

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

<b>UNITED STATES OF AMERICA,</b>	*	
<b>Plaintiff,</b>	*	
<b>v.</b>	*	<b>Civil Action No.</b>
<b>DENNIS HARDESTY</b>	*	
<b>Defendant.</b>	*	

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**CONSENT DECREE**

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Department of Housing and Urban Development (“HUD”) and the United States Environmental Protection Agency (“EPA”), has filed a complaint alleging that Dennis Hardesty (hereinafter referred to as “Defendant”) violated Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“Section 1018”), 42 U.S.C. § 4852d; and

WHEREAS, Section 1018 and the implementing regulations, found at 24 C.F.R. Part 35, Subpart A, and 40 C.F.R. Part 745, Subpart F, require, among other things, that the owners and managing agents of residential properties subject to the law make certain disclosures and provide certain records concerning Lead-Based Paint and Lead-Based Paint Hazards to tenants when a new lease is entered into or, if the lease predates the effective date of Section 1018, at the first change to the terms of an existing lease, such as a rent increase; and

WHEREAS, Defendant owns and manages 50 residential properties in Rockford, Illinois constructed prior to 1978 containing approximately 52 units that are subject to this Consent Decree (“Subject Properties,” as defined below); and

WHEREAS, the United States alleges that Defendant failed to make certain disclosures

required by Section 1018 in connection with transactions in approximately 50 Subject Properties in Rockford, Illinois; and

WHEREAS, the Defendant has agreed to perform certain Lead-Based Paint Hazard Reduction Work in the Subject Properties; and

WHEREAS, the United States alleges it is entitled to seek injunctive relief in a judicial action, including, but not limited to, an order requiring Defendant to comply with Section 1018 prospectively, and an order requiring Defendant to abate Lead-Based Paint; and

WHEREAS, the United States alleges that Defendant is subject to administrative civil penalties by HUD and EPA for violations of Section 1018 of up to \$16,000 per violation; and

WHEREAS, the United States and Defendant agree that settlement of the claims of the United States without further litigation is in the public interest and that entry of this Consent Decree is an appropriate means of resolving this matter; and

WHEREAS, the Parties agree that settlement and entry of this Consent Decree does not constitute admission or acknowledgement of liability or wrongdoing by Defendant, but is intended solely to settle all claims asserted by the United States against Defendant for violations of Section 1018 and the regulations thereunder on the terms set forth herein; and

WHEREAS, the United States and the Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest; and

NOW, THEREFORE, upon consent and agreement of the United States and the Defendant and the Court having considered the matter and been duly advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 4852d(b)(2) and has personal jurisdiction over the Defendant. Defendant consents to, and shall not challenge entry of, this Consent Decree and the Court's jurisdiction to enter and enforce this Consent Decree.

2. Venue is proper in this Court pursuant to 42 U.S.C. § 4852d(b)(2) and 28 U.S.C. § 1391(b) and (c) because the lawsuit involves actions that took place, and the Subject Properties are located, in the Northern District of Illinois.

**II. PARTIES BOUND**

3. This Consent Decree shall apply to and be binding upon the United States and Defendant, and his heirs, successors, and assigns.

4. Defendant shall remain liable to the United States for all the obligations set forth in this Consent Decree regardless of whether Defendant sells or transfers a Subject Property. If Defendant intends to sell or transfer a Subject Property prior to termination of the Consent Decree, all of the following must occur before the sale or transfer: (a) presumption of Lead-Based Paint or performance of any Lead-Based Paint inspections and all Lead-Based Paint Hazard Reduction Work must be completed at the Subject Property as set forth in Section VII; (b) a clearance examination must be passed as set forth in Section VII and the clearance examination report ("Clearance Report") sent to HUD requesting an expedited approval due to the pending sale or transfer; and (c) HUD must approve the final Clearance Report. HUD shall provide its approval in writing.

### III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree, which are defined in the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“Act”), shall have the meaning given in the Act or in any regulations promulgated pursuant to the Act. Whenever other terms listed below are used in this Consent Decree, the following definitions shall apply:

A. “**Abatement**” shall mean any measure or set of measures designed to permanently eliminate Lead-Based Paint or Lead-Based Paint hazards. Abatement includes, but is not limited to the removal of Lead-Based Paint and dust-lead hazards, the permanent enclosure or encapsulation of Lead-Based Paint, the replacement of painted components or fixtures, or the removal or permanent covering of soil.

B. “**Clearance Examination**” shall mean an activity conducted after Lead-Based Paint window replacement and other Lead-Based Paint Hazard Reduction Work, pursuant to Chapter 15 of the HUD Guidelines, have been performed to determine that the Lead-Based Paint Hazard Reduction Work are complete and that no settled dust-lead hazards exist in the unit, common areas, or in an exterior living area. The clearance process includes a visual assessment and collection and analysis of environmental samples. If Lead-Based Paint Hazard Reduction Work is performed in separate stages, clearance shall be achieved after each Hazard Reduction event before occupants are allowed to re-enter the work area. The appropriate clearance standards shall be the more restrictive of those set by the jurisdiction where the property is located or by Section 403 of the Toxic Substances Control Act (“TSCA”) and its implementing regulations, 40 C.F.R. § 745.227(e)(8)-(9).

