



# **Environmental Injustice: Lead Poisoning in Indiana**

A Report of the  
Indiana Advisory Committee to the  
U.S. Commission on Civil Rights

November 2020

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Acknowledgements**

The Indiana Advisory Committee wishes to thank the speakers who participated in its public meetings, as well as the organizations and individuals who submitted written comments in connection with our investigation. The Committee also wishes to thank former member of the Committee, Dr. Carlton Waterhouse, for his insight, guidance, and testimony on this important topic.

**Indiana Advisory Committee to the  
U.S. Commission on Civil Rights**

The Indiana Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding civil rights concerns regarding lead poisoning and environmental justice in Indiana, with a focus on lead exposure and lead poisoning impacting Indiana's children of color. This report is provided as part of the Committee's responsibility to study and report on civil rights issues in the state of Indiana. The contents of this report are primarily based on testimony the Committee heard during public meetings; three virtual briefings on April 30, 2019, May 3, 2019, and May 28, 2020, and two briefings held in Evansville, IN on November 16, 2019 and Indianapolis, IN on February 27, 2020.

The report begins with a brief background of the issues considered by the Committee. It then presents an overview of the testimony received that discusses factors which contribute to disproportionately high levels of lead poisoning among Indiana's children of color. Primary areas of investigation included civil rights concerns relating to the sources of lead exposure, the medical impact of lead exposure, testing policies, government responses towards those who have been lead-poisoned, and promising practices to address the ongoing issue of lead poisoning in the state.

The Committee heard concerning testimony that provided evidence to the discriminatory impact of past practices and current policies that negatively impact the health and economic outcomes of Indiana's children of color. From 1950s decisions to site the West Calumet Housing Complex and the Carrie Gosch Elementary School in industrial, "undesirable" residential areas<sup>1</sup> to the 2016 decision to provide disaster relief to lead-impacted Greentown (97% white) but not lead-impacted East Chicago (90% non-white),<sup>2</sup> Indiana has a troubling history with caring for and protecting non-white residents from lead poisoning.

The continued refusal to amend the blood lead contamination level from 10 µg/dL to the nationally-recommended 5 µg/dL in order to receive critical resources speaks to ongoing government and regulatory neglect of Indiana's citizens of color. There are tragic human costs to these decisions. There is also fiscal impact evidence<sup>3</sup> showing that the costs of responding to lead poisoning far outweighs the costs of preventing lead poisoning. From the findings developed in response to testimony heard, the Committee offers to the Commission recommendations for addressing this problem of national importance. While other important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this Committee's specific civil rights mandate are left for another discussion.

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<sup>1</sup> Browning Statement, at 6; East Chicago Redevelopment Trustees and East Chicago Redevelopment Commission, 1959 Annual Report, Indiana University Northwest, Calumet Regional Archives, East Chicago Collection, Box 1, Folder 28; "Public Housing Sites are Scarce," Chicago Tribune, October 6, 1966, sec. Northwest Indiana-Calumet. <https://pema.cc/HJW8-37SQ> (accessed August 25, 2020); Benfer Statement, at 1.

<sup>2</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 34; <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-east-chicago-disaster-request-denied-st-0119-20170119-story.html>; <https://www.healthaffairs.org/doi/10.1377/hblog20170808.061398/full/>.

<sup>3</sup> Benfer Statement, at 12.

*Letter of Transmittal*

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The Committee recognizes that 2020 has highlighted serious health disparities for communities of color during the COVID-19 pandemic alongside a public reckoning around police violence towards Black men and Black women. The Committee hopes this spotlight increases awareness of the continued acceptance of policies and practices across government systems that disproportionately protect white Americans, while ignoring ongoing crises like lead poisoning that disproportionately and gravely harm Black Americans. It is in this context that the Committee submits its lead poisoning and environmental justice report for the Commission's review and urgent attention.

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**TABLE OF CONTENTS**

I.	Introduction and Background.....	2
II.	Summary of Panel Testimony.....	5
	A.    Timeline of Lead Poisoning in Indiana	5
	B.    Sources of Lead	9
	C.    Medical Impact of Lead Exposure	13
	D.    Testing	16
	1.    Lack of Universal Testing.....	20
	2.    Medicaid Grant Requirements and Testing Inconsistencies.....	22
	3.    Fiscal Impact.....	28
	a) Increasing the number of children identified as lead poisoned increases the fiscal cost of providing services .....	28
	b) Preventing lead poisoning is less expensive than responding to lead poisoning .....	31
	E.    Environmental Justice Administration	34
	1.    Government Intervention in the West Calumet Housing Complex.....	34
	2.    Discriminatory Impact .....	41
	3.    Political Power .....	45
	F.    Promising Practices	49
III.	Findings and Recommendations.....	52
	A.    Findings	53
	B.    Recommendations	59
IV.	Appendix.....	65
	A.    Transcripts	65
	B.    Written Testimony	65

## I. INTRODUCTION AND BACKGROUND

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On January 29, 2019, the Indiana Advisory Committee voted to take up a proposal to examine the civil rights issues related to indoor and outdoor lead exposure in the state. Several federal and state laws are implicated where disparities in environmental quality and lead contamination exist, including:

- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance.<sup>4</sup> Under the Environment Protection Agency (EPA) and Department of Health and Human Services (HHS) regulations implementing Title VI, disproportionate impact, not only intentional discrimination, is prohibited in the administration of environmental programs, including siting and enforcement for recipients of federal financial assistance.<sup>5</sup>
- The Equal Protection Clause of the Fourteenth Amendment prohibits states from discriminating in the treatment of peoples based on their race.<sup>6</sup>
- Title VIII of the Civil Rights Act of 1968 prohibits discrimination in the sale, rental, and financing of dwellings and in other housing related transactions because of race, color, religion, sex, family status, national origin, and disability.<sup>7</sup> It also requires that all federal

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<sup>4</sup> 42 U.S.C. § 2000d.

<sup>5</sup> U.S. Environmental Protection Agency, Office of the Attorney General, *Memorandum for Heads of Department and Agencies that Provide Federal Financial Assistance*, 1994, p. 1, <https://www.epa.gov/sites/production/files/2015-03/documents/tab15.pdf>. U.S. Department of Health and Human Services, "Civil Rights Requirements – A. Title VI of the Civil Rights Act of 1964, 42 U.S. C. 2000det seq.," <https://www.hhs.gov/civil-rights/for-individuals/special-topics/need-y-families/civil-rights-requirements/index.html> (last visited October 19, 2020).

<sup>6</sup> U.S. CONST. amend. XIV.

<sup>7</sup> 42 U.S.C. §§ 3601-19.

programs relating to housing and urban development be “administered in a manner that affirmatively furthers fair housing.”<sup>8</sup>

- Executive Order 12898 requires each federal agency, “to the greatest extent practicable and permitted by law, ... [to] make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”<sup>9</sup>
- Title X of the Federal Lead-Safe Housing Rule indicates that HUD has the authority to implement lead poisoning prevention efforts in federally-assisted housing when blood lead levels of children living in federally-assisted housing levels reach 5 µg/dL.<sup>10</sup>
- Indiana requires the reporting of blood lead tests,<sup>11</sup> and the Indiana Case Management Rule for lead poisoning indicates beginning case management services for children with blood lead levels above 10 µg/dL.<sup>12</sup>

The Indiana Advisory Committee studied Indiana’s compliance with Title VI of the Civil Rights Act, the Equal Protection Clause of the Fourteenth Amendment, Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, and Executive Order 12898 regarding lead exposure and the protection of children. Specifically, the Committee studied lead-based environmental and health disparities in the protection of children based on race, color, or national origin. To fulfill this study, the Committee considered undertaking studies on environmental justice, lead, and children’s health.

At its meeting on March 7, 2019, the Committee’s subcommittee considered undertaking environmental justice broadly but decided to focus efforts on lead and children’s health. The subcommittee focused on these issues due to the significant lead challenges facing Indiana’s children from multiple sources. In East Chicago, in 2016, extreme levels of lead contamination were found in a local neighborhood and a public housing facility. At this time, it was discovered that children were exposed to extremely high levels of lead over many years despite federal and

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<sup>8</sup> *See id.* U.S. Department of Housing and Urban Development, “Fair Housing and Related Statutes, Regulations, and Executive Orders,”

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fair\\_housing\\_and\\_related\\_law](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law) (last visited October 19, 2020).

<sup>9</sup> Exec. Order No. 12,898, 32 C.F.R. § 651.17, <http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf>.

<sup>10</sup> 24 C.F.R. § 35.325; see also HUD Issues Final Rule to Help Children Exposed to Lead Paint Hazards: Stricter Definition of “Elevated Blood Lead Level” in Young Children matches CDC Approach, press release, Jan. 13, 2007, available here <https://archives.hud.gov/news/2017/pr17-006.cfm>.

<sup>11</sup> IND. CODE § 16-41-39.4-3; 410 IND. ADMIN. CODE 29-3-1.

<sup>12</sup> IND. CODE § 16-41-39.4-1; 410 IND. ADMIN. CODE 29-1-6.

state testing and knowledge of substantial lead pollution in the area predating the construction of the neighborhood. Similar sites exist across the state. Of equal concern, recent testing of school water fountains and faucets across the state revealed that many schools had one or more faucets with unsafe levels of lead being discharged from tested units. In the city of East Chicago, the Calumet neighborhood and some of the schools that have unsafe levels of lead have high concentrations of students of color. Indiana blood lead testing over many years indicates that race significantly affects the likelihood that children have elevated blood lead levels.

The Centers for Disease Control (CDC) provides the Indiana State Department of Health<sup>13</sup> with a federal grant to help fund childhood blood lead testing. The CDC recommends that all children with blood lead levels above 5 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ) be identified as having elevated blood lead levels. The Indiana State Health Department does not follow the CDC guidance, instead using a much higher threshold (10  $\mu\text{g}/\text{dL}$  or more) to identify children with elevated blood lead levels. Moreover, Indiana consistently tests fewer than 40% of the children they are directed to test under the U.S. Department of Health and Human Services (HHS) grant administered by the CDC. The CDC writes on their lead website, “[n]o safe blood lead level in children has been identified. Lead exposure can affect nearly every system in the body. Because lead exposure often occurs with no obvious symptoms, it frequently goes unrecognized.”<sup>14</sup> Unrecognized lead poisoning in children leads to substantial irreversible adverse health effects.

In their document, “Educational Interventions for Children Affected by Lead,” CDC writes:

Lead is a developmental neurotoxicant, and high blood lead levels (HBLLs) in young children can impair intellectual functioning and cause behavioral problems that last a lifetime. Primary prevention of HBLLs remains a national priority and is the only effective way to prevent the neurodevelopmental and behavioral abnormalities associated with lead exposure.<sup>15</sup>

Indiana’s practices seem to impede primary prevention for some children in addition to having a significant disparate impact. It is the disparate impact of Indiana’s lead poisoning prevention policies that the committee proposed to investigate. The scope of this project was limited to an examination of factors contributing to disproportionate lead exposure and elevated blood lead levels in Indiana children on the basis of race, color, or national origin.

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<sup>13</sup> The Indiana State Department of Health (ISDH) and the Indiana Department of Health (IDOH) are the same entity. As of November 10, 2020, there has not been a legislative change to the name from Indiana State Department of Health to Indiana Department of Health, so Indiana State Department of Health (ISDH) is used within this report.

<sup>14</sup> U.S. Centers for Disease Control, “Lead Poisoning Prevention.” Childhood Lead Poisoning Prevention Program. CDC.gov. <https://www.cdc.gov/nceh/lead/prevention/default.htm> (accessed August 25, 2020).

<sup>15</sup> U.S. Centers for Disease Control, *Educational Interventions for Children Affected by Lead*, 2015, p. vii. [https://www.cdc.gov/nceh/lead/publications/Educational\\_Interventions\\_Children\\_Affected\\_by\\_Lead.pdf](https://www.cdc.gov/nceh/lead/publications/Educational_Interventions_Children_Affected_by_Lead.pdf) (accessed August 25, 2020).



## II. SUMMARY OF PANEL TESTIMONY

Public briefings occurred on April 30, 2019, May 3, 2019, November 16, 2019, February 27, 2020, and May 28, 2020. Written comments were submitted following the public meetings. The public meetings included testimony from academic experts, community members, government officials, and advocates. Speakers were selected to provide a diverse and balanced overview of concerns related to lead poisoning of children in Indiana. Despite persistent efforts, the Committee was unsuccessful in securing speakers from state government agencies. Speakers identified specific areas in need of improvement, especially related to testing, remediation, public notice efforts related to lead exposure, and policies and practices that address the disparate impact of lead exposure on children of color.<sup>16</sup>

### A. Timeline of Lead Poisoning in Indiana

Popular awareness of lead's toxicity has increased steadily since the turn of the twentieth century. In 1890s England, people pointed to lead as a "silent pediatric epidemic" responsible for killing babies. Some women even turned to lead to terminate pregnancies in the early 1900s.<sup>17</sup> In 1921, growing international concerns around the health impacts of lead spurred the International Labor Organization to ban the use of white lead in paint, where it had been added to increase durability.<sup>18</sup>

Acute childhood lead poisoning emerged as a major public concern in the United States in the 1950s and 1960s.<sup>19</sup> Americans relied on heavily leaded gasoline well into the 1970s, exposing themselves to poisonous fumes through inhalation.<sup>20</sup> In 1969, René Dubos warned, "[t]he problem is so well defined, so neatly packaged with both causes and cures known, that if we don't end this social crime, our society deserves all the disasters that have been forecast for it."<sup>21</sup>

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<sup>16</sup> The Committee heard testimony primarily relating to children of color who are Black. The Committee heard that Native Americans are impacted by lead exposure and lead poisoning, but there is a lack of complete data available that would help inform recommendations related to addressing lead exposure in children who are Native American in Indiana. See Gillespie Testimony, *May 2020 Web Hearing*, p. 17.

<sup>17</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 3, 8.

<sup>18</sup> International Labour Organization, White Lead (Painting) Convention, 1921 (No. 13).

<sup>19</sup> Elizabeth Grennan Browning, Adjunct Assistant Professor of History, Indiana University, Written Statement for the Indiana Advisory Committee Briefing before the U.S. Commission on Civil Rights, February 27, 2020, at 1. (hereinafter Browning Statement).

<sup>20</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

<sup>21</sup> Mona Hanna-Attisha, testimony, *May 2019 Web Hearing Before the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, Web briefing, May 3, 2019, transcript, p. 4 (hereinafter cited as May 2019 Web

The federal government took robust measures in the 1970s to decrease lead exposure. In 1972, the federal Lead-Based Paint Poisoning Prevention Act limited lead amounts in paint used in federally funded public housing.<sup>22</sup> The U.S. Environmental Protection Agency (EPA) implemented a phased reduction of lead in gasoline beginning in 1973,<sup>23</sup> and in 1979, the Consumer Products Safety Commission banned leaded paint in residential use.<sup>24</sup> Eventually, Congress amended the Clean Air Act (1990) to ban remaining lead from gasoline.<sup>25</sup> The ban took effect in 1996.<sup>26</sup>

Indiana's track record on lead safety contradicts this narrative of progress, however. The state's legacy is better understood as one of continued, intentional contamination. Several panelists provided an overview of Indiana's history of serious, preventable lead poisoning suffered by people of color.<sup>27</sup> The Committee heard evidence on this issue from Denise Rahman (Indiana NAACP Environmental and Climate Justice Program and Climate Justice Chair of the Indiana State Conference of the NAACP), Emily Benfer (formerly Visiting Associate Clinical Professor of Law at Columbia Law School, now Visiting Professor of Law at Wake Forest University), Dr. Elizabeth Browning (Adjunct Assistant Professor of History and fellow at the Environmental Resilience Institute of Indiana University), and the East Chicago-Calumet Coalition Community Advisory Group.<sup>28</sup>

Panelists elaborated on the example of East Chicago, the site of the most extreme example of lead contamination in Indiana. From 1910-1949, the DuPont East Chicago facility manufactured lead

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Hearing); David C. Bellinger and Andrew Bellinger, "Childhood Lead Poisoning: The Torturous Path from Science to Policy." *Journal of Clinical Investigation*. April 3 2006; 116(4): 853–857.

<https://www.jci.org/articles/view/28232> (accessed August 25, 2020).

<sup>22</sup> Lead-Based Paint Poisoning Prevention Act, Law of Jan. 31, 1971, ch. 63, § 4801, Pub. L. 95-626, Title II, § 208(b) (repealed 1979). Browning Testimony, *Indianapolis Hearing*, p. 73.

<sup>23</sup> Environmental and Energy Study Institute, Fact Sheet: A Brief History of Octane in Gasoline: From Lead to Ethanol (March 2016) at page 2 (discussing leaded gasoline phase out in the United States).

<sup>24</sup> 42 U.S.C. § 4831; Browning Testimony, *Indianapolis Hearing*, p. 73.

<sup>25</sup> 42 U.S.C. 7545(n); see also 40 C.F.R. Part 80.

<sup>26</sup> *Id.* Browning Testimony, *Indianapolis Hearing*, p. 73.

<sup>27</sup> Denise Rahman, *February 2020 Indianapolis Hearing Panelist Presentations*, Feb. 27, 2020, at 5 (hereafter cited as February 2020 Indianapolis Hearing Panelist Presentations); Benfer Testimony, *May 2019 Web Hearing*, p. 21; Browning Testimony, *Indianapolis Hearing*, p. 73; East Chicago Calumet Coalition - Community Advisory Group Statement at 2.

<sup>28</sup> Denise Rahman, *February 2020 Indianapolis Hearing Panelist Presentations*, Feb. 27, 2020, at 5 (hereafter cited as February 2020 Indianapolis Hearing Panelist Presentations); Benfer Testimony, *May 2019 Web Hearing*, p. 21; Browning Testimony, *Indianapolis Hearing*, p. 73; East Chicago Calumet Coalition - Community Advisory Group Statement at 2.

arsenate insecticide.<sup>29</sup> The 61-acre Anaconda Lead and International Refining Company plant in East Chicago produced white lead pigment used in paint from 1911-1968.<sup>30</sup> Across the street from the Anaconda Lead plant, the 79-acre USS Lead Refinery Incorporated plant, originally a subsidiary of the United States Smelting, Refining, and Mining Company, operated from 1906-1985.<sup>31</sup>

Testimony highlighted the intersection of lead contamination and the state's practices of racial segregation. The USS Lead site exists within the bounds of an urban renewal project originating in 1959, the West Calumet Urban Renewal Project No. 2.<sup>32</sup> At the same time the urban renewal project was in its early stages, the Carrie Gosch Elementary School was built about six blocks north of the Anaconda Lead plant (November 1959).<sup>33</sup> Urban renewal of nearby Indiana Harbor was projected to displace 2,300 families.<sup>34</sup> East Chicago's Redevelopment Commission completed a survey in 1959 that noted that the West Calumet clearance area was not suitable for "higher cost homes," and with further study, likely not suitable for residential purposes.<sup>35</sup> In a 1966 *Chicago Tribune* article, East Chicago Housing Authority Executive Director Benjamin Lesniak Jr. admitted struggling to locate adequate sites for future public housing, which would be populated mostly by people of color: "[w]e can either tear down existing deteriorating structures and replace them with public housing units or we can construct them in vacant areas which are surrounded by industries, and undesirable residential areas."<sup>36</sup> Despite growing national awareness about lead's harmful impact and local scientific studies indicating the unsuitable nature of the site, the West Calumet Public Housing Complex was constructed on the former site of the Anaconda lead refinery in 1972.<sup>37</sup>

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<sup>29</sup> Rahman, *February 2020 Indianapolis Hearing Panelist Presentations*, at 5.

<sup>30</sup> Browning Statement, at 3 and Writers' Program of the Works Projects Administration in the State of Indiana, *The Calumet Region History Guide* (Gary: Garman Printing Co., 1939), 102.

<sup>31</sup> Browning Statement, at 3, and Writers' Program of the Works Projects Administration in the State of Indiana, *The Calumet Region History Guide* (Gary: Garman Printing Co., 1939), 111.

<sup>32</sup> Browning Statement, at 6.

<sup>33</sup> Rahman, *February 2020 Indianapolis Hearing Panelist Presentations*, at 5.

<sup>34</sup> "Public Housing Sites are Scarce," *Chicago Tribune*, October 6, 1966, sec. Northwest Indiana-Calumet. <https://perma.cc/HJW8-37SQ>. (accessed August 25, 2020).

<sup>35</sup> Browning Statement, at 6, and East Chicago Redevelopment Trustees and East Chicago Redevelopment Commission, 1959 Annual Report, Indiana University Northwest, Calumet Regional Archives, East Chicago Collection, Box 1, Folder 28.

