

Addressing Environmental Site Hazards at Child Care Facilities

A Review of State Policy Strategies

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PART ONE

Introduction

The past several years have seen growing efforts to ensure that child care facilities are located on sites that do not pose environmental hazards. Environmental site hazards may arise from contamination caused by a prior use at or near the child care site. They may also result from a current, nearby activity that is a source of air, water or soil pollution, noise, odors, or other environmental health concerns affecting the child care premises.

Identifying and addressing potential environmental site hazards before a child care facility is licensed, as well as during facility operations, can help prevent and reduce harmful exposures to staff and children. As noted in the 2013 U.S. Environmental Protection Agency report, *America's Children and the Environment*, children are especially vulnerable to pollutant exposures because their bodies are developing and because they breathe more air relative to their size than adults. Children's activities, such as playing on the ground or putting their hands in their mouths, can result in exposures that adults do not face.

This paper aims to assist policymakers, agency officials, and others interested in considering how state policies and programs can prevent and address exposure to environmental site hazards at licensed child care facilities. The term "policy" is used broadly here to capture laws, regulations and other written government documents.

- [Part II](#) provides background on the types of policies that address environmental health issues at child care facilities.
- [Part III](#) presents an overview of how existing state policies and programs address potential environmental site hazards at child care facilities.
- [Part IV](#) highlights considerations for developing, revising and implementing policies and programs to address environmental site hazards.
- [Appendix A](#) describes notable policies and programs in New Jersey, New York and Connecticut.
- [Appendix B](#) provides a list of references for the information provided in this paper, including citations to the state laws and regulations discussed here.

This paper builds on a 2015 Environmental Law Institute (ELI) report developed with the Children's Environmental Health Network. *Reducing Environmental Exposures in Child Care Facilities: A Review of State Policy* discusses state policies addressing environmental site hazards, as well as policies governing a variety of specific contaminants. (A companion ELI report, *Drinking Water Quality in Child Care Facilities*, reviews state policies on the subject of drinking water.) The 2015 report is based on a review of the laws and regulations of all 50 states. The information provided there and in this paper may be useful not only to states, but also to Tribes, U.S. Territories and local jurisdictions considering policies and programs to strengthen environmental health protections in licensed child care facilities.

An important new resource for taking action to address environmental site hazards is *Choose Safe Places for Early Care and Education: Guidance Manual*, published in 2017 by CDC's Agency for Toxic Substances and Disease Registry (ATSDR). The ATSDR manual offers practical tools to a broad range of stakeholders who can play a role in ensuring that child care facilities "are located on sites where hazards have been considered, addressed, and mitigated to protect children's health." (Manual at 7.) The manual provides additional information and technical background on the policy and programmatic strategies described in this paper.

PART TWO

Policy Framework for Environmental Health in Licensed Child Care Facilities

A variety of federal, state and local policies and programs address environmental health in licensed child care facilities. The requirements are different from state to state and may also vary from one local jurisdiction to another.

The starting point for understanding the environmental health requirements for child care facilities in a particular state is the state's child care licensing laws and regulations. Other important areas of state policy include: general sanitation/health standards for child care; building/fire codes for new construction; and requirements for controlling individual pollutant exposures. Federal standards – sometimes implemented by state-approved programs – add another policy layer for certain environmental health issues. There may also be local building, zoning and environmental health laws that apply to child care facilities. Apart from government policies, non-governmental organizations have established prominent voluntary standards for child care facility best practices.

Child Care Licensing Policies

All 50 states have licensing requirements for child care facilities. These requirements vary from state to state, and within a state the requirements usually differ somewhat based on the size and type of facility. Licensed child care may be center-based or home-based. Licensing is carried out by a state agency, which might have local or regional offices that help administer the program. (It is possible, though not common, that a county or city will establish and implement its own, separate child care licensing program.) The state licensing program may be located in the state health, social/human services, child welfare or other agency.

State child care policies establish the process and requirements for obtaining and renewing a license, the minimum criteria for operating the child care facility, and the oversight and enforcement mechanisms for ensuring compliance.

- The **licensing statute (law)** establishes the basic requirement for obtaining a state license and may set forth certain general criteria and standards for licensees. The statute also establishes the scope of authority of state agencies to develop regulations and take other action to carry out the program.
- The **licensing regulations** implement the statutory authority with more detailed requirements. Physical facility conditions are one of several core components of state licensing regulations. The regulations may address environmental health issues under regulatory headings such as “facilities,” “physical environment,” “health” or “environmental requirements.” In addition to establishing standards, the regulations typically require compliance with other federal, state and local

regulations. Licensing regulations are updated periodically, pursuant to state laws governing the administrative process.

- Other **written policy documents** are developed by licensing agencies to aid in the administration of statutory and regulatory requirements. For example, agencies develop license application forms, which may include information necessary for the agency to determine whether the facility complies with regulatory standards. Agencies also develop guidance documents that explain the meaning of certain regulatory provisions to assist licensed facilities in achieving compliance.

Apart from policies that establish regulatory requirements, many child care licensing agencies have developed **voluntary incentive programs** for child care providers, often known as Quality Rating Improvement Systems (QRIS). Although they vary from state to state, QRIS programs typically provide formal recognition of child care programs that undertake continuous quality improvement and meet a set of defined program quality standards.

