

## Addressing Lead Paint in Residential Demolitions (Senate Bill 871, 2017) Frequently Asked Questions

**About this Frequently Asked Questions document:** The 2017 Oregon legislature enacted Senate Bill 871 allowing any city in Oregon to establish a program by ordinance that requires individuals and contractors to follow certain best practices when demolishing pre-1978 residences in order to prevent health risks from exposure to lead dust. The bill also requires contractors to submit proof of holding one of four training certifications as defined in Oregon Administrative Rules (OAR) 333-068.

This Frequently Asked Questions (FAQ) document is intended as a companion to the Best Practices (see [healthoregon.org/lead](http://healthoregon.org/lead)) Oregon Health Authority (OHA) developed to meet the requirements of SB 871 (2017). It is a living document and the answers may be periodically revised and updated. The responses are intended solely for guidance and do not alter any statutory or regulatory requirements. Because the guidance provided in this document often addresses the very specific circumstances stated in each question, the reader should also consult other applicable state and federal documents ([Senate Bill 871\[2017\]](#); [40 Code of Federal Regulation 745 Subparts D, E, and L](#); [OAR 333-068, 333-069, 333-070](#)).

At the request of a stakeholder advisory committee that helped inform the development of the Best Practices, this document also includes a series of “sample implementation scenarios” to assist a city seeking to adopt a demolition program by ordinance. However, these scenarios are for informational purposes only, and the city should adopt best practices that suit its goals for containing fugitive dust from demolitions.

NOTE: The answers to many of the questions below assume a city has adopted a residential demolition program to control lead dust.

### **General**

**Question:** Senate Bill 871 (SB 871) Section 1 (2) states that the best practices and certification requirements do not apply if “a person certified to inspect or assess structures for the presence of lead-based paint in accordance with rules adopted by the [Oregon Health Authority] has determined that the residence or residential building does not contain lead-based paint.” Which rules is this statement referring to?

**Answer:** OAR 333-069 (and, by reference [40 Code of Federal Regulations \(CFR\) 745 Subpart L](#)) contains definitions and work practice standards for conducting lead-based paint inspections. Only a certified “inspector” or “risk assessor” may conduct inspections to determine the presence or absence of lead-based paint. This includes a surface-by-surface investigation of all components with a distinct painting history. Additional information about the lead-based paint

inspection procedure and methodology can be found in [Chapter 7](#) of HUD's [Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing \(2012 Edition\)](#).

**Question:** Can a residence or residential structure be presumed to contain lead-based paint?

**Answer:** Yes, SB 871 addresses demolitions of any residential structure built before January 1, 1978. Unless a full lead inspection determines there is no lead-based paint present, the structure must be presumed to have lead-based paint.

**Question:** How is "lead-based paint" defined?

**Answer:** Lead-based paint is defined in [40 CFR 745.223](#) as "paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight."

**Question:** Can components that meet or exceed the federal definition of lead-based paint, as determined by a lead inspection, be removed prior to a demolition and thus eliminate the requirement to follow the best practices?

**Answer:** In order to be exempted from following the best practices, a written report from an inspector must state that no lead-based paint was identified at the residence. If all components that tested positive for lead-based paint are removed prior to demolition, then an additional lead inspection report must document that no lead-based paint was identified. Once this is satisfied, then implementation of the best practices is not required.

**Question:** Some older residences are clad with multiple layers of siding, with the oldest layer covered up by a newer layer. This newer layer (for example, vinyl siding), is likely free of lead-based paint. If a lead inspection is performed based on federal protocols, won't this older, hidden layer be missed by the lead inspector's XRF analysis?

**Answer:** The federal definition of an inspection is the "surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation." Because these are adopted protocols at the federal and state level, a lead inspector is only expected to perform the work practice standards outlined in the regulations, which does not include destructive sampling other than paint chip sampling of a painted surface. However, if an older layer of siding is in plain view and accessible by the inspector, the inspector would be expected to test this surface, since this component would be seen as having a "distinct painting history".

**Question:** Are the best practices to be adopted verbatim? Is there any flexibility in the wording for local jurisdictions?

**Answer:** If a city adopts best practices established by OHA they do not have to be adopted verbatim, but do need to stay within the original intent of the best practice. If a numerical range, value, or minimum is stated, the city is required to adhere to this range, value, or minimum. Specifically, SB 871 states that a city may not adopt best practices for containing lead particles during a demolition “that are in addition to” the best practices developed by OHA. This maintains a level of consistency across municipalities.

**Question:** Does Senate Bill 871 prohibit cities from regulating other airborne toxins or health-related concerns around demolitions?

**Answer:** No. Section 1 (3)(a) states that SB 871 does not prohibit cities from further regulating demolitions. However, Section 1 (3)(b) does not allow cities to adopt best practices that are in addition to those developed by OHA to contain lead particles from demolitions.