<sup>36</sup> Browning Statement, at 6, and "Public Housing Sites are Scarce," *Chicago Tribune*, October 6, 1966, sec. Northwest Indiana-Calumet. <https://perma.cc/HJW8-37SQ> (accessed August 25, 2020); Benfer Statement, at 1.

<sup>37</sup> Browning Testimony, *Indianapolis Hearing*, p. 73, and Browning Statement, at 7.

In the 1980s, the EPA found the USS Lead plant exceeded allowable limits of soil and water contamination, and testing in the 1990s found high levels of lead on the grounds of the Carrie Gosch School Elementary School.<sup>38</sup> The EPA recommended listing the USS Lead site on the National Priorities List (NPL) designating it as a known or threatened site for release of hazardous contaminants in 1992, but did not designate the site, which included USS Lead along with nearby commercial, municipal, and residential areas, as a Superfund site until 2009.<sup>39</sup> Although testing for lead had begun years earlier, residents were only notified of the official designation in August 2016.<sup>40</sup> At that time, 1100 households in the West Calumet Housing Complex were informed they had 60-90 days to vacate their homes due to lead contamination.<sup>41</sup>

In August 2018 the Agency for Toxic Substances and Disease Registry (ATSDR), a branch of the U.S. Department of Health and Human Services, concluded that children living on the USS lead site were up to three times more likely to have elevated blood lead levels than children in the rest of East Chicago and up to five times as likely to have elevated blood levels as the rest of the nation.<sup>42</sup> The EPA designated the East Chicago site as an “environmental justice community.”<sup>43</sup> This designation indicates that the community (usually low-income) is disproportionately burdened with environmental harm.<sup>44</sup>

Despite the designation, industry continues to site or carry environmental hazards in the East Chicago neighborhoods. One recent proposal aimed to expand a railyard to transfer petroleum coke (petcoke) by open rail car through already contaminated East Chicago neighborhoods in early

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<sup>38</sup> Rahman, *February 2020 Indianapolis Hearing Panelist Presentations*, at 5; Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, p. 5.

<sup>39</sup> Browning Statement, at 3; U.S. Department of Health and Human Services, Agency for Toxic Substance and Disease Registry (ATSDR), “Health Consultation: Historical Blood Lead Levels in East Chicago, Indiana Neighborhoods Impacted by Lead Smelter” (August 16, 2018), [https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US\\_Smelter\\_Lead\\_Refinery\\_HC\\_2018-508.pdf](https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US_Smelter_Lead_Refinery_HC_2018-508.pdf) (accessed August 25, 2020); Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 5-6.

<sup>40</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 31.

<sup>41</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 31.

<sup>42</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 21; East Chicago Calumet Coalition - Community Advisory Group Statement at 2; Browning Testimony, *Indianapolis Hearing*, pp. 70-71.

<sup>43</sup> U.S. Environmental Protection Agency, EPA Annual Environmental Justice Progress Report FY 2019, 2019, p. 1, 7. [https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19\\_ej\\_report-final-web-v2s.pdf](https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19_ej_report-final-web-v2s.pdf) (accessed August 25, 2020).

<sup>44</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 22. Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 7-8; U.S. Environmental Protection Agency, EPA Annual Environmental Justice Progress Report FY 2019, 2019, p. 1, 7. [https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19\\_ej\\_report-final-web-v2s.pdf](https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19_ej_report-final-web-v2s.pdf) (accessed August 25, 2020).

2020.<sup>45</sup> The EPA noted that as of June 4, 2020, it understands the rail yard expansion plans have stopped, and plans to continue to enforce federal statutes to protect East Chicago from further environmental contamination.<sup>46</sup>

## **B. Sources of Lead**

Lead enters the body primarily through ingestion or inhalation.<sup>47</sup> Dr. Mona Hanna-Attisha of the Michigan State University College of Human Medicine, the pediatrician who raised attention to the City of Flint's water crisis, noted "hidden underneath layers of paint in older homes, buried underground in pipes that deliver our drinking water, and nestled in the soil of our yards, we live with a legacy of lead."<sup>48</sup> Multiple panelists remarked that primary sources of lead in the 1960s-1970s included inhaling lead used in gasoline, lead plumbing, and paint.<sup>49</sup> However, following regulatory action in the 1980s-1990s, now sources of lead exposure primarily includes residual levels of lead left in soil and inside or around buildings from old lead-based paint sources.<sup>50</sup> Dr. Howard Mielke, Research Professor at Tulane University, shared that the amount of lead exposure that occurred in earlier decades from lead used in gasoline was "extraordinarily large" due to the easy absorption of nano particles of lead entering the bloodstream through the lungs.<sup>51</sup>

Soil tends to have high levels of lead around houses and buildings painted before 1978, or buildings undergoing demolition.<sup>52</sup> Lead used in gasoline settled into soil, resulting in high concentrations of lead in soil next to highways.<sup>53</sup> Elevated levels of lead are also found near current industrial

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<sup>45</sup>Browning Statement, at 7 and Lauren Cross, "NRDC, Groups Decry Petcoke Transport Plans in East Chicago," *The Times of Northwest Indiana*, January 29, 2020. [https://www.nwitimes.com/news/local/crime-and-courts/nrdc-groups-decry-petcoke-transportplans-in-east-chicago/article\\_39db7b5e-9d02-500d-9751-457c3575aaa6.html](https://www.nwitimes.com/news/local/crime-and-courts/nrdc-groups-decry-petcoke-transportplans-in-east-chicago/article_39db7b5e-9d02-500d-9751-457c3575aaa6.html) (accessed August 25, 2020).

<sup>46</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, p. 9.

<sup>47</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

<sup>48</sup> Mona Hanna-Attisha, testimony, *May 2019 Web Hearing Before the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, Web briefing, May 3, 2019, transcript, p. 3 (hereafter cited as *May 2019 Web Hearing*).

<sup>49</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7; Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>50</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7; 42 U.S.C. §§ 4801-4846; 42 U.S.C. § 7401 et seq.; Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>51</sup> Mielke Testimony, *April 2019 Web Hearing*, p. 3.

<sup>52</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7; 42 U.S.C. §§ 4801-4846.

<sup>53</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

facilities and the former sites of these facilities.<sup>54</sup> In his studies of lead exposure in New Orleans, Dr. Mielke notes the strong association between the amount of lead in the environment and children's blood lead levels: "Fundamentally, [in] the environment, as it becomes cleaner, the blood lead levels tend to go down community by community across the metropolitan area."<sup>55</sup>

Natural levels of lead in soil are about 30-50 parts per million (ppm), but can be lower.<sup>56</sup> Surface levels of lead in soil quickly surpass 400 ppm in many areas simply through the accumulation of lead from gasoline, house paints, and industrial facilities.<sup>57</sup> Lead recycling and battery recycling facilities contribute significantly to increased presence of lead in surface soils, which can turn into dust on dry days, continually re-contaminating indoor and outdoor environments, and spreading lead beyond areas generally associated with lead contamination.<sup>58</sup>

Dr. Gabe Filippelli of the Center for Urban Health at Indiana University – Purdue University Indianapolis shared lead's far-reaching geographic spread, where a park in the urban center of Indianapolis had similar levels to a park in a suburban area of Indianapolis, and "even in the urban setting far away from local sources, you just have this general high values of lead in surface soils."<sup>59</sup> Lead in homes and areas where children gather is of particular concern. Children ingest or inhale lead through chipped paint, dust around the house, or playing around the house or at a contaminated playground.<sup>60</sup> Dr. Hanna-Attisha highlighted that for small children, "one of the highest exposures is from old windows and window sills that are constantly being closed, especially in the summertime. That can create friction and releases a lot of that dust that has lead in it."<sup>61</sup>

Dr. Browning shared, "[i]n the broader Calumet region, environmental harm has especially traumatized lower income communities of color whose residents not only work in the most hazardous parts of these industrial facilities, but also live and play in close proximity to them."<sup>62</sup> In addition to the industrial facilities located in East Chicago, Indiana is home to numerous former lead smelter and industrial sites.<sup>63</sup> Dr. Janet McCabe, Director of the Environmental Resilience

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<sup>54</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>55</sup> Mielke Testimony, *April 2019 Web Hearing*, p. 4.

<sup>56</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>57</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>58</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>59</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>60</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, pp. 7-8.

<sup>61</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, pp. 7-8.

<sup>62</sup> Browning Testimony, *Indianapolis Hearing*, p. 64.

<sup>63</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 22.

Institute noted, “we have children all over the state who are at risk of lead poisoning, and I would say that although it's not as dramatic as the East Chicago situation, the primary source of lead poisoning for children in Indiana is their own home.”<sup>64</sup> Highlighting the historic and ongoing racial discrimination in Indiana housing that narrows housing options for people of color across income levels, Dr. McCabe continued, “the reason why poor children and children of color are more likely to be exposed [in] their home is because they are more likely to live in poorly maintained older housing, housing where paint is chipping.”<sup>65</sup>

Every county in the state of Indiana has housing stock built before 1978, when lead-based paint was banned for residential use, that likely includes lead-based paint.<sup>66</sup> For example, using research gained through data of oil lead concentrations found in local wildlife, Dr. Jennifer Latimer, Interim Chair and Professor at Indiana State University, shared that a large portion of Terre Haute is likely at high risk of lead poisoning.<sup>67</sup>

Ms. Benfer shared information from the American Community Survey that in Indiana, “23.2% homes were built before 1950 and 44.9% of homes were built before 1970. One point four million were built before 1980.”<sup>68</sup> Despite the prevalence of older housing stock across Indiana, there is no systematic testing of homes, or registry of rental homes, that indicate whether the residence has been inspected for lead, or abated.<sup>69</sup> Home inspections and potential abatement only occurs once a child tests positive for lead poisoning.<sup>70</sup>

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<sup>64</sup> McCabe Testimony, *Indianapolis Hearing*, p. 90.

<sup>65</sup> McCabe Testimony, *Indianapolis Hearing*, p. 91.

<sup>66</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 21.

<sup>67</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 9.

<sup>68</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 21; According to the American Community Survey and Census Bureau's Population Estimates Program, the total number of housing units in Indiana built before 1980 is 1,479,668 and the total number of housing units in IN is 2,537,189, this means 58.32% of housing units were built before 1980. U.S. Census Bureau, American FactFinder, [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17\\_5YR/S2504/0400000US18](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2504/0400000US18) (using 2013-2017 American Community Survey 5-Year Estimates, accessed August 25, 2020).

<sup>69</sup> McCabe Testimony, *Indianapolis Hearing*, p. 97.

<sup>70</sup> McCabe Testimony, *Indianapolis Hearing*, p. 97. See also 40 C.F.R. § 745.61 (“Nothing in this subpart requires the owner of property(ies) subject to these standards to evaluate the property(ies) for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.”); *id.* at § 745.220 (setting out a batement procedures if a child residing in the building has been identified as having an elevated blood lead level).

Several panelists shared testimony regarding the inability to decrease the presence of lead in indoor and outdoor environments without remediation efforts that remove or contain the lead.<sup>71</sup> Despite regulatory action targeting lead in gasoline, water pipes, and paint, lead continues to be a significant issue as it does not decay or degrade.<sup>72</sup> It is also challenging to decrease lead poisoning in a community without proper cleanup that removes contaminants.<sup>73</sup> Dr. Hanna-Attisha shared that tactics used by the lead industry to remove blame and responsibility for cleanup included telling parents to keep their houses clean and wash their children's hands, which did not solve the issue of lead and lead dust within and around homes.<sup>74</sup>

Lead from paint sources and industry can settle in soil which can result in runoff into drinking water sources, and lead in old pipes has also contributed to the presence of lead in drinking water.<sup>75</sup> The City of East Chicago began replacing lead service lines in 2017 to reduce levels of lead in drinking water, however, residents did not have adequate information about the service line replacement efforts and the availability of drinking water filters.<sup>76</sup>

Advocacy groups and residents in East Chicago are also concerned that groundwater carrying lead continues to seep into basements in areas that have been remediated.<sup>77</sup> Addressing issues related to buried waste, basement flooding, recontamination, and subsurface intrusion of toxic contaminated groundwater, concerned citizen, Larry Davis notes: “[s]omething needs to be done to protect East Chicago, Indiana residents from toxic Subsurface Intrusion hazards by severely contaminated groundwater and toxic wastes buried within the Calumet Aquifer itself in the Calumet community of East Chicago, Indiana.”<sup>78</sup>

In response to concerns about contaminated groundwater, the EPA noted it is not aware of seepage posing an unacceptable risk to residences within the USS Lead Site, and sampling results at the Superfund's “Zones 2 and 3 conducted to date indicate that arsenic in groundwater at the top of

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<sup>71</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16; Mielke Testimony, *April 2019 Web Hearing*, p. 6; Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 8. Benfer Testimony, *May 2019 Web Hearing*, p. 21; East Chicago Calumet Coalition - Community Advisory Group Statement, at 5.

<sup>72</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 15-16.

<sup>73</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 17.

<sup>74</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 8; East Chicago Calumet Coalition - Community Advisory Group Statement, at 5.

<sup>75</sup> East Chicago Calumet Coalition - Community Advisory Group Statement, at 4.

<sup>76</sup> East Chicago Calumet Coalition - Community Advisory Group Statement, at 5.

<sup>77</sup> East Chicago Calumet Coalition - Community Advisory Group Statement, at 5; Larry Davis, Written Statement for the Indianapolis Briefing before the U.S. Commission on Civil Rights, Feb. 27, 2020, at 120 (hereinafter Davis Statement).

<sup>78</sup> Davis Statement, at 119.



the water table is consistently below the MCL [Maximum Contaminant Level]; lead is not detected in the shallow water throughout much of the Site, but fluctuates at one monitoring well (OU1MW5) up to approximately 230 ug/L.”<sup>79</sup> The EPA also noted that the Remedial Investigation Report will be publicly available on its website once it is approved.<sup>80</sup>

Lead from paint sources and industry can also turn into dust that is inhaled in the air.<sup>81</sup> Lead compounds are among the 188 hazardous air pollutants tracked and controlled by the EPA according to the 1990 Clean Air Act Amendments,<sup>82</sup> and failure to comply with standards results in a “nonattainment designation.”<sup>83</sup> Ms. Deborah Malitz with Protect Muncie shared that industrial facilities are of particular concern for adding of lead particulates to the air, saying “it definitely doesn’t just stop at the perimeter lines of that facilities. It’s coming out in plumes.”<sup>84</sup> She added that communities that “have studied this have found historic deposition plumes as far as five miles out.”<sup>85</sup>

### C. Medical Impact of Lead Exposure

Panelists agreed: There is no safe level of lead in the blood of a child.<sup>86</sup> Brain scans show lead has an impact on speech, ability to control behavior, ability to assess difficult situations and respond

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<sup>79</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 10-11.

<sup>80</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, p. 11; Remedial Investigation Report to be available at <https://www.epa.gov/uss-lead-superfund-site>.

<sup>81</sup> Malitz Testimony, *Indianapolis Hearing*, p. 45.

<sup>82</sup> 42 U.S.C. § 7401 et seq.

<sup>83</sup> Malitz Testimony, *Indianapolis Hearing*, p. 57; Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 6-7. U.S. Environmental Protection Agency, EPA Annual Environmental Justice Progress Report FY 2019, 2019, p. 1, 7. [https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19\\_ej\\_report-final-web-v2s.pdf](https://www.epa.gov/sites/production/files/2019-11/documents/11.19.19_ej_report-final-web-v2s.pdf) (accessed August 25, 2020).

<sup>84</sup> Malitz Testimony, *Indianapolis Hearing*, p. 47.

<sup>85</sup> Malitz Testimony, *Indianapolis Hearing*, p. 56.

<sup>86</sup> Carlton Waterhouse, testimony, *Hearing Before the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, Indianapolis, IN, Feb. 27, 2020, transcript, p. 78 (hereafter cited as Indianapolis Hearing); Browning Statement, at 1 and Gerald E. Markowitz and David Rosner, *Lead Wars: The Politics of Science and the Fate of America’s Children* (Berkeley: University of California Press, 2013), 29; Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 8; Browning Statement, at 1 and Gerald E. Markowitz and David Rosner, *Lead Wars: The Politics of Science and the Fate of America’s Children* (Berkeley: University of California Press, 2013), 29; American Academy of Pediatrics, Council on Environmental Health, Policy Statement: Prevention of Childhood Lead Toxicity, 138 *Pediatrics* 1, 5 (July 2016).

appropriately, and behavioral disorders related to attention, focus, and hostility.<sup>87</sup> Lead decreases brain mass and brain functioning, impacting cognitive abilities, increasing development delays, and increasing risky behaviors that include dangerous activities, including a propensity for crime later in life.<sup>88</sup> Children are at the highest risk for ingesting lead until age six, with exposure beginning during pregnancy if a mother is exposed to lead, and continuing when lead is passed through breastmilk and if water with lead in it is used to mix powdered formula.<sup>89</sup>

Mothers are tasked with managing their children's lead exposure beginning with pregnancy through managing ingestion of lead through nutrition and the lived environment, with many mothers or primary caregivers in need of resources to manage existing exposure and prevent further exposure for their children.<sup>90</sup> The presence of stress increases the body's uptake of lead, making it possible for babies to be impacted by their mother's stress, particularly in cases where stress can impact a person's stress burden.<sup>91</sup> Lead exposure from water and from lead in blood seriously impacts babies in utero during a developmentally vulnerable age of exposure, and has been associated with fetal death, miscarriage, prematurity, and low birth weight.<sup>92</sup>

The impacts of lead exposure are permanent and irreversible.<sup>93</sup> Lead poisoning increases in severity over time and with the level of exposure, but most lead is stored in bones and leaks into the body in the decades following exposure, highlighting the need to prevent exposure to lead in the first place, especially in children.<sup>94</sup> Part of the reason children are at highest risk is due to ingesting an enormous amount of dust and soil during hand to mouth activity while crawling and beginning to walk.<sup>95</sup> A child's developing body will absorb about five times as much lead as an

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<sup>87</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 14-15.

<sup>88</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 14-15; Mielke Testimony, *April 2019 Web Hearing*, p. 6; Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 5.

<sup>89</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7; Filippelli Testimony, *April 2019 Web Hearing*, p. 15; Browning Statement, at 2.

<sup>90</sup> Browning Testimony, *Indianapolis Hearing*, p. 65; Norah MacKendrick and Kate Cairns, "The Polluted Child and Maternal Responsibility in the U.S. Environmental Health Movements," *Signs: Journal of Women in Culture and Society* 44, no. 2 (January 2019): 307-32; Norah MacKendrick, "More Work for Mother: Chemical Body Burdens as a Maternal Responsibility," *Gender & Society* 28, no. 5 (October 2014): 705-28.

<sup>91</sup> Pugh Testimony, *May 2019 Web Hearing*, p. 11; 27.

<sup>92</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 8.

<sup>93</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 15; Agency for Toxic Substances and Disease Registry, *Health Consultation*, p. 15.

<sup>94</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 15; Borowiecki Testimony, *November 2019 Web Hearing*, p. 11.

<sup>95</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

adult who ingests the same amount.<sup>96</sup> This is because children's intestines are not yet able to filter out lead, leading to increased absorption at very young ages and impacting the appropriate formation of neurons that are still developing in the brain.<sup>97</sup>

Lead is also easily absorbed into a child's body when the child lacks calcium, iron, and vitamin C, or their stomach is empty.<sup>98</sup> Several panelists additionally highlighted the increased risk of negative effects of lead exposure for children who are anemic.<sup>99</sup> Children living in underserved communities are particularly vulnerable to serious and debilitating lead exposure.<sup>100</sup> Children living in these communities are at increased risk of higher lead absorption not just due to developmental age, but also due to poor nutrition they or their mothers experience during pregnancy.<sup>101</sup>

In their testimony, Drs. Hanna-Attisha, Mielke, and Filippelli all stressed the need to prevent lead exposure before it occurs.<sup>102</sup> Recent studies indicate children exposed to lead continue losing IQ and economic output progressively through their adulthood.<sup>103</sup> Independent of other social and economic factors, children who have been lead poisoned are more likely to struggle in school, under-perform in the workplace, and earn less across their earning years.<sup>104</sup> Studies show that lead-poisoned individuals are seven times more likely to drop out of school, and six times more likely to enter the criminal justice system.<sup>105</sup>

Dr. Mielke described a lead exposure study that revealed that children who were very highly exposed to lead in the 1960s and 1970s had very high rates of crime and aggravated assault 22

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<sup>96</sup> Browning Statement, at 1.

<sup>97</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

<sup>98</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

<sup>99</sup> Anna Aizer, testimony, *April 2019 Web Hearing Before the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, Web briefing, April 30, 2019, transcript, p. 19 (hereafter cited as *April 2019 Web Hearing*); Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7; Filippelli Testimony, *April 2019 Web Hearing*, p. 15.