C. **“Day”** shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

D. **“Elevated Blood-Lead Level”** shall mean a blood-lead concentration equal to or greater than ten (10) micrograms per deciliter ( $\mu\text{g}/\text{dl}$ ) as measured through a venous blood lead test.

E. A **“force majeure event”** shall mean any event beyond the control of Defendant, his contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay and the adverse effects of such delay to the greatest extent possible. “Force majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

F. **“Friction Surface”** shall mean an interior or exterior surface that is subject to abrasion or friction, including, but not limited to window components, tight fitting or rubbing doors, cabinet doors and drawers, stairway treads and railings, floors, and similar components on outside decks and porches.

G. **“Hazard Reduction Work”** shall mean measures designed to reduce or eliminate human exposure to Lead-Based Paint hazards through methods including Interim Controls or Abatement or a combination of the two.

H. **“HUD Guidelines”** shall mean the edition of the “HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” in effect on the date the work is conducted pursuant to this Consent Decree.

I. **“Impact Surface”** shall mean an interior or exterior surface that is subject to damage by repeated sudden force such as doorjamb, door trim, door stops, outside corners of walls, baseboards and shoe moldings, stair risers, and chair rails.

J. **“Interest”** shall mean interest pursuant to 28 U.S.C. § 1961.

K. **“Interim Controls”** shall mean a set of measures designed to temporarily reduce human exposure or likely exposure to Lead-Based Paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of Lead-Based Paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

L. **“Lead Supervisor”** shall mean a person certified or licensed by EPA or an EPA-authorized state to perform lead abatement, supervise lead abatement workers who perform lead abatement, and prepare occupant protection plans and abatement reports as defined in 40 C.F.R. § 745.226 or the applicable state law and/or regulations in an EPA-authorized state.

M. **“Lead-Based Paint”** shall mean paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. If a Subject Property is located in a jurisdiction with a more stringent definition of Lead-Based Paint or safety standard, “Lead-Based Paint,” as used herein, shall mean paint or other surface coatings that meet the more stringent standard.

N. **“Lead-Based Paint Free”** shall mean housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square

centimeter or 0.5 percent by weight. If a Subject Property is located in a jurisdiction with a more stringent definition of Lead-Based Paint or safety standard, "Lead-Based Paint Free," as used herein, shall mean housing that meets the more stringent standard.

O. **"Lead-Based Paint Free Certification"** shall mean a signed certification provided by the certified Lead-Based Paint inspector or Risk Assessor who conducted the Lead-Based Paint inspection that states:

*The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm<sup>2</sup> or 0.5 percent by weight (or the standard of the state where the property is located if more stringent) was found on any building components, using the inspection protocol in Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. Therefore, this dwelling qualifies for the exemption in 40 C.F.R. Part 745 and 24 C.F.R. Part 35 for housing being leased that is free of Lead-Based Paint.*

P. **"Month"** shall mean thirty (30) consecutive days.

Q. **"Paragraph"** shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

R. **"Risk Assessor"** shall mean an individual who has been trained by an accredited training program and certified by EPA or an authorized state to perform Lead-Based Paint inspections and risk assessments. A Risk Assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

S. **"Section"** shall mean a portion of this Consent Decree identified by a Roman numeral.

T. **"Section 1018"** shall mean Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

U. **“Subject Property”** or **“Subject Properties”** shall mean the properties listed in Appendix 1 of this Consent Decree.

V. **“Submit”** shall mean to dispatch via first class United States mail or other delivery service of demonstrated reliability and equivalent or better speed.

W. **“United States”** shall mean the United States of America on behalf of HUD and EPA.

X. **“Year of First Construction”** shall mean the year the first building on the property was constructed if the Subject Property has multiple buildings with different years of construction. Where a building was constructed over more than one year, this date shall be the date the construction permit was obtained, or if no permit was obtained, the year construction started.

#### **IV. GENERAL PROVISIONS**

6. By signing this Consent Decree, Defendant certifies that the Subject Properties listed in Appendix 1 of this Consent Decree are the only properties constructed before 1978 that Defendant owns, in whole or in part, or manages.

7. By signing this Consent Decree, Defendant certifies that he has no business affiliates that own and/or manage residential properties constructed before 1978 other than those listed in this Consent Decree.

