

**Health and Housing
Enforcement in Urban and
Rural Areas of Iowa**

**Iowa has many
problems with housing quality.**

AGE OF IOWA'S HOUSING STOCK COMPARED TO SURROUNDING STATES

STATE	% HOUSING BUILT BEFORE 1950
ILLINOIS	31.8%
IOWA	39.3%
KANSAS	28.3%
MINNESOTA	27.1%
MISSOURI	23.6%
NEBRASKA	32.3%
WISCONSIN	31.1%

Age is a surrogate for many housing problems.

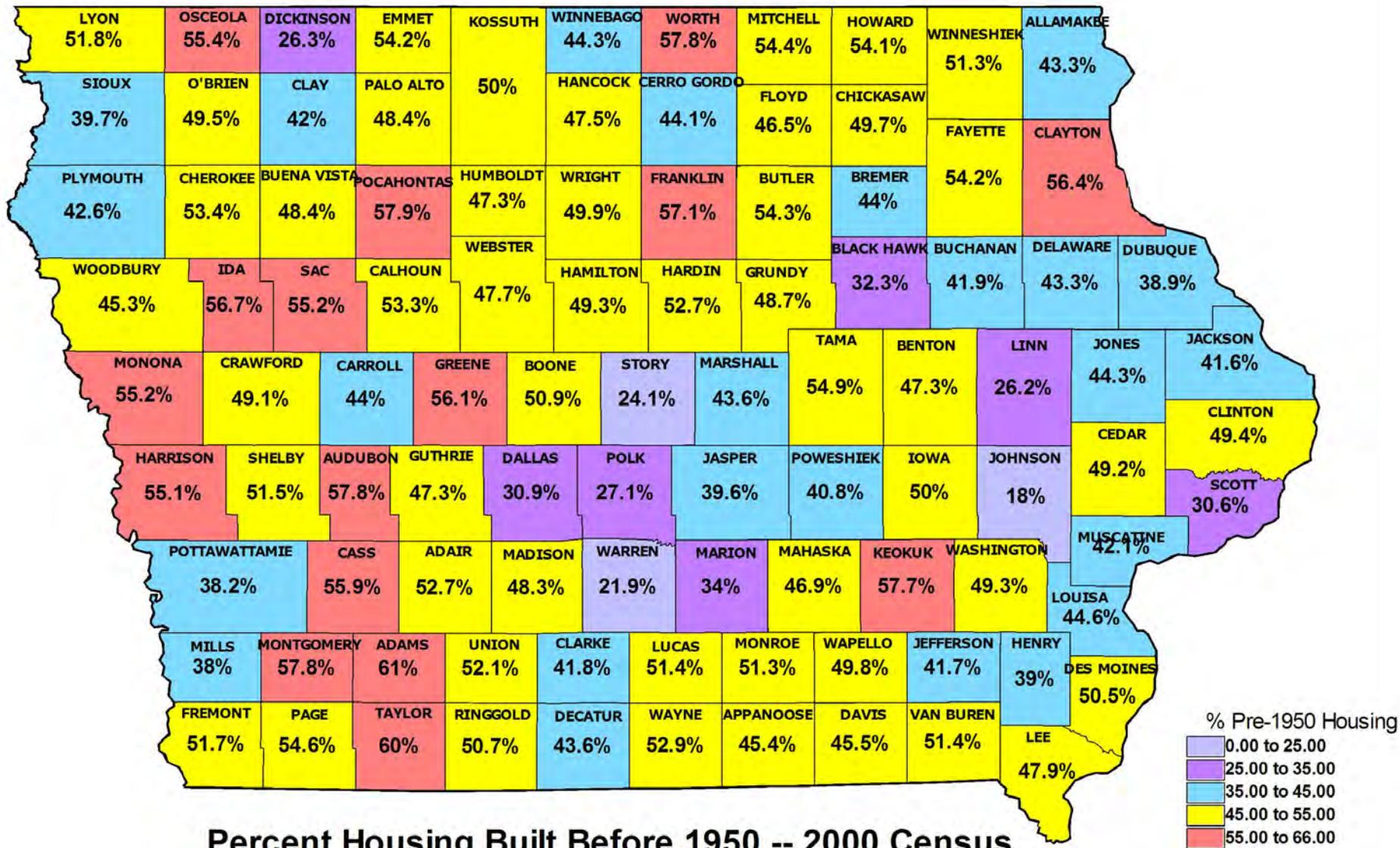


TABLE 2.2**HOUSING CONDITION BY TYPE OF HOUSING MARKET (places)**

	Rapidly growing		Stable growing		Stagnant		Declining	
	metro	non-metro	metro	non-metro	metro	non-metro	metro	non-metro
Estimated housing condition (from LHNA)								
Units reported "fair"	30.8%	13.9%	33.1%	34.9%	43.9%	37.9%	30.4%	38.9%
Units reported "poor"	20.9%	12.5%	17.2%	21.4%	18.0%	23.4%	20.1%	25.9%
Units reported "dilapidated"	2.9%	0.2%	2.4%	4.6%	4.4%	5.0%	2.9%	8.9%
Number "poor" units	1,067	506	2,156	5,897	1,807	18,062	1,440	6,640
Number "dilapidated" units	101	8	561	729	327	2,064	169	3,570

Source: Meeting the Challenges of the Next Decade

HOUSING AND COMMUNITY DEVELOPMENT IN IOWA IN 2000:

A Report to the Iowa Finance Authority and the Iowa Department of Economic Development

“Dilapidated” units are estimated to need more than \$25-30,000 in repairs.

“Poor” units are estimated to need \$15-\$25,000 in repairs.





















IOWA LAW

Iowa law places requirements for health services and regulation primarily on counties.

Iowa law places requirements for regulation of housing primarily on cities.

As a result, health and housing regulation and services are often provided by different government entities – often with little coordination.

RENTAL HOUSING CODES IN IOWA

Iowa Code 364.17

Cities with a population of 15,000 or more were to adopt the latest version of one of the following housing codes before January 1, 1981:

- The uniform housing code promulgated by the international conference of building officials.**
- The housing code promulgated by the American public health association.**