Child Care Health and Sanitation Policies

In addition to child care licensing regulations, many states have health or sanitation codes for child care facilities. These rules are typically implemented by state and/or local health agencies, and they may require separate inspections, permits or other mechanisms for ensuring compliance. In many cases, the requirements in these codes are focused on food service. Colorado and West Virginia are examples of states that have health/sanitation codes for child care facilities that include a broader range of environmental health requirements.

Policies Addressing Specific Environmental Exposures

Federal, state and local governments adopt a variety of laws and regulations addressing specific environmental exposures, from lead paint and secondhand smoke to pesticides and drinking water contaminants. These policies, which may cover a range of facilities or apply specifically to child care facilities, typically fall under the purview of an agency other than the child care licensing agency. The substantive requirements in these policies may be incorporated into child care regulations and reviewed as part of the licensing process; or they might simply be referenced in licensing regulations as separate requirements that child care facilities must meet. For some areas of federal policy, states may receive authority to implement federal requirements (e.g., regarding lead-based paint or drinking water quality).

Building Codes

Child care providers undertaking new construction or renovation of their facilities must comply with any building codes in effect for the particular type of facility. These codes, which usually incorporate model codes and standards, address indoor environmental quality issues such as ventilation and moisture control. The requirements vary based on facility size and type (e.g., residential vs. commercial). Building codes may be found at the state and/or local levels, and are usually implemented by local agencies.

Zoning and Occupancy Policies

New child care facilities may be subject to local (town, city or county) zoning and land use policies that designate the type of use allowed in a particular zone or area and that address issues such as building setback and height, traffic and noise. While these policies do not commonly establish requirements relating to environmental site hazards, they generally set forth documentation, inspection and other procedures for obtaining any necessary zoning review and approval.

Local governments may also require an occupancy permit or certificate for new child care facilities that are moving into a location that previously housed a different use or occupancy, even if new construction or renovation is not involved. This process might involve a separate inspection by the local building or other permitting agency to ensure that the use is allowed and that any applicable health and safety or other permitting requirements have been met.

Non-Governmental, Voluntary Standards

Apart from federal, state and local policies, non-governmental organizations publish voluntary standards that aim to advance health and safety best practices in child care.

- *Industry Health and Safety Standards for Child Care.* A widely-referenced health and safety standard for child care is *Caring for Our Children, National Health and Safety Performance Standards Guidelines for Early Care and Education Programs*, 3rd Edition (CFOC3), published by the National Resource Center for Health and Safety in Early Education and Child Care (NRC). CFOC3 includes hundreds of best practices standards, including numerous environmental health standards. (*Caring for Our Children: Environmental Health in Early Care and Education* is a subset of CFOC3 standards with the greatest impact on environmental health.) Each standard includes background information and commentary. CFOC3 section 5.1.1.5, “Environmental Audit of Site Location,” states that “an environmental audit should be conducted before construction of a new building; renovation or occupation of an older building; or after a natural disaster, to properly evaluate and, where necessary, remediate or avoid sites where children’s health could be compromised.” The standard describes generally the type of information to include in the audit and the type of audit and post-audit information to keep on file. The federal Administration for Children and Families recommends that providers participating in its child care funding programs consult *Caring for Our Children*.
- *Accreditation Programs.* Child care facilities may choose to participate in non-governmental programs that provide a particular accreditation or certification, and such voluntary programs may include facility or environmental health standards that participating programs must meet. For example, the National Association for the Education of Young Children (NAEYC) is a professional membership organization that has offered an Early Learning Program Accreditation for over 30 years. NAEYC program standards covering Health (Standard 5) incorporate a variety of environmental health elements, such as using least-toxic cleaning products and discouraging vehicle idling. In addition, the Physical Environment Standard (Standard 9) calls for keeping the building and grounds “free of trash and hazardous items.”

Are there Federal Requirements for Child Care Facilities?

Child care facilities may be covered under federal laws that address environmental exposures, such as lead paint laws and laws regulating safe drinking water. In addition, some federal programs that provide funding for early care and education establish standards that funding recipients must meet. Two examples are the **Child Care and Development Fund (CCDF)** program and the **Head Start** program, both run by the Administration for Children and Families of the U.S. Department of Health and Human Services.

The CCDF program helps low-income working families obtain child care by providing funds to States, Territories and Tribes, which in turn distribute the funding within their jurisdictions. Recent revisions to the CCDF law and regulations require states receiving funds to certify that they have, among other things, “requirements designed to protect the health and safety of children”; those requirements must apply to providers serving children who receive CCDF subsidies. The requirements must address “building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic.” The regulations require CCDF Lead Agencies to ensure that child care inspectors are qualified and receive training in these and other health and safety matters. In addition, a minimum percentage of CCDF funds must be used for quality improvement, which may include facilitating compliance with state health and safety requirements.