#### **V. COMPLIANCE WITH SECTION 1018**

8. Defendant shall comply with all requirements of Section 1018 and its implementing regulations.

9. To the extent not previously accomplished, no later than two (2) Months after the Effective Date of this Consent Decree, Defendant shall provide to each tenant in the Subject



Properties a “Protect Your Family from Lead in Your Home” pamphlet approved by EPA, EPA’s “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools” pamphlet, as well as a “lead paint disclosure form” which shall include, at a minimum, the following:

A. If any Lead-Based Paint testing has been performed, a summary, drafted by the certified Lead-Based Paint inspector, of information concerning the existence or non-existence of Lead-Based Paint and/or Lead-Based Paint Hazards in the unit, common areas, and/or exterior;

B. A list of any available records or reports concerning Lead-Based Paint or Lead-Based Paint Hazards in the unit, common areas, and/or exterior and the opportunity to review such records or reports, or an indication of a lack of records or reports;

C. A lead warning statement containing the specific language set forth in regulations promulgated pursuant to Section 1018; and

D. Signatures and dates of both the landlord Defendant and tenant(s).

10. Within seventy-five (75) Days of the Effective Date of this Consent Decree, Defendant shall provide written notice to HUD and EPA that Defendant has complied with the requirements of Paragraphs 8 and 9 of this Consent Decree and, for each Subject Property, provide a copy of at least one disclosure form completed pursuant to Paragraph 9.

#### **VI. PAYMENT OF PENALTY**

11. Within thirty (30) Days of the Effective Date of this Consent Decree, Defendant shall pay a civil penalty of \$5,000.00 (five thousand dollars) to the United States as an administrative penalty for past violations of Section 1018.

12. Payment of the civil penalty shall be rendered by electronic funds transfer to the United States Department of Justice, in accordance with current procedures, referencing DJ

Number 90-5-1-1-10760 and the civil action case name and case number of the Northern District of Illinois. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Illinois. Any funds received after 5:00 p.m. (EST) shall be credited on the next business Day.

13. Notification that payment of the civil penalty has been made, referencing the DJ Number 90-5-1-1-10760 and the civil action case name and case number of the Northern District of Illinois, shall be provided in accordance with the notification provisions of Section XVII.

14. If Defendant fails to make any payment under Paragraph 11, Defendant shall be subject to Stipulated Penalties pursuant to Paragraph 23.A. of this Consent Decree. In addition, Interest shall accrue on any unpaid amounts until the total amount due has been received.

15. Defendant shall not deduct the civil penalty paid to the United States, or any Interest or Stipulated Penalties, paid under this Consent Decree from his federal, state, or local income taxes, and the United States does not in any way release Defendant from any claims arising under Title 26 of the United States Code.

## **VII. WORK TO BE PERFORMED**

16. The following Lead-Based Paint inspections or presumptions of Lead-Based Paint, Lead-Based Paint Hazard Reduction Work, clearance, and ongoing operations and maintenance (“O&M”) work shall be performed for units, common areas and exteriors for each Subject Property:

A. In lieu of performing a Lead-Based Paint inspection at each Subject Property, Defendant may presume Lead-Based Paint on all surfaces of that unit, common area, and exterior of each Subject Property. This includes, but is not limited to, all window components, all Friction and Impact Surfaces, as well as walls, ceilings and floors. If Defendant does not

presume Lead-Based Paint on all surfaces, as described above, a Lead-Based Paint inspection must be performed. The Lead-Based Paint inspection shall be performed either fully compliant with Chapter 7 of the HUD Guidelines or limited to paint-chip sampling or XRF testing of surfaces and components to determine the presence or absence of Lead-Based Paint which would require Lead-Based Paint Hazard Reduction Work as outlined in paragraph 16.E(i). Either type of inspection shall include a visual evaluation for deteriorated paint. The inspection report must provide a single page summary suitable for disclosure and clearly indicate what type of inspection was performed, full HUD Guidelines compliant or limited to surfaces sampled. For each Subject Property where a Lead-Based Paint inspection or limited lead-based paint inspection is performed, Defendant shall provide a copy of the inspection report to HUD no later than fifteen (15) days after receipt of such inspection report.

B. Defendant shall comply with the plan for Lead-Based Paint Hazard Reduction Work (“Hazard Reduction Plan”) for all Subject Properties not found to be Lead-Based Paint Free. The Hazard Reduction Plan is Appendix 2 of this Consent Decree. The Hazard Reduction Plan includes information about the components to be abated or controlled, the method of Abatement or Interim Control chosen, and the names of certified Abatement contractors who Defendant intends to have perform required Lead-Based Paint Hazard Reduction Work. The certified Abatement contractor may be changed upon written notice to HUD and EPA. Defendant shall perform all Lead-Based Paint Hazard Reduction Work required by this Consent Decree in accordance with the Hazard Reduction Plan.