- The basic housing code promulgated by the building officials conference of America.**

RENTAL HOUSING CODES IN IOWA

Iowa Code 364.17

- **The standard housing code promulgated by the southern building code congress international.**
- **Housing quality standards (HQS) promulgated by the United States department of housing and urban development for use in assisted housing programs.**

Note: All codes except for HQS are obsolete. HQS is obsolete unless a city has adopted the most recent version.

RENTAL HOUSING CODES IN IOWA

Iowa Code 364.17

Cities that did not do this by January 1, 1981, were considered to have adopted the uniform housing code promulgated by the international conference of building officials, as amended to January 1, 1980 (obsolete).

A city which reaches a population of 15,000 has six months to comply with this section.

RENTAL HOUSING CODES IN IOWA

Iowa Code 364.17

City shall adopt enforcement procedures, which shall include:

- 1. A program for regular rental inspections.**
- 2. Rental inspections upon receipt of complaints.**
- 3. Certification of inspected rental housing.**

RENTAL HOUSING CODES IN IOWA

Iowa Code 364.17

City may include the following and other requirements as part of enforcement:

- A schedule of civil penalties or criminal fines.**
- Requirement for violations to be corrected.**
- Citations for failure to remedy a violation.**

RENTAL HOUSING CODES IN IOWA

Iowa Code 364.17

Cities with populations of less than 15,000 may adopt rental housing code.

City may adopt housing code provisions that are more stringent.

CITY OF KEOTA, IOWA

92.07 PROPERTY OWNER RESPONSIBLE.

As a convenience to property owners that lease or rent property to others, the City may bill lessees or tenants for charges for water delivered to a property during such rental or lease period; however, a property owner and any lessee or tenant shall have joint and several responsibility for payment of the charges and fees associated with the provision of water service to the property.