Head Start and Early Head Start programs promote school readiness of children aged five and younger from low-income families. Head Start programs may be based in community centers and schools, as well as in child care centers and family child care homes. Thus, state child care licensing regulations may apply to some Head Start programs. In addition, all Head Start facilities must comply with federal program regulations, which were updated in September 2016. The regulations include certain general health and safety standards, including the requirement that grantees have a system for ensuring that all facilities where children are served are “free from pollutants, hazards and toxins that are accessible to children and could endanger children’s safety.” The regulations also address site hazards specifically; Head Start grantees who are eligible for funds for the purchase, construction or renovation of a facility must submit a “Phase I environmental site assessment that describes the environmental condition of the proposed facility site and any structures on the site.”

Sources:

Child Care and Development Fund program regulations: 45 Code of Fed. Regs (CFR) §§98.41,.42, .53

Head Start program regulations: 45 CFR §§1302.47, 1303.44

PART THREE

Key Elements of State Policies Addressing Environmental Site Hazards

This section begins with a short overview of how states currently address environmental site hazards at child care facilities through their policies and programs. The remainder of the section highlights the key elements of those policies, which other states can consider in developing initiatives to advance safe siting and address environmental site hazards. In addition, Appendix A includes individual descriptions of state policies from New Jersey, New York and Connecticut. Appendix B provides citations to the state laws and regulations described below.

Overview of Current State Policies and Programs

General Standards for Child Care Premises. A core purpose of state child care licensing regulations is to ensure the health, safety and wellbeing of children in care. Child care regulations thus establish standards for the physical premises that must be maintained by the licensee, often including a variety of specific requirements related to environmental health and sanitation. In many states, licensing regulations include a general requirement for maintaining the child care premises free of health and safety hazards.

State child care licensing regulations may also establish standards that address more directly the child care facility's site and location. In West Virginia, for example, state health department regulations for child care centers require child care centers to be located "in a relatively noise and pollution free environment." Similarly, state licensing regulations might require child care facilities to be located "to protect the health and safety of children" (North Dakota) or "in an area that offers minimal hazards to the health, safety, and well-being of children" (Oklahoma). Or they might prohibit child care centers from being located "where conditions exist that would be hazardous to the health and safety of children" (Virginia) or "in an area where conditions exist that could be injurious to the welfare of children" (Indiana).

At least a few states address specifically the risk of contaminated soils. While many states require child care playgrounds to be free of hazards generally, New Hampshire requires that outdoor areas be free of "soil contaminated with toxic chemicals or substances," and Colorado prohibits soils in play areas from containing "hazardous levels of any toxic chemical or substances." West Virginia's licensing regulations require that: "When there is reason to believe that exposure to the soil in the outdoor activity area might harm the child... [the child care center] has on file evidence that the soil does not contain hazardous levels of any toxic chemical or substances."

Identifying and Addressing Environmental Site Hazards. The types of facility standards described above might provide regulatory authority for requiring action to address environmental hazards that come to

light before or after licensing of a child care facility. However, potential environmental contamination from prior uses or nearby pollution sources is generally not the primary focus of such regulatory provisions, and the requirements are not widely implemented to require affirmative steps to identify potential sources of environmental contamination.

A small number of states have gone further, however, to establish policies and programs that are focused directly on the identification and remediation of environmental site hazards. These states include New Jersey and New York, which incorporate into their child care licensing *laws and regulations* explicit requirements for identifying, assessing and addressing potential environmental site hazards before a facility receives a license or license renewal. Connecticut has developed a pioneering *non-regulatory initiative* to help identify potential site hazards and to provide education and technical assistance to child care providers and others. Pennsylvania and other states have undertaken or are developing non-regulatory activities elements similar to the Connecticut program. See Appendix A for individual descriptions of the New Jersey, New York and Connecticut initiatives.

Although child care licensing regulations generally do not establish siting requirements for child care facilities located in school buildings, some states have separate policies that require consideration of potential environmental hazards in the siting of new schools.

Key Elements of Existing State Policies and Programs

The remainder of this section distills the core elements of existing state policies and programs to advance safe siting of child care facilities. For states considering the development of new policies and programs, these elements can be implemented individually or in combination. Depending on the needs and opportunities within the particular jurisdiction, the following strategies could be incorporated into: licensing, health or environmental regulations; agency forms, guidance or other written policies that supplement existing regulations; or agency-led voluntary programs to identify and address site hazards.

✓ *Specific Site/Location Restrictions for New Child Care Facilities*

States can consider adopting child care regulations that restrict new child care facilities from locating near specified activities or facilities that pose environmental exposure risks or on a site where such activities previously occurred.

For example, New Jersey recently revised its regulations to prohibit new or relocating child care centers from being located in a building that was formerly a dry cleaner or funeral home. Child care laws and regulations in other states include siting restrictions or buffer zones related to nearby: agricultural operations/pesticides (Arizona); “sources of toxic fumes or gases” (Mississippi); and any “high hazard area or occupancy” (Missouri).

As an alternative to adopting new regulatory standards, a state could issue written guidance explaining how its existing standards – e.g., criteria that refer generally to environmental hazards – apply to nearby sources of environmental contamination.