**Question:** Can a demolition contractor perform a lead-based paint inspection on the residential structure to be demolished? Is there a requirement that a third party must test for lead-based paint?

**Answer:** If the demolition contractor is also a lead-based paint inspector or risk assessor certified under OHA as both a firm and individual, the contractor can perform its own lead-based paint inspection. The lead-based paint inspection is subject to the same state and federal rules and regulations adopted by OHA ([OAR 333-069-0100](#) and [40 CFR 745.227](#)).

**Question:** What does it mean to “contain” lead-based paint? What are the rules and regulations currently?

**Answer:** Current OHA rules (enforceable by the state) define work practice standards for containing lead-based paint during renovation or abatement activities. However, these do not apply to whole-structure demolition. The legislature enacted SB 871 to develop best practices a city may adopt by ordinance (enforceable by the city) “for containing lead particles that otherwise would be released into the air during a demolition.” Containing lead dust during demolitions means keeping fugitive dust from dispersing off a demolition site onto neighbor’s properties or common-use areas (streets and sidewalks).

## **Certification Requirements**

**Question:** Which certifications are eligible for a contractor to receive a permit to demolish a residence or residential structure built before January 1, 1978?

**Answer:** The eligible certifications include: certified renovator; abatement worker; abatement supervisor; and project designer. The list of eligible certifications can be found in OAR 333-068-0070. Abatement workers, supervisors, and project designers must be certified under the Oregon Health Authority. This OHA certificate is eligible to submit as proof to receive a demolition permit. For certified renovators, a training certificate from an accredited training provider or a Lead-Based Paint Renovator license from the Oregon Construction Contractors Board (CCB) is considered valid proof of certification.

**Question:** How does a city determine the legitimacy of a certification for those listed in OAR 333-068-0070 (certified abatement worker, supervisor, project designer, or renovator)?

**Answer:** Certifications for abatement worker, supervisor, and project designer are issued by the Oregon Health Authority as part of its programs to prevent lead poisoning (see [healthoregon.org/lead](http://healthoregon.org/lead)). Any individual performing this work in Oregon must be certified under OHA, and this certificate can be used as proof when applying for a demolition permit. For *certified renovator*, only the training certificate from an accredited training provider is required, however, a contractor can also submit a Lead-Based Paint Renovator license from the CCB. If there are questions about the validity of the renovator training certificate, please review the following resources:

- For Oregon training providers, see the [list](#) that is frequently updated by Oregon Health Authority.
- For Washington training providers, see the [list](#) maintained by the state’s Department of Commerce.
- For other states, check the EPA’s [website](#) to locate a Renovation, Repair, and Painting training provider.
- You can also use the CCB’s “[Contractor License Search](#)” page. Search for the contractor’s company name, and click on the “Learn more about this business” link under the “About this Business” section of the search results. Under the “Additional Business Licenses and Certifications” section, determine if the contractor has a current “Certified Lead-based Paint Renovation (LBPR) Contractor License”. See the screenshot below for an example.

<b>ADDITIONAL BUSINESS LICENSES AND CERTIFICATIONS</b>
<b>CERTIFIED LEAD-BASED PAINT RENOVATION (LBPR) CONTRACTOR LICENSE: YES</b> Expiration Date: 02/18/2018 <i>Required to bid and work on pre-1978 residential structures.</i>

- For additional assistance, call the Oregon Health Authority’s Lead-based Paint Program at 971-673-0440 or visit [healthoregon.org/lead](http://healthoregon.org/lead)

**Question:** Why isn't a Lead-Based Paint Renovator license from the CCB required as proof of certification for a certified renovator?

**Answer:** Section 1 (1)(b) of SB 871 states that a person must “submit proof verifying that the person has been certified to engage in lead-based paint activities in accordance with rules adopted by the Oregon Health Authority.” Rules pertaining to the Lead-Based Paint Renovator license are found in [Division 7 of Chapter 812](#) under the Construction Contractors Board. SB 871 directed OHA to require OHA-approved certification; it did not authorize OHA to require licensure under the Construction Contractors Board Lead-Based Paint Renovator Licensing program.

**Question:** SB 871 requires only a contractor, as defined by ORS 701.005 (5)(a), to submit proof of being certified in one of four lead-based paint disciplines. If an individual is not considered a “contractor” under this definition, is the individual required to submit proof of certification in one of the lead-based paint disciplines? What if the individual offers to tear down the residence for free?

**Answer:** If a city adopts any of the best practices by ordinance, anyone performing the demolition will be required to follow them, regardless of whether or not they are a contractor. When the person performing the demolition is a contractor defined by ORS 701.005(5)(a), SB 871 explicitly states that this person must submit “proof verifying that the person has been certified to engage in lead-based paint activities” in order to receive a demolition permit. For a list of eligible certifications, please see [OAR 333-068-0070](#).

