

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

AVILLAGE, INC., WE ACT FOR ENVIRONMENTAL
JUSTICE, INC., and NEW YORK PUBLIC INTEREST
RESEARCH GROUP FUND, INC.,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law
and Rules,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH,
JAMES V. MCDONALD, in his official capacity as
Commissioner of the New York State Department of
Health,

Respondents.

Index No. _____

VERIFIED PETITION

Oral Argument Requested

Petitioners AVillage, Inc., WE ACT for Environmental Justice, Inc., and New York Public Interest Research Group Fund, Inc., for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), allege as follows:

PRELIMINARY STATEMENT

1. This case challenges the regulations adopted by the New York State Department of Health and its Commissioner (together, “DOH”) that fail to adequately implement a nation-leading lead poisoning prevention law. The regulations unlawfully and unreasonably deny people, particularly children, the law’s protection from the risk of lead exposure in the home.

2. Lead exposure is one of the most significant human health risks present in the home. When a person breathes or ingests lead, usually through lead dust, paint chips, or soil, that exposure can cause elevated blood lead levels. Elevated levels of lead in the body are sometimes referred to as lead poisoning or lead toxicity. DOH acknowledges that “[t]he effects of lead

poisoning on a child are devastating and irreversible.” 48 N.Y. Reg. 17 (April 8, 2026) (“State Register”), Exhibit 2.¹

3. Young children, especially those under the age of six, are particularly at risk because they swallow lead dust or lead paint as a result of frequent hand-to-mouth behaviors. Their bodies are rapidly developing and are more susceptible to taking in lead if exposed. Lead exposure for young children is particularly concerning because “[e]ven low levels of lead in the blood are associated with developmental delays, difficulty learning, and behavioral issues. The effects of lead poisoning can be permanent and disabling.”²

4. Lead affects nearly every function in the human body.³ Lead is “highly poisonous,” and can cause profound cardiovascular, neurocognitive, immunological, and reproductive harms (such as infertility, impotence, and miscarriage), with even greater negative impacts on children than adults.⁴

5. New York is consistently among states with the highest percentage of children under six with elevated blood lead levels in the country, and New York State (even leaving out New York City) has more children with elevated blood lead levels than any other state.⁵ Lead exposure is particularly significant in cities with older housing stock because of the prevalence of lead-based paint, which was not banned nationally until 1978. New York homes are some of the oldest in the

¹ All exhibits cited are attached to the Affirmation of Torie Atkinson.

² CDC, *About Childhood Lead Poisoning Prevention* (Aug. 21, 2025), <https://www.cdc.gov/lead-prevention/about/index.html>.

³ EPA, *Integrated Science Assessment for Lead*, ES-7 (Jan. 2024), https://www.epa.gov/system/files/documents/2026-06/integrated-science-assessment-for-lead_january-2024_complete.pdf.

⁴ *Id.*

⁵ See CDC, *Childhood Blood Lead Surveillance: National Data 2017-2022*, <https://www.cdc.gov/lead-prevention/media/files/2025/08/2017-2022-cbbs-national-data-508-1.xlsx> (Sept. 23, 2025) (available at <https://www.cdc.gov/lead-prevention/php/data/national-surveillance-data.html>).

nation, leading to increased potential for lead exposure and, by extension, elevated blood lead levels. State Register at 17.

6. The most effective way to address lead exposure is prevention.

7. In 2023, the Legislature passed Public Health Law § 1377 (“Proactive Lead Inspection Law”), requiring proactive lead inspections of multi-dwelling rental housing in communities with high numbers of children with elevated blood lead levels.

8. The law creates a public registry showing which housing units have been certified as “free of lead paint hazards.” N.Y. Pub. Health Law (“PHL”) § 1377(3), (5). The Proactive Lead Inspection Law directs the DOH Commissioner to promulgate regulations setting a variety of minimum standards for the program.

9. DOH adopted regulations on April 8, 2026 (the “Regulations”). N.Y. Comp. Code R. & Regs tit. 10 §§ 67-2, 67-5 (2026) (hereinafter “§ 67-2” and “§ 67-5” respectively), Exhibit 1.