States could also adopt regulatory standards that restrict certain *other* businesses (e.g., commercial or industrial establishments, agricultural operations) from locating near an existing child care facility if those businesses are determined to pose environmental health risks. For example, Maine law and regulations prohibit new or relocated perchloroethylene (“perc”) dry cleaning systems from being installed in a facility that is co-located with a residence, daycare center, school, preschool or other facility designed to be occupied by children. Beginning in 2021, existing dry cleaners in Maine that are co-located with such facilities must completely eliminate perc use and remove all perc dry cleaning equipment from the building.

✓ ***Request to License Applicants for Information about Potential Site Hazards***

State licensing agencies can consider requesting information about potential site hazards from applicants for a new child care license or license renewal.

In some cases, purchasers of child care centers may be required (e.g., by their lending institution) to perform a Phase I Environmental Site Assessment. However, many license applicants will not have collected this type of information about historic or current pollution sources. New Jersey’s license application asks applicants about prior site uses and co-located uses. The state also requests that applicants obtain a “letter of prior uses” from local construction officials; the Department of Community Affairs, the state’s building agency, has developed a model letter for this purpose.

Connecticut and New York provide questionnaires regarding site hazards to license applicants, along with written guidance to help child care applicants complete the forms accurately. In New York, providers must attend a state-approved orientation session before receiving an application package; that session covers application requirements, including the request for site hazard information. Pennsylvania and Texas take a somewhat different approach, providing an online survey that new providers fill out on a voluntary basis. In Pennsylvania, most providers learn of the survey from the licensing agency during the application process; state health officials are working to enhance participation by identifying and contacting newly licensed providers from a list provided to them by the licensing agency.

✓ ***Exchange of Information among State and Local Regulatory Agencies***

States can consider establishing formal or informal mechanisms to facilitate the exchange of information between child care licensing officials and agencies that regulate industrial and commercial facilities.

Federal and state databases of regulated industrial and commercial sites are an important source of information that can be used to identify potential risks to child care facilities. States can cross-check such lists with location information for licensed child care. At the start of Connecticut’s Screening Assessment for Environmental Risk (SAFER) program, the Department of Public Health used the state’s List of Contaminated or Potentially Contaminated Sites to manually identify any existing or new daycare centers located on the same street as a listed contaminated site. The agency now uses Geographical Information System (GIS) mapping to identify industrial facilities within a 600 foot radius of child care centers that are applying for a license. In Pennsylvania, when the Department of Health receives an

inquiry from a licensed provider, the agency also uses GIS and other information resources to identify potential sources of contamination. The agency identifies small quantity generators such as dry cleaners (within a city-block radius of child care facilities), as well as brownfields and hazardous waste sites (within 1/8 mile of child care facilities).

ATSDR's *Choose Safe Places for Early Care and Education Guidance Manual* describes the ways that states might use geographic-based data. It also includes a list of federal government websites with environmental hazards datasets that states could use in mapping or cross-checking hazardous sites and child care locations. (Manual at 72).

State and local agencies can also exchange information during the course of their ongoing programs – e.g., in the event an agency's regulatory activities reveal discharges, plumes or other contamination that may affect nearby child care facilities.

✓ ***Identification of Potential Site Hazards During Regular Child Care Facility Inspections***

States can consider incorporating review of potential site hazards into required child care facility inspections.

All state child care agencies require inspections prior to licensing and at specified intervals thereafter. In Connecticut, the SAFER program has developed guidance for child care licensing inspectors to identify potential site hazards. In New York, child care licensing inspections are carried out by local/regional fire and safety inspectors who have general knowledge of the local area and may use GIS tools to verify applicant information about potential site hazards. States can also consider whether review of potential environmental site hazards might be incorporated into other types of inspections of child care facilities – e.g., those conducted by state or local health, fire code, building, zoning or permitting officials.

✓ ***Required Assessment of Potential Site Hazards and Remediation of Identified Hazards***

States can consider policies and programs to help ensure that appropriate assessment and remedial actions are taken if a potential site hazard is identified through applicant information, inspections, agency referrals or other means.

As noted above, virtually all state child care licensing laws and regulations require facilities to meet certain general standards for health, safety and sanitation. These standards may provide authority for licensing agencies to require child care providers to address conditions that are determined to pose a health and safety hazard to occupants – e.g., to make improvements to the ventilation system or to remediate soil contamination or other identified environmental site hazards.

Beyond such general standards, New Jersey has established explicit regulatory requirements for the assessment and remediation of potential environmental site hazards. Child care center applicants must obtain an environmental assessment and show that no remediation is needed under state environmental standards. An Indoor Environmental Health Assessment approved by the State Department of Health may also be required, depending on age of building, co-location and prior or nearby uses. New York's child care licensing regulations are less detailed, but also require child care

centers to address potential environmental site hazards. A child daycare center applicant is asked about prior and nearby uses and is required to contact appropriate state agencies to arrange for any recommended testing and inspection. Testing and inspection must demonstrate that the “building, its property and premises, and the surrounding neighborhood” meet state health and safety standards.

In New Jersey and New York, applicants for both new licenses and license renewals must follow procedures for addressing site hazards. This approach enables the state to make an initial review of the licensed child care center and to then determine at license renewals whether conditions at the facility have changed or a new business has located nearby.

✓ ***Technical and Financial Assistance for Providers in Addressing Site Hazards***

States can consider creating or expanding technical and financial assistance programs to help ensure that child care facilities are able to take the steps necessary to assess and address environmental hazards.