<sup>100</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

<sup>101</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7.

<sup>102</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 7; Mielke Testimony, *April 2019 Web Hearing*, p. 6; Filippelli Testimony, *April 2019 Web Hearing*, p. 15.

<sup>103</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 15.

<sup>104</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 20; Health Impact Project. "10 Policies to Prevent and Respond to Childhood Lead Exposure." Pewtrusts.org. [https://www.pewtrusts.org/-/media/assets/2017/08/hip\\_childhood\\_lead\\_poisoning\\_report.pdf](https://www.pewtrusts.org/-/media/assets/2017/08/hip_childhood_lead_poisoning_report.pdf) (accessed August 25, 2020).

<sup>105</sup> *Ibid.*

years later.<sup>106</sup> There was a noted correlation between decreasing blood lead levels in the population and a decrease in crime and aggravated assaults.<sup>107</sup> Studies tracking lead exposure and school performance schools follow a similar pattern; high levels of lead in blood and high levels of lead in soil around a school resulted in low performance, while low levels of lead in students' blood and school soil was associated with higher school performance.<sup>108</sup>

## **D. Testing**

The Committee heard testimony relating to testing for lead exposure primarily in blood, water, and soil contamination. In 2012, the CDC changed the recommended testing level in blood from 10 µg/dL to 5 µg/dL, indicating lead poisoning concerns in anyone with blood lead levels greater than 5 µg/dL.<sup>109</sup> Furthermore, panelists emphasized that the CDC has itself acknowledged that there is no safe level of blood in the body, and it is now possible to test down to 0 µg/dL.<sup>110</sup> The State of Indiana continues to use 10 µg/dL for its blood lead testing level rather than the CDC's recommended 5 µg/dL, although the Medicaid program requires 5 µg/dL as its testing level.<sup>111</sup> Some counties in Indiana have adopted the CDC's recommended 5 µg/dL as their blood lead screening level for lead poisoning.<sup>112</sup>

In March 2018, the state considered lowering Indiana's testing level for lead contamination to 5 µg/dL, however, no official action was taken.<sup>113</sup> According to the most recent 2014 data, the number of children tested and confirmed to have more than 10 µg/dL of lead in their blood was 4.61%, which has been used as an estimate to determine the prevalence of lead poisoning in Indiana if all children were being screened.<sup>114</sup>

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<sup>106</sup> Mielke Testimony, *April 2019 Web Hearing*, p. 7.

<sup>107</sup> Mielke Testimony, *April 2019 Web Hearing*, p. 7.

<sup>108</sup> Mielke Testimony, *April 2019 Web Hearing*, p. 7.

<sup>109</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 78. See also <https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm>.

<sup>110</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 10; Benfer Testimony, *May 2019 Web Hearing*, p. 26; Filippelli Testimony, *April 2019 Web Hearing*, p. 26; U.S. Centers for Disease Control, "Lead Poisoning Prevention." Childhood Lead Poisoning Prevention Program. CDC.gov. <https://www.cdc.gov/nceh/lead/prevention/default.htm> (accessed August 25, 2020).

<sup>111</sup> McCabe Testimony, *Indianapolis Hearing*, p. 98; Waterhouse Testimony, *Indianapolis Hearing*, p. 78.

<sup>112</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 78; Gillespie Testimony, *May 2020 Web Hearing*, p. 13; Rahman Testimony, *Indianapolis Hearing*, p. 36; Johnson Testimony, *April 2019 Web Hearing*, p. 31.

<sup>113</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 18.

<sup>114</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 26.

In drinking water, lead concentrations must be 15 parts per billion (ppb) or lower to be considered safe.<sup>115</sup> Ms. Rahman shared that recent samples of drinking water in the Marion County schools revealed the average lead contamination in Marion County schools came to 20 ppb, but some schools had concentrations of 8,630 ppb, more than 500 times the allowable amount.<sup>116</sup> As of July 1, 2020, the Indiana requires schools test water to ensure lead levels in drinking water are less than 15 ppb.<sup>117</sup> However, soil and student's blood lead levels are not required to be tested under this newly adopted legislation.<sup>118</sup>

In soil and surrounding environments, lead concentrations should be less than 400 ppm for play areas, or 1200 ppm for non-play areas.<sup>119</sup> Of particular concern is soil in areas frequented by children, particularly playgrounds and areas around childcare centers. Dr. Howard Mielke, Research Professor at Tulane University, shared his research and findings related to the ease of preventing lead poisoning in these areas of concern:

We've done a lot of work on childcare centers, and in a very short period of time, we can change the surface of the soil from where it's severely contaminated to where it's really clean. We bring in soil from outside the city and it's very low in lead, about five parts per million into parts of the city that might have 1,000 parts per million. A layer of just a few inches will change the entire environment to the point that it's really very clean for the children to live in. But we have very little funding and support towards doing this kind of rehabilitation or changing the soils of parts of the city....The major change that we've seen is in, and it's certainly concurrent, that as the general amount of lead in the soil has decreased, the blood lead levels have gone down.<sup>120</sup>

Dr. Filippelli discussed the lack of awareness of potential lead contamination in soil used for urban gardening, noting that “regardless of whether it's a commercial operation or the neighbor down the street with a garden next to their peeling lead paint at home, there should be some capacity to

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<sup>115</sup> U.S. Environmental Protection Agency, “Basic Information about Lead in Drinking Water.” Epa.gov. <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> (accessed August 25, 2020).

<sup>116</sup> Rahman Testimony, *Indianapolis Hearing*, p. 33; Marion County Public Health Department, “School Water Report.” 2019. <http://marionhealth.org/schoolwaterreport/> (accessed August 25, 2020).

<sup>117</sup> IND. CODE § 16-41-21.1-3 (2020).

<sup>118</sup> Gillespie Testimony, *May 2020 Hearing*, p. 12-13; IND. CODE § 16-41-21.1-3 (2020).

<sup>119</sup> Agency for Toxic Substances and Disease Registry. “What are U.S. Standards for Lead Levels?” 2019. <https://www.atsdr.cdc.gov/csem/csem.asp?csem=34&po=8#:~:text=Soil%20contains%20lead%20concentrations%20less,play%20areas%20%5BEPA%202000a%5D> (accessed August 25, 2020).

<sup>120</sup> Mielke Testimony, *April 2019 Web Hearing*, p. 6.

provide that lead testing as well as some simple steps on how to mitigate properties.”<sup>121</sup> Dr. Latimer agreed that formal outreach around urban gardening is lacking when it comes to potential contamination of surface soils, with gardeners generally hearing from gardening resource fairs, word of mouth, or other informal means that it is important to get the soil used for gardening tested.<sup>122</sup> Dr. Latimer agreed, noting, “[a]ny place that had industry, that had high traffic volumes, and that had old housing stocks needs to have a lead testing program.”<sup>123</sup>

Elevated blood lead levels are especially high among lower income and minority children with higher rates of lead exposure in their lived environments.<sup>124</sup> Dr. Latimer shared that nationally, the average for children who have elevated blood lead levels hovers between three and four percent, however, closer to five percent of Indiana’s children have elevated blood lead levels.<sup>125</sup> Dr. Filippelli added that children who were shown to be lead poisoned in South Bend and Indianapolis were disproportionately of color and lower income.<sup>126</sup>

The Howard University School of Law Environmental Justice Center provided the following analysis around the disproportionate incidence of lead poisoning among Black children:

According to the 2018 Childhood Lead Surveillance Report from the Lead & Healthy Homes Division, there were 52 confirmed cases of elevated blood levels in Black children under the age of 7 in Indiana out of the 15,001 Black children which were tested. The children with elevated blood lead levels made up 0.35% of the Black children tested. Conversely, there were 25,480 white children tested with 78 cases of confirmed elevated blood levels. The 78 cases of elevated blood levels made up 0.31% of the white children tested. At that rate, if 25,480 Black children would have been tested 89 would have been identified. This reflects a 42% increase in the number of Black children eligible for services.<sup>127</sup>

In order to have more accurate and consistently reported data, Dr. Latimer stressed the need to expand upon the current efforts to test blood lead levels in children to include considering the

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<sup>121</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 24.

<sup>122</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 25.

<sup>123</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 14.

<sup>124</sup> Browning Testimony, *Indianapolis Hearing*, p. 65.

<sup>125</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 10.

<sup>126</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 17.

<sup>127</sup> Howard University School of Law Environmental Justice Center Statement, at 5; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2018, p. 8, <https://www.in.gov/isdh/files/2018%20Lead%20Report.pdf> (accessed August 25, 2020).

sources of lead exposure, potentially from soils, and lead in food, like fish.<sup>128</sup> Levels of lead in air are pervasive and serious, and also must be considered.<sup>129</sup> Jessica Fraser, Director of the Indiana Institute for Working Families, provided the Committee with their unpublished data to highlight the incidence of lead risk for owner-occupied units with children under six in Indiana as part of their efforts to conduct outreach to affected areas; this data can be found in the report appendix.<sup>130</sup>

Chris Borowiecki, Director of the Environmental Division with the Vanderburgh County Health Department shared what their lead testing and service provision program entails.<sup>131</sup> The program serves families with children under age six who receive lead testing through their pediatrician, or through the Vanderburgh County Health Department for lab testing for no cost.<sup>132</sup> Mr. Borowiecki noted that outreach within his program includes going to health fairs as well as going to doctor's offices and asking if they can also test for lead while providing other tests and vaccinations, which is not always successful.<sup>133</sup> Regardless of income level,<sup>134</sup> an environmental assessment is started if the child's blood lead levels are greater than 10 µg/dL, which includes contacting the family and asking the family about their current cleaning and dusting habits to explore how to reduce lead dust, nutrition counseling, checking the inside and outside of the home, sampling the home, and checking to see if grass, mulch, or concrete might be needed to cover contaminated soil.<sup>135</sup>

Mr. Borowiecki shared: “[c]ommonly, if they wanted to take out a wall, they wanted to do some remodeling or something, and there is lead in the wall areas, there are the paint chips, then they can generate a lot of dust. What we can do is try to help them with that.”<sup>136</sup> While the full services of the program may not be triggered by a blood lead level test below 10 µg/dL, he shared they still make contact with families at blood lead levels of 5-6 µg/dL in order to provide visual inspection, counseling, and connect with the EPA for follow up if needed.<sup>137</sup> He added that the program was working with about 15 children in fall of 2019, and that testing for lead poisoning in the houses’

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<sup>128</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 12.

<sup>129</sup> Malitz Testimony, *Indianapolis Hearing*, p. 45.

<sup>130</sup> Jessica Fraser, Director, Indiana Institute for Working Families, Written Statement for the Indianapolis Hearing before the U.S. Commission on Civil Rights, February 19, 2020, at 1 (hereinafter Fraser Statement).

<sup>131</sup> Chris Borowiecki, testimony, *Hearing before the U.S. Commission on Civil Rights, Web Hearing*, November 11, 2019, transcript, p. 2 (hereafter cited as November 2019 Web Hearing).

<sup>132</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 2.

<sup>133</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 8.

<sup>134</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 4.

<sup>135</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 34.

<sup>136</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 3.

<sup>137</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 4.

water has not been common during his time at the Vanderburgh County Health Department, “though we have that ability if we feel like we need to, because we’re on city water.”<sup>138</sup>

### *1. Lack of Universal Testing*

Panelists raised concern that very few children in Indiana are tested for lead exposure, noting that Indiana lacks universal testing for lead exposure or lead poisoning.<sup>139</sup> According to the Howard University School of Law Environmental Justice Center, many states require universal testing, and the states that require universal testing have increased levels of testing particularly for Medicaid recipients.<sup>140</sup> While Indiana recommends increasing screening children for lead exposure,<sup>141</sup> the lack of a legal mandate results in very low numbers of children screened: 12% of Indiana’s children are tested for lead poisoning by age three, and only about 8% of Indiana’s children are tested by age five.<sup>142</sup> Dr. Carlton Waterhouse, Professor of Law and Divinity and Director of the Environmental Justice Center at the Howard University School of Law, noted that the state is testing fewer children in 2020 than it tested in the early 2000s, as shown in Figure 1.<sup>143</sup>

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<sup>138</sup> Borowiecki Testimony, *November 2019 Web Hearing*, p. 6.

<sup>139</sup> McCabe Testimony, *Indianapolis Hearing*, p. 96; Latimer Testimony, *April 2019 Web Hearing*, p. 101; Gillespie Testimony, *May 2020 Web Hearing*, p. 13.

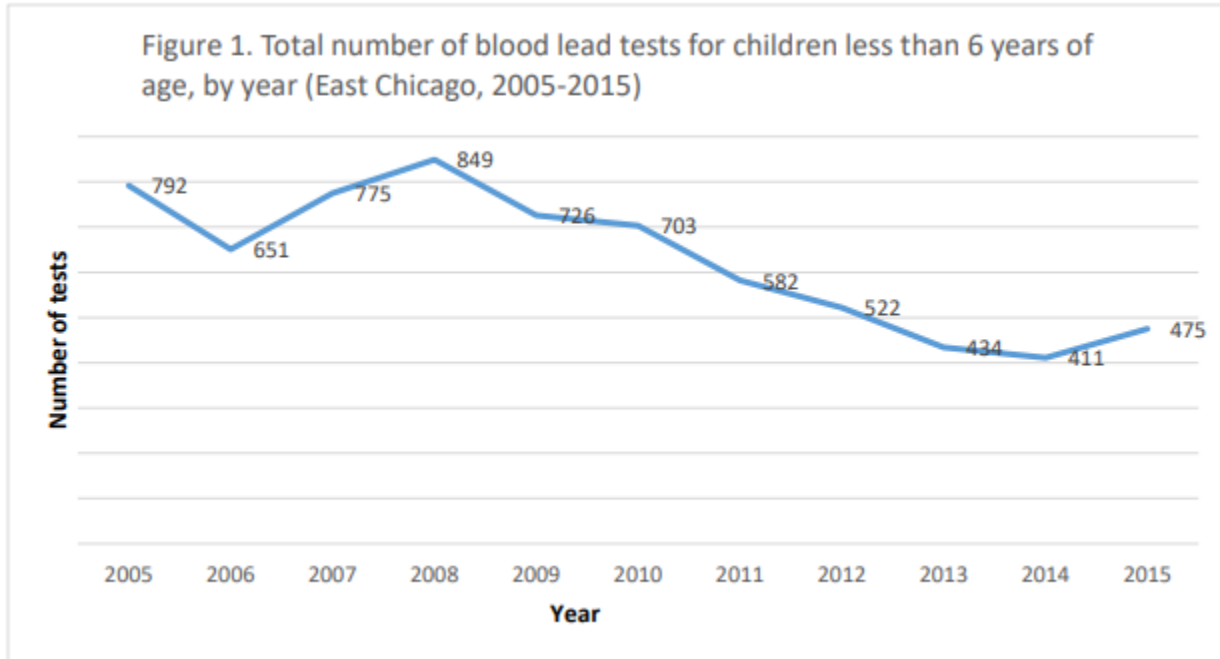
<sup>140</sup> Howard University School of Law Environmental Justice Center Statement, at 5.

<sup>141</sup> State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2017, p. 4, 8, <https://www.in.gov/isdh/files/2017-lead-report-final.pdf> (accessed August 25, 2020).

<sup>142</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 21; Gillespie Testimony, *May 2020 Web Hearing*, p. 13.

<sup>143</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 80; Agency for Toxic Substances and Disease Registry, *Health Consultation*, p. 8, [https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US\\_Smelter\\_Lead\\_Refinery\\_HC\\_2018-508.pdf](https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US_Smelter_Lead_Refinery_HC_2018-508.pdf) (accessed August 31, 2020).





Source: Agency for Toxic Substances Disease Registry, Health Consultation

Figure 1

Dr. Latimer added that while testing levels are beginning to increase within the state, populations deemed most at risk for elevated blood lead levels, including Indiana's rural counties, continue to be overlooked.<sup>144</sup> Dr. McCabe shared that there are efforts to increase blood lead screenings in government programs.<sup>145</sup>

Without a state policy in place to require testing, testing decisions are made by often underfunded counties where lead poisoning may not be a highly visible priority, and as a result, many children are not being tested.<sup>146</sup> Dr. Latimer shared that some counties do provide free blood testing for children under six years of age, however, both urban and rural counties struggle to make testing

<sup>144</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 11; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2017, p. 8, <https://www.in.gov/isdh/files/2017-lead-report-final.pdf> (accessed August 25, 2020).

<sup>145</sup> McCabe Testimony, *Indianapolis Hearing*, p. 102. See also U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Vikki Wachino, Director of Center for Medicaid and CHIP Services, *Coverage of Blood Lead Testing for Children Enrolled in Medicaid and the Children's Health Insurance Program*, 2016, p. 2, (Nov. 30, 2016) (hereafter U.S. Department of Health and Human Services, *Coverage of Blood Lead Testing*) <https://www.medicare.gov/federal-policy-guidance/downloads/cib113016.pdf>.

<sup>146</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 13.

accessible to children at risk of lead poisoning.<sup>147</sup> Some states require lead testing be covered by insurance, as the cost to get tested can be significant if there is no existing lead testing program.<sup>148</sup>

Without adequate testing, children with lead poisoning are not identified and do not receive mandated services.<sup>149</sup> Jennifer Phillips of the Indiana University Robert H. McKinney School of Law said, “not only is the overall screening rate low, a 2016 analysis estimated that 76% of children who are expected to have elevated BLLs [blood lead levels above 5 µg/dL] are not screened, meaning that most children with lead poisoning in the state are not identified”<sup>150</sup> and may not be receiving the services that are recommended for children with blood lead levels of 5-9.9 µg/dL.<sup>151</sup>

## **2. Medicaid Grant Requirements and Testing Inconsistencies**

Although the State of Indiana does not have a universal blood lead testing policy, Indiana children who receive Medicaid are required to have their blood tested for lead poisoning, and programs that accept federal funding have an obligation to comply with Medicaid regulations.<sup>152</sup> Ms. Phillips shared that Medicaid requires testing children’s blood for lead poisoning at 12 and 24 months,<sup>153</sup> however, most children within this age group are still not screened nationally, and Indiana has the lowest Medicaid screening rate among the nearest five states.<sup>154</sup> Dr. Latimer added that Indiana recently added a requirement to also test Medicaid recipients at six months, but noted that levels of testing would likely remain low, as Vermont, which does have a universal lead testing requirement, is still only testing approximately 70 percent of its Medicaid recipients.<sup>155</sup> Dr.

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<sup>147</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 13.

<sup>148</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 13; Howard University School of Law Environmental Justice Center Statement, at 6.

<sup>149</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 16.

<sup>150</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 16.

<sup>151</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 16.

<sup>152</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 16; U.S. Department of Health and Human Services, *Coverage of Blood Lead Testing* at 2. <https://www.medicaid.gov/medicaid/benefits/early-and-periodic-screening-diagnostic-and-treatment/lead-screening/index.html> (accessed November 10, 2020); Waterhouse Testimony, *May 2020 Web Hearing*, p. 24; Howard University School of Law Environmental Justice Center Statement, at 2; 45 C.F.R. Part 75.

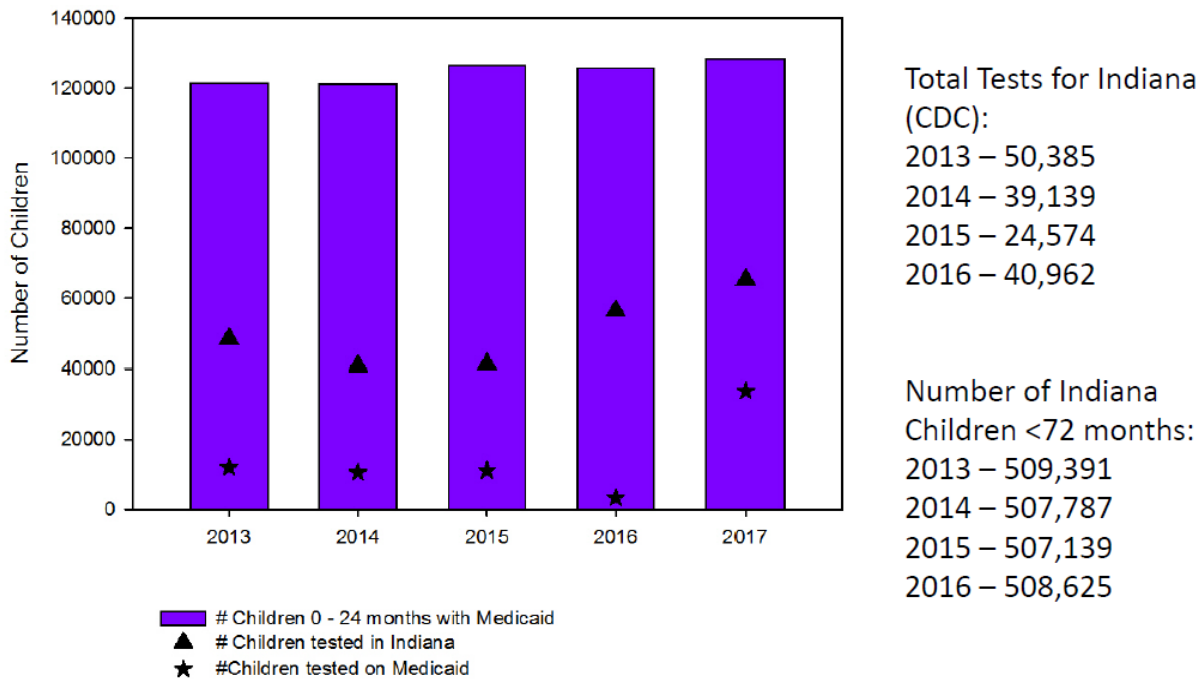
<sup>153</sup> U.S. Department of Health and Human Services, *Coverage of Blood Lead Testing*. <https://www.medicaid.gov/medicaid/benefits/early-and-periodic-screening-diagnostic-and-treatment/lead-screening/index.html> (accessed November 10, 2020).