C. At least ten (10) business Days before the commencement of any Lead-Based Paint Hazard Reduction Work, including window replacement, Defendant shall ensure that the Lead Supervisor prepares a Notification for Lead-Based Paint Abatement Activities in

accordance with State and/or local laws and/or regulations where the work is being performed, or 40 C.F.R. Part 227, as applicable. This notice shall contain the date when Lead-Based Paint Abatement activities will start, the name of the certified Lead Supervisor or firm performing the work, the property address, and a brief description of the Lead-Based Paint Abatement activities being performed. Defendant shall provide a copy of this notification to HUD and EPA electronically or via facsimile transmission in accordance with Paragraph 41 at the same time the notice is provided to the State and local jurisdiction.

D. Defendant shall comply with a plan for ongoing operations and maintenance (“O&M Plan”), including ongoing monitoring for all Subject Properties that are not Lead-Based Paint Free. The O&M Plan is Appendix 3 of this Consent Decree. O&M shall be performed for all components where Lead-Based Paint Hazard Reduction Work is performed and/or Lead-Based Paint was identified and not removed. .

E. For each Subject Property not identified as Lead-Based Paint Free, the following Lead-Based Paint Hazard Reduction Work shall be performed in the units, common areas, and exteriors of each Subject Property in accordance with the Hazard Reduction Plan and the HUD Guidelines:

- (i). Except as provided in Paragraph 16.E.(ii), within five (5) years after the Effective Date,
  - a. All windows, including window sills, not identified as Lead-Based Paint Free shall be replaced in accordance with the Hazard Reduction Plan and Chapter 12 of the HUD Guidelines.
  - b. Abatement of all Friction and Impact Surfaces that contain or are presumed to contain Lead-Based Paint.

- c. Stabilization of any other non-Friction and non-Impact Surfaces or components that contain or are presumed to contain deteriorated Lead-Based Paint.
- d. Removal, or HEPA vacuuming and steam cleaning of all carpeting.
- e. Rendering of all interior rough, pitted, or porous horizontal surfaces to be smooth and cleanable.

(ii). Within one (1) year after the Effective Date, bare soil identified on the grounds of each Subject Property shall be covered with a vegetative ground covering, mulch, or other appropriate covering in accordance with Chapter 11 of the HUD Guidelines.

(iii). Worksite preparation and occupant protection shall be in accordance with Chapter 8 of the HUD Guidelines.

(iv). Daily and final cleanups shall be in accordance with Chapter 14 of the HUD Guidelines.

(v). Clearance Examination must be completed by a certified Lead-Based Paint Risk Assessor in each building upon completion of final cleanup in accordance with Chapter 15 of the HUD Guidelines. Within fifteen (15) Days of receipt of the Lead-Based Paint Clearance Examination report (“Clearance Report”), the Defendant shall Submit the Clearance Report to HUD. The Clearance Report shall contain all results of dust samples analyzed at a laboratory recognized by EPA through the National Lead Laboratory Accreditation Program (“NLLAP”) as being capable of performing analyses for lead compounds in paint chips, dust, and soil samples, and the results of a visual assessment of work areas and Lead-Based Paint Hazard Reduction Work performed. If the results indicate that clearance is not achieved, Defendant shall repeat the cleaning procedures identified above under Paragraph 16.E.(iv) and repeat dust clearance

sampling within fifteen (15) Days of the failed Clearance Examination, and repeat this procedure until clearance has been attained.

F. In each of the five (5) years after the Effective Date, Defendant shall make substantial and reasonable progress on the Lead-Based Paint Hazard Reduction Work as set forth in this Consent Decree, and shall detail the progress made in the Annual Report required in Paragraph 18. The Parties agree that substantial and reasonable progress shall mean completion of at least one-fifth of the total inventory of units in each year. For the purposes of this Consent Decree, units that have been tested in accordance with Chapter 7 of the HUD Guidelines and determined to be Lead-Based Paint Free may be counted towards progress.

G. The timelines in this Section shall not apply where Defendant has been notified by a governmental entity or become aware of a unit where a child with an Elevated Blood-Lead Level resides or is a regular visitor (i.e., visits at least two (2) different Days within any week for at least three (3) hours on each Day, and the combined annual visits last at least sixty (60) hours). Defendant shall comply with such notice(s) including the timelines set forth in the notice(s). Additionally, Defendant shall perform all work under this Section and the Hazard Reduction Plan in the unit within sixty (60) Days of notification or becoming aware of a unit where a child with an Elevated Blood-Lead Level resides or is a regular visitor. If exteriors and common areas are required to be treated by any governmental entity, Defendant shall also treat those areas within sixty (60) Days of notification or becoming aware of a unit where a child with an Elevated Blood-Lead Level resides or is a regular visitor.