**Question:** None of the certifications in OAR 333-068-0070 specifically address lead in demolitions. Can a city require a contractor to attend or obtain additional trainings or certifications beyond what is required in SB 871?

**Answer:** Yes. OHA has included a best practice that specifically allows for the development of local demolition-specific trainings. SB 871 does not prohibit a city from approving or accrediting additional trainings or certifications that provide demolition-specific information, or from requiring a contractor who performs demolitions on residences built before 1978 to attend or obtain additional demolition-specific trainings or certifications. However, these trainings or certifications can only be *in addition to* those that are required in OAR 333-068-0700.

**Question:** If the employees of the certified contractor with the demolition permit are allowed to do the work, what type of training will they be required to obtain? Will it be similar to the Renovation, Repair, and Painting Rule where workers are required to have on-the-job training of lead-safe work practices?

**Answer:** SB 871 does not require implementation of on-the-job training by the certified contractor. However, it does require any person performing the demolition to follow the best

practices adopted by the city. There are specific best practices that a city can adopt that address these issues, for example, the creation of a dust management plan and employee participation in trainings related to dust and demolition practices.

## **Best Practices**

**Question:** What health and safety information should be included on neighbor notification door hangers?

**Answer:** The door hangers should include recommendations for protecting the residents' own health, such as: closing windows and doors; staying inside during the demolition; keeping children away from the site and away from dirt and debris; wiping down or mopping horizontal surfaces in the home; removing shoes at the door; washing hands before eating; etc. [Building Detroit](#) produced a good example of a door hanger notifying neighbors of an upcoming demolition. Specific detailed information on health risks for vulnerable populations (children under 6 and pregnant women) may also be included. Additional information can be found at [healthoregon.org/lead](http://healthoregon.org/lead).

**Question:** Can a city require best practices that only apply to certain residence types? For example, can a city require a different set of best practices on demolitions of larger residential structures?

**Answer:** Yes. A city could require additional or different best practices for residences of varying sizes. For example, a city could adopt by ordinance the requirement that demolitions of multi-family residences be required to follow additional best practices to contain lead particles. However, a city program must draw from the OHA-adopted Best Practices in developing requirements for any type of demolition requirement.

**Question:** Which properties are considered “adjacent” as it pertains to Best Practice 1C, Distribute Neighbor Notification Door Hangers?

**Answer:** An “adjacent” property is one that touches the property in question or directly faces (and, in the case of a corner lot, diagonally faces) the property in question. Below (Figure 1) is a sample sketch showing a hypothetical subject property and the property owners required to be notified prior to a demolition. This is a sample only and is not to be used as a final authority when sending notice. If in doubt, it is advisable to provide notice to additional properties.

**X = Property Owners to be Notified**

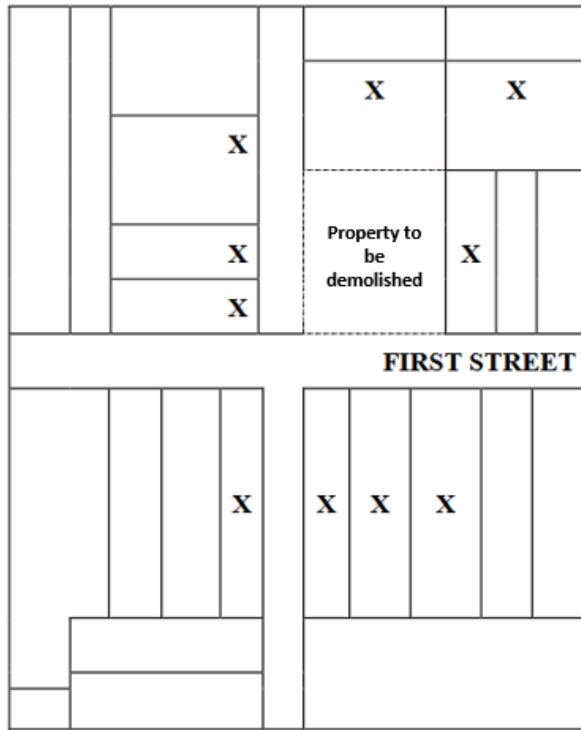


Figure 1 Adapted from the City of Alexandria, VA

**Question:** In some cities in Oregon, rural settings may have houses farther than the required distance for notification. Does the demolition contractor have to notify those neighbors as well?

**Answer:** Yes, if the best practice adopted by the city requires notification of *adjacent* properties. This means that any adjoining property, no matter the distance, must be notified of the upcoming demolition. If a city has also adopted a maximum distance, and non-adjacent properties fall outside that distance, then those properties do not need to be notified.