Though the nature of environmental site hazards varies considerably, not all problems require extensive or expensive remediation activities. The type of assessment and follow-up required varies depending on the nature of the problem. ATSDR’s *Choose Safe Places for Early Care and Education Guidance Manual* describes potential hazards and explains what can be done to identify and remediate those hazards.

Many state child care licensing regulations direct the licensing agency to provide education, training and/or technical assistance to help providers meet facility standards. State health and environmental agencies can also bring important expertise to bear in providing technical assistance – e.g., reviewing records, conducting site visits or making recommendations for sampling or mitigation. Through the SAFER program, the Connecticut Department of Public Health provides technical assistance in the form of gathering and reviewing available information for any child care site referred to the program, as well as coordinating with the relevant parties in determining next steps if problems are identified.

In addition to technical help, financial assistance may be needed in cases where small child care providers or those serving lower-income families need to identify or address environmental hazards on their premises. States may have existing programs that provide funding to new child care facilities, and those programs might be broad enough to allow funding to help providers comply with health and safety requirements. States can also explore whether assessment and remediation of site hazards at child care facilities might be eligible activities under funding programs that are not specific to child care – e.g., programs that fund hazardous waste cleanup or economic development activities. In New Jersey, the Department of Environmental Protection’s Hazardous Discharge Site Remediation Fund may reimburse child care facility owners up to \$1500 for completing the environmental site assessment required by state regulations.

PART FOUR

Considerations for Developing New State Policies and Programs

The following considerations for developing state policies and programs to advance safe siting of child care facilities are drawn from a review of existing state policies and programs and conversations with selected state officials.

✓ *Review of Existing Authorities for Developing Policies and Programs*

A review of existing state child care licensing laws and regulations may be helpful for determining the extent of the licensing agency's authority to address environmental site hazards proactively and in response to identified hazards. Many state licensing regulations already establish requirements relating to health and safety hazards on the physical premises, which may authorize the licensing agency to take action to address known hazards. Licensing regulations may also include provisions authorizing agencies to investigate suspected hazards or to take steps to identify whether there are conditions that pose potential hazards – e.g., authority to request inspections or technical assistance from other state agencies, or to request sampling or other information from the licensed facility.

Regulatory authorities may also facilitate activities to educate providers and potential providers about environmental site hazards. Most state child care licensing laws and regulations require licensees and their employees to complete some form of orientation, training and/or ongoing professional development as a condition for licensing. In many cases, training activities must be accredited or approved by the licensing agency. These training/professional development requirements usually include a mandatory health and safety component and could thus be a basis for states to promote the inclusion of information about environmental site hazards.

Where regulatory gaps or uncertainties are identified in the child care licensing framework, the state licensing statute may authorize the agency to revise its regulations to incorporate more explicit standards and requirements that fulfill the goals and directives of the statute.

States can also review authorities outside of child care licensing. For example, where states have separate child care health and sanitation codes, those regulations (and their authorizing statutes) can be reviewed to clarify the gaps and opportunities for health agencies to act to investigate potential site hazards at child care facilities. State laws and regulations in other areas, such as pollution control, may also provide authority for state agencies to take regulatory or non-regulatory action to address known or suspected environmental site hazards at child care facilities.

✓ *Coordination among State Agencies*

Multiple state agencies have important roles to play in developing a safe siting initiative for child care facilities. Close coordination among child care, health, environmental protection and other programs is

vital to developing new regulations, forms, guidance or state program activities in a way that integrates expertise across state agencies. A common understanding of agency roles and activities can help ensure that new policies and programs work well in concert with existing child care licensing processes. It is also important for leveraging scarce agency resources for actions such as: cross-checks of state databases; site visits; reviews of technical site assessment or remediation documents; and training, education and outreach to inspectors, local agencies and providers. As discussed earlier, collaboration and communication is also important for the ongoing exchange of information about potential hazards at child care sites.

✓ ***Communication with Local Agencies and Non-Governmental Organizations***

The role of local officials in regulating child care facilities varies not only from state to state, but also within a state. Health, building, housing, zoning and other permitting officials are frequently involved in approval of new child care facilities and/or oversight of existing facilities. Even though environmental site hazards are not the primary focus of most local agencies, local officials are in a position to help refer potential problems to state agencies – either when a child care facility is applying for local approval or when another business is applying for approval to locate near a child care facility. States agencies can consider conducting broad outreach to state-wide associations of local government officials or engaging in direct communications with individual municipalities in areas of the state with significant potential environmental hazards.

States might also benefit from communicating with local organizations and community members, who may have knowledge of current or historical uses of property that pose potential health hazards. In addition to the informational resources available from federal and state agencies, some local and national groups have developed mapping tools that overlay various types of environmental information. For example, the organization Physicians for Social Responsibility created a web-based map of Los Angeles that includes sensitive uses such as schools and child care facilities, along with potentially hazardous uses such as warehouses, auto body and repair shops, dry cleaners, gas stations and waste facilities.