H. Ongoing operations and maintenance (“O&M”) in all Subject Properties that are not certified Lead-Based Paint Free shall be implemented at the completion of any Abatement or Interim Control activity, and shall be conducted in accordance with Chapter 6 of the HUD

Guidelines and the O&M Plan. During reevaluations, Defendant shall ensure that all methods used to enclose or encapsulate all Lead-Based Paint surfaces are still intact and the Abatement and Interim Control methods have not failed. If any Lead-Based Paint Abatement or Interim Control, or other surface containing or presumed to contain Lead-Based Paint has failed or deteriorated, Defendant shall repair the area to the same level in accordance with Chapters 11, 12 and/or 13 of the HUD Guidelines, as applicable, and perform a Clearance Examination within one (1) Month of discovery of the failure. If Lead-Based Paint dust hazards or bare soil are discovered as part of ongoing reevaluations, Defendant shall address them according to Chapter 11 of the HUD Guidelines.

### **VIII. REPORTING REQUIREMENTS**

17. Defendant shall Submit any state, city, and/or county notices received relating to Lead-Based Paint violations at the Subject Properties to HUD and EPA at the relevant address listed in Paragraph 41 within fifteen (15) Days of receipt of such notice.

18. On or before thirteen (13) Months after the Effective Date and annually thereafter until completion of all work performed under Section VII, Defendant shall Submit to HUD and EPA a written annual report (“Annual Report”) covering the previous twelve (12) Month period. The Annual Report shall include, at a minimum: (a) the status of work performed under Section VII, including and Lead-Based Paint inspection testing or presumption of Lead-Based Paint, the type of Abatement or Interim Controls and components abated or controlled, and a list of the property addresses and units where work has been completed and cleared during that reporting period; (b) the status of ongoing operations and maintenance activities in accordance with Section VII, Paragraph 16.H.; (c) any and all information concerning the cost of any Lead-Based Paint inspections, Lead-Based Paint Hazard Reduction Work, including Lead-Based Paint

clearance examinations, the source of those funds, and the number of units completed under Section VII; and (d) for the first Annual Report only, copies of any new leases and disclosure forms entered into during the previous twelve Month period at Subject Properties where Lead-Based Paint Hazard Reduction Work has been completed.

19. Defendant shall ensure contractor compliance with any state, city, and/or county requirements for reporting Lead-Based Paint inspections and Lead-Based Paint Hazard Reduction Work, including Lead-Based Paint clearance examinations, in accordance with the laws of the State of Illinois and local jurisdictions therein.

**IX. QUALIFICATIONS TO CONDUCT LEAD-BASED PAINT WORK**

20. A. All Lead-Based Paint inspections, Lead-Based Paint Hazard Reduction Work, and Lead-Based Paint clearance examinations performed shall be consistent with the HUD Guidelines and conducted by individuals certified to perform the work in accordance with the laws of the State of Illinois. All Lead-Based Paint Hazard Reduction Work shall be supervised by a Lead Supervisor.

B. Persons performing Interim Controls, visual assessments for O&M, and general maintenance shall be trained in either HUD's one day "Lead Safe Work Practices" class or the HUD/EPA "Remodeling, Repair, and Painting" class. All Interim Control and general maintenance work, other than minor maintenance and repair, shall be conducted by firms and individuals certified by EPA, or an EPA authorized state, to conduct or direct renovation, remodeling and/or painting work under EPA's Residential Property Renovation Rule, 40 C.F.R. Part 745, Subpart E.

21. Defendant shall ensure that Clearance Examinations are not conducted by the same individual and/or same or affiliated business entity conducting the Lead-Based Paint



Hazard Reduction Work that is being evaluated by the Clearance Examination.

22. Defendant shall ensure that any Lead-Based Paint inspections are not done by the same individual and/or same or affiliated business entity doing Lead-Based Paint Hazard Reduction Work on the Subject Properties.

**X. STIPULATED PENALTIES**

23. In the event that Defendant fails to pay the penalty in a timely manner in accordance with Paragraph 11, fails to comply with any of the terms or provisions of this Consent Decree relating to the submission of plans or performance of the work described in Section VII above or the submission of reports under Section VIII, fails to comply with Paragraphs 8-10 regarding compliance with Section 1018, or use any funds other than his own as set forth in Paragraph 37, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

A. If the Defendant fails to make timely payment of the penalty provided for in Section VI, Defendant shall be required to pay as stipulated penalties \$400 per day. Stipulated penalties shall accrue until such time as the original penalty, any Interest, and all accrued stipulated penalties are paid.

B. If the Defendant fails to complete any Lead-Based Paint Hazard Reduction Work or any clearance examinations, or to conduct O&M as described in Section VII and in accordance with the deadlines set forth in this Consent Decree, Defendant shall pay stipulated penalties of \$400 per day per violation per each unit until the Lead-Based Paint Hazard Reduction Work, clearance examinations, and/or O&M is completed. If any Lead-Based Paint Hazard Reduction Work fails because of Defendant's failure to follow the Hazard Reduction Plan or HUD Guidelines and/or conduct O&M as described in Section VII, those Subject

Properties shall not be considered abated or treated in accordance with this Consent Decree and stipulated penalties shall accrue.