10. However, the Regulations DOH adopted overlook many lead-based paint hazards, specifically lead paint on friction and impact surfaces and porches, and inadequately address lead soil hazards.

11. The Regulations further propose a lead-based paint standard and lead soil hazard that federal courts have already rejected as inadequately protective of human health.

12. The Regulations do not demand appropriate qualifications for local health department inspectors, as required by law.

13. In adopting Regulations to implement the Proactive Lead Inspection Law, DOH also unnecessarily and unlawfully amended existing regulations that implement Public Health Law § 1373, the title of which is “Abatement of lead poisoning conditions” (“Lead Abatement Law”).

14. The Lead Abatement Law requires the elimination of lead hazards in the home of a child who has already been found to have elevated blood lead levels.

15. DOH's amendments allow temporary repainting, rather than permanent elimination, of lead-based paint hazards, undercutting that law's purpose.

16. As a result of the Regulations, New Yorkers could rent homes certified as lead-free that nevertheless contain dangerous lead hazards.

PARTIES

17. Petitioner AVillage, Inc. is a nonprofit organization based in Albany, NY. Affirmation of Eva Bass in Support of Verified Petition ("Bass Aff.") ¶ 8.

18. AVillage is dedicated to empowering and improving the lives of Albany residents in underserved neighborhoods. *Id.* ¶ 9.

19. AVillage has long advocated to address lead exposure and lead-based paint in the home because they are key concerns for its members and AVillage has tailored its advocacy to address those concerns. *Id.* ¶¶ 10–11, 21–23, 26–28.

20. AVillage's members, including its Executive Director, have experienced firsthand the devastating effects of lead poisoning on children in their communities. *Id.* ¶¶ 12–16, 23, 27.

21. Petitioner WE ACT for Environmental Justice ("WE ACT") is a membership organization based in New York, NY. Affirmation of Dr. Anhthu Hoang in Support of Verified Petition ("Hoang Aff.") ¶ 3.

22. WE ACT and its members work to build healthy environments and create strong environmental health protections, with a particular emphasis on ensuring meaningful participation for people of color and low-income people. *Id.* ¶ 4.

23. WE ACT has been engaged in lead exposure prevention advocacy on behalf of its members for decades. *Id.* ¶¶ 8–18.

24. Petitioner New York Public Interest Research Group Fund, Inc. (“NYPIRG”) is a nonprofit organization based in New York, NY with an office in Albany. Affirmation of Russ Haven in Support of Verified Petition (“Haven Aff.”) ¶¶ 3–4.

25. NYPIRG is a non-partisan, nonprofit, research and advocacy organization working in a wide range of areas, including work that protects the environment and public health in New York. *Id.* ¶ 5.

26. NYPIRG has been engaged in lead poisoning prevention work in New York for decades and has been a leading voice on statewide advocacy for universal testing and primary prevention programs. *Id.* ¶¶ 7–16.

27. Respondent New York State Department of Health is a New York State government agency based in Albany, NY.

28. Respondent James V. McDonald, M.D., M.P.H., is the Commissioner of the New York State Department of Health and is sued in his official capacity.

JURISDICTION AND VENUE

29. This Court has jurisdiction pursuant to CPLR § 7801, *et seq.*

30. Petitioners timely initiated this special proceeding by properly filing their Notice of Petition, Verified Petition, and all supporting affirmations, memorandum of law, and other exhibits, on August 6, 2026.

31. Venue lies in Supreme Court, Albany County because Albany County is a “county within the judicial district . . . where the material events otherwise took place. . . .” N.Y. C.P.L.R. § 506(b).

FACTUAL BACKGROUND

A. History of the Proactive Lead Inspection Law.

32. As described above, lead is a serious health risk to all people, but particularly to children who experience the greatest health harms and longer-term health impacts that affect their development and growth. Lead remains a major and unacceptable public health and environmental justice problem.

33. The Legislature has repeatedly passed laws meant to protect New Yorkers, particularly children, from the devastating effects of lead. *See* Title X (Control of Lead Poisoning), PHL §§ 1370–1377 (1970). Title X was initially adopted in 1970 and banned the use and sale of lead-based paint and authorized both DOH and local housing code agencies to identify possible sources of lead poisoning in the home and order abatement of these conditions. PHL § 1373.

