

D. During installation of the soil cover, the person performing the abatement must keep the soil moist.

Subp. 6. Abatement priority. If abatement of bare soil is done at a residential property or a playground in conjunction with other types of lead abatement, the abatement of the bare soil must be done after paint abatement but before interior dust abatement.

Subp. 7. Abatement area. In the event data establish that only a portion of the bare soil on a residential property or playground exceeds the bare soil standard, the person performing abatement is only required to abate the bare soil that exceeds the standard.

Subp. 8. Variance. Any alternative abatement procedures to subpart 3 or 4 shall be proposed in a variance request as described in part 4760.0050 and must have agency approval before the alternative abatement procedure can be performed.

4760.0030 LEAD ABATEMENT IN SOIL

152

Statutory Authority: *MS s 116.07; 116.53; 144.878***History:** *15 SR 1847***4760.0035 DISPOSAL OF WASTE MATERIALS FROM ABATEMENT PROJECTS.**

Subpart 1. Demolition debris. Demolition debris, such as windows, doors, walls, and concrete, created from an abatement project may be disposed of in a demolition landfill.

Subp. 2. Bare soil. Unless the commissioner determines that bare soil must be managed as a hazardous waste, the person performing the abatement may dispose of bare soil as normal household refuse.

Subp. 3. Other waste material. All other waste materials generated during abatement of lead contaminated material shall be disposed of according to applicable agency requirements.

Statutory Authority: *MS s 116.07; 116.53; 144.878***History:** *15 SR 1847***4760.0040 ABATEMENT CONTRACTOR DUTIES.**

If a person hires an abatement contractor to conduct the abatement, the abatement contractor shall comply with the requirements of parts 4760.0030 and 4760.0035.

Statutory Authority: *MS s 116.07; 116.53; 144.878***History:** *15 SR 1847***4760.0045 LOCAL ENFORCEMENT.**

Nothing in parts 4760.0010 to 4760.0050 shall be construed to restrict the authority of any local governmental body from enforcing applicable laws regulating the amount of lead in material.

Statutory Authority: *MS s 116.07; 116.53; 144.878***History:** *15 SR 1847***4760.0050 VARIANCE.**

Subpart 1. Procedures. A person performing abatement of bare soil may apply for a variance from the requirements of part 4760.0030, subpart 3 or 4, to allow for use of innovative abatement methods. The person shall comply with part 7000.0700 in applying for the variance and the agency shall act upon the variance request according to the procedures of part 7000.0700.

Subp. 2. Burden of proof. The person who applies for a variance has the burden of establishing that the variance should be granted.

Subp. 3. Granting of the variance request. The agency shall grant the variance request if the person establishes that the innovative abatement method will ensure that upon completion of the abatement, no person will come in contact with bare soil that exceeds the bare soil standard in part 4760.0020.

Statutory Authority: *MS s 116.07; 116.53; 144.878***History:** *15 SR 1847***4760.0500 SCOPE.**

Parts 4760.0500 to 4760.0540 establish procedures for determining priorities for response action for residential sites and playgrounds in the state where soils are found to be contaminated with lead, as required by Minnesota Statutes, section 116.53, subdivision 2.

Statutory Authority: *MS s 116.53***History:** *16 SR 1709*

4760.0510 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 4760.0500 to 4760.0540, the following terms have the meanings given them.

Subp. 2. **Child.** "Child" means a human being under the age of six years.

Subp. 3. **Distributing authority.** "Distributing authority" means a governmental agency or entity, such as a local board of health, that distributes funds for the abatement of soil lead contamination.

Subp. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subp. 5. **Person.** "Person" has the meaning given in Minnesota Statutes, section 116.06, subdivision 8.

Subp. 6. **Playground.** "Playground" means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play.

Subp. 7. **Residence.** "Residence" means a house, duplex, apartment, or other building or structure used or intended for use as human habitation and the real property upon which the building or structure is located.

Subp. 8. **Response action.** "Response action" has the meaning given in Minnesota Statutes, section 116.51, subdivision 5.

Subp. 9. **Site.** "Site" means an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

Statutory Authority: *MS s 116.53*

History: *16 SR 1709*

4760.0520 PRIORITY RANKING SYSTEM.

Subpart 1. **Priority one.** A site is a priority one site if the site contains more than 300 parts per million lead and the site is a residence of a child with an elevated blood lead level or the residence of a pregnant woman with a blood lead level of ten micrograms per deciliter or more.

Subp. 2. **Priority two.** A site is a priority two site if the site contains more than 300 parts per million lead and the site is a residence or a playground and the site is frequented by a child with an elevated blood lead level.

Subp. 3. **Priority three.** A site is a priority three site if it is a census tract that meets one or more of the following criteria:

A. it contains the residence of a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more;

B. any soil sample within the census tract indicates a soil lead level of more than 300 parts per million; or

C. the census tract is on the following list:

CENSUS TRACT NUMBER	CITY	LOWER CONFIDENCE LIMIT	MEAN	UPPER CONFIDENCE LIMIT
1. 84	Minneapolis	460.019	736.507	1179.170
2. 332	St. Paul	361.915	733.350	1485.990
3. 83	Minneapolis	358.645	460.916	592.350
4. 71	Minneapolis	340.962	514.736	777.080
5. 78	Minneapolis	336.858	459.276	626.180
6. 72	Minneapolis	324.952	412.103	522.630
7. 69	Minneapolis	322.637	407.247	514.050
8. 79	Minneapolis	310.606	514.142	851.050
9. 93	Minneapolis	291.339	640.391	1407.640