C. If the Defendant fails to Submit any information or reports to HUD or EPA, as described in Paragraph 13, Section VII, or Section VIII, in accordance with the requirements and/or deadlines set forth in this Consent Decree, the Defendant shall pay stipulated penalties of \$400 per day for each day each such submission is deemed inadequate and/or late.

D. If the Defendant fails to comply with the requirements of Section 1018 and its implementing regulations, as required by Paragraph 8, to provide tenant disclosure, as required by Paragraph 9, and/or to provide notice of compliance with a copy of a completed disclosure form, as required by Paragraph 10, the Defendant shall pay stipulated penalties of \$400 per day for each day the disclosure and/or notice and/or copy of a completed disclosure form is deemed inadequate and/or late.

E. If the Defendant fails to use his own funds as set forth in Paragraph 37, or uses HUD Office of Healthy Homes and Lead Hazard Control grant funds for any work at the Subject Properties or any other Federal, State, or local grant funds or other assistance to do any of the work required in Section VII of this Consent Decree, the Defendant shall pay stipulated penalties in the amount equal to double the amount of the grant funds or other assistance received.

F. Payment of stipulated penalties and any applicable Interest shall be made to the United States in the manner set forth in Paragraph 12 of this Consent Decree. Defendant shall pay the stipulated penalties and any applicable Interest not more than fifteen (15) Days after receipt of written demand by the United States for such penalties.

G. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for Interest on such penalties accruing as of the date payment became due.

24. Stipulated Penalties shall accrue regardless of whether the United States has notified the Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or the required activity is due and shall continue to accrue through the date of payment, or until the required activity is performed. However, the United States may, in its unreviewable discretion, waive or reduce the amount of any Stipulated Penalty. Nothing herein shall prevent the United States from seeking other relief that may be available for non-compliance, nor prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

25. Subject to the provisions of Section XIV (Covenant Not to Sue) and Section XV (Plaintiff's Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States (including, but not limited to, statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt) for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of Section 1018, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **XI. FORCE MAJEURE**

26. The Defendant shall provide notice orally or by electronic or facsimile transmission to the Civil Division Chief of the United States Attorney's Office as detailed in Section XVII of this Consent Decree (Notice) as soon as possible, but not later than 72 hours

after the time the Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide formal, written notice, as provided in Section XVII of this Consent Decree (Notice), within seven (7) Days of the time the Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the Defendant's past and proposed actions to prevent or minimize any delay and the adverse effects of any delay; a schedule for carrying out those actions; and the Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude the Defendant from asserting any claim of force majeure.

27. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for the Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XIX of this Consent Decree (Integration).

28. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the Defendant, the United States' position shall be binding, unless the Defendant invokes Dispute Resolution under Section XII of this Consent Decree. In any dispute involving force majeure, the Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is in fact a force majeure event; that the Defendant gave the notice required by Paragraph 26 of this Section; that the force majeure event caused any delay Defendant claims was attributable to that event; and that the Defendant exercised best efforts to prevent or minimize any delay and the adverse effects of any

delay caused by the event.

## **XII. DISPUTE RESOLUTION**

29. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce the obligations of the Defendant under this Consent Decree that the Defendant has not timely disputed in accordance with this Section.

30. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed thirty (30) Days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

31. If the Parties are not in agreement at the end of this informal negotiations period, the position of the United States shall be controlling unless the Defendant files a petition with the Court for resolution of the dispute within twenty-one (21) Days of receipt of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have twenty-one (21) Days to file a response with an alternate proposal for resolution. In any such dispute, the Defendant shall have the burden of proving that the United States' proposal is arbitrary and capricious.

32. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect any obligation of the Defendant under this Consent Decree not directly in dispute, unless the United States or the Court agrees otherwise. Stipulated Penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending

resolution of the dispute as provided in Paragraph 24. Notwithstanding the stay of payment, Stipulated Penalties, together with Interest, shall accrue from the first day of non-compliance with any applicable provision of this Consent Decree. In the event that the Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid, together with Interest, as provided in Paragraph 24.

### **XIII. RIGHT OF ENTRY**

33. HUD, EPA and their representatives, contractors, consultants, and attorneys shall have the right of entry into and upon all Subject Properties owned or controlled by the Defendant, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- A. monitoring the progress of activities required by this Consent Decree;
- B. verifying any data or information required to be Submitted pursuant to this

Consent Decree;

C. obtaining samples and, upon request, splits of any samples taken by the Defendant or his consultants (upon request, the Defendant will be provided with splits of all samples taken by the United States); and

- D. otherwise assessing the Defendant's compliance with this Consent Decree.

34. This Section in no way limits or affects any right of entry and inspection held by the United States, HUD, EPA, and any State, County, or City in which the Subject Property is located pursuant to applicable federal, state or local laws, regulations, or permits.