✓ ***Information and Training for Child Care Providers***

Licensed child care providers can play an important role in recognizing and addressing potential site hazards. It is thus important for a safe siting initiative to educate providers and potential providers about how to determine whether there are potential hazards affecting their facility and about any health risks associated with those hazards. The health and safety training required under state child care licensing regulations may offer a formal mechanism for doing so. States can also work with child care resource and referral agencies or other non-governmental organizations to integrate safe siting into health and safety training and education for child care providers.

APPENDIX A

Profiles of State Programs

This Appendix highlights three state initiatives to address potential environmental site hazards at child care facilities. The first two, New Jersey and New York, are based on state laws and/or regulations that establish requirements for identifying and addressing hazards. Connecticut's approach relies on a non-regulatory program led by the state health department. All three initiatives involve coordination among and contributions from multiple state agencies. The following information is drawn from state laws, regulations and other policy and program documents, as well as conversations with state officials.

NEW JERSEY: Regulatory Requirements for Identifying and Addressing Site Hazards

Summary. Following a 2006 mercury contamination incident at a licensed child care center, New Jersey enacted a law and adopted detailed regulations for addressing environmental hazards at child care sites. Child care centers in New Jersey now must obtain an environmental assessment/clearance of the site in connection with the licensing process, and an indoor environmental assessment may also be required.

Key Elements. New Jersey law and regulations establish criteria for the location of a child care center, as well as detailed requirements for identifying, assessing and addressing potential environmental hazards.

Site/Location Criteria. New Jersey's child care licensing regulations were revised in 2017 to require that new and relocating child care centers may "not be located in a building that was formerly a dry cleaner or funeral home." The regulations also state more generally that child care centers may "not be located near or adjacent to areas determined by the Office of Licensing to be hazardous to the physical health and safety of the children."

Child Care Licensing Application Documentation Requirements. State child care licensing and health regulations require child care centers (other than those operating in public schools) to take specific steps to address potential environmental site hazards as part of the licensing application process. Applicants must submit the following information to the Office of Licensing (within the Department of Children and Families) at the time of initial license application, license renewal or facility relocation:

- **Written verification that no further environmental site remediation is needed**, pursuant to Department of Environmental Protection (NJ DEP) standards and requirements. In general, this requires applicants for a new child care center license to hire a state-certified Licensed Site Remediation Professional (LSRP) to conduct a Preliminary Assessment (similar to a Phase I) and possible site investigation, prior to issuing a "Response Action Outcome" (RAO) letter.
- **Written certification whether the building ever housed certain hazardous use categories**, including factory/industrial, high hazard, storage, nail salon, dry cleaner, funeral home and gas station. The

applicant must also indicate whether the center will be co-located in a multi-use building, along with the nature of the co-location; licensees must notify the licensing agency immediately of any change in use by other occupants of the multi-use building.

The Office of Licensing receives this information in a number of ways. First, it may obtain the information through a courtesy life-safety inspection, which the Office conducts prior to an application in order to provide technical assistance in meeting regulatory requirements. Second, the application itself requests information on prior uses or co-location, including a “letter of prior uses” obtained from the local construction official. (After the state’s child care siting law was enacted, the state building agency regulating local construction offices, the Department of Community Affairs, provided a model letter that local officials could use to provide this information.) Finally, in some cases, the agency may obtain the information through the required environmental assessment (Response Action Outcome letter), which is obtained prior to issuance of a license.

- If the building has previously housed a hazardous use as listed in the regulations, is co-located with a hazardous use (such as co-location in a strip mall sharing the same roof), has a hazardous use nearby or was built prior to 1979, the applicant must also provide a written Safe Building Interior Certification affirming that no further remediation is needed for the interior of the building. Department of Health (NJ DOH) regulations establish the process for obtaining this Certification.

Site Assessment and Remediation Requirements. NJ DEP regulations, the Technical Requirements for Site Remediation, govern the environmental assessment of child care and other facilities. The agency also publishes a listing of the state-licensed private professionals who must undertake the assessment.

Indoor Environmental Health Assessment and Remediation Requirements. New Jersey is unique in establishing regulatory requirements for assessing and remediating the interior environment if child care center applicants meet the regulatory criteria for potential site hazards noted above. Following referral from the licensing (or other) agency, the NJ DOH determines whether an Indoor Environmental Health Assessment (IEHA) is required. The IEHA, conducted by a NJ DOH-licensed Indoor Environmental Consultant, must address: asbestos; lead; organic and inorganic compounds; metals; formaldehyde; pesticides; radon; and other contaminants. NJ DOH review of the IEHA includes an agency site visit, and the facility must demonstrate compliance with standards for radon, asbestos and lead specified in NJ DOH regulations, as well as with site-specific maximum contaminant levels developed by the agency.

Sources.