<sup>154</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 17.

<sup>155</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 10.

Latimer shared the following chart (Figure 2) in her slides to emphasize the low levels of testing shown, particularly for children who are recipients of Medicaid:

This is the data for Indiana. The purple bars represent the number of kids zero to 24 months here on Medicaid, in December of each of these years. This data is published on the website for the Indiana Family and Social Services Administration. Then the triangles and the stars come from the Lead and Healthy Homes reports from the Indiana Department of Health. The triangles represent the number of kids who are being tested annually, and then the stars represents the number of kids on Medicaid who are being tested. We should be testing all 120,000 of these kids every year, but actually, [at] most we're testing about half of them, 60,000 kids, and only a small percentage of those kids are on Medicaid. We're not doing a regular job of testing a population that the CDC and most health departments deemed to be at risk.<sup>156</sup>



Source: Indiana State Department of Health, Lead and Healthy Homes Reports

Figure 1

Dr. Waterhouse shared similar concerns relating to the low levels of testing, noting that while the CDC asks its grant recipients to test all children receiving Medicaid, Indiana consistently tests less

<sup>156</sup> Latimer Testimony, April 2019 Web Hearing, p. 10.

than 40 percent of its Medicaid recipients for lead exposure, sometimes far less than 40 percent.<sup>157</sup> He added that Indiana and Kentucky are the only two states that receive Medicaid funding but do not require laboratories to report blood lead levels to state officials.<sup>158</sup> Referring to the Indiana State Department of Health Lead and Healthy Homes Division 2018 report,<sup>159</sup> Dr. Waterhouse highlighted that close to 95 percent of children on Medicaid were tested for measles and mumps, while only 11 percent were tested for lead.<sup>160</sup> Multiple panelists shared that screening is especially important for children on Medicaid and other children who are at high risk for exposure in order to catch lead exposure early.<sup>161</sup>

In addition to very low levels of reporting related to blood lead levels in Medicaid recipients, panelists and the Indiana State Department of Health noted inconsistent reporting is an issue, both in overall numbers of children tested as well as racial identity of children tested.<sup>162</sup> Tony Gillespie, Vice President of Public Policy & Engagement at the Indiana Minority Health Coalition shared that in 2018, “the racial and ethnic information was classified as unknown for 27% of the children tested and for 31% of the lead cases identified. Reporting ethnicity information was unknown for 39% of the children tested in 26% of the lead cases identified. So this is something that has historically been ongoing.”<sup>163</sup> Emphasizing the historical issues around collecting appropriate data for chronic health conditions and diseases, Mr. Gillespie explained that there is a need to make racial and ethnic data collection required versus optional, noting the general understanding that “if it’s not data that’s required to be collected, then it’s not collected.”<sup>164</sup> He also noted that data

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<sup>157</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 81; McCabe Testimony, *Indianapolis Hearing*, p. 98.

<sup>158</sup> Waterhouse Testimony, *Indianapolis Hearing*, pp. 81-82.

<sup>159</sup> State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2018, p. 8, <https://www.in.gov/isdh/files/2018%20Lead%20Report.pdf> (accessed August 25, 2020).

<sup>160</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 81.

<sup>161</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 16; Latimer Testimony, *April 2019 Web Hearing*, p. 11; Benfer Testimony, *May 2019 Web Hearing*, p. 21.

<sup>162</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 80; Latimer Testimony, *April 2019 Web Hearing*, p. 10; Johnson Testimony, *April 2019 Web Hearing*, p. 31; Benfer Testimony, *May 2019 Web Hearing*, p. 21; Gillespie Testimony, *May 2020 Web Hearing*, p. 13; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2015, p. 4, <https://www.in.gov/isdh/files/Lead%20Report%202015%20w%20reportable%20disease.pdf> (accessed August 25, 2020); Howard University School of Law Environmental Justice Center Statement, at 5.

<sup>163</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 13.

<sup>164</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 16.

reporting mechanisms should be consistent and streamlined between county and state-level reporting.<sup>165</sup>

Dr. Latimer provided a visual of what inconsistent reporting looks like between federal and Indiana lead data results, which shows more peach and yellow areas of concern in a CDC vs. state level comparison (Figure 3):

The data on both of those websites or in their different reports just are different. They disagree. So, it's hard, I think, to really understand what's going on in terms of success or unsuccessful policy when we don't have great data....For whatever reason, I don't know what it is. I don't think that is necessarily... I don't think that there's any agenda or anything. I think there's just a problem in terms of reporting some of the data....When you talk to parents, you also hear this, that tests get lost, that it's difficult to get your results. Somewhere, there's a disconnect, where the data isn't getting captured in all of the same places. The same data isn't getting captured in every place that's reported.<sup>166</sup>

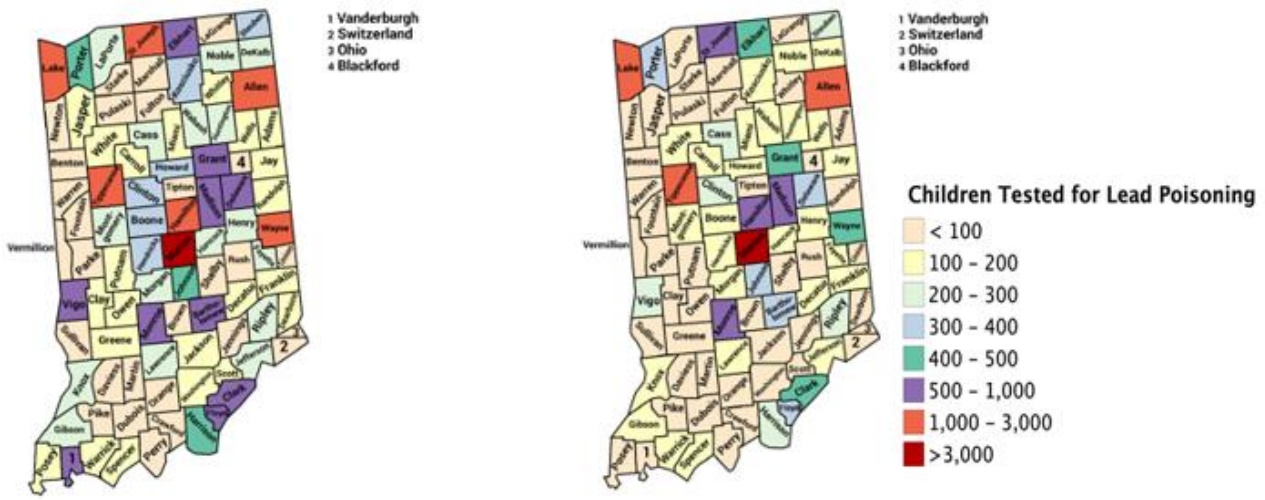
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<sup>165</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 17.

<sup>166</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 10-11; April 2019 Web Hearing, p. 21, Note: Data collected for the two charts was collected through tables available at [https://www.cdc.gov/nceh/lead/docs/data/state/2015/IN\\_CountyLevelSummary\\_2015.xlsx](https://www.cdc.gov/nceh/lead/docs/data/state/2015/IN_CountyLevelSummary_2015.xlsx) (accessed August 25, 2020) and State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2015, <https://www.in.gov/isdh/files/Lead%20Report%202015%20w%20reportable%20disease.pdf> (accessed August 25, 2020).

ISDH Lead and Healthy Homes Report for 2015

CDC County Level Lead Surveillance Data from for 2015



Source: Indiana State Department of Health, Lead and Healthy Homes Report; Centers for Disease Control, County Level Lead Surveillance Data

Figure 3

The inconsistency in testing and accurately reporting lead poisoning data for Medicaid recipients, particularly relating to consistently capturing racial data, raises particular concern because people of color are disproportionately represented among the Medicaid population.<sup>167</sup> Title VI of the Civil Rights Act of 1964 regulations establish that recipients of federal funding may not have programs that have the effect of discriminating against certain populations,<sup>168</sup> and as a recipient of federal Medicaid funding, Indiana must ensure its programs and protocols do not have the effect of discriminating against people of color who are disproportionately represented in Indiana’s Medicaid population.<sup>169</sup> For children enrolled in Medicaid, if lead poisoning is discovered during testing, federal law requires that medically necessary services are provided.<sup>170</sup> If children are not screened or their data is not reported accurately, they do not receive the services they are legally

<sup>167</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 25; Waterhouse Testimony, *Indianapolis Hearing*, pp. 82-83; Howard University School of Law Environmental Justice Center Statement, at 5.

<sup>168</sup> 42 U.S.C. § 2000d.

<sup>169</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 82; 45 C.F.R. §§ 80.1, 80.3(a), 80.3(b)(1)(I); Waterhouse Testimony, *May 2020 Web Hearing*, p. 24; Howard University School of Law Environmental Justice Center Statement, at 5.

<sup>170</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 25. See also 42 U.S.C. § 1396d (Section 1905 of the Social Security Act) and Medicaid Manual Section 5010; *Coverage of Blood Lead Testing* at 2 (discussing lead screening and medical coverage under Medicaid).

entitled to.<sup>171</sup> As Indiana’s Medicaid population includes a disproportionate number of Black and Hispanic children, this means that Black and Hispanic children are not being screened or identified, and do not receive the services the state committed to providing.<sup>172</sup>

Dr. Waterhouse and the Howard University School of Law Environmental Justice Center raised concerns that the Indiana State Department of Health may not be complying with the expectations that Title VI established for federal grant recipients of Medicaid funding.<sup>173</sup> The Committee asked CDC/Agency for Toxic Substances and Disease Registry for additional information related to its requirements of the Indiana State Department of Health as a recipient of grant funding, including Medicaid. In its response to questions from the Committee, the CDC recommended a reconstitution of Indiana’s Lead Advisory Board “with an emphasis on strengthening lead laws and codes to increase testing.”<sup>174</sup>

Additionally, the CDC noted it “recommends that state and local agencies develop statewide blood lead screening guidelines based on local data as well as the state or local jurisdiction laws and regulations for blood lead testing and intervention for lead-exposed children. Ultimately, blood lead testing is a decision made by the child’s health care provider in consideration of the child’s individual risk factors, local conditions, and applicable laws and/or guidance.”<sup>175</sup> Responding to the CDC/Agency for Toxic Substances and Disease Registry’s written testimony for the Committee noting that the Indiana State Department of Health is complying with grant requirements, Dr. Waterhouse shared that “it doesn’t seem clear from the CDC testimony that it’s part of their consideration in the way they carry out their obligations” when it comes to holding states to the requirement to test children for lead poisoning.<sup>176</sup>

Dr. Indra Frank, Environmental Health and Water Policy Director at the Hoosier Environmental Council, highlighted a major challenge posed by the complicated nature of the Medicaid billing system: the restriction on local health departments to bill directly for services related to lead

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<sup>171</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 25; Howard University School of Law Environmental Justice Center Statement, at 6; Waterhouse Testimony, *Indianapolis Hearing*, pp. 82-83; McCabe Testimony, *Indianapolis Hearing*, p. 96.

<sup>172</sup> Waterhouse Testimony, *Indianapolis Hearing*, pp. 82-83; Waterhouse Testimony, *Indianapolis Hearing*, p. 78.

<sup>173</sup> Waterhouse Testimony, *May 2020 Web Hearing*, p. 25; Howard University School of Law Environmental Justice Center, Written Statement for the Indianapolis Briefing before the U.S. Commission on Civil Rights, March 31, 2020, at 2. (hereinafter Howard University School of Law Environmental Justice Center Statement); 45 C.F.R. §§ 80.3(a), 80.3(b)(2).

<sup>174</sup> ATSDR to Indiana Advisory Committee to USCCR, May 28, 2020, ATSDR Response to IAC Questions, p. 3.

<sup>175</sup> ATSDR to Indiana Advisory Committee to USCCR, May 28, 2020, ATSDR Response to IAC Questions, p. 4.

<sup>176</sup> Waterhouse Testimony, *May 2020 Web Hearing*, p. 25.

poisoned children.<sup>177</sup> According to Dr. Frank, only a few of Indiana's local health departments have been successful in signing up for billing for services provided directly to Medicaid.<sup>178</sup> Medicaid grant funds primarily support state-level salaries and activities, but do not support the care of individual lead-poisoned children.<sup>179</sup> Services billable under Medicaid funding include sending a public health worker and lead risk assessor to a home immediately after a child is identified as having a high blood lead level.<sup>180</sup> As these services are often provided directly by the county health departments, it is important to simplify the billing process for local health departments to bill Medicaid for the care of lead poisoned children.<sup>181</sup>

### **3. Fiscal Impact**

#### ***a) Increasing the number of children identified as lead poisoned increases the fiscal cost of providing services***

Indiana State Department of Health Commissioner Dr. Box has previously called for the state to decrease its blood lead level requirements for access to services from 10 µg/dL to 5 µg/dL, but was met with resistance related to the fiscal impact that would be caused by increasing the number of children identified, and the resulting anticipated increase in services needed to decrease lead exposure in children found to have elevated blood lead levels.<sup>182</sup> Services include case management, nutritional, developmental, and environmental assessments, and home visits.<sup>183</sup> The CDC has recommended providing services to children with blood lead levels of 5 µg/dL since 2012, but Indiana requires local health departments to provide comprehensive follow-up services

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<sup>177</sup> Indiana's Lead Advisory Council has been active in the recent past but has been on pause since the COVID-19 pandemic started. Indra Frank, testimony, *September 2020 Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, Sept. 9, 2020, transcript, p. 12 (hereafter cited as September 2020 Meeting).

<sup>178</sup> Frank Testimony, *September 2020 Meeting*, p. 12.

<sup>179</sup> Frank Testimony, *September 2020 Meeting*, p. 12.

<sup>180</sup> Frank Testimony, *September 2020 Meeting*, p. 13.

<sup>181</sup> Frank Testimony, *September 2020 Meeting*, p. 13.

<sup>182</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 84; McCabe Testimony, *Indianapolis Hearing*, pp. 88-89; McCabe Testimony, *Indianapolis Hearing*, pp. 92-93; Phillips Testimony, *May 2019 Web Hearing*, p. 17-18.

<sup>183</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 17.



to children with blood lead levels of 10 µg/dL or more.<sup>184</sup> Representatives from the Indiana State Department of Health did not provide comment on the questions posed by the Committee.<sup>185</sup>

Dr. McCabe shared that when racial identity was captured during screenings, there was a high percentage of children of color who tested positive for lead poisoning at the 10 µg/dL level.<sup>186</sup> The Indiana State Department of Health previously included reporting on how many tests were confirmed above 5 µg/dL, but no longer provides this information.<sup>187</sup> According to its 2015 lead surveillance report, the Department of Health found that increasing the number of tests increased the cases found of elevated blood lead levels.<sup>188</sup>

In 2018, the Indiana State Department of Health identified 220 children with blood lead levels at 10 µg/dL, estimating that they would identify 1,000 - 1,200 children per year if they tested at 5 µg/dL.<sup>189</sup> Ms. Phillips provided the following chart, which shows how many children might be missing out on services based on data from the 2016 annual report from the state health department:<sup>190</sup>

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<sup>184</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 17; U.S. Centers for Disease Control. “Blood Lead Levels in Children.” Childhood Lead Poisoning Prevention. CDC.gov. <https://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm> (accessed August 25, 2020); State of Indiana, Indiana State Department of Health. “Overview.” Lead & Healthy Homes Division. IN.gov. <https://www.in.gov/isdh/26550.htm> (accessed August 25, 2020).

<sup>185</sup> Kelly MacKinnon to Indiana Advisory Committee to USCCR, May 28, 2020; ISDH Response to IAC Questions.

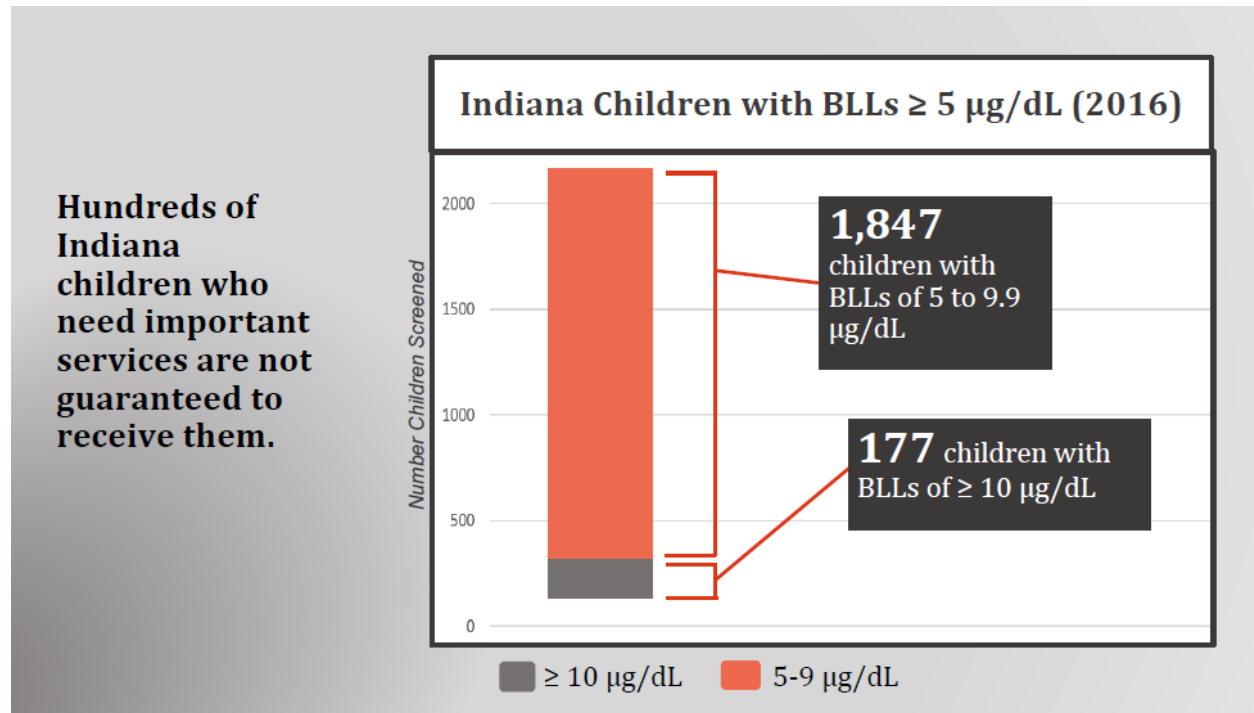
<sup>186</sup> McCabe Testimony, *Indianapolis Hearing*, p. 96.

<sup>187</sup> McCabe Testimony, *Indianapolis Hearing*, p. 96; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2015, p. 4, <https://www.in.gov/isdh/files/Lead%20Report%202015%20w%20reportable%20disease.pdf> (accessed August 25, 2020).

<sup>188</sup> McCabe Testimony, *Indianapolis Hearing*, p. 96; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2015, p. 4, <https://www.in.gov/isdh/files/Lead%20Report%202015%20w%20reportable%20disease.pdf> (accessed August 25, 2020).

<sup>189</sup> McCabe Testimony, *Indianapolis Hearing*, p. 93; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2018, p. 7, <https://www.in.gov/isdh/files/2018%20Lead%20Report.pdf> (accessed August 25, 2020); Howard University School of Law Environmental Justice Center Statement, at 6.