### **XIV. COVENANT NOT TO SUE**

35. In consideration of the payments required by this Consent Decree and the work to be performed, and except as otherwise provided in this Consent Decree, the United States covenants not to sue or take administrative or other action against the Defendant for the

violations of Section 1018 at the Subject Properties alleged in the complaint in this matter through the date of lodging. This covenant not to sue with respect to the Defendant is conditioned upon the complete and satisfactory performance by the Defendant of his obligations under this Consent Decree. This covenant not to sue extends only to the Defendant and does not extend to any other person or business entity.

**XV. PLAINTIFF'S RESERVATION OF RIGHTS**

36. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 35. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendant with respect to all other matters, including but not limited to, the following:

- A. claims based on a failure by the Defendant to meet a requirement of this Consent Decree;
- B. claims based upon violations of Section 1018 that occur after the date of lodging of this Consent Decree;
- C. criminal liability; and
- D. all claims not barred by Paragraph 35 of this Consent Decree.

**XVI. MISCELLANEOUS**

37. Defendant hereby certifies that he will use his own funds, and that no HUD Office of Healthy Homes and Lead Hazard Control grant funds will be used for any work at the Subject Properties and that no Federal, State, or local grant funds or other assistance will be used to complete the work required in Section VII.

38. This Consent Decree in no way affects Defendant's responsibilities to comply with all federal, state, or local laws and regulations.

39. Except as otherwise provided in this Consent Decree, each Party shall bear its own costs and attorneys' fees in this action.

**XVII. NOTICES AND SUBMISSIONS**

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be in writing and directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States and the Defendant.

41. All notices and reports shall refer to this Consent Decree and the date of entry of the Consent Decree, and shall cite the case name of United States v. Dennis Hardesty and the case number.

U.S. Attorney's Office:

Chief, Civil Division  
United States Attorney's Office  
Northern District of Illinois, Western Division  
327 S. Church Street, Room 3300  
Rockford, Illinois 61101  
(815) 987-4457  
Monica.Mallory@usdoj.gov

U.S. Department of Justice:

Chief, Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044  
D.J. No. 90-5-1-1-10760



U.S. Department of Housing and Urban Development:

Director, Lead Programs Enforcement Division  
Office of Healthy Homes and Lead Hazard Control  
U.S. Department of Housing and Urban Development  
451 7th Street, SW, Room 8236  
Washington, DC 20410  
(202) 755-1785  
(202) 708-4248 facsimile  
Bruce.P.Haber@hud.gov

and

John B. Shumway, Assistant General Counsel  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW, Room 9262  
Washington, DC 20410

U.S. Environmental Protection Agency

Chief, Pesticides and Toxics Compliance Section  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Defendant:

Dennis Hardesty  
P.O. Box 3131  
Rockford, Illinois 61106

42. Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address.

43. Any notice, report, certification, data presentation, or other document Submitted by Defendant pursuant to this Consent Decree which discusses, describes, demonstrates, supports any findings, or makes any representation concerning Defendant's compliance or non-compliance with any requirement of this Consent Decree shall be certified by Defendant or a

duly authorized representative of Defendant. A person is a “duly authorized representative” only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is Submitted to the United States consistent with this Paragraph.

44. The certification required by Paragraph 43, above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. With regard to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such persons, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**XVIII. RETENTION OF JURISDICTION**

45. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XIX. INTEGRATION**

46. This Consent Decree and its Appendices constitute the final, complete and

exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. It may not be enlarged, modified, or altered unless such modifications are made in writing and approved by the Parties and the Court. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

**XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

47. Defendant agrees and acknowledges that this Consent Decree shall be lodged with the Court and a notice of such lodging shall be published in the Federal Register, to allow an opportunity for public comment for at least thirty (30) Days, and consideration of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to entry of this Consent Decree based on comments received during the public notice period. Defendant consents to entry of this Consent Decree without further notice.

48. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

**XXI. EFFECTIVE DATE**

49. The Effective Date of this Consent Decree shall be the date upon which it is entered by the Court.

**XXII. RECORD RETENTION AND PRESERVATION**

50. Defendant shall preserve, during the pendency of this Consent Decree and for a minimum of at least twelve (12) Months after its termination, all documents and records in his custody, control or possession and in the custody, control or possession of his employees, agents, assigns, contractors, subcontractors or consultants, which in any manner relate to this Consent

Decree or to the performance of work under this Consent Decree. At the end of this twelve (12) Month period and at least thirty (30) calendar Days before any document or record is destroyed, Defendant shall notify and make available to the United States such documents and records, or shall provide the originals or accurate, true and complete copies of such documents and records to the United States. Defendant shall not destroy any document or record to which the United States has requested access for inspection or copying until the United States has obtained such access or copies or withdrawn its request for such access or copies.