- N.J. Department of Children and Families, Child Care Center Licensing Regulations – N.J. Admin. Code §§3A:52-5.3(i), 3A:52-2.3, 3A:52-3.2 – <http://www.state.nj.us/dcf/providers/licensing/laws/CCCmanual.pdf>; <http://www.nj.gov/dcf/about/divisions/ol/>
- N.J. Department of Health, Indoor Environmental Health Assessment Overview and Regulations – http://www.nj.gov/health/ceohs/documents/childcare/njac_850_adoption.pdf
- N.J. Department of Environmental Protection, Environmental Guidance for All Child Care Centers and Educational Facilities – <http://www.nj.gov/dep/dccrequest/>
- N.J. Department of Consumer Affairs – Letters of Prior Use - <http://www.state.nj.us/dca/divisions/codes/alerts/childcare.html>

NEW YORK: Regulatory Requirements for Identifying and Addressing Site Hazards

Summary. New York requires applicants for a day care center or group family day care license to certify whether there are potential environmental hazards on the site. If potential hazards are identified, applicants must contact the relevant state agencies and take any necessary steps to ensure the site is free from health risks. The requirements were established in state regulations and the state has developed written forms and guidance to aid implementation.

Key Elements. New York's child care licensing regulations require providers to take steps to identify and address potential environmental hazards.

Identifying Potential Hazards: Regulatory Requirements for Certification/Documentation by License Applicants. New York's regulations and guidance for child day care centers and group family day care require applicants for a new license or license renewal to submit the following information regarding potential environmental hazards:

- **Written certification by the applicant** that the "building, its property and premises, and the surrounding neighborhood and environment are free from environmental hazards." The regulations note that such hazards include, but are not limited to: dry cleaners, gas stations, nuclear laboratories or power plants, property designated as a Federal superfund clean-up site and any property with known contaminated ground or water supplies.
- **Documentation of any inspection/testing carried out** to address potential hazards, along with a statement from the inspecting authority that "the building, its property and premises, and the surrounding neighborhood meet applicable standards for sanitation and safety."

Identifying Potential Hazards: Application Forms and Guidance. To implement these regulatory requirements, the Office of Children and Family Services developed a number of forms in coordination with the state Department of Health. The forms are sent as part of the application package to all applicants for new licenses and renewals.

- An **Environmental Hazards Statement**, a simple written certification indicating, to the best of the applicant's knowledge, whether any environmental hazards exist on the site or surrounding areas.
- An **Environmental Hazards Guidance Sheet**, to assist providers in identifying potential hazards so that they can complete the certification form accurately. The document lists common sources of environmental contamination that may require further evaluation, such as gas stations, dry cleaners and manufacturing or power plants. The guidance also addresses radon and lead. The guidance includes a chart listing which agency to contact (with phone numbers) for each type of environmental hazard.
- An **Environmental Hazard Information Form**, required for providers who state that a potential environmental hazard may exist, which includes: (1) general information about the hazard, (2) a list of government agencies the provider has contacted regarding the hazards and (3) a statement of whether any agency recommended an environmental hazard assessment.

While New York’s child care licensing regulations rely heavily on applicants’ certification regarding potential hazards, the Office of Children and Family Services has local fire and safety inspectors who inspect all child care facilities prior to licensure. Those inspectors are generally familiar with the local area and may find potential environmental hazards not identified by an applicant. They can use the state’s GIS mapping to check any hazards suspected or identified by applicants. The Office may also receive a referral from the Department of Health or other agency that obtains information about environmental site hazards potentially affecting an existing daycare center.

Addressing Potential Hazards: Assessment and Remediation. The child care licensing regulations require inspection or testing by the appropriate government agency if “the historical or current use of the building, its property and premises, or the surrounding neighborhood indicates that an environmental hazard may be present.” As noted above, the applicant must certify that the building and premises are free of such hazards.

Sources.

- New York Office of Children & Family Services, Child Care Licensing Regulations – 18 N.Y. Comp. Codes Rules and Regs. §§416.2, §418-1.2
- N.Y. State Office of Children & Family Services, Environmental Hazards Guidance Sheet, Environmental Hazard Information Form, and Directions for Completing the Environmental Hazards Statement – <http://www.ocfs.state.ny.us/main/documents/docsChildCare.asp>

CONNECTICUT: Non-Regulatory Program for Identifying and Addressing Site Hazards

Summary. The Connecticut Department of Public Health’s (CT DPH) Screening Assessment for Environmental Risk (SAFER) Program, established in 2010, works with the state child care licensing program and other state and local agencies to determine whether a daycare center or group day care home may be affected by hazardous chemicals and to assist in addressing any identified hazards. The program was not mandated by law or regulation and did not create new regulatory requirements for providers.

Key Elements. The SAFER program, which is led by the Environmental and Occupational Health Assessment Program at the CT DPH, has developed a protocol setting out procedures for collecting information to identify potential environmental hazards. The protocol was developed in coordination with the agency’s child care licensing program.

Identifying Potential Hazards: Using State Environmental Databases. The SAFER program compares the location of licensed child care facilities with industrial sites known to the state Department of Environmental Protection (CT DEP). Initially, the program identified any CT DEP sites on the same street as the child care facility. In October 2016, the program began using GIS tools to map industrial sites located within 600 feet of a new child care center or group child care home.

Identifying Potential Hazards: Child Care Licensing Application Forms. The SAFER program developed a **Property History Questionnaire** for Child Care Centers and Group Child Care Homes, which includes questions about prior uses of the property and asks whether any environmental site assessments have

been performed. The questionnaire has been incorporated as an appendix to the child care license application. It includes information about how to identify potential hazards and strongly recommends that applicants consult with the property owner and specified local officials to find out about past uses of the property.