<sup>190</sup> Jennifer Phillips, May 2019 Web Hearing Panelist Presentations, at 27; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2016, <https://www.in.gov/isdh/files/lead%20report%202016-new.pdf> (accessed August 25, 2020); Phillips Testimony, *May 2019 Web Hearing*, p. 17. The 177 with 10 or more micrograms noted in the chart refers to children with confirmed lead levels. The 1,847 with 5 or more noted in the chart are children with at least one test showing a BLL of 5 to 9.9. A lead level is “confirmed” if a venous blood tests or two capillary (fingerprick) tests are done (as



**Source: Indiana State Department of Health, Childhood Lead Surveillance Report; Jennifer Phillips**  
**Figure 4**

Ms. Akeeshea Daniels, a resident of East Chicago and mother of three children who lived in lead-contaminated housing, asked panelists what testing or services can be provided to older children who were exposed to lead when they were younger.<sup>191</sup> As lead is absorbed into bone over time, Ms. Daniels asked about the possibility of testing for lead in bone for her children who are now in their early 20s.<sup>192</sup> However, Dr. Filippelli noted that lead stored in bone is not readily detectible with current testing techniques, although that is an area currently under exploration.<sup>193</sup>

Debbie Chizewer, of Northwest University Pritzker School of Law’s Environmental Advocacy Clinic, at the time of the April 2019 hearing, emphasized that Ms. Daniels’ point highlights the need for state and federal government to explore long-term studies of residents in communities

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opposed to just one fingerprick test). Ms. Phillips did not use confirmed levels for the 5-9.9 micrograms because there is no requirement to offer these children a confirmatory test. Confirmatory testing is another service that Indiana begins requiring at the 10 microgram level.

<sup>191</sup> Daniels Testimony, *April 2019 Web Hearing*, p. 29.

<sup>192</sup> Daniels Testimony, *April 2019 Web Hearing*, p. 29.

<sup>193</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 29.

impacted by lead exposure along with other contaminants to better understand associated diseases and the needs of the impacted communities.<sup>194</sup> Karla Johnson, Administrator of the Marion County Public Health Department's Lead Program, expanded upon the concerns raised by Ms. Daniels and Ms. Chizewer stating:

We forget that these children grow up. There's all this emphasis and all of this time and energy placed on identifying these children. Case management for these children ends at six, the moment that they enter into school, the moment that they have the rest of their lives to struggle. I think if there's a justice issue here, it is dropping these children off [at] the doorstep of the schools and telling the parents that they're going to have all of these issues and doing nothing to help them.<sup>195</sup>

***b) Preventing lead poisoning is less expensive than responding to lead poisoning***

Panelists also discussed the need to prevent lead poisoning from occurring in the first place using a fiscal impact lens. Referring to a cohort of 180,000 child-occupied housing units with lead contamination, Ms. Benfer shared research that “the cost of lead poisoning to Indiana alone is approximately 262 million dollars per year per cohort of children, with tax-payers shouldering 50 million of those dollars.”<sup>196</sup> This included \$191,000 for medical interventions, \$1.2 million for Attention Deficit Hyperactivity Disorder associated with lead poisoning, \$352,000 for special education needs associated with lead poisoning, \$875,000 in parental lost wages associated with time taken to care for lead poisoned children, and an estimated loss of \$260 million in potential earnings by lead poisoned children (Figure 5).<sup>197</sup>

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<sup>194</sup> Chizewer Testimony, *April 2019 Web Hearing*, p. 30.

<sup>195</sup> Johnson Testimony, *April 2019 Web Hearing*, p. 31.

<sup>196</sup> Benfer Testimony, *May 2019 Web Hearing*, pp. 22-23; Emily Benfer, Written Statement for the Indianapolis Briefing before the U.S. Commission on Civil Rights, May 6, 2019, at 6; According to the American Community Survey and Census Bureau's Population Estimates Program, the total number of families with a child under 6 in Indiana is 303,595. U.S. Census Bureau, American FactFinder, [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17\\_5YR/S2501/0400000US18](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2501/0400000US18) (using 2013-2017 American Community Survey 5-Year Estimates). By applying 58.32% to 303,595 families, Ms. Benfer estimates that there are 177,054 housing units that have children under 6 and potential lead-based paint hazards.

<sup>197</sup> Benfer Testimony, *May 2019 Web Hearing*, pp. 22-23; Benfer Statement, at 6, 12: This table is a summary of Tables 1-8 provided in Benfer statement costs of lead poisoning calculations included in the Appendix. Description of assumed taxpayer cost is drawn from the calculations used in Tracy Swinburn's *Economic Impacts of Lead Exposure and Remediation in Michigan* (2014), [https://www.ecocenter.org/sites/default/files/Lead\\_Cost\\_Report\\_MI\\_2014\\_smaller.pdf](https://www.ecocenter.org/sites/default/files/Lead_Cost_Report_MI_2014_smaller.pdf).

Summary of costs associated with lead exposure			
Indiana			
	Amount	Cost to the Taxpayer	Description of assumed taxpayer costs
<b>Increases in health care</b>			
Blood Lead Treatment	\$191,033.48	\$171,930.13	Estimated 90% of IN children with EBLL are on Medicaid
Treatment of lead-related ADHD	\$1,249,964.32	\$1,124,967.89	Estimated 90% of IN children with EBLL are on Medicaid
<b>Parental work loss</b>	\$875,101.81	\$43,755.09	Estimated 5% of City and State Tax
<b>Increases in special education</b>	\$352,404.04	\$352,404.04	Estimated 100% of costs will be through public education
<b>Reduction in lifetime earnings</b>	\$259,627,077.57	\$12,981,353.88	Estimated 5% of City and State Tax
		\$51,925,415.51	Estimated 20% Federal Tax
<b>TOTAL</b>	<b>\$262,295,581.22</b>	<b>\$14,674,411.03</b>	

Source: Benfer Statement to the Indiana Advisory Committee, calculations completed by Virginia Morgan, MPH, under Emily Benfer’s Supervision

Figure 5

Meanwhile, lead hazard risk assessments for the same cohort of 180,000 housing units that contain children would cost an estimated \$62-\$89 million per year, for a savings of \$173 - \$200 million per year (Figure 6).<sup>198</sup> However, the rental housing industry and the housing industry in general is

<sup>198</sup> Benfer Testimony, *May 2019 Web Hearing*, pp. 26; Benfer Statement, at 12: This table summarizes the potential cost of performing a risk assessment in homes with children under 6 years old who live in pre-1978 homes; A: According to the American Community Survey and Census Bureau’s Population Estimates Program, the total number of housing units in Indiana built before 1980 is 1,479,668 and the total number of housing units in IN is 2,537,189, this means 58.32% of housing units were built before 1980. U.S. Census Bureau, American FactFinder, [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17\\_5YR/S2504/0400000US18](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2504/0400000US18) (using 2013-2017 American Community Survey 5-Year Estimates). According to the American Community Survey and Census Bureau’s Population Estimates Program, the total number of families with a child under 6 in Indiana is 303,595. U.S. Census Bureau, American FactFinder, [https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17\\_5YR/S2501/0400000US18](https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_5YR/S2501/0400000US18) (using 2013-2017 American Community Survey 5-Year Estimates). By applying 58.32% to 303,595 families, we can estimate that there are 177,054 housing units that have children under 6 and potential lead-based paint hazards; B: HUD estimates the cost of a risk assessment for a single-family housing unit is \$700. HUD estimates the cost of a risk assessment for a multi-family housing unit is \$450. These cost estimates were applied to the total number of housing units that have children under 6 and potential lead-based paint hazards that was calculated in footnote 24. Office of Lead Hazard Control and Healthy Homes, U.S. Dept. of Housing and Urban Development, Economic Analysis of the Proposed Rule on Lead based Paint: Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels 18 tbl.3 (Aug. 10, 2016).

not in favor of more lead inspections that could require more abatement measures that can include costly repairs and relocating a family during the abatement process.<sup>199</sup> Ms. Benfer’s additional research into the costs of lead poisoning in Indiana is included in the Appendix.

Potential Costs of Risk Assessment		
Homes with Potential Lead Hazard and Children under 6 <sup>A</sup>		
# of families with children under 6	% housing stock built pre 1978	# of pre 1978 homes with children under 6
303,595	58.32%	177,054
Potential Cost of Risk Assessment in Homes with Potential Lead Hazard and Children under 6 <sup>B</sup>		
Cost RA low	Cost RA hi	
\$450.00	\$700.00	
	\$61,968,947.63	\$88,527,068.04

Source: Benfer Statement to the Indiana Advisory Committee, calculations completed by Virginia Morgan, MPH, under Emily Benfer’s Supervision

Figure 6

Panelists also expressed concern over federal and state investment in lead prevention and mitigation strategies. The Department of Housing and Urban Development (HUD) notes it requires pre-rental risk assessments in federally-assisted housing, but Ms. Benfer testified that “HUD declined to require pre-rental risk assessments in the housing choice voucher program and project-based Section 8.”<sup>200</sup> The Environmental Protection Agency (EPA) has provided over \$4 million to Indiana for lead prevention efforts in the past decade,<sup>201</sup> and, as of 2019, the CDC provided \$441,000 for lead prevention efforts.<sup>202</sup>

Ms. Benfer shared that the EPA has the authority to seek cost recovery for health surveillance costs, blood testing, and future studies under the Comprehensive Response Compensation and Liability Act (CERCLA or more commonly referred to as the Superfund Law)<sup>203</sup> but has not successfully pursued this option.<sup>204</sup> In response to testimony regarding authority to seek cost recovery for health surveillance efforts, the EPA responded, “in drafting the Comprehensive

<sup>199</sup> McCabe Testimony, *Indianapolis Hearing*, p. 95.

<sup>200</sup> James Cunningham to Indiana Advisory Committee to USCCR, May 28, 2020, HUD Response to IAC Questions; p. 28; Benfer Testimony, *May 2019 Web Hearing*, p. 32.

<sup>201</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 79.

<sup>202</sup> McCabe Testimony, *Indianapolis Hearing*, pp. 93-94; Waterhouse Testimony, *Indianapolis Hearing*, p. 101.

<sup>203</sup> Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”) (codified at 42 U.S.C. § 9601 et seq.).

<sup>204</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 22.

Response Compensation and Liability Act (CERCLA or ‘Superfund [Law]’), Congress did not give EPA clear authority to order health surveillance or to recover costs associated with health surveillance. Judicial precedent dating back to 1992 does not recognize a cause of action by EPA for medical monitoring cost recovery under CERCLA.”<sup>205</sup>

Indiana relies on federal funds for lead poisoning prevention programs, contributes \$0 in state funds to the lead poisoning prevention program, and, as of early 2020, ranked 48<sup>th</sup> in the country for state funding of all public health programs.<sup>206</sup> Dr. McCabe noted this means “that the state has no money to provide to the local health departments to cover these services. So, every time they ask the local health departments to do more over here on lead, it means the local health departments have to make a decision to do less over here on something else, or scrounge locally and find the money to do it.”<sup>207</sup> She continued, noting that “in this instance, these would be new costs, and there was no provision for these additional moneys to be in the state budget” at that time.<sup>208</sup>

Dr. Waterhouse asked the Committee to consider the civil rights implications of Indiana’s lack of investment in lead prevention and mitigation strategies,<sup>209</sup> given its reliance on federal funds covered under Title VI of the Civil Rights Act of 1964<sup>210</sup>, which prohibits discrimination based on race, and given the disproportionate levels of people of color impacted by lead poisoning in the state.<sup>211</sup> Noting the lack of necessary funding needed for adequate lead abatement and lead testing-related work, Dr. Waterhouse noted, “the state doesn’t make any contributions. The state’s just not invested.”<sup>212</sup>

## **E. Environmental Justice Administration**

### ***1. Government Intervention in the West Calumet Housing Complex***

Panelists discussed government intervention related to lead poisoning in East Chicago and the West Calumet Housing Complex in particular. The West Calumet housing complex within East Chicago is part of Indiana’s Lake County and borders the city of Hammond, which borders Cook

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<sup>205</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, p. 12.

<sup>206</sup> McCabe Testimony, *Indianapolis Hearing*, pp. 93-94; Waterhouse Testimony, *Indianapolis Hearing*, p. 101.

<sup>207</sup> McCabe Testimony, *Indianapolis Hearing*, p. 94.

<sup>208</sup> McCabe Testimony, *Indianapolis Hearing*, p. 120.

<sup>209</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 79.

<sup>210</sup> Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, as amended, (codified at 42 U.S.C. § 2000d et. seq.).

<sup>211</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 79; Howard University School of Law Environmental Justice Center Statement, at 4.

<sup>212</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 101.

County, Illinois. According to a 2016 analysis by HUD, at the time residents were given instructions to relocate, the West Calumet housing complex which is located in Census Tract 303, has one of the highest poverty rates in the area at 61.5%, “compared to 15.4% for the state of Indiana, 14.3% for the state of Illinois, 17.9% for Lake County, 17.1% for [nearby] Cook County, and 35.9% for East Chicago.”<sup>213</sup> Additionally, Census Tract 303 is 97.2% people of color, compared to 92.8% for East Chicago overall, 18.5% for the state of Indiana, 36.3% for the state of Illinois, and 56.1% for Cook County.<sup>214</sup>

Ms. Rahman shared that the EPA was aware of lead contamination since the 1980s due to the complex’s location on the grounds of the Anaconda Lead refining plant and proximity to the USS Lead site,<sup>215</sup> but delayed cleanup of much of the contaminated soil for decades in part due to a testing flaw that looped residents of the housing complex together with residents from East Chicago in general.<sup>216</sup>

Mr. Shelton noted, “[f]rom 2005 to 2015, preliminary tests showed more than 20 percent of the children tested in the census tract that includes the West Calumet Housing Complex had elevated blood levels according to data provided by the Indiana State Department of Health, while approximately ten percent of the children living in the two cleanup zones next to the housing complex had elevated blood lead levels.”<sup>217</sup> Hilary Shelton, Senior Vice-President of Advocacy and Policy at the NAACP Washington Bureau, Dr. Browning, and members of the East Chicago-Calumet Coalition Community Advisory Group expressed great concern that young children within the housing complex were lead poisoned, as this meant children under six years of age living in the housing complex were nearly three times as likely to exceed the CDC’s criteria of 5 µg/dL compared to a child living in areas outside the Superfund site.<sup>218</sup> Mr. Shelton continued that in June of 2016, the City Health Department and the Center for Disease Control, Agency for Toxic Substances and Disease Registry, started health assessments, including blood lead level testing.<sup>219</sup>

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<sup>213</sup> James Cunningham to Indiana Advisory Committee to USCCR, May 28, 2020, HUD Response to IAC Questions, p. 2.

<sup>214</sup> James Cunningham to Indiana Advisory Committee to USCCR, May 28, 2020, HUD Response to IAC Questions, p. 2; Cunningham Testimony, *May 2020 Web Hearing*, p. 10-11.

<sup>215</sup> Browning Testimony, *Indianapolis Hearing*, p. 66-67.

<sup>216</sup> Browning Testimony, *Indianapolis Hearing*, p. 32.

<sup>217</sup> Shelton Testimony, *Indianapolis Hearing*, p. 16.

<sup>218</sup> Browning Testimony, *Indianapolis Hearing*, pp. 70-71; Browning Testimony, *Indianapolis Hearing*, p. 32; Shelton Testimony, *Indianapolis Hearing*, p. 15.

<sup>219</sup> Shelton Testimony, *Indianapolis Hearing*, p. 15; Agency for Toxic Substances and Disease Registry, Health Consultation – Historical Blood Lead Levels in East Chicago, Indiana Neighborhoods Impacted by Lead Smelters

Title X of the Federal Lead-Safe Housing Rule indicates that HUD has the authority to implement lead poisoning prevention efforts in federally-assisted housing when blood lead levels of children living in federally-assisted housing levels reach 5 µg/dL.<sup>220</sup> Ms. Benfer shared that while pre-rental risk assessments for federally-assisted housing are not required by HUD, Lead Safe Housing for Kids Act of 2019<sup>221</sup> would have required pre-rental risk assessments in all federally-assisted housing before children can move into the property so “taxpayer dollars are not subsidizing lead poisoning in those properties and that we can protect those kids equally as well.”<sup>222</sup>

Federal and state government agencies realized the mistake in failing to separate the housing complex test results from the surrounding area, and, in the fallout of the Flint Michigan water crisis that began in 2014, HUD and EPA developed a joint agreement to expedite the testing and evacuation of 1,100 West Calumet Housing Complex residents.<sup>223</sup> Ms. Rahman shared that HUD reduced a typical four-month relocation process to one week,<sup>224</sup> resulting in a rushed-through process that isolated residents from resources that would help meet long-term health and education needs.<sup>225</sup>

Despite the increased collaboration between federal entities, Ms. Rahman shared resident perspectives that there was no interconnection of agencies stating that “[e]ach agency was working in a silo by itself and not knowing what the other was doing.”<sup>226</sup> Ms. Rahman also shared that residents did not receive mental health services, nor was there an effort to find culturally competent mental health providers.<sup>227</sup> According to Mr. Shelton, it was not until August of 2016, after a decade of concerns from parents and residents that the Carrie Gosch Elementary School was

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(Aug. 16, 2018),

[https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US\\_Smelter\\_Lead\\_Refinery\\_HC\\_2018-508.pdf](https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US_Smelter_Lead_Refinery_HC_2018-508.pdf) (accessed August 25, 2020) (hereafter cited as Agency for Toxic Substances and Disease Registry, *Health Consultation*).

<sup>220</sup> Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub L. 102-550, 106 Stat. 3672, as amended (codified at 42 U.S.C. § 63A); Benfer Testimony, *May 2019 Web Hearing*, p. 32; 24 C.F.R. § 35.325.

<sup>221</sup> Lead-Safe Housing for Kids Act of 2019, S. 1583, 116th Cong. (2019).

<sup>222</sup> *Id.* at § 2; Benfer Testimony, *May 2019 Web Hearing*, p. 32.

<sup>223</sup> Browning Testimony, *Indianapolis Hearing*, p. 66-67.

<sup>224</sup> Browning Testimony, *Indianapolis Hearing*, p. 67.

<sup>225</sup> Browning Testimony, *Indianapolis Hearing*, p. 68.

<sup>226</sup> Rahman Testimony, *Indianapolis Hearing*, p. 30.

<sup>227</sup> Rahman Testimony, *Indianapolis Hearing*, p. 35.



located six blocks from an active smelter site for decades, that the school was moved to a mile and a half away.<sup>228</sup>

Mr. Shelton noted, “also in August of 2016, 1100 households in the West Calumet Public Housing Complex, which was built on and around the old lead smelter factory, were told they had 60 to 90 days to vacate their homes...Around the same time, the EPA advised all residents to assume their water is contaminated and use certified filters.”<sup>229</sup> In February 2017, Governor Eric Holcomb granted a disaster declaration that found soil lead contamination levels of 91,000 ppm, over 227 times the legal limit of 400 ppm.<sup>230</sup>

Lead remediation efforts include removing 24 inches of contaminated soil, which many residents disagree with.<sup>231</sup> Ms. Rahman said, “currently the EPA is monitoring the groundwater through wells placed around the DuPont and U.S. lead sites in residential areas, and there's soil remediation taking place, but not at the level that the residents would like.”<sup>232</sup> In a written statement, the East Chicago-Calumet Community Advisory Group noted that remediation is continuing and “has not eliminated the risk of lead exposure to residents.”<sup>233</sup> Additionally, residents must request interior dust sampling, it is not an action that is proactively offered to residents in impacted areas.<sup>234</sup>

The EPA provided the following response to the testimony heard by the Committee regarding concerns that excavation to a depth of 24 inches below ground surface (bgs) is not sufficient for future residential use:

On March 24, 2020, EPA issued an Amended Record of Decision (ROD Amendment). (SEMS, 955458). The ROD Amendment set forth the basis for EPA’s selected remedy: excavation to a depth of 24” below ground surface (bgs) if the end use is residential and excavation to a depth of 12” bgs if the end use is commercial/industrial. Before selecting this contingent remedy, EPA evaluated an array of alternatives ranging from No Action to excavation to native sand, a depth in almost all instances greater than 24” bgs. The alternatives were evaluated according to nine criteria set forth in the National Contingency Plan, 40 CFR Part

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<sup>228</sup> Shelton Testimony, *Indianapolis Hearing*, p. 14-16.

<sup>229</sup> Shelton Testimony, *Indianapolis Hearing*, p. 15.

<sup>230</sup> Shelton Testimony, *Indianapolis Hearing*, p. 16.

<sup>231</sup> Rahman Testimony, *Indianapolis Hearing*, p. 32; East Chicago Calumet Coalition - Community Advisory Group Statement at 1.