Keota's population is approximately 1000.

PROBLEMS

- **Communities with a population of at least 15,000 are required have only about 36 percent of Iowa's pre-1950 rental housing. (173,186 units)**
- **Housing code options listed in Iowa code are obsolete.**
- **No state agency has authority to assure that cities that are required to have rental housing codes actually have them and are enforcing them.**
- **If there is no rental housing code in a community, only option for tenant dissatisfied with condition of house is to move or to bring civil action under the Iowa Landlord Tenant Act.**

IOWA CODE CHAPTER 137

LOCAL BOARDS OF HEALTH

137.5 Jurisdiction of county and city boards.

- The county board shall have jurisdiction over public health matters within the county.**
- The council of any city having a population of 25,000 or more may appoint a city board of health. The city board shall have jurisdiction within the municipal limits.**

IOWA CODE CHAPTER 137 LOCAL BOARDS OF HEALTH

County health departments generally deal with housing under three circumstances:

- 1. Private water wells.**
- 2. Private wastewater treatment systems.**
- 3. “Nuisance” houses (homes in bad condition that are affecting neighboring properties – rats, insects, bats, etc.).**
- 4. Lead-based paint hazards (usually handled through specific regulation – rarely handled under general authority of local board of health).**

LOCAL REGULATIONS

**641 Chapter 68 of the Iowa
Administrative Code.**

**Local boards of health can adopt this model regulation,
which applies to elevated blood lead children.**



**WATCH
FOR
HORSE-DRAWN
VEHICLES**



Resource Conservation and Recovery Act (RCRA)



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Centers for Disease Control and Prevention

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Background



- The Resource Conservation and Recovery Act (RCRA) was enacted in 1976 and consists collectively of the Solid Waste Disposal Act of 1965 and subsequent amendments to it.
- RCRA regulates the generation, transportation, treatment, storage, and disposal of hazardous waste (Subtitle C).
- RCRA provides authority for EPA to protect the public from solid wastes that present an imminent and substantial hazard (Section 7003).
- The Act also provides for citizen suits (Section 7002).

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Section 7003

Elements and Requirements

- Section 7003 of RCRA establishes EPA's imminent hazard authority. It provides that:
 - when EPA receives evidence "that the past or present *handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment,*" EPA may bring suit against any person who has contributed or is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such activity, order such person to take other action as may be necessary, or both.



Section 7003

- Generally, EPA must make three determinations under Section 7003:
 1. The violator is a “person” under RCRA who has contributed or is contributing to the handling, storage, treatment, transportation or disposal of “solid waste.”
 2. The statute defines “solid waste” to include “refuse . . . and other discarded material,” This term has been liberally construed. EPA has applied the term to lead dust and deteriorated (chipping, peeling, flaking) LBP in two cases.
 3. The potential endangerment stems from the past or present “handling, storage, treatment, transportation, or disposal” of solid waste.



Section 7003 Orders for Lead-based Paint Hazards



- In two actions EPA used section 7003 to protect children from lead dust hazards (*17th Street Trust & Fall River*).
- In the absence of Section 7003 regulations, or written guidance on applying this law to LBP, these cases are highly instructive.
- In short, in both cases:
 - ◆ EPA became involved at the request of state/local authorities;
 - ◆ Lead-contaminated dust and/or deteriorated paint were pervasive in the subject properties;
 - ◆ Tests confirmed that dust and paint chips/flakes contained lead significantly in excess of federal lead hazard standards;
 - ◆ Young children resided in or frequented the properties.
 - ◆ These cases illustrate the potentially broad applicability of RCRA 7003 to LBP hazards, since these two cases involved:
 - ★ *Actual* lead poisoning, as well as *potential* poisoning (*Fall River*); and
 - ★ The *generation* of new LBP hazards, as well as the *continuing presence* of LBP hazards (*17th Street Trust*).