Identifying Potential Hazards: Guidance for Child Care Inspectors. The program also developed an **Environmental Issues Referral Form** for use during regularly scheduled child care center inspections. The form is designed to help inspectors identify former or current industrial, manufacturing and/or agricultural uses or co-located businesses that may warrant follow-up through the SAFER program. The checklist addresses property and building characteristics, as well as adjacent businesses.

Addressing Potential Hazards: Technical Assistance and Follow-Up. The SAFER program conducts follow-up on any site identified through the protocol or otherwise referred by a state or local agency, in coordination with relevant state and local agencies, the property owner and the child care operator. The program may issue recommendations for additional action, including soil and air sampling or remediation, and seeks to bring about prompt resolution of any potential hazards.

Source.

- Conn. Dep't of Public Health, Child Day Care SAFER Program Protocol, Forms, and Background Information – <http://www.portal.ct.gov/DPH/Environmental-Health/Environmental-and-Occupational-Health-Assessment/Child-Day-Care-SAFER-Program>

APPENDIX B

References

This Appendix lists the principal sources for the information discussed in this paper. The first section provides citations to the laws and regulations mentioned in the paper, while the second section lists the reports and other documents noted throughout. In addition to these sources, some of the information provided in the paper reflects phone conversations between ELI and selected state officials.

State Child Care Licensing Laws and Regulations Cited in this Paper

Following is a list of the child care laws and regulations mentioned in this paper, along with their citations. While this paper discusses many, if not most, state laws and regulations that address directly the subject of environmental site hazards at child care facilities, it does not purport to include all such policies. Therefore, the following is not offered as a comprehensive list of state policies on the subject.

Each state provides an online listing of its official laws and regulations. These are often found on the website of the state legislature. In some cases, the state's regulations (administrative code) are found on the website of the Department of the Secretary of State or other agency website.

Another resource for finding state child care licensing laws and regulations is a listing funded through the federal Administration for Children and Families: <https://childcareta.acf.hhs.gov/licensing>.

- **Arizona** Revised Statutes § 36-897.01 (Child Care Group Homes)
- **6 Colorado** Code Regs. §1010-7:7.6 (Health and Sanitation of Child Care Facilities)
- **470 Indiana** Admin. Code §3-4.7-2 (Child Care Center Licensing)
- **06-096 Code of Maine** Rules, Ch. 125, §§1-7 (Perchloroethylene Dry Cleaners)
- **Mississippi** Admin. Code §15-11-55:1.11.9 (Licensure of Child Care Facilities)
- **19 Missouri** Code State Regs. §30-62.087 (Licensing Rules for Group Child Care Homes and Centers)
- **New Hampshire** Admin. Code §He-C 4002.14 (Child Care Program Licensing)
- **New Jersey** Admin. Code §§3A:52-2.3, 3A:52-3.2, 3A:52-5.3(i) (Manual of Requirements for Child Care Centers); New Jersey Admin. Code §8:50-3.1 (Health: Evaluation and Assessment of Child Care Centers and Educational Facilities)
- **18 New York** Comp. Codes Rules & Regs. §416.2 (Group Family Day Care), §418-1.2 (Child Day Care)
- **North Dakota** Admin. Code §75-03-09-18 (Group Child Care Early Childhood Services)
- **Oklahoma** Admin. Code §340:110-3-300 (Child Care Centers)
- **22 Virginia** Admin. Code §40-185-280 (Licensed Child Day Centers)
- **West Virginia** Code St. Rules §64-21-5 (Health: Child Care Centers), §78-1-20 (Child Care Center Licensing)

Other Material Referenced in this Paper

- U.S. Environmental Protection Agency, *America's Children and the Environment* (2013), at: <https://www.epa.gov/ace>
- Environmental Law Institute, *Reducing Environmental Exposures in Child Care Facilities: A Review of State Policy* (2015), at: <https://www.eli.org/buildings/reducing-environmental-exposures-child-care-facilities>
- Agency for Toxic Substances and Disease Registry and Centers for Disease Control and Prevention, *Choose Safe Places for Early Care and Education: Guidance Manual* (2017), at: <https://www.atsdr.cdc.gov/safeplacesforece/index.html>
- American Academy of Pediatrics, American Public Health Association and National Resource Center for Health and Safety in Child Care and Early Education, *Caring for Our Children, National Health and Safety Performance Standards Guidelines for Early Care and Education Programs, 3rd Edition* (2011), at: <http://nrckids.org/CFOC>
- American Academy of Pediatrics, American Public Health Association and National Resource Center for Health and Safety in Child Care and Early Education, *Caring for Our Children: Environmental Health in Early Care and Education* (2011), at: http://nrckids.org/CFOC/Environmental_Health
- National Association for the Education of Young Children (NAEYC), Early Learning Program Accreditation program, at: <https://www.naeyc.org/accreditation/early-learning-program-accreditation>
- Physicians for Social Responsibility – Los Angeles, *500ft* (web-based hazard-mapping tool for South and Southeast Los Angeles), at: <http://500ft.psr-la.org/>



1730 M Street, NW, Suite 700

Washington, DC 20036

Tel: 202.939.3800

Fax: 202.939.3868

www.eli.org