<sup>232</sup> Rahman Testimony, *Indianapolis Hearing*, p. 39.

<sup>233</sup> East Chicago Calumet Coalition - Community Advisory Group (“the CAG”), Written Statement for the Indianapolis Briefing before the U.S. Commission on Civil Rights, March 27, 2020, at 2 (hereinafter East Chicago Calumet Coalition - Community Advisory Group Statement).

<sup>234</sup> East Chicago Calumet Coalition - Community Advisory Group Statement, at 5.

300 (NCP). The evaluation included a consideration of how effective each remedy was in reducing the risks posed to residents or neighbors, who might ingest, inhale or come into direct contact with arsenic or lead contaminated soils. Ingestion, inhalation and direct contact are the primary exposure pathways at the Site. After careful consideration, EPA concluded that the selected contingent remedy – excavation to either 12” or 24” bgs - was protective of human health and the environment and that excavation to depth of greater than 12” bgs for commercial/industrial development and 24” bgs for residential development was not significantly more protective of human health. Both remedies effectively eliminate the principal exposure pathways of ingestion, inhalation and direct contact.<sup>235</sup>

The Committee received an update on this issue from Mark Templeton, Clinical Professor of Law and Director of the Abrams Environmental Law Clinic at the University Chicago Law School, Nancy Loeb, Clinical Professor of Law and Director of the Environmental Advocacy Clinic at the Northwestern University Pritzker School of Law, their students, and members of the East Chicago Calumet Coalition – Community Advisory Group.<sup>236</sup> In their letter to the Committee, they noted that in May 2020, the East Chicago Common Council voted to authorize the redevelopment of the West Calumet Housing Complex site as a commercial warehouse space.<sup>237</sup> Given the EPA’s plan to remediate 12” bgs for commercial/industrial development, only 12” bgs soil at the West Calumet Housing Complex site will be remediated.<sup>238</sup>

Ms. Rahman shared concerns that the government did not come together to provide proper food and health education to residents during this time, and, support appropriate relocation options.<sup>239</sup> Ms. Benfer agreed that the lack of coordinated response and linkages to providers was a major failing, and that next steps for East Chicago should include leveraging Superfund laws that allow cost recovery for health surveillance, including blood testing, expanded Medicaid services, and

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<sup>235</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 1 -2; U.S. Environmental Protection Agency, *Record of Decision Amendment for the USS Lead Superfund Site Zone 1 East Chicago, Indiana*, 2020. <https://semspub.epa.gov/work/05/955458.pdf> (accessed August 25, 2020).

<sup>236</sup> University of Chicago Abrams Environmental Law Clinic, Letter to the Indiana Advisory Committee to the U.S. Commission on Civil Rights, September 22, 2020, at 1 (hereinafter University of Chicago Abrams Environmental Law Clinic Letter).

<sup>237</sup> University of Chicago Abrams Environmental Law Clinic Letter, at 1.

<sup>238</sup> University of Chicago Abrams Environmental Law Clinic Letter, at 1.

<sup>239</sup> Rahman Testimony, *Indianapolis Hearing*, pp. 31-32.

long term monitoring.<sup>240</sup> Ms. Benfer noted, “we won't see the full extent of harm until much later in life.”<sup>241</sup>

James Cunningham, Deputy Regional Administrator for HUD Region 5 noted that the agency is responsible for the enforcement of the lead disclosure rule, and also provides grants to state and local governments for homelead abatement.<sup>242</sup> HUD supports the East Chicago Housing Authority and was involved in the relocation of residents in late 2016, which included providing mobile vans on site throughout 2016.<sup>243</sup>

When asked during the Committee's May 2020 web hearing about follow-up monitoring and reporting efforts to the 2016 relocation of West Calumet housing complex residents, HUD officials noted that the East Chicago Housing Authority was responsible for follow-up efforts, and they have complied with the Voluntary Client's Agreement<sup>244</sup> which allowed for an extra 300 days of relocation support.<sup>245</sup> Mr. Cunningham noted, “there's also a reporting mechanism that if a child that gets tested and lives in HUD Assisted Housing, that we report that to the health department. There's a referral system, that if a child has an elevated blood lead level, that they are referred to the local health agency, and that was done during this process.”<sup>246</sup>

On the subject of follow-up and reporting to see how families have transitioned to their new housing following the emergency relocation efforts in East Chicago, Mr. Cunningham shared that HUD completed an initial move analysis which tracks residents' moves out of the West Calumet housing complex between July 2016 and April 2017 by poverty level and race, and is included in

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<sup>240</sup> Benfer Testimony, May 2019 Web Hearing, p. 34-35.

<sup>241</sup> Ibid.

<sup>242</sup> James Cunningham, testimony, *May 2020 Web Hearing Before the Indiana Advisory Committee to the U.S. Commission on Civil Rights*, Web briefing, May 28, 2020, transcript, p. 4 (hereafter cited as May 2020 Web Hearing).

<sup>243</sup> Cunningham Testimony, *May 2020 Web Hearing*, p. 5; 7.

<sup>244</sup> Minor Testimony, *May 2020 Web Hearing*, p. 6. The Voluntary Client's Agreement refers to disputed complaints concerning relocation assistance and the relocation process regarding the relocation of West Calumet residents: HUD, “Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act Preliminary Voluntary Compliance Agreement and Title VIII Conciliation Agreement between the United States Department of Housing and Urban Development and Calumet Lives Matter (Complainants) and East Chicago Housing Authority (Recipient/Respondent).” HUD.gov. [https://www.hud.gov/sites/documents/ECHA\\_11032016.PDF](https://www.hud.gov/sites/documents/ECHA_11032016.PDF) (accessed November 10, 2020).

<sup>245</sup> Cunningham Testimony, *May 2020 Web Hearing*, p. 9.

<sup>246</sup> Cunningham Testimony, *May 2020 Web Hearing*, p. 7.

the Appendix.<sup>247</sup> There do not appear to be follow-up qualitative interviews to assess how families have transitioned.

Highlighting concern about the continued presence of lead in the community following initial clean-up efforts, East Chicago Calumet Coalition Community Advisory Group member Lori Locklear shared:

“Lead is still a problem here in East Chicago. I was one of the residents that had their home cleaned on the inside by the EPA [in 2017]. At the beginning of 2020 I applied for a lead paint abatement program that was recommended by Janet Pope, EPA Community Involvement Coordinator. I was accepted and was part of the program this year. They found lead dust on my floors and windowsill and in my basement again. The EPA had cleaned up the lead in my home and it came back. I think there is lead blowing around in the air.”<sup>248</sup>

Tony Gillespie with the Indiana Minority Health Coalition stressed that one of the big gaps discussed by community coalition and grassroots advocacy groups was the lack of a coherent aftercare plan for East Chicago residents following the emergency relocation efforts.<sup>249</sup> Mr. Gillespie and others noted that multiple layers of outreach and intervention alongside multiple offerings of lead tests and screening are essential for adequate interventions with communities facing health disparities and distrust of public health efforts.<sup>250</sup> Gillespie also stressed that lead poisoning not be forgotten during the current challenge to address testing and services related to COVID-19.<sup>251</sup>

In response to concerns about outreach to communities impacted by lead poisoning, the EPA provided a timeline of community involvement activities at the USS Lead Superfund site that included public meetings, creation of a hotline, bi-lingual outreach materials, and a Superfund Jobs Training Initiative among other initiatives that can be found at their website.<sup>252</sup> The EPA added there were 150 separate community involvement activities and public communications between 2006 and July 2019 which included EPA staffing a community outreach office at the former Carrie

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<sup>247</sup> Cunningham Testimony, *May 2020 Web Hearing*, p. 11; James Cunningham to Indiana Advisory Committee to USCCR, May 28, 2020, HUD Response to IAC Questions, p. 2.

<sup>248</sup> University of Chicago Abrams Environmental Law Clinic Letter, at 1.

<sup>249</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 12.

<sup>250</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 12; East Chicago Calumet Coalition - Community Advisory Group Statement, at 5.

<sup>251</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 12.

<sup>252</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 9-10; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5844406/?report=classic>.

Gosch Elementary School with Community Involvement Coordinators, placement of signs, and hand delivery of City-prepared applications to replace the lead service lines to over 500 houses.<sup>253</sup>

## 2. Discriminatory Impact

Dr. Waterhouse and Ms. Phillips shared that both Black and Hispanic children have higher rates of lead poisoning than white children, even when accounting for socioeconomic status.<sup>254</sup> National origin is also a consideration for lead poisoning, particularly for refugees and immigrants,<sup>255</sup> and Native Americans.<sup>256</sup> While panelists focused on the incidence of lead poisoning in Black children in their testimony during remarks to the Committee, Asian and Pacific Islanders have also shown higher elevated blood lead levels across multiple years.<sup>257</sup> Black children are three times as likely to develop lead poisoning than white children, and Hispanic children are two times as likely to develop lead poisoning than white children.<sup>258</sup> This is partially because Black children live in closer proximity to environmental hazards, are exposed to more environmental pollutants, and have fewer resources to counter the negative effects of exposure than white children.<sup>259</sup> Additionally, a 2014 Indiana State Department of Health annual report revealed children enrolled in Medicaid are nearly three times as likely to be lead poisoned as children not enrolled in Medicaid.<sup>260</sup>

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<sup>253</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 11-12; EPA, “USS Lead Superfund Site Community Involvement Activities (2006-Present.” EPA.gov. <https://semspub.epa.gov/work/05/947394.pdf> (accessed September 2, 2020), EPA, “USS Lead Superfund Site and the Former DuPont East Chicago Facility 2018 Community Involvement Plan.” EPA.gov. <https://semspub.epa.gov/work/05/945548.pdf> (accessed September 2, 2020).

<sup>254</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 77; Phillips Testimony, *May 2019 Web Hearing*, pp. 15-16.

<sup>255</sup> Phillips Testimony, *May 2019 Web Hearing*, pp. 15-16; Shelton Testimony, *Indianapolis Hearing*, p. 23; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2017, p. 8, <https://www.in.gov/isdh/files/2017-lead-report-final.pdf>.

<sup>256</sup> Gillespie Testimony, *May 2020 Web Hearing*, p. 17.

<sup>257</sup> State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2016, p. 9, <https://www.in.gov/isdh/files/lead%20report%202016-new.pdf>; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2015, p. 7, <https://www.in.gov/isdh/files/Lead%20Report%202015%20w%20reportable%20disease.pdf>; Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2014, p. 4, [https://www.in.gov/isdh/files/Lead\\_Report\\_2014\(3\).pdf](https://www.in.gov/isdh/files/Lead_Report_2014(3).pdf).

<sup>258</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 20.

<sup>259</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 19.

<sup>260</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 15; State of Indiana, Indiana State Department of Health, *Childhood Lead Surveillance Report Lead & Healthy Homes Division*, 2014, p. 4, [https://www.in.gov/isdh/files/Lead\\_Report\\_2014\(3\).pdf](https://www.in.gov/isdh/files/Lead_Report_2014(3).pdf) (accessed August 25, 2020).

A special report by Reuters highlighted that between 2005 and 2015, lead poisoning rates in Indiana ranged from 1% in some communities to over 31% in other communities that are largely located in urban areas.<sup>261</sup> Mr. Shelton shared, “[a]s we are finding in a great number of cases in East Chicago, there's a greater concentration of people of color living in close proximity to the former lead smelting plant compared to the city at large.”<sup>262</sup>

East Chicago has roughly 29,000 residents, about 90% of which are people of color, and 30% living under the federal poverty line.<sup>263</sup> Ms. Benfer noted, “87% of the West Calumet Housing Complex residents were African-American, 11% were Latino or Hispanic, and 18% identified as disabled,” which formed the basis for a successful Title VI complaint that led to an agreement between EPA and HUD to collaborate on addressing civil rights violations at Superfund sites.<sup>264</sup>

Additional demographic data related to the West Calumet Housing Complex is found in the Agency for Toxic Substances and Disease Registry’s report, referenced by the East Chicago-Calumet Coalition Advisory Group in their statement to the Committee (Figure 7):<sup>265</sup>

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<sup>261</sup> Phillips Testimony, *May 2019 Web Hearing*, p. 16; Schneyer, Joshua. “Special Report: Flawed CDC Report Left Indiana Children Vulnerable to Lead Poisoning.” Special Reports. Reuters.com. <https://www.reuters.com/article/us-usa-pollution-report-specialreport/special-report-flawed-cdc-report-left-indiana-children-vulnerable-to-lead-poisoning-idUSKCN11Y1BH> (accessed August 25, 2020).

<sup>262</sup> Shelton Testimony, *Indianapolis Hearing*, p. 13.

<sup>263</sup> Shelton Testimony, *Indianapolis Hearing*, p. 12.

<sup>264</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 31; U.S. Department of Housing and Urban Development. “Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act, Preliminary Voluntary Compliance Agreement and Title VIII Conciliation Agreement between the U.S. Department of Housing and Urban Development and Calumet Lives Matter.” HUD.gov. (2016). [https://www.hud.gov/sites/documents/ECHA\\_11032016.PDF](https://www.hud.gov/sites/documents/ECHA_11032016.PDF) (accessed August 25, 2020); U.S. Department of Housing and Urban Development. “MOU Between HUD and EPA Regarding Communication about Certain Public and HUD-Assisted Multifamily Housing Near Superfund Sites.” HUD Guidance. HudExchange.info. <https://files.hudexchange.info/resources/documents/Memorandum-of-Understanding-between-HUD-and-EPA-Regarding-Improving-Communication-About-Certain-Public-and-HUD-Assisted-Multifamily-Housing-Near-Superfund-Sites.pdf> (accessed August 25, 2020).

<sup>265</sup> East Chicago Calumet Coalition - Community Advisory Group Statement, at 2-3; Agency for Toxic Substances and Disease Registry, *Health Consultation – Historical Blood Lead Levels in East Chicago, Indiana Neighborhoods Impacted by Lead Smelters* (Aug. 16, 2018), p. 7; [https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US\\_Smelter\\_Lead\\_Refinery\\_HC\\_2018-508.pdf](https://www.atsdr.cdc.gov/HAC/pha/USSmelterandLeadRefinery/US_Smelter_Lead_Refinery_HC_2018-508.pdf) (accessed August 25, 2020).

**Table 1. Sociodemographic Characteristics of Children (less than 6 years old) with a Blood Lead Test between 2005-2015, by Geographic Area**

	WCHC <sup>1</sup> (Zone 1)		Calumet (Zone 2)		East Calumet (Zone 3)		Other East Chicago		Total East Chicago	
	N	%	N	%	N	%	N	%	N	%
<b>Sex</b>										
Female	159	45.7	81	50.3	153	46.7	2,346	49.4	2,739	49.0
Male	183	52.6	77	47.8	168	51.2	2,344	49.4	2,772	50.0
Unknown	6	1.7	*	1.9	7	2.1	60	1.3	76	1.0
<b>Age (months)</b>										
0 to 24	87	25.0	52	32.3	102	31.1	1,403	29.5	1,644	29.4
25 to 48	111	31.9	36	22.4	104	31.7	1,322	27.8	1,573	28.1
49 to <72	150	43.1	73	45.3	122	37.2	2,025	42.6	2,370	42.4
<b>Race</b>										
Black	233	67.0	118	73.3	142	43.3	1,718	36.2	2,211	40.0
White	21	6.0	11	6.8	68	20.7	666	14.0	766	13.7
Other	5	1.4	*	0.6	8	2.4	211	4.4	225	4.0
Unknown	89	25.6	31	19.3	110	33.5	2,155	45.4	2,385	42.7
<b>Medicaid Status</b>										
Yes	180	51.7	90	55.9	162	49.4	2,285	48.1	2,717	48.6
No	69	19.8	48	29.8	99	30.2	1,163	24.5	1,379	24.7
Unknown	99	28.5	23	14.3	67	20.4	1,302	27.4	1,491	26.7
<b>Total tested</b>	<b>348</b>		<b>161</b>		<b>328</b>		<b>4,750</b>		<b>5,587</b>	

<sup>1</sup>WCHC: West Calumet Housing Complex

\* Redactions applied to cell counts less than 5

**Source: Agency for Toxic Substances and Disease Registry, Health Consultation  
Figure 7**

For the USS Lead sites in particular, Dr. Browning notes that extreme urban renewal efforts, including “red-lining, displacement of minorities in in urban centers, and the concentration of low-income minority populations near toxic dump sites and industries” needs to inform the current understanding [of] what happened to residents of the West Calumet Housing Complex.<sup>266</sup> Dr. Waterhouse stressed that the issues relating to high levels of lead poisoning extend beyond the housing complex as well, which “raises bigger questions about how adequately the state is dealing with this and the continued racial disparity that it represents.”<sup>267</sup>

When lead was found to be an issue in communities, the lead industry often blamed residents for not cleaning their houses well enough, despite research that lead will still get into the body of a

<sup>266</sup> Browning Testimony, *Indianapolis Hearing*, p. 71.

<sup>267</sup> Waterhouse Testimony, *May 2020 Web Hearing*, p. 26.

child if there is lead present from old paint or dust.<sup>268</sup> The low-level of concern and inattention to remediating known effects of lead poisoning in communities underscores the persistent issues of environmental justice and racism.<sup>269</sup> Mr. Shelton noted that recognition of “the literal trend of environmental racism throughout our nation” led the NAACP to create a program on environmental and climate justice approximately a decade ago.<sup>270</sup> Mr. Shelton added that the EPA’s National Center for Environmental Assessment released a 2018 study noting that national, state, and county data all indicated that people of color are disproportionately burdened compared to white Americans.<sup>271</sup>

Dr. Waterhouse emphasized the responsibility and role of government in addressing these burdens, saying “I think the state has a responsibility to protect its people, and because lead is a result of failed state policy, not individual choices by its citizens, it has a greater onus and responsibility to take it and handle it.”<sup>272</sup> When government and local organizations work together to reduce blood lead levels, the blood lead levels decrease.<sup>273</sup> Dr. Filippelli noted that blood lead levels are declining more quickly for white children than for children of color, and “these national level policies that significantly help everybody, they have helped white children more than they have helped children of color.”<sup>274</sup> Based on research conducted in Indianapolis, Dr. Filippelli shared that changing the testing level from 10 µg/dL to 5 µg/dL would result in disproportionately higher rates of Black children vs. white children identified.<sup>275</sup>

Dr. Browning added, “[l]ead poisoning is a civil rights issue, because structural inequalities and our government's lack of investment in these communities have made them vulnerable to what is a completely avoidable problem.”<sup>276</sup> Dr. Filippelli added that “it takes individual researchers and

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<sup>268</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 8.

<sup>269</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 76.

<sup>270</sup> Shelton Testimony, *Indianapolis Hearing*, p. 16.

<sup>271</sup> Shelton Testimony, *Indianapolis Hearing*, p. 16; Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, pp. 6-7; Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, and Jennifer Richmond-Bryant, “Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status.” *American Journal of Public Health*. April 2018; 108(4): 480-485.  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5844406/?report=classic> (accessed August 25, 2020).

<sup>272</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 110.

<sup>273</sup> Waterhouse Testimony, *Indianapolis Hearing*, p. 77.

<sup>274</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 26-27.

<sup>275</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 27.

<sup>276</sup> Browning Testimony, *Indianapolis Hearing*, p. 65.



a lot of effort to identify various hotspots and cities where the regulatory agencies are not funded to do so. That's not a very intelligent approach to dealing with these issues.”<sup>277</sup>

Dr. Anna Aizer, Associate Professor at Brown University shared her research tracking the relationship between Black and white children’s test scores over time as support for reviewing environmental regulations for children who are at the greatest risk of exposure to lead hazards.<sup>278</sup> Test scores for both Black and white children improved following the 1978 lead paint regulation, and the gap between Black and white test scores decreased, suggesting a relationship between the declining gap in blood lead levels and the declining gap in test scores.<sup>279</sup>

Adding to Dr. Filippelli’s point that current environmental regulations help white children more than Black children, Dr. Aizer notes, “[i]f you target environmental regulation of children who are at the greatest risk of exposure to lead [you have] the potential to reduce disparities in not only future test scores, but future economic outcomes.”<sup>280</sup> This could reduce the Black-white test gap, which is one of the most effective methods for reducing economic inequality based on race.<sup>281</sup> Dr. Aizer continued, noting that the benefits of reducing lead are tracked in the education, health, and labor systems, however, housing authorities who have direct impact on lead exposure may not see lead reduction as part of their objectives, suggesting that “what you need is an alignment of incentives across housing, education and health,” particularly when Black families are limited in their residential choices.<sup>282</sup>

### **3. Political Power**

Dr. Browning shared that the ongoing pattern of industry siting environmental hazards in communities of low income people of color requires “extra vigilance by communities like East Chicago's West Calumet neighborhood, which continues to uncover toxic waste from its long history of industrial contamination.”<sup>283</sup> As recently as early 2020, Canadian National proposed to store environmental contaminants near the USS Lead Superfund site despite the known environmental contamination in the community, causing environmental groups to come together to speak out about the proposed action.<sup>284</sup>

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<sup>277</sup> Filippelli Testimony, *April 2019 Web Hearing*, pp. 17-18.