34. In 1992, the Legislature created a Lead Poisoning Prevention Program within the Department of Health that mandates blood lead level screenings for children, PHL § 1370-C, and updated the 1970s home inspection law to take action when a child with an elevated blood lead level is identified by the screenings (“Lead Abatement Law”).

35. Under the updated Lead Abatement Law, when a local health department identifies a child with an elevated blood lead level, the department performs a lead exposure assessment of the home, childcare facility, or other area where the child spends time to determine whether the locations had conditions “conducive to lead poisoning.” *Id.* § 1373(1).

36. If such conditions exist—for example, the presence of peeling lead paint—the local health department can then issue a notice and demand to the property owner to eliminate the lead hazards.

37. The goal of the Lead Poisoning Prevention Program is to identify children who have already experienced irreversible harms from lead and prevent further exposure.

38. The Lead Poisoning Prevention Program is known as a “secondary prevention” program because while it may incidentally prevent other children from being exposed to lead in the same home in the future, it does not prevent the “primary” exposure that triggered the child’s elevated blood lead levels.

39. The Lead Poisoning Prevention Program also does not identify or abate lead hazards in homes where a child with an elevated blood lead level has not yet been identified.

40. As a result, children in New York continue to be exposed to lead at unacceptable rates.

41. In 2023, the Legislature passed the Proactive Lead Inspection Law, requiring regular lead inspections of multi-dwelling rental housing in communities of concern, remediation of identified lead-based paint hazards, owner certification at least every three years that the dwelling is free of lead-based paint hazards, and the creation of a public registry listing which housing units have been certified as free of lead hazards.

42. The Proactive Lead Inspection Law is a “primary prevention” program intended to identify and prevent lead exposure *before* it can harm residents.

43. As DOH described, “[w]ithout a preventative program such as [the Proactive Lead Inspection Law], children with high blood lead levels are identified through routine testing at age one and two or when symptoms of lead poisoning are identified, and at that point, irreversible injury to the child has already occurred.” State Register at 17.

44. Critically, the Proactive Lead Inspection Law was intended to advance the effort to prevent lead poisoning by eliminating lead hazards before a child has experienced the health consequences of lead.

45. Proactive inspection and remediation policies designed to detect and address lead paint hazards before children are exposed can help lower rates of children with elevated blood lead levels. *Id.*

46. The Proactive Lead Inspection Law became effective on November 3, 2025 but no implementing regulations had yet been adopted.

B. Rulemaking to Implement the Proactive Lead Inspection Law.

47. Public Health Law § 1377 directs the DOH Commissioner to adopt regulations implementing the inspections and certifications required by the Proactive Lead Inspection Law, and also to adopt any other regulations that are necessary to administer, coordinate, and enforce the Program. PHL § 1377(6)–(7).

48. Specifically, subsection 7 requires Respondents to promulgate rules regarding the inspections and certifications that will be required, including: (a) the frequency of inspections; (b) the minimum conditions the residential dwelling must meet for a valid inspection certification; (c) qualifications for inspectors; (d) minimum standards for a standardized form on which the owner of a residential dwelling may self-certify as to a satisfactory inspection, as well as what documentation is required; e) alternative methods of certification; and f) procedures for false certifications.

49. On December 24, 2024, Respondents published and opened for public comment proposed regulations (“2024 Proposed Regulations”) on the Proactive Lead Inspection Law.

50. On information and belief, multiple sets of comments were submitted to DOH on the 2024 Proposed Regulations.

51. Petitioner WE ACT joined a set of comments from seventeen experts and organizations devoted to lead exposure prevention, which were timely submitted on February 21, 2025 (“2025 Comments”). Exhibit 5.

52. These comments identified many shortfalls that would not satisfy the requirements of the Proactive Lead Inspection Law or provide sufficient information and guidance to landlords, tenants, and families to ensure the program would successfully reduce lead exposure.