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In re 17th Street Revocable Trust

Factual Background

- In 2000, EPA Region 3 (Philadelphia) issued a unilateral administrative order to 17th Street Revocable Trust and other owner respondents of a 77-unit apartment building in Washington D.C requiring the cleanup of lead dust hazards.
- The 1914 building included a child care center on the ground floor and the presence of longstanding and pervasive LBP hazards was unquestionable.
- From 1990 through 1997, the District of Columbia government learned of at least five lead poisoned children residing at the property, including two with EBLLs greater than 20 ug/dl.



In re 17th Street Revocable Trust



- The DC government inspected the property, and issued Housing Deficiency Notices for six separate units, for a total of 15 lead violations.
- In spring 2000, again in response to reports of lead poisoned children living at the property, DC government provided for LBP inspections. The inspections “revealed the presence of extremely high levels of lead-based paint and lead-based paint waste” (i.e., dust containing lead, and detached LBP chips or flakes).
- In October 2001, EPA observed peeling paint on door frames, and paint chips, flakes and dust near and on windows.

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In re 17th Street Revocable Trust



Consequently, EPA determined that:

- The level of lead in dust and paint chips “clearly far exceeded any levels that would be considered hazardous”;
- The “dust that contains lead, and detached lead-based paint chips or flakes . . . are refuse and discarded materials”;
- The LBP in many instances was located on impact or friction surfaces, and that repeated opening of windows and doors resulted in “the continuing *process of new lead-based paint wastes being generated*” including new LBP dust, chips and flakes;
- The “dust containing lead and detached lead-based paint chips and flakes . . . may present an imminent and substantial endangerment to human health and the environment” because they cause EBLs “associated with adverse human health effects” which “present a substantial risk to the health of tenants” especially young children; and
- The respondents, “either directly or indirectly through contractors or employees” were responsible for the maintenance of the property.

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In re 17th Street Revocable Trust

Actions Ordered

- Perform interim controls in all 77 residential units and all interior common and maintenance areas in the property within 40 working days of the order;
- Distribute EPA's *Protect Your Family* lead hazard pamphlet to all tenants;
- Provide for LBP inspections and risk assessments in residential units, interior common areas and maintenance areas not previously evaluated;
- Within one year of EPA's approval of its work plan, "permanently abate all lead-based paint waste and deteriorating lead-based paint" in all 77 residential units, and interior common and maintenance areas and clean such areas; and
- Comply with clearance testing, performance standards, and record-keeping requirements.

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In re 17th Street Revocable Trust

Conclusions :

- The respondents were “persons” under RCRA;
- The “lead-based paint waste” constituted “solid waste”;
- The solid waste was being “handled, stored, treated and/or disposed of” at the property;
- There “may be an imminent and substantial endangerment to human health and the environment arising from the past or present handling, storage, treatment or disposal of lead-based paint waste at and/or from the property;
- Respondents were “persons who have contributed to and are contributing to” the handling, storage, treatment and/or disposal of solid waste; and
- The actions required by EPA were “necessary to protect human health and the environment.”

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Group I Management and M275 LLC of Fall River, Massachusetts



- In 2001, EPA Region 1 (Boston) issued a UAO to Group I Management and M275 LLC, owners of a commercial building that had contracted to sandblast paint from the first floor of the building.
- During the work, tenants observed dust coming through the floor and out of the windows, and lead-contaminated debris in a trash dumpster. One of the tenants was a dance school, set to begin classes for children in about two weeks. Also the dance instructor was pregnant.
- State authorities contacted EPA, in response to the complaints. EPA personnel inspected the property and observed dust throughout the building. EPA sampling found that the sand and paint debris contained between 868 and 2,790 ppm lead (whereas 40 ug/sq. ft is the federal dust-lead hazard standard for floors.)

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Group I Management and M275 LLC of Fall River, Massachusetts



Actions Ordered

- EPA ordered the respondent to abate the lead at the property, beginning with the dance studio, including lead dust on all interior surfaces and furniture, lead contaminated debris, and equipment and other objects contaminated with lead dust. The order also required the respondent to perform related measures, including occupant protection, clearance testing, and reporting to EPA.