<sup>278</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 19.

<sup>279</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 19.

<sup>280</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 22.

<sup>281</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 22.

<sup>282</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 26.

<sup>283</sup> Browning Testimony, *Indianapolis Hearing*, p. 74.

<sup>284</sup> Browning Testimony, *Indianapolis Hearing*, pp. 73-74.

Governmental neglect towards environmentally sensitive communities is recent and pervasive. Ms. Benfer shared that when East Chicago was first identified publicly as being on a Superfund site in 2016, then-governor Mike Pence “was asked to provide disaster relief necessary to relocate those families to safety and he refused to do so. However, he did provide that same assistance to Greentown, where the population is 97% white.”<sup>285</sup> When the residents of East Chicago were relocated, it was done at an expedited pace that made it very challenging for residents to organize, and the Community Advisory Committee that was formed has not been given the level of deference it needs to impact lasting change for residents.<sup>286</sup>

Mr. Shelton shared that “as a result of this too-long history of damage to the residents of East Chicago, many people are concerned that they are still being exposed to environmental toxins, and they are unsure of the measures to take to best protect themselves and their families. Many don't trust that those in power are doing all that they can do to protect them.”<sup>287</sup> Mr. Davis wrote in correspondence following the briefing that “the local residents of the Calumet community of East Chicago, Indiana have not been directly involved in the actual decisions effecting their community, it's so-called “clean-up,” and urgent re-development plans.”<sup>288</sup>

Ms. Malitz underscored the role of political power of certain communities in reducing environmental hazards in their own communities. While Muncie, Indiana has primarily white residents, there are high levels of poverty compared to neighboring Indianapolis.<sup>289</sup> In discussing Protect Muncie's efforts to require the addition of a device that would reduce hazardous particulates in the air at a company in Muncie, Ms. Malitz shared that one company was forced to add a costly device to reduce environmental contamination in nearby Indianapolis. Malitz stated that “it's just striking to us living in Muncie that somehow we didn't rate the same amount of concern that that neighborhood in Indianapolis did, and there was no budging this situation.”<sup>290</sup>

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<sup>285</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 34; <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-east-chicago-disaster-request-denied-st-0119-20170119-story.html>; <https://www.healthaffairs.org/doi/10.1377/hblog20170808.061398/full/>.

<sup>286</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 34; James Cunningham to Indiana Advisory Committee to USCCR, May 28, 2020, HUD Response to IAC Questions, p. 26.

<sup>287</sup> Shelton Testimony, *Indianapolis Hearing*, p. 16.

<sup>288</sup> Davis Statement, at 118.

<sup>289</sup> U.S. Census Bureau. “Muncie City, Indiana.” QuickFacts. Census.gov. <https://www.census.gov/quickfacts/munciecityindiana> (accessed August 25, 2020) and U.S. Census Bureau. “Indiana; Indianapolis city (balance), Indiana.” QuickFacts. Census.gov. <https://www.census.gov/quickfacts/fact/table/IN.indianapolis/balanceindiana/PST045219> (accessed August 25, 2020).

<sup>290</sup> Malitz Testimony, *Indianapolis Hearing*, p. 60.

Regarding obtaining an air filtration device to filter contaminants from industrial facilities, Ms. Malitz noted that the response received has essentially pointed to the lack of legislation that forces the industry to comply with the best-available technology to reduce environmental harm, and there is a lack of political will to pressure industry to provide environmental remediation efforts.<sup>291</sup> She said, “[a]ll of us were sitting there thinking, ‘Well, IDEM [Indiana Department of Environmental Management] is going to protect us. They wouldn't let a facility like this be right next door to our neighborhood if we didn't -- if they were watching out for us. But in fact, what we discovered was that it wasn't true.’”<sup>292</sup>

Ms. Malitz stressed, “[t]his is why citizen groups like Protect Muncie exist.”<sup>293</sup> She explained, “[t]hese are low-income people who have no political power, have given up, and don't feel that there's anybody listening to the them.”<sup>294</sup> Dr. Hanna-Attisha added that government neglect in addressing issues related to environmental contamination is “a very well-known form of environmental racism, environmental injustice, yet we have the tools and the models on how to protect children... we just need to have the political will to put them in place.”<sup>295</sup>

Panelists shared the perception that the state is focused only on addressing federal compliance standards related to lead regulations, and impacted communities have had to take up the role of advocating for themselves.<sup>296</sup> Currently, facilities self-monitor and self-report, adding to a “real healthy feeling of distrust about the numbers that are being reported,” according to Ms. Malitz.<sup>297</sup> Dr. Filippelli added that citizen science approaches are attempting to place power back in the hands of communities impacted by environmental contamination.<sup>298</sup> Programs such as Indiana University's Healthy Cities Project and the Best Safe Program can be valuable tools for teaching children how to be citizen scientists, which includes learning how to sample for lead, but Dr. Filippelli stressed the need for regulations and appropriate remediation that meet the needs of communities found to have high levels of lead.<sup>299</sup>

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<sup>291</sup> Malitz Testimony, *Indianapolis Hearing*, p. 42, 53.

<sup>292</sup> Malitz Testimony, *Indianapolis Hearing*, p. 48.

<sup>293</sup> Malitz Testimony, *Indianapolis Hearing*, p. 55.

<sup>294</sup> Malitz Testimony, *Indianapolis Hearing*, p. 59.

<sup>295</sup> Hanna-Attisha Testimony, *May 2019 Web Hearing*, p. 6.

<sup>296</sup> Malitz Testimony, *Indianapolis Hearing*, p. 57; Filippelli Testimony, *April 2019 Web Hearing*, p. 18.; Tetzlaff Testimony, *April 2019 Web Hearing*, p. 28.

<sup>297</sup> Malitz Testimony, *Indianapolis Hearing*, p. 48, 57.

<sup>298</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 18.

<sup>299</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 18.

Panelists noted that in the absence of regulator leadership, community-based organizations and advocates have relentlessly moved the conversations around lead contamination forward.<sup>300</sup> Gary Holland from the NAACP in Indianapolis shared NAACP's role in advocating for testing lead in school waters, asking school board and mayors to sign a resolution to have the Health Department test schools for lead in drinking water.<sup>301</sup> Citizens and advocates continue to raise concerns around appropriate lead remediation efforts, including concerns that contaminated soil is being removed from known sites and dumped in areas that are 99% Black.<sup>302</sup> Concerned citizen Larry Davis provided his correspondence with government agencies, news articles, and reports of efforts to move contaminated soil from one location to another location that is next to residential homes in a community that is predominantly people of color following the February 2020 Indianapolis briefing, which can be found in the appendix.<sup>303</sup>

Mr. Shelton noted, “[t]oo often our communities are so close to where they're actually dumping contaminated soil, not just places where the soil is being contaminated, but where they're caught themselves moving it from one section to the other. In essence, we believe there's need for a concentrated focus on what's happening, certifying where contamination's being lifted and moved to, and exactly what the impact would be on those areas as well.”<sup>304</sup>

In response to concerns that contaminated soil from the East Chicago soil removal process includes disposing of contaminated soil in nearby communities, the EPA responded that much of the USS Lead Site's Operable Unit 1 site, which consists of the Calumet neighborhood, has contaminated soil which has “been disposed of in the licensed Republic Services Newton County Landfill in Brook, Indiana,” and regulations prohibit the transfer of such “wastes to a land disposal facility that is releasing contaminants into the environment and requires that any releases from other waste management units must be controlled.”<sup>305</sup>

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<sup>300</sup> Malitz Testimony, *Indianapolis Hearing*, p. 55; Waterhouse Testimony, *Indianapolis Hearing*, p. 106.

<sup>301</sup> Holland Testimony, *May 2019 Web Hearing*, p. 33.

<sup>302</sup> Shelton Testimony, *Indianapolis Hearing*, p. 16; East Chicago Calumet Coalition - Community Advisory Group Statement, at 5.

<sup>303</sup> East Chicago Calumet Coalition - Community Advisory Group Statement, at 5; Davis Statement, at 120.

<sup>304</sup> Shelton Testimony, *Indianapolis Hearing*, p. 22.

<sup>305</sup> Kurt Thiede to Indiana Advisory Committee to USCCR, June 4, 2020, EPA Response to IAC Questions, p. 4.

## F. Promising Practices

Panelists stressed the importance of identification and remediation of lead hazards as the means of preventing lead poisoning.<sup>306</sup> Under the umbrella of prevention efforts, Ms. Benfer shared that 17 cities and states have adopted pre-rental lead hazard inspection laws so lead is identified and contained before a child occupies a unit, and additional best practices include visual assessments, dust-wipes, and lead paint, soil, and water tests.<sup>307</sup> Additionally, the EPA allows states to implement and enforce the Renovation, Repair and Painting (RRP) rule, which 14 states have adopted and expanded and include a lead-dust clearance test, training requirements, training in dual languages, and licensed renovators on lead remediation sites at all times.<sup>308</sup>

There is a need to target high-risk buildings in known environmentally hazardous locations, as well as landlords whose buildings repeatedly fail inspections.<sup>309</sup> Ms. Benfer notes, “[b]ecause most state laws allow property owners to re-lease units even if lead hazards exist, and don't require that pre-rental inspection, one residential address may be responsible for the poisoning of numerous children.”<sup>310</sup> The Chicago Public Health Department collected data to identify 67 high risk buildings that contributed to 1000 cases of lead poisoning.<sup>311</sup> If one child in a multi-family building is lead poisoned, Maine requires inspections of all units in that building.<sup>312</sup> A recent instance of this effort in Maine resulted in an additional 163 units found to have lead hazards.<sup>313</sup>

Dr. Aizer shared that in Rhode Island, a program initiated in 1998 provides landlords with information and funding to reduce lead hazards in rental properties.<sup>314</sup> Completion of the program provides a lead-safe certificate, an incentive to landlords as it reduces legal liability if a child is lead poisoned in one of their rental properties.<sup>315</sup> This program was developed as Rhode Island did not have significant funding to enforce lead remediation issues, however, targeting implementation of the lead-safe certificate program in neighborhoods with older housing and the highest lead levels

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<sup>306</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 23; Latimer Testimony, *April 2019 Web Hearing*, p. 8; Filippelli Testimony, *April 2019 Web Hearing*, p. 26.

<sup>307</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 23.

<sup>308</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 23; 40 C.F.R. § 745.

<sup>309</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 24.

<sup>310</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 24.

<sup>311</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 24.

<sup>312</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 24.

<sup>313</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 24.

<sup>314</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 20.

<sup>315</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 20.

decreased blood lead levels by almost half.<sup>316</sup> Dr. Aizer noted this program is responsible for about half of the disproportionate decline in lead levels among Black Rhode Islanders due to the targeted outreach and implementation of the program.<sup>317</sup> For a state with limited funding for lead prevention programs, Dr. Aizer recommends targeting lead smelter or Superfund sites, and then older urban areas where lead levels tend to remain significantly higher than in suburban areas.<sup>318</sup>

Rhode Island is another leader when it comes to testing for lead, where 80% of all children are tested at least once before age three for lead levels above 5 µg/dL, with some receiving multiple lead tests before age three.<sup>319</sup> Dr. Aizer attributes this high testing rate due to it being a small state with a Department of Health that prioritizes attention to particular disadvantages related to lead exposure for Black, Hispanic, and low-income families with children.<sup>320</sup>

Dr. Latimer noted, “I do think that one of the most important things that we should be doing is changing the legislation, so that we're using CDC guidelines” of testing for lead poisoning contamination at 5 µg/dL rather than 10 µg/dL.<sup>321</sup> Dr. Latimer continued to highlight best practices, noting that states that require universal testing also mandate that lead testing is covered by insurance, and states which have publicly accessible lead databases could help with proactive measure to prevent lead poisoning.<sup>322</sup> Dr. Filippelli agreed that one of the key issues for Indiana is reducing its lead testing level to match CDC guidelines, emphasizing that there is no known safe level of lead in the body.<sup>323</sup>

Many states provide automatic eligibility for services for children with lead poisoning when prevention efforts fail or fail to exist.<sup>324</sup> When a child is identified with blood lead poisoning, intense and early intervention at the earliest possible point can mean the difference between receiving critical and appropriate services or receiving disciplinary actions that further inhibit educational progress.<sup>325</sup> Ms. Benfer shared a June 2020 report from organizations in East Chicago, including the Shriver National Center on Poverty Law, Northwestern Law School, and University

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<sup>316</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 21.

<sup>317</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 21.

<sup>318</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 23.

<sup>319</sup> Aizer Testimony, *April 2019 Web Hearing*, p. 20; State of Rhode Island Department of Health. “Environmental Lead Program.” Health.RI.gov. [https://health.ri.gov/programs/detail.php?pgm\\_id=1071](https://health.ri.gov/programs/detail.php?pgm_id=1071) (accessed August 25, 2020).

<sup>320</sup> Aizer Testimony, *April 2019 Web Hearing*, pp. 22-23.

<sup>321</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 26.

<sup>322</sup> Latimer Testimony, *April 2019 Web Hearing*, p. 26.

<sup>323</sup> Filippelli Testimony, *April 2019 Web Hearing*, p. 26.

<sup>324</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 23.

<sup>325</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 23.

of Chicago Law School that highlights the need to center directly-impacted community members within conversations and decision-making about determinations on the health or safety of their communities; preventing environmental contamination from occurring in the first place; committing appropriate and adequate financial resources to addressing prevention and remediation efforts, and federal cross-disciplinary approaches to align priorities and resources along strong interagency practices.<sup>326</sup>

Mr. Shelton recommended the development of a “Black-Green Pipeline:”<sup>327</sup>

We are calling for our educational system to teach and promote the science, technology, engineering and mathematics, or STEM as some would call it, studies in a way that [is] accessible and compelling for children of color and low-income children to exposure that there is a pipeline for future leadership... In an ideal world, this pipeline would run through community-based nonprofit organizations, philanthropy and the business community, to zoning boards, public service utility commissions, rural electric co-op boards, water boards and school boards to the Army Corps of Engineers, city councils, mayors' offices, Governorship, lower courts to the Supreme Court, and the halls of Congress to the Presidency.<sup>328</sup>

Additional recommendations and examples of best practices came from Dr. Pamela Pugh, Chief Public Health Advisor for the City of Flint, MI. In April 2014, Flint, MI began drawing water from the Flint river, leading to a highly-publicized outcry regarding contaminated water.<sup>329</sup> With her colleagues, Dr. Pugh formed a City of Flint technical advisory council of public health and medical professionals and research scientists, developed an environmental justice summit, and worked with the local branch of the NAACP to develop a 20-point plan to make demands of the governor,<sup>330</sup> along with “Health Equity in All” policies that have been critical to addressing lead issues in the City of Flint.<sup>331</sup>

Dr. Pugh also stressed the important work of concerned pastors and resident groups in driving the work that has been done to resolve the Flint water crisis.<sup>332</sup> Dr. Pugh and Ms. Benfer added that

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<sup>326</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 35; Emily Coffey, Kate Walz, Debbie Chizewer, Emily Benfer, Mark Templeton, and Robert Weinstock, *Poisonous Homes: The Fight for Environmental Justice in Federally Assisted Housing*. Shriver Center on Poverty Law & Earthjustice. June 2020. [https://www.povertylaw.org/wp-content/uploads/2020/06/environmental\\_justice\\_report\\_final.pdf](https://www.povertylaw.org/wp-content/uploads/2020/06/environmental_justice_report_final.pdf) (accessed August 25, 2020).

<sup>327</sup> Shelton Testimony, *Indianapolis Hearing*, p. 19.

<sup>328</sup> Shelton Testimony, *Indianapolis Hearing*, pp. 19-20.

<sup>329</sup> Pugh Testimony, *May 2019 Web Hearing*, p. 10.

<sup>330</sup> Pugh Testimony, *May 2019 Web Hearing*, p. 13.

<sup>331</sup> Pugh Testimony, *May 2019 Web Hearing*, p. 30.

<sup>332</sup> Pugh Testimony, *May 2019 Web Hearing*, p. 29-30.

findings from the Michigan Department of Civil Rights report, *The Flint Water Crisis: Systemic Racism Through the Lens of Flint*, which provides recommendations that Indiana can learn from, including: doing a better job of listening to communities impacted by environmental injustice, developing robust procedures and mechanisms for tracking environmental and health issues through a civil rights lens, recognizing public interest in cost benefit analyses when siting potential environmental hazards, and building tools like a Racial Equity Framework and the Flint Registry to eliminate gaps between white communities and communities of color that rely on data and collaboration.<sup>333</sup>

As of May 2019, Ms. Benfer shared that “neither the federal or state government has created a program in Indiana that could build off of models like that of the Flint Registry”<sup>334</sup> which connects individuals exposed to lead-contaminated water to comprehensive community resources.<sup>335</sup> Ms. Benfer highlighted that Indiana could implement this program where people in known lead-contaminated areas, like East Chicago, could receive testing and be connected to essential services.<sup>336</sup>

### III. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>337</sup>

Below, the Committee offers to the Commission a summary of findings identified throughout the Committee’s inquiry. The findings result directly from the testimony received and reflect the views of the cited panelists. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise,

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<sup>333</sup> Pugh Testimony, *May 2019 Web Hearing*, p. 12.; Benfer Testimony, *May 2019 Web Hearing*, p. 34; Michigan Civil Rights Commission, *The Flint Water Crisis: Systemic Racism Through the Lens of Flint*, Michigan.Gov. February 17, 2017, [https://www.michigan.gov/documents/mdcr/VFlintCrisisRep-F-Edited3-13-17\\_554317\\_7.pdf](https://www.michigan.gov/documents/mdcr/VFlintCrisisRep-F-Edited3-13-17_554317_7.pdf) (accessed August 25, 2020); Flint Registry. “Flint Registry: Get Connected. Get Supported. Get Counted.” <https://www.flintregistry.org/about/> (accessed August 25, 2020).

<sup>334</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 22.

<sup>335</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 34; Flint Registry. “Flint Registry: Get Connected. Get Supported. Get Counted.” <https://www.flintregistry.org/about/> (accessed August 25, 2020).

<sup>336</sup> Benfer Testimony, *May 2019 Web Hearing*, p. 34; Flint Registry. “Flint Registry: Get Connected. Get Supported. Get Counted.” <https://www.flintregistry.org/about/> (accessed August 25, 2020).

<sup>337</sup> 45 C.F.R. § 703.2.



and firsthand experience with the topics at hand. Following these findings, the Committee proposes for the Commission to consider several recommendations for federal and state actors.

## **A. Findings**

### 1. Medical Impact of Lead Exposure

- a. There is no safe level of lead in the blood of a child. Lead exposure permanently and irreversibly impacts speech, cognition, ability to control behavior, ability to avoid engaging in dangerous or risky behaviors, and hostility. For these reasons, prevention efforts are needed to prevent lead exposure and lead poisoning from occurring in the first place.
- b. A child's developing body will absorb about five times as much lead as an adult who ingests the same amount because their developing intestines cannot yet filter out lead. Children under six years of age are at highest risk for lead exposure and lead poisoning. This is due to pre-natal exposure through the mother's nutrition and environment, post-natal exposure through breastmilk or formula made with contaminated water and ingesting contaminated soil and dust from hand to mouth activity during early developmental stages. The presence of stress increases the body's uptake of lead, making it possible for babies to be impacted by their mother's stress.
- c. Independent of social and economic factors, lead poisoned children are more likely to struggle in school, under-perform in the workplace, and earn less across their earning years. Lead-poisoned individuals are seven times more likely to drop out of school and six times more likely to enter the criminal justice system.

### 2. Race and Lead in Indiana

- a. The Indiana State Department of Health has inconsistently reported racial and ethnic demographic data. Racial and ethnic data collection regarding blood lead tests is required by state statute but does not appear to be enforced. While the 2018 Childhood Lead Surveillance Report by the Indiana State Department of Health's Lead and Healthy Homes Division provides a demographic breakdown by race and ethnicity, none of the 2017, 2016, or 2015 reports provide this information. In its 2018 report, racial and ethnic information was classified as unknown for 27% of the children tested and for 31% of the lead cases identified.
- b. The Indiana State Department of Health Lead and Healthy Homes Divisions Childhood Lead and Surveillance Reports that do provide a racial demographic breakdown indicate that Black children consistently suffer from elevated blood lead

levels at significantly disproportionate rates. Agency reports that do not include a racial demographic breakdown or detailed information also indicate that Black children consistently suffer from elevated blood lead levels at significantly disproportionate rates.