53. On December 3, 2025, DOH published a new set of proposed regulations (“2025 Proposed Regulations”) purporting to address the deficiencies identified in the 2024 proposed regulations.

54. Twelve sets of comments were submitted to DOH on the 2025 Proposed Regulations. State Register at 18.

55. Petitioners AVillage and WE ACT, joined by nearly forty other experts and organizations (including Lead Free Kids New York, of which NYPIRG is a member), timely submitted comments on January 20, 2026 (“2026 Comments”). Exhibit 4.

56. These comments both applauded changes that DOH had made to improve its proposed regulations, and re-raised many issues that remained unresolved from the prior round.

57. Petitioners raised each issue in this litigation in both the 2025 Comments and 2026 Comments.

58. DOH adopted the Regulations on April 8, 2026, largely without revision from the 2025 Proposed Regulations. State Register at 17.

C. Challenged Regulations Provisions.

59. First, the Regulations illegally and irrationally fail to address many critical lead exposure pathways, specifically friction and impact surfaces, porches, and soil.

60. Second, the Regulations include obsolete metrics for determining whether soil samples are contaminated and whether paint is lead-based.

61. Third, the Regulations fail to require any, let alone sufficient, certification or protocols for local health department inspectors of these homes.

62. Lastly, the DOH amended the implementing regulations for the Lead Abatement Law in a way that would permit repainting over lead hazards in homes where children have already experienced elevated blood lead levels.

63. While § 67-5.2(n) of the Regulations define “lead-based paint hazard” to include lead-based paint that is peeling, cracking, blistering, flaking, chipping or powdering, it does not include the presence of lead-based paint on friction or impact surfaces (such as doors and windows) as lead-based paint hazards.

64. Lead paint on friction and impact surfaces, even when it is intact, is often the cause of exposure to lead because abrasion creates lead dust.

65. The Regulations do not require visual inspections or dust wipe sampling on open porches, § 67-5.5(g), despite porches being an important potential source of lead exposure for children.

66. The Proactive Lead Inspection Law applies broadly to “residential dwellings,” PHL § 1377(3), (5), (7), including “outdoor soil conditions.” *Id.* § 1377(8). The law provides no exceptions for porches.

67. The Proactive Lead Inspection Law requires inspection of “outdoor soil conditions” and that soil around covered dwellings must be free of lead paint hazards. *Id.* § 1377(8). DOH’s lead soil hazards fall short of what is required in Public Health Law § 1377(8), in two ways.

68. First, the Regulations allow for soil inspections to be skipped when there is snow cover on the ground. § 67-5.5(d).

69. This exclusion is impermissible: the statute provides no exceptions for soil inspection. An inspection should simply be rescheduled if snowfall would impede inspection.

70. Second, DOH has adopted decades-old soil lead hazard and lead-based paint weight and concentration definitions that were rejected by the Ninth Circuit in 2021 as neither science-based nor sufficiently protective of human health. *A Cmty. Voice v. EPA*, 997 F.3d 983, 994 (9th Cir. 2021). §§ 67-5.2(m), 67-5.5(d).

71. The definition of “lead-based paint” is not set at the lowest measurable level, but rather based on a higher, obsolete definition adopted in 1992. § 67-5.5(m).

72. DOH’s definition of lead-based paint—0.5% of metallic lead by weight, or a concentration of metallic lead exceeding 1.0mg per cm²—is antiquated. In contrast, New York City defines paint containing more than 0.25% of metallic lead by weight or with a concentration of more than 0.5mg of lead per cm² to be “lead-based.” N.Y.C. Admin. Code § 27-2056.2(7)(b), 28 RCNY § 11-01(t)(2).

73. The Proactive Lead Inspection Law requires DOH to set forth the “qualifications of inspectors,” PHL § 1377(7)(c), but the Regulations do not provide any specific qualifications for inspectors working for local health departments, stating only that an inspector must be “certified or trained in a manner acceptable to the department.” § 67-5.2(k).

74. Similarly, the Proactive Lead Inspection Law requires “dust wipe samples [be] obtained in accordance with United States Environmental Protection Agency protocols,” PHL § 1377(8), but the Regulations fail to require those protocols, including that dust wipes be performed by EPA-certified risk assessors.

