

**Joint Comments of the
New York City Coalition to End Lead Poisoning, WE ACT for Environmental Justice,
and Earthjustice,
on the proposed amendments
to the Rules Regarding Lead-Contaminated Dust
(Article 173 of the NYC Health Code)**

The following organizations jointly submit the following comments in response to the proposed amendments to Article 173 of the Health Code published in the City Record (Vol.153 p. 2282) on May 29, 2026, and are to be the subject of a hearing on July 1, 2026.

The New York City Coalition to End Lead Poisoning (NYCCELP) has advocated since 1983 for the enactment and enforcement of sound policies to prevent lead poisoning of our City's children. In 1985 NYCCELP commenced a class action, NYCCELP v. Koch, to compel the enforcement of the City's lead poisoning prevention, which resulted, inter alia, in declarations clarifying the meanings of and duties under these laws, orders directing enforcement of these laws, and contempt orders against the City for its failure to do so.

WE ACT for Environmental Justice (WEACT) is a community based organization in Harlem, New York that since 1988 has been building healthy communities by ensuring that people of color and/or low income residents participate meaningfully in the creation of sound and fair environmental health and protection policies and practices.

Earthjustice is the nation's leading environmental law organization. It uses legal and policy tools to reduce or eliminate toxic exposures that harm people's health and wellbeing, especially by those whose lived experiences are most affected by pollution, toxic exposures, and other health burdens. Earthjustice works closely with community and frontline groups, national and regional environmental justice advocates, civil rights organizations, tribes, worker and farmworker groups, disability advocates, and others with a strong stake in these matters.

NYCCELP, WEACT, and Earthjustice commend the Board of Health on its proposal to amend the Health Code pertaining to the definition of lead-contaminated dust, in response to the federal Environmental Protection Agency's (EPA) recent revisions to that agency's definitions of lead dust hazards and lead dust clearance levels, found at 89 FR 89416, which, in turn, were promulgated as a result of the litigation in A Community Voice et al. v. EPA, 997 F.3d 983 (Ninth Circuit 2021). Indeed, NYCCELP and WEACT were among the petitioners, and Earthjustice was counsel, in A Community Voice. The Board's proposed action, which would, among other things, tighten the definition of "lead-contaminated dust" in New York City to 4 µg/ft² on floors, 32 µg/ft² on windowsills, and 80 µg/ft² on window wells, is wholly consistent with the Board's mandate found in Administrative Code § 27-2056.2(8).

We do recognize the Board, in its rulemaking, is seeking to reconcile the new nomenclature adopted in the revised EPA regulations at 40 CFR Part 745 Subpart L – i.e., "dust-lead reportable levels" (DLRL) and "dust-lead action levels" (DLAL) – with New York City's existing statutory framework found in the New York City Childhood Lead Poisoning Prevention Act of 2003, as amended ("Local Law 1 of 2004") in a manner that is both logical and enforceable, given that the structure of New York City's laws significantly diverges from the applicable federal laws. Our one concern, however, is that by adopting a "single standard" for the purposes of implementation by property owners and enforcement by City agencies, the proposed regulation could be misinterpreted as an indication that the Board of Health disagrees with the Ninth Circuit's and EPA's conclusion that any measurable amount of lead in dust can present a hazard to human health. We do not think that is the Board's intention at all, but we do think that this could be ameliorated by requiring a generic disclaimer statement to be included in any dust test result provided by an authorized lab, such as the following:

Although the New York City Health Code provides a regulatory definition of the term “lead-contaminated dust” to mean levels that are 4 ug/ft² or greater on floors, 32 ug/dL or greater on window sills, and 80 ug/ft² or greater in window wells, both the New York City Board of Health and the federal Environmental Protection Agency consider any measurable level of lead in dust to be a hazard.

Matthew J. Chachere, Emeritus Attorney
Northern Manhattan Improvement Corp.
Legal Services
45 Wadsworth Avenue, New York, NY 10033
(For commenters NYCCELP and WEACT)

Eve C. Gartner, Director Toxics Strategies
Earthjustice
48 Wall St., 15th Floor
New York, NY 10005