- c. Black and Hispanic children have higher rates of lead poisoning than white children, even when accounting for socioeconomic status.
- d. Asian and Pacific Islanders have shown higher elevated blood lead levels across multiple years.
- e. Despite having higher elevated blood lead level rates, Black children are under tested in Indiana. Changing the screening level from 10 µg/dL to 5 µg/dL would result in disproportionately higher rates of black children vs. white children identified.
- f. Indiana's continued use of 10 µg/dL to qualify for services disproportionately deprives Black, Hispanic, as well as Asian and Pacific Islander children with elevated blood lead levels between 5 µg/dL and 10 µg/dL of the care and services they need.
- g. East Chicago lead testing racial demographic data was not reported by the Indiana State Department of Health. Witness testimony suggests that Black children comprised a majority of the children tested and found with elevated blood lead levels in East Chicago.
- h. The Indiana State government and its agencies have not acted to address the clear racial health disparities facing Black children. Governmental neglect at addressing issues related to environmental contamination are a known form of environmental racism and environmental injustice.
- i. Indiana relies on federal funds for lead poisoning prevention programs and contributes \$0 in state funds to the lead poisoning prevention program. There are disproportionate levels of people of color impacted by lead poisoning in Indiana. There are serious civil rights implications for Indiana's lack of investment in lead prevention and mitigation strategies, given its reliance on federal funds covered under Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race.

### 3. Sources of Lead

- a. The primary source of lead exposure for Indiana's children is their own home. Homes built before the 1978 lead-paint regulations continue to shed lead paint chips and lead dust in the environment. Lead from paint sources and industry can also turn into dust that is inhaled in the air. Industrial sites are also significant in contributing to the presence of lead in surrounding environments.
  - b. Lower income and communities of color work in the most hazardous parts of industrial facilities and live and play near industrial hazards. Children of color in underserved communities are particularly at-risk for serious and debilitating lead exposure. Blood lead levels are especially high among Black children who live in low-income communities.
  - c. At the time of HUD's initial move analysis conducted between July 2016 and April 2017 after efforts to move residents away from the contaminated site, 97.2% of residents of the West Calumet Housing Complex Census Tract 303 were people of color, compared to 18.5% for the state of Indiana. Children under six years of age in the housing complex were nearly three times as likely to exceed the CDC's criteria of 5 µg/dL compared to a child living outside the Superfund site.
  - d. Lead does not decay or degrade on its own. Contaminated soil, water, and air from industrial facilities impacts homes and areas children play in until it is cleaned up.
  - e. It is less expensive to prevent lead exposure than it is to remediate environments and provide medical interventions and resources to children who have been exposed to lead. Lead risk assessments in the housing industry alone could save an estimated \$173-200 million per year, while preventing a terrible human toll as well.
4. Testing
- a. The Centers for Disease Control (CDC) recommends testing for blood lead contamination at 5 µg/dL, and it is possible to test down to 0 µg/dL. Indiana screens for blood lead contamination at 10 µg/dL. Changing the testing level from 10 µg/dL to 5 µg/dL would result in disproportionately more Black children than white children identified.
  - b. Some counties in Indiana provide free testing for lead. The state of Indiana does not provide free testing for lead. Some counties in Indiana have adopted the CDC's recommended use of 5 µg/dL, but the state still uses 10 µg/dL as its threshold for funding services. By testing at 10 µg/dL, Indiana is eliminating automatic eligibility for services for those whose blood lead levels fall between 5 µg/dL and 10 µg/dL.
  - c. Indiana has the lowest Medicaid testing rate among the nearest five states. Indiana and Kentucky are the only two states that receive Medicaid funding but do not

require labs to report blood lead levels to state officials. Additionally, federal Medicaid funds require grantees to test for contamination of blood lead at 5 µg/dL, not 10 µg/dL. Despite the CDC's recommendation to identify contamination at 5 µg/dL, Indiana continues to refer Medicaid recipients for service when the child's blood lead level reaches 10 µg/dL.

- d. The CDC asks its Medicaid grant recipients to test all children receiving Medicaid. Indiana consistently tests less than 40% of its Medicaid recipients for lead exposure, and in some years, far less than 40%. In 2018, Indiana tested around 95% of children on Medicaid for measles and mumps but only tested 11% of children on Medicaid for lead. By accepting this funding, the state of Indiana is required to adhere to Title VI requirements to ensure there is no discrimination in the administration of grant funds. As children of color are disproportionately impacted by lead poisoning in Indiana, panelists raised concern that these practices result in disparately impacting children of color.
- e. Indiana lacks a universal lead testing policy. States that require universal testing have increased testing rates for Medicaid recipients. Populations deemed most at risk for elevated blood lead levels continue to be overlooked. While the Indiana State Department of Health recommends increasing testing children for lead exposure, the lack of a legal mandate and an enforcement mechanism results in very low numbers of children screened.
- f. Data relating to lead exposure between state and federal agencies do not match. Data collection related to lead exposure does not consistently capture racial and ethnic information which could be used to assess for discrimination, target interventions, and assign resources.

## 5. Environmental Justice Administration

- a. The EPA's National Center for Environmental Assessment noted in 2018 that national, state, and county data all indicate that people of color are disproportionately burdened compared to white Americans. When East Chicago, which is 90% people of color, was first identified as a Superfund site in 2016, then-governor Mike Pence declined to provide the requested disaster relief necessary to relocate families, however, he provided this assistance to residents of Greentown, which is 97% white.
- b. Blood lead levels are declining more quickly for white children than for children of color due to national level policies. Targeting environmental regulations for children at the greatest risk of exposure to lead has the potential to reduce the Black-

white test gap, which is one of the most effective methods for reducing economic inequality based on race.

- c. Indiana ranks 48<sup>th</sup> in the country for state funding of all public health programs. The Committee heard concern from panelists that the State is relying on federal funds and standards to provide lead abatement and lead testing-related work. In the absence of regulator leadership, impacted communities have had to take up the role of advocating for themselves.
- d. Remediation efforts address point-in-time lead contamination, but do not address ongoing lead exposure through runoff from contaminated paint sources, industry, and lead water pipes, or lead dust in the air that continually settles into soil and environments around homes and playgrounds.
- e. Indiana State Legislature recently passed House Bill 1265 which requires that school drinking water lead levels be tested and are below 15 ppb.<sup>338</sup> However, soil and student's blood levels are not required to be tested under this bill.
- f. At the time that residents were moved out of the West Calumet Housing Complex due to lead exposure, the Committee heard that there was a lack of a strong and coordinated response between government entities and providers. The Committee heard that residents did not have adequate access to culturally competent mental health providers, proper nutrition education, or proper health education. Residents of known lead-impacted areas must request interior dust sampling. It is not part of the actions proactively offered to impacted residents. Residents were not directly involved in the decisions affecting their communities.
- g. Advocates are concerned that lead exposure and poisoning will be ignored by the state due to the current focus on the COVID-19 pandemic.

## 6. Promising Practices

- a. Lead poisoning is a preventable problem. Prevention efforts include pre-rental hazard inspection laws, visual assessments, dust-wipes, and lead paint, soil, and water tests. As lead levels in the environment decrease, rates of lead poisoning also decrease. Panelists highlighted that an alignment of incentives and regulations across housing, education, and health is needed, particularly when Black families are limited in their housing choices.

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<sup>338</sup> IND. CODE § 16-41-21.1-3 (2020).

- b. Universal testing leads to increases in early identification of children who can benefit from services before lead poisoning progresses to more severe cases that impact educational and occupational outcomes. Many states provide automatic eligibility for services for children with lead poisoning when prevention efforts fail or fail to exist.
- c. EPA allows states to implement and enforce the Renovation, Repair and Painting (RRP) rule, which 14 states have adopted and expanded. The RRP rule includes a lead-dust clearance test, training requirements, training in dual languages, and licensed renovators on lead remediation sites at all times.
- d. Citizen science approaches are attempting to place power back in the hands of communities impacted by environmental contamination, such as Indiana University's Healthy Cities Project and the Best Safe Program which includes teaching children how to sample for lead. The NAACP's Black-Green Pipeline is intended to support inclusion of communities of color into the green economy through teaching children Science, Technology, Engineering and Math and nurturing their development through to roles of leadership and power. These efforts are not, however, meant to replace the need for regulations and appropriate remediation efforts.
- e. The Committee heard recommendations to target high-risk buildings in known environmentally hazardous locations, as well as landlords whose buildings repeatedly fail inspections. If one child in a multi-family building is lead poisoned in Maine, the state requires inspections of all units in that building. A recent instance of this effort in Maine resulted in an additional 163 units found to have lead hazards.
- f. The Committee heard recommendations to target lead-prevention and remediation programming to building owners in areas that are lead smelters, Superfund sites, and older urban areas. Rhode Island provides a lead-safe certificate to landlords who complete a program that provides information and funding to reduce lead hazards in rental properties. The state had limited funds for lead prevention programs but used targeted outreach to reach populations most impacted by lead exposure, contributing to an almost 50% decrease in lead levels of Rhode Islanders.
- g. Panelists recommended that Indiana learn from the Flint water crisis by listening to communities impacted by environmental justice, developing robust procedures and mechanisms for tracking environmental and health issues through a civil rights lens, recognizing public interest in cost benefit analyses with siting potential environmental hazards, and building data and collaboration tools to track and eliminate gaps between white communities and communities of color.

## **B. Recommendations**

- 1) The U.S. Commission on Civil Rights should send this report to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services and Centers for Disease Control and issue recommendations for it to:
  - a) Enforce Medicaid grant requirements regarding testing recipients for blood lead contamination. The CDC recommends that all children with blood lead levels above 5 micrograms per deciliter ( $\mu\text{g}/\text{dL}$ ) be identified as having elevated blood lead levels. The Indiana State Health Department does not follow the CDC guidance, instead using a much higher threshold (10  $\mu\text{g}/\text{dL}$  or more) to identify children with elevated blood lead levels. Moreover, Indiana consistently tests fewer than 40% of the children they are directed to test under the U.S. Department of Health and Human Services (HHS) grant administered by the CDC. Collaborate with the Indiana State Department of Health's Lead and Healthy Homes Program to ensure reliable data is captured consistently across local, state, and federal levels.
  - b) Ensure culturally competent services, including culturally competent counseling services, are provided as part of case management efforts for lead-exposed and lead-poisoned families. This could include training and coordination with local community and/or local advisory groups prior to providing resources.
  - c) Establish a joint task force in collaboration with the U.S. Environmental Protection Agency and the U.S. Department of Housing and Urban Development to study health disparities among those in federally-funded housing through a lens of environmental hazards and related outcomes on the basis of race, color, disability status, and other federally protected categories. The task force should explore long-term studies of residents in communities impacted by lead exposure along with other contaminants to better understand associated diseases and the needs of the impacted communities. This task force should be charged with recommending and implementing appropriate policies, practices, and training to reduce such disparities. In consultation and coordination with residents in communities impacted by lead exposure, the task force should conduct long-term health surveillance to track their health and well-being and facilitate the provision of needed medical services.
  - d) Ensure the Centers for Medicare and Medicaid simplify the process for local health departments to bill Medicaid for the care of lead poisoned children. The current complexity of billing is interfering with many Indiana county health departments' provision of case management services for their lead poisoned children.
- 2) The U.S. Commission on Civil Rights should send this report to the U.S. Environmental Protection Agency (EPA) and issue recommendations to:

- a) Seek cost recovery for health surveillance costs, blood testing, and future studies under the Superfund Law<sup>339</sup> for communities impacted by lead poisoning in Indiana, as noted on EPA’s website that “EPA was given power to seek out those parties responsible for any release and assure their cooperation in the cleanup.”<sup>340</sup>
  - b) Prohibit continued siting of industrial hazards on Superfund sites or in nearby impacted residential communities.
  - c) Ensure culturally competent services, including culturally competent counseling services, are provided as part of case management efforts for lead-exposed and lead-poisoned families. This could include training and coordination with local community and/or local advisory groups prior to providing resources.
  - d) Establish a joint task force in collaboration with the U.S. Department of Housing and Urban Development and the U.S. Department of Health and Human Services, Centers for Disease Control to study health disparities among those in federally-funded housing through a lens of environmental hazards and related outcomes on the basis of race, color, disability status, and other federally protected categories. The task force should explore long-term studies of residents in communities impacted by lead exposure along with other contaminants to better understand associated diseases and the needs of the impacted communities. This task force should be charged with recommending and implementing appropriate policies, practices, and training to reduce such disparities. In consultation and coordination with residents in communities impacted by lead exposure, the task force should conduct long-term health surveillance to track their health and well-being and facilitate the provision of needed medical services.
- 3) The U.S. Commission on Civil Rights should send this report to the U.S. Department of Housing and Urban Development and issue recommendations to:
- a) Require landlords receiving federal funds to complete lead risk assessment and remediation in housing prior to occupancy.
  - b) More effectively implement the existing requirement to perform environmental assessments of the sites proposed for housing developments built under U.S. Department of Housing and Urban Development programs and for federally funded properties

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<sup>339</sup> 42 U.S.C. § 9601 et seq. (1980).

<sup>340</sup> U.S. Environmental Protection Agency. “Summary of the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund).” EPA.gov. <https://www.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act> (accessed September 1, 2020).



- undergoing rehabilitation. Improve those environmental assessments by including meaningful engagement with the affected populations.
- c) Ensure culturally competent services, including culturally competent counseling services, are provided as part of case management efforts for lead-exposed and lead-poisoned families. This could include training and coordination with local community and/or local advisory groups prior to providing resources.
  - d) Establish a joint task force in collaboration with the U.S. Environmental Protection Agency and the U.S. Department of Health and Human Services, Centers for Disease Control to study health disparities among those in federally-funded housing through a lens of environmental hazards and related outcomes on the basis of race, color, disability status, and other federally protected categories. This task force should be charged with recommending and implementing appropriate policies, practices, and training to reduce such disparities. The task force should explore long-term studies of residents in communities impacted by lead exposure along with other contaminants to better understand associated diseases and the needs of the impacted communities. In consultation and coordination with residents in communities impacted by lead exposure, the task force should conduct long-term health surveillance to track their health and well-being and facilitate the provision of needed medical services.
- 4) The Commission should send this report and issue recommendations to the Indiana General Assembly to:
- a) Adopt and pass appropriate legislation to reduce the definition of blood lead contamination, or “elevated blood lead level” from 10 µg/dL to 5 µg/dL or greater as currently defined by the CDC.
  - b) Adopt and pass appropriate legislation that would require universal, free testing for lead in pregnant women and for children, the earlier the better, but at a minimum, ages 1 year and 2 years, and as requested by a family member or doctor up to 7 years of age in Indiana.
  - c) Adopt and pass appropriate legislation to provide case management, nutritional assessments and education, internal and external home assessments, and remediation services if a child has a blood level of 5 µg/dL or greater, and allocate sufficient funds to health departments so they can meet the requirement.
  - d) Adopt and pass appropriate legislation to provide assessments and case management for schools, childcare centers, and residential buildings if a child within that facility is found to have a blood level of 5 µg/dL or greater.
  - e) Adopt and pass appropriate legislation to require the collection of race and ethnicity, including Native American/indigenous populations alongside other demographic

information requested as part of lead testing and screening protocols. Adopt and pass appropriate legislation to amend IND. CODE § 16-41-21.1-3 (2020) beyond testing school water for lead to include testing drinking water at childcare centers and testing soil at schools and childcare centers and to require remediation if lead is found at 5 ug/dl or greater in drinking water or at 400 parts per million or greater in soil.

- f) Adopt and pass appropriate legislation to ensure an Indiana Lead Advisory Board meets consistently to monitor enforcement of lead laws and codes to increase testing, and explore long-term studies of residents in communities impacted by lead exposure along with other contaminants to better understand associated diseases and the needs of the impacted communities.
  - g) Adopt and pass appropriate legislation to require that insurance providers cover the costs of lead testing for all children up to 72 months in age.
  - h) Adopt and pass appropriate legislation to require the annual reporting of race and ethnicity including Native American/indigenous populations alongside other demographic information requested as part of lead testing and testing protocols.
  - i) Adopt and pass legislation requiring companies selling paint in Indiana to pay a fee of \$0.25 for every gallon of paint sold in the state, similar to a program in place in Maine (See Appendix). Allocate those funds to the Childhood Lead Poisoning Prevention Fund which already exists under Indiana statute at IND. CODE 16-41-39.4-3.1.
  - j) Adopt and pass appropriate legislation to prevent retaliatory evictions. If an eviction happens within 90 days of a complaint by code enforcement or the state or local health department, it should be considered illegal retaliation. No family should have to worry that they will get evicted because they called the health department about health hazards in their rental housing.
  - k) Adopt and pass appropriate legislation to allow families to repair lead hazards and deduct the cost of that repair from their rent if the landlord has refused to make the repair.
  - l) Allocate sufficient funds to the state health department and local health departments from the Childhood Lead Poisoning Prevention Fund and the General Fund to cover the case management, nutritional assessments, internal and external home lead risk assessments, and remediation needed for Hoosier children with a blood level of 5 µg/dL or greater; and to assist schools and childcare centers with testing and remediating drinking water and soil.
- 5) The Commission on Civil Rights should send this report and issue the following recommendation to the Indiana State Department of Health:

- a) Review existing models like the Flint Registry which connects individuals exposed to lead-contaminated water to comprehensive community resources, as an example to improve and inform Indiana's efforts to address lead poisoning.
- b) Review Rhode Island's Lead Safe Certificate program to incentivize landlords to reduce and remediate lead in housing, particularly in areas around lead smelters and older urban housing, as an example to improve and inform Indiana's efforts to address lead poisoning.
- c) Ensure data collected from blood lead tests captures racial and ethnic demographic information, including Native American/indigenous populations for which there is currently little data available.
- d) Collaborate with the CDC's Lead Surveillance Program to ensure reliable data is captured consistently across local, state, and federal levels. Data reporting mechanisms should also be consistent and streamlined between county and state-level reporting.
- e) Provide county-level incidence of lead poisoning information on a publicly accessible and available website. This could include providing a registry of homes that indicate whether the residence has been inspected for lead or abated for lead.
- f) Ensure culturally competent services, including culturally competent counseling services, are provided as part of case management efforts for lead-exposed and lead-poisoned families. This could include training and coordination with local community and/or local advisory groups prior to providing resources.
- g) Enforce IND. CODE 16-41-39.4-3, which requires that laboratories report blood lead levels of Medicaid recipients to state officials.
- h) Report data collected from blood lead tests including racial and ethnic demographic information, including Native American/indigenous populations annually. The annual lead report from the Indiana State Department of Health should include the number of children with a blood lead level of 5 µg/dL or greater.
- i) Ensure that testing regimes, practices, and protocol's comply with U.S. Department of Health and Human Service Title VI regulations at 45 CFR 80.3 generally and 80.3 b(2) in particular which states in part.
  - (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program...may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of...substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

- j) Ensure that Indiana health providers are aware of the need to test pregnant women and young children for lead and report the test results and that it is a requirement for the children they care for who are covered by Medicaid.

## **IV. APPENDIX**

All materials can be found here:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L0IOL0Vudmlyb25tZW50YWwgSnVzdGljZQ%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L0IOL0Vudmlyb25tZW50YWwgSnVzdGljZQ%3D%3D)

### **A. Transcripts**

April 2019 Web Hearing

May 2019 Web Hearing

November 2019 Web Hearing

February 2020 Indianapolis Hearing

May 2020 Web Hearing

September 2020 Committee Meeting

### **B. Written Testimony**

April 2019 Web Hearing Panelist Presentations

May 2019 Web Hearing Panelist Presentations

February 2020 Indianapolis Hearing Panelist Presentations

ATSDR Response to IAC Questions 5.26.20

Benfer Statement 5.6.19

Browning Statement 2.27.20

East Chicago Calumet Coalition Advisory Group Statement 3.27.20

EPA Response to IAC Questions 6.4.20

Fraser Statement 2.19.20

Howard University School of Law Environmental Justice Center Statement 3.31.20

HUD Response to IAC Questions 5.29.20

ISDH Response to IAC Questions 5.28.20

Larry Davis Emails Submitted 3.26.20

Maine Lead Poisoning Prevention Fee

Hoosier Environmental Council Written Statement 9.8.20

ISDH Response to IAC Questions 9.8.20

University of Chicago Abrams Environmental Law Clinic Letter to the IAC 9.22.20

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**Indiana Advisory Committee to the  
United States Commission on Civil Rights**



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**U. S. Commission on Civil Rights**

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