75. Under longstanding EPA rules, dust wipe sampling, unlike a purely visual inspection, is a “risk assessment,” or “on-site investigation to determine the existence, nature, severity, and

location of lead-based paint hazards.” 40 C.F.R. § 745.223. Risk assessments “shall be conducted only by a person certified by EPA as a risk assessor.” *Id.* § 745.227(d).

76. Finally, the Regulations needlessly amend the regulations for the Lead Abatement Law in a way that undermines the law’s purpose and will result in continued lead exposure for children already harmed by lead.

77. When a child has been discovered to have elevated blood lead levels, the Lead Abatement Law requires inspection of the home and anywhere the child spends time for lead paint hazards and the “discontinuance of a paint condition conducive to lead poisoning.” PHL § 1373(1).

78. Unlike the Proactive Lead Inspection Law, the Lead Abatement Law applies to all homes, regardless of whether they are in communities of concern, are rentable, or have more than one unit.

79. Unlike the Proactive Lead Inspection Law, the Lead Abatement Law does not provide for continued or recurring inspections. This is because the law assumes lead hazards will be permanently abated so as not to re-expose the child.

80. The 2026 amendments to Lead Abatement Law regulations now only require remediation of lead hazards in homes where a child has been identified as having elevated blood lead levels. § 67-2.1.

81. DOH specifically defines “remediation” to include paint film stabilization, which is essentially painting over lead paint. § 67-2.2(q).

82. Paint film stabilization merely reduces exposure to lead paint and dust, and the improvement is only temporary as the new coat of paint eventually deteriorates and causes lead paint and dust to re-emerge.

83. Lead hazards in these homes would therefore not be discontinued, as the Lead Abatement Law requires.

FIRST CAUSE OF ACTION

(Violations of Public Health Law § 1377)

84. Petitioners repeat and re-allege the allegations contained in paragraphs 1–83 above and incorporate such allegations by reference as if set forth herein.

85. The Proactive Lead Inspection Law requires dwellings to be certified as “free of lead paint hazards.” PHL § 1377(3), (5). The Regulations fail to address many lead-based paint hazards, specifically lead-based paint on friction and impact surfaces, and porches, and the full array of circumstances presenting lead soil hazards.

86. Petitioners’ members live in communities of concern meant to be protected by the Proactive Lead Inspection Law.

87. The Regulations set obsolete numeric standards for both lead-based paint and soil lead hazards, already rejected by federal courts as not based in science and insufficiently protective of children, that would permit significant lead hazards to remain in dwellings certified as “free of lead paint hazards.”

88. The Proactive Lead Inspection Law specifically requires “dust wipe samples [be] obtained in accordance with United States Environmental Protection Agency [“EPA”] protocols,” *Id.* § 1377(8), but the Regulations fail to require those protocols where the inspection is performed by a local health department.

89. DOH acted contrary to law when it issued the Regulations that violate the Proactive Lead Inspection Law.

90. DOH’s decision was arbitrary and capricious because it had no reasonable basis.

SECOND CAUSE OF ACTION

(Violations of Public Health Law § 1373)

91. Petitioners repeat and re-allege the allegations contained in paragraphs 1–83 above and incorporate such allegations by reference as if set forth herein.

92. The Lead Abatement Law prescribes actions that must be taken when a dwelling is found to have “conditions conducive to lead poisoning” (typically when a child has been diagnosed with an elevated blood lead level). *Id.* § 1373.

93. When a child has elevated blood lead levels, the Lead Abatement Law requires inspection of the home and anywhere the child spends time for lead paint hazards and the “discontinuance of a paint condition conducive to lead poisoning.” *Id.* § 1373(1).

94. The statute provides that a notice and demand of a violation “may order abatement of a paint condition conducive to lead poisoning.” *Id.* § 1373(3).

