

Regulated Senseless in New York City

The New York Times

August 21, 1993

By Richard Miniter

Concerned about his children's health, Tony Benjamin asked the city for help. It turned out to be a big mistake.

A year ago, in the midst of a lead-poisoning scare in the New York public schools, he and his wife had five of their eight children tested by a private lab. Their youngest son, Elisha, now 2 years old, had a lead level of 25 micrograms per deciliter of blood -- right at the threshold of what is considered dangerous. (The other children's counts were high, but not dangerously so.)

The family doctor recommended that Elisha be retested; he thought the boy's chicken pox might have temporarily boosted his lead count. With the illness in retreat, Elisha's lead level had fallen to 20 micrograms per deciliter -- high, but not considered dangerous.

The Benjamins were still concerned. Mr. Benjamin sent copies of the two tests to the city Department of Health and asked for help. The lab also filed a copy of the first blood test with the department, under a state regulation requiring that any blood test showing a lead level of 25 micrograms or above be reported to the city. (Now, all test results must be filed with the city.)

Mr. Benjamin got a lead detection kit and began testing his home. He was thorough, even testing beneath the top layer of paint on his walls and woodwork. Below the surface of most of the woodwork, Mr. Benjamin found high concentrations of lead.

He called the New York State Lead Abatement Program in Albany, and an official said there was no cause for concern since the woodwork had been painted within the previous year, sealing in the old lead paint.

But one November morning, two city Health Department inspectors arrived unannounced at the Benjamins' three-story home in Flatbush, Brooklyn. Wherever the inspectors saw a nick in the paint, they marked it with a large red rubber stamp reading "violation." With 17 such marks throughout the home, the inspectors pronounced it a health hazard.

Mr. Benjamin was told to move his family out, strip all the woodwork and renovate the basement. Later, he was notified that if he did not immediately repair the violations, he would face fines of up to \$8,500.

Mr. Benjamin did renovate the basement, where Elisha often plays, at a cost of about \$7,000. He says complying with the rest of the city's orders would cost \$10,000 to \$15,000. A small-businessman, he cannot afford the repairs, and he is certain they would have no noticeable effect on his child's health.

He decided to appeal.

City inspectors showed up three more times and grew more impatient with Mr. Benjamin each time. In subsequent blood tests, Elisha's lead level continued to drop, eventually to 10 micrograms per deciliter.

Although the Health Department's official notice said the violations "present a danger to the life or health of the child/children of the above-referenced premises," city officials repeatedly told Mr. Benjamin that Elisha's lead levels were "irrelevant" and that they just wanted him to comply with the rules.

Mr. Benjamin's case was eventually heard by an administrative judge, who refused even to look at Elisha's blood tests. Mr. Benjamin's only defense, the judge said, would be that the paint did not contain lead. The judge decided not to fine Mr. Benjamin, "since he has acted diligently thus far." But he must still comply with the order to remove the paint.

Mr. Benjamin's story is more than a case of bureaucratic overzealousness; it is a parable of government failure. If he complies with the city's orders, it could actually harm his family's health, since stripping away old paint can increase the amount of exposed lead.

Moreover, the city's heavy-handed tactics all but insure that parents will resist its lead-abatement efforts. The Benjamins' neighbors, having heard about the family's plight, are having their children tested out of state or are risking their children's health by not having them tested at all.

Lead, which can impair a child's ability to learn, is a serious problem in New York City. Forty percent of the city's houses and apartments were built before 1940, when lead paint was common. There may be 240,000 apartments that have both lead paint and small children.

The city would be far more successful if it took a less coercive approach. It should offer to inspect homes with the understanding that rather than citing "violations," it ought to offer prudent advice on how to minimize the risk. Poor parents should be given vouchers to cover the cost of lead abatement. The Health Department's expertise could be of great value. In Mr. Benjamin's case, the inspectors did determine that the basement was a significant source of lead; his own detection kit had registered negative. But when Elisha's lead levels came down, the city should have backed off.

The issue, however, is larger than lead. Thanks in part to a growing number of state and Federal mandates, the city must regulate increasingly complex matters of environmental risk. In the case of lead, as with asbestos several years ago, the city is doing a poor job of identifying and remedying the most serious risks.

With the Federal Environmental Protection Agency expected to issue new regulations on radon and water quality soon, it is urgent that the city reassess the way it deals with environmental risks.

But its bureaucratic overkill means that New Yorkers will be less willing to dig into their wallets to satisfy regulations that have no significant health benefits.

The Benjamins wonder where it will all end. Like most citizens, they are willing to make a good-faith effort to reduce the risks. The city should reciprocate by knowing when to stop.

Copyright 1993 The The New York Times