**Question:** Is an asbestos survey required prior to residential demolitions?

**Answer:** Yes, under a separate law administered by the Oregon Department of Environmental Quality. Detailed requirements for asbestos surveys can be found here:

<http://www.oregon.gov/deq/FilterDocs/AsbestosFacts.pdf>

<http://www.oregon.gov/deq/FilterDocs/asb-DemoFS.pdf>

**Question:** If asbestos is found in a survey, does it need to be abated prior to demolition?

**Answer:** Yes. Detailed requirements for asbestos abatement can be found here:

<http://www.oregon.gov/deq/Hazards-and-Cleanup/Pages/Asbestos-for-Homeowners.aspx>

**Question:** What is meant by a “sealed HEPA vacuum”?

**Answer:** [40 CFR 745.83](#) defines a “HEPA vacuum” as “a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.”

**Question:** In order to monitor for airborne dust, what size particulate matter is considered a “proxy for lead dust”?

**Answer:** PM<sub>10</sub> (particulate matter that is 10 microns in size or smaller) is the most useful size of particulate when monitoring for lead concentrations in air. Fine particulates of this size are also most likely to cause adverse health effects, as they are small enough to pass beyond the terminal bronchioles of the lungs and enter into the bloodstream. Total Suspended Particulate measures particles that are likely to be ingested, while Particulate Fallout measures those particles that are considered a nuisance and are helpful for measuring dust leaving a site and impacting immediate neighbors.

**Question:** If a residence is being fully deconstructed (without the use of heavy machinery), are all the adopted best practices still required?

**Answer:** This FAQ document includes sample implementation scenarios that may apply to certain demolition or deconstruction situations. Please review these for informational purposes only.

**Question:** Can the agencies recommend specific best practices that are relevant for certain scenarios (for example, for a whole-house deconstruction, partial deconstruction, and mechanical demolition)?

**Answer:** In order to assist cities with implementation of the best practices, this FAQ document provides some theoretical scenarios (see below). These scenarios envision how different best practices may be combined to achieve different outcomes. These scenarios are provided for information only; each city should design its own combination of best practices according to circumstances and goals.



## Sample Implementation Scenarios:

These sample implementation scenarios have been included as a way to assist a city that is looking to adopt best practices by ordinance. These scenarios are for informational purposes only, and the city should adopt best practices that best suit its goals for containing lead particles that otherwise would be released into the air during a demolition.

### 1. Mandatory Whole-House Deconstruction

In this scenario, a city could mandate whole-house deconstruction for some or all homes to be demolished. In this case, practices relating to mechanical demolition need not be implemented, yet extra guidance for dust minimization during deconstruction would be helpful. A set of best practices could include:

Pre-Demolition	During Demolition	Post-Demolition
1A: Create dust management plan	2B: Perform whole house deconstruction	3A: Vacuum hard surfaces
	2D: Enclose chutes, cover dumpsters and minimize drop heights	3D: Cover bare soil
	2E: Erect Barriers and Fencing	
	2F: Limit activity during excessive wind	
	2I: Post signage	
	2J: Minimize soil and water runoff	
	2K: Conduct demolition inspection	
	2L: Minimize dust from site cleanup	

## 2. Partial Deconstruction Requirement

In this scenario, a city may require that components typically containing high lead content are removed prior to mechanical demolition. These include exterior painted materials as described in 2A.

Pre-Demolition	During Demolition	Post-Demolition
1A: Create dust management plan	2A: Apply selective deconstruction techniques	3B: Produce post-demolition report
1C: Distribute neighbor notification door hangers	2C: Apply wet-wet-wet demolition practices	3C: Conduct a post-demolition inspection
	2D: Enclose chutes, cover dumpsters and minimize drop heights	3D: Cover bare soil
	2E: Erect Barriers and Fencing	
	2F: Limit activity during excessive wind	
	2I: Post signage	
	2J: Minimize soil and water runoff	
	2K: Conduct demolition inspection	
	2L: Minimize dust from site cleanup	

### 3. No Deconstruction Requirement

In this scenario, no deconstruction is required, allowing mechanical demolition of the entire structure. Because this has the highest chance of dust generation, more requirements are put in place to control this dust.

Pre-Demolition	During Demolition	Post-Demolition
1A: Create dust management plan	2C: Apply wet-wet-wet demolition practices	3A: Clean and/or Wet Sidewalks and Streets
1B: Participate in extra training	2D: Enclose chutes, cover dumpsters and minimize drop heights	3B: Produce post-demolition report
1C: Distribute neighbor notification door hangers	2E: Erect Barriers and Fencing	3C: Conduct a post-demolition inspection
1D: Conduct a pre-demolition inspection	2F: Limit activity during excessive wind	3D: Cover bare soil
	2G: Monitor for airborne dust	
	2H: Minimize transportation impacts	
	2I: Post signage	
	2J: Minimize soil and water runoff	
	2K: Conduct demolition inspection	
	2L: Minimize dust from site cleanup	