10. 18	Minneapolis	241.486	437.469	792.510
11. 23	Minneapolis	239.560	536.452	1201.290
12. 12	Duluth	250.261	519.718	1079.300
13. 82	Minneapolis	264.749	379.520	544.050
14. 25	Minneapolis	182.547	509.773	1423.570
15. 354	St. Paul	260.405	363.646	507.820
16. 15	Minneapolis	209.802	450.573	967.660
17. 366	St. Paul	112.570	588.720	3078.890
18. 47	Minneapolis	192.907	417.770	904.750
19. 70	Minneapolis	37.422	363.044	3522.060
20. 94	Minneapolis	187.400	400.858	857.460
21. 22	Minneapolis	251.728	346.117	476.720
22. 92	Minneapolis	112.740	495.288	2175.890
23. 86	Minneapolis	186.407	349.367	654.790
24. 337	St. Paul	245.707	319.574	415.650
25. 35	Minneapolis	160.398	338.992	716.440
26. 344	St. Paul	218.728	320.605	469.930
27. 57	Minneapolis	164.839	290.643	512.460
28. 65	Minneapolis	52.789	257.315	1254.250
29. 21	Minneapolis	66.709	255.534	978.840
30. 19	Minneapolis	171.870	282.398	464.000
31. 36	Minneapolis	94.638	254.595	684.910
32. 111	Minneapolis	110.134	257.701	602.990
33. 312	St. Paul	47.241	227.399	1094.610
34. 103	Minneapolis	40.160	218.218	1185.740
35. 368	St. Paul	3.343	136.804	5597.760
36. 2	Minneapolis	104.219	239.240	549.190
37. 17	Minneapolis	46.312	192.512	800.230
38. 27	Duluth	57.187	191.895	643.920
39. 85	Minneapolis	146.515	244.739	408.810
40. 16	Duluth	69.174	197.015	561.120
41. 54	Minneapolis	39.020	161.430	667.850
42. 50	Minneapolis	186.525	255.434	349.800
43. 95	Minneapolis	123.395	217.816	384.490
44. 320	St. Paul	0.124	31.690	8091.850
45. 325	St. Paul	122.539	213.922	373.450
46. 99	Minneapolis	79.929	189.789	450.650
47. 60	Minneapolis	114.333	204.372	365.320
48. 61	Minneapolis	74.229	173.984	407.800
49. 49	Minneapolis	56.477	159.926	452.870
50. 371	St. Paul	135.290	216.914	347.786
51. 18	Duluth	28.309	112.400	446.290
52. 75	Minneapolis	93.796	195.579	407.810
53. 340	St. Paul	99.113	183.212	338.672
54. 363	St. Paul	29.196	110.590	418.900
55. 350	St. Paul	22.960	99.916	434.810
56. 19	Duluth	90.188	196.893	429.840
57. 28	Duluth	56.699	139.281	342.145
58. 112	Minneapolis	48.806	126.633	328.561
59. 16	Minneapolis	29.691	98.646	327.741
60. 52	Minneapolis	0.750	16.699	372.000
61. 357	St. Paul	115.904	188.437	306.360
62. 73	Minneapolis	71.059	148.505	310.357
63. 349	St. Paul	58.097	136.714	321.717
64. 315	St. Paul	152.960	214.613	301.116

Subp. 4. **Prioritizing census tracts.** Priority three census tracts are further prioritized as described in items A to D.

A. A census tract is a priority A if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

B. A census tract is a priority B if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceeds 300 parts per million and a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

C. A census tract is a priority C if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million.

D. A census tract is a priority D if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceeds 300 parts per million.

Subp. 5. **Individual residences and playgrounds within a census tract.** A residence or playground within a census tract that meets the criteria for a priority one or a priority two site must be prioritized as a priority one or a priority two site.

Subp. 6. **Ranking.** A site must be ranked at the highest priority for which it qualifies, whether the site is a residence or a playground or a census tract.

Statutory Authority: *MS s 116.53*

History: *16 SR 1709*

4760.0530 ABATEMENT PRIORITY LIST.

Subpart 1. **Distributing authority.** A distributing authority shall prepare an abatement priority list that ranks known sites within the distributing authority's jurisdiction according to the priorities established in part 4760.0520. The abatement list shall list those known residences and playgrounds that are priority one or priority two and those known census tracts as priority 3A, 3B, 3C, or 3D. The abatement list shall be prepared before the distributing authority uses public funds to abate any site.

Subp. 2. **Amendment of list.** A distributing authority may at any time amend its abatement priority list. A distributing authority shall add additional sites to its abatement priority list at any time that information becomes available identifying new sites.

Subp. 3. **Additional sampling.** A distributing authority may elect to take additional samples before prioritizing a residence or playground or a census tract. The distributing authority shall consider all sample results that the authority considers reliable in making a decision on the proper priority ranking for a particular residence or playground or census tract.

Statutory Authority: *MS s 116.53*

History: *16 SR 1709*

4760.0540 RESPONSE ACTION.

Subpart 1. **Use of public funds.** No distributing authority shall authorize public funds for abatement until the authority has prepared an abatement priority list. Public funds shall be used for abatement in order of priority established by the abatement priority list.

Subp. 2. **Additional abatement.** Nothing in parts 4760.0500 to 4760.0540 shall be construed to preclude any person from abating any site, regardless of priority, if the person pays for the abatement without the use of public funds or if the soil abatement is part of a publicly funded abatement project that is not strictly limited to soil lead abatement.

Subp. 3. **Abatement not required.** Parts 4760.0500 to 4760.0540 do not require:

A. any person to abate any site at that person's expense; or

B. a distributing authority to abate any site that does not exceed the soil lead standard of 300 parts per million.

Subp. 4. Abatement procedures. A person who undertakes abatement of a site contaminated with lead shall follow the abatement procedures in chapter 4760.

Statutory Authority: *MS s 116.53*

History: *16 SR 1709*