Group I Management and M275 LLC of Fall River, Massachusetts



Conclusions

- The respondents were persons under RCRA;
- The lead dust constituted “solid waste”;
- The solid waste “has been and/or is currently being handled, stored, treated, or disposed of” at the property;
- Conditions at the property “may present an imminent and substantial endangerment to health and the environment” arising from the “past or present handling, storage, treatment or disposal of lead dust”;
- One respondent had been and was “currently contributing to the handling and/or storage, treatment and/or disposal” of the solid waste; and
- The actions required by EPA’s order were consistent with RCRA, and necessary to protect health and/or the environment.



Imminent Hazard Authority Overview



- EPA determines whether a matter may present an “imminent and substantial endangerment” on a case-by-case basis. EPA typically has used Section 7003 to address contamination of natural resources.
- In *17th Street Trust* and *Fall River*, however, the Agency found an imminent and substantial endangerment where LBP hazards had caused or were likely to cause childhood lead poisoning, for which the adverse effects are undisputed.
- In deciding whether an imminent and substantial endangerment exists, the Agency considers several factors potentially applicable to other situations involving LBP hazards, such as the sensitivity of the at-risk population, bioaccumulation, the exposure pathway, and the level of contaminant.

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Enforcement Options

- In determining whether to invoke Section 7003 rather than other legal authority, EPA considers the:
 - ◆ Risk to health or the environment, with highest priority to “serious risks”;
 - ◆ Strength of evidence that all of the requirements of Section 7003 are met;
 - ◆ Technical capability, and financial ability, of the responsible person to perform the required actions;
 - ◆ EPA’s ability to oversee performance of the required actions; and
 - ◆ Availability of other legal authorities to require the same actions.



Enforcement Options

- Section 7003 permits EPA to seek an injunction against any person, and/or order such person “to take such action as may be necessary” to protect human health and the environment.” An EPA order take the form of:
 - A unilateral administrative order (UAO), issued without negotiation; or
 - A negotiated administrative order, known as an administrative order on consent (AOC).

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Citizen Suits

- Section 7002 of RCRA allows any person to initiate a civil action against a person “who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal” of a solid (or hazardous) waste which “may present an imminent and substantial endangerment to health or the environment.”
- Congress authorized citizens to bring suit to compel the cleanup of solid waste.



Citizen Suits Overview

- The civil action must be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment occurred.
- The district court has the authority to “order such person to take such other action as may be necessary.”
- The citizen suit provision allows the plaintiff to eliminate the endangerment.
- It does not allow for the recovery of plaintiff’s damages or collection of civil penalties.
 - ◆ But the law allows the court to award to the prevailing party “costs of the litigation.”



Citizen Suits



- Before commencing the civil action the plaintiff must:
 - ◆ Give specific written notice to the EPA, the state in which the alleged endangerment occurred, and any person alleged to have contributed or to be contributing to the endangerment at least 90 days in advance.
 - ◆ If the EPA (or the state) has commenced and is “diligently prosecuting” an action in court to require compliance with RCRA then the plaintiff may not commence the action.



Why Use Citizen Suits

- A notice of intent to sue under RCRA's citizen suit provision may bring about imminent action and achieve results.
- Property owner has many reasons to cooperate after receiving notice:
 - ◆ Because the EPA and state hazardous waste authority are notified of the problem and most property owners prefer to be out of the spotlight of these agencies;
 - ◆ Notice may trigger requirements that property owners notify their insurance agents; and
 - ◆ The cost to abate the hazard is far less than the cost of litigation.



Indiana Test Case

- There is no precedent for the use of RCRA's citizen suit authority to secure the cleanup of lead hazards.
- However, Tom Neltner conducted a test case while he was director of Improving Kids' Environment
- Tom will discuss his experience with filing a notice of intent to sue under the Citizen Suit provision.



Questions

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