95. The amended regulations have replaced the title of the section “Environmental Assessment and Abatement” with “Environmental Assessment and *Remediation*.” Compare N.Y. Comp. Codes R. & Regs. tit. 10 § 67-2 (1995), Exhibit 3, *with* 10 N.Y. Comp. Codes R. & Regs. tit. 10 § 67-2 (2026), Exhibit 1 (emphasis added). Abatement is a term of art that means to permanently eliminate. The term “remediate” or “remediation” does not appear at all in the statute.

96. Prior to the amendments, the purpose of the regulations was “to define requirements for the assessment and abatement of conditions conducive to lead poisoning.” § 67-2.1.

97. The revised Regulations now state that the purpose “is to define requirements for the assessment and *remediation* of conditions conducive to lead poisoning.” § 67-2.1 (emphasis added).

98. DOH defines “remediation” to include paint film stabilization. § 67-2.2(q). Paint film stabilization is defined as “repairing deteriorated paint by safely removing loose fragments and applying a smooth surface coating to reduce lead-based paint chips and lead dust.” § 67-2.2(p).

99. The definition of remediation explains that repainting merely “reduce[s],” but does not discontinue, creation of lead dust and paint chips.

100. Allowing temporary paint film stabilization in homes where a child has elevated blood lead levels is contrary to the Lead Abatement Law’s text and purpose.

101. DOH’s decision to amend these Regulations unlawfully undermines the statute’s clear mandate.

102. DOH’s decision was also arbitrary and capricious because it had no reasonable basis.

THIRD CAUSE OF ACTION

(Failure to Consider Petitioners’ Members’ Rights Under N.Y. Const., Art. 1, Sec. 19)

103. Petitioners repeat and re-allege the allegations contained in paragraphs 1–83 above and incorporates such allegations by reference as if set forth herein.

104. N.Y. Const., Art. 1, Sec. 19 guarantees every person the right to “clean air and water, and a healthful environment.”

105. DOH’s Regulations miss critical pathways of lead exposure, rely on outdated numeric standards that are not protective of human health, and fail to require that all inspectors meet EPA’s training and certification standards to ensure accurate and consistent inspections.

106. As a result, the Regulations will permit dangerous lead exposure for thousands of vulnerable New Yorkers, especially children, with devastating and irreversible health effects.

107. Where an agency rejects measures that are feasible, health protective, and widely accepted, it acts unlawfully, arbitrarily, and capriciously and also denies New Yorkers harmed by those decisions their right to a cleaner and more healthful environment.

108. Respondent DOH unlawfully failed to consider the impact of the permit on Petitioner's members' constitutional right to clean water and a healthful environment. N.Y. Const., Art. 1, Sec. 19.

WHEREFORE, Petitioner respectfully requests that this Court enter judgment against Respondent pursuant to CPLR sections 7803(1), 7803(3), and 7806 as follows:

1. Adjudging and declaring that DOH's issuance of the Regulations was affected by errors of law, arbitrary and capricious, and an abuse of discretion;
2. Remand of the Regulations without vacatur;
3. Granting Petitioners the costs and disbursements of this action; and
4. Granting such other and further relief as the Court deems just and proper.

Dated: August 6, 2026
New York, NY

Respectfully Submitted,

Torie Atkinson

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing Memorandum of Law affirmation complies with the requirements of 22 NYCRR § 202.8-b. The document was prepared on a computer using Microsoft Word and is 3,938 words long (excluding the caption, signature blocks, and this certificate), as computed by Microsoft Word.

Dated: August 6, 2026
New York, NY

Respectfully submitted,



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Counsel for Petitioners

VERIFICATION

STATE OF NEW YORK)
)
 COUNTY OF ALBANY) ss.:

Russ Haven, being duly sworn, hereby affirms under penalty of perjury: I am General Counsel for New York Public Interest Research Group Fund, Inc. and I have authority to approve the annexed petition on behalf of Public Interest Research Group Fund, Inc. I have reviewed the petition and know its contents. The petition is true to my knowledge, except to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.



Russ Haven

Sworn to before me this 6th day of August, 2026.



NOTARY PUBLIC

New York County, New York

Notarized online using audio-video communication technology

Torie Atkinson Online Notary Public State of New York New York County Commission #: 02AT0022825 Commission Expires: 03/27/2028
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