### **XXIII. SIGNATORIES/SERVICE**

51. Each undersigned representative of the United States and Defendant certifies that he or she has reviewed this Consent Decree, and had the opportunity to have this Consent Decree reviewed by counsel, and is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

52. Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree based on public comments received pursuant to Paragraph 47 above.

53. Defendant agrees that the person identified on his behalf under Section XVII is authorized to accept service of process by mail on behalf of Defendant with respect to all matters arising under or relating to this Consent Decree. Defendant hereby agrees to accept service by certified mail in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

54. Upon approval and entry of this Consent Decree by the Court, the Consent Decree shall constitute a final judgment pursuant to Rules 54 and 58 of the Federal Rule of Civil Procedure.

#### **XXIV. TERMINATION**

55. This Consent Decree shall terminate after all of the following have occurred:

A. Defendant has completed all work required by this Consent Decree.

B. Defendant has paid all penalties and Interest due under this Consent Decree and no penalties are outstanding or owed to the United States;

C. Defendant has certified compliance with the terms and conditions of this Consent Decree to the United States; and

D. The United States has not disputed Defendant's certification. If the United States disputes Defendant's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court. If the United States does not contest the certification, the United States shall petition or the Parties shall jointly petition the Court to terminate the Consent Decree.

#### **XXV. FINAL JUDGMENT**

56. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court in this action between and among the United States and the Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rule of Civil Procedure.

So entered in accordance with the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

United States v. Dennis Hardesty

THE UNDERSIGNED PARTIES enter into this Consent Decree in the above matter, relating to the sites enumerated in this Consent Decree:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division



\_\_\_\_\_  
W. BENJAMIN FISHEROW  
Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Date

11/5/15

United States v. Dennis Hardesty

FOR PLAINTIFF, UNITED STATES OF AMERICA:

ZACHARY T. FARDON  
United States Attorney

s/ Thomas Walsh

Date November 12, 2015

\_\_\_\_\_  
THOMAS WALSH  
Civil Chief  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-5312

s/ Monica Mallory

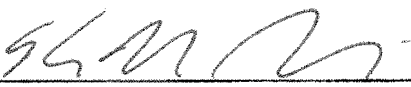
Date November 12, 2015

\_\_\_\_\_  
MONICA MALLORY  
Assistant United States Attorney  
Northern District of Illinois, Western Division  
327 S. Church Street, Room 3300  
Rockford, Illinois 61101  
(815) 987-4457




United States v. Dennis Hardesty

FOR UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:

  
\_\_\_\_\_  
KEVIN M. SIMPSON  
Associate General Counsel for the Office of  
Finance and Administrative Law

Date 10.15.15

  
\_\_\_\_\_  
JOHN B. SHUMWAY  
Assistant General Counsel for Administrative Law  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, SW, Room 9262  
Washington, DC 20410  
(202) 402-5190

Date 10 11 15

United States v. Dennis Hardesty

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



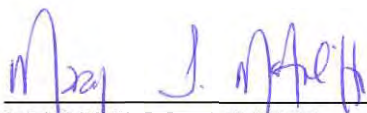
SUSAN HEDMAN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Date 10-23-2015



BÉRTRAM C. FREY  
Acting Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Date October 20, 2015

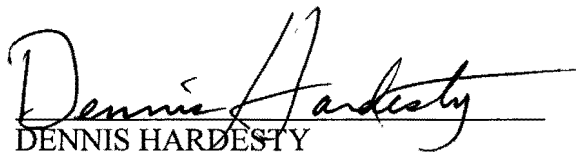


MARY T. McAULIFFE  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604  
(312) 886-6237

Date October 13, 2015

United States v. Dennis Hardesty.

FOR DENNIS HARDESTY:

A handwritten signature in cursive script that reads "Dennis Hardesty". The signature is written over a horizontal line.

DENNIS HARDESTY  
P.O. Box 3131  
Rockford, Illinois 61106

Date 10/8/15

**APPENDIX 1: SUBJECT PROPERTY LIST**(Subject Properties with Street Addresses and State, Number of Units,  
and Year of First Construction)

	Address	Number of Units	Construction date
1.	1414 Apache, Rockford, IL 61107	1	1963
2.	1232 Benton St., Rockford, IL 61107	1	1930
3.	3318 Broadway, Rockford, IL 61108	1	1944
4.	3318 Carolina, Rockford, IL 61108	1	1950
5.	410 Chicago Ave., Rockford, IL 61107	1	1940
6.	2007 Charles St., Rockford, IL 61104	1	1915
7.	3504 N. Court, Rockford, IL 61103	1	1959
8.	3603 Corbridge, Rockford, IL 61107	1	1960
9.	124 Dawn, Rockford, IL 61107	1	1930
10.	216 Dawn, Rockford, IL 61107	1	1967
11.	420 Washington, Rockford, IL 61104	1	1925
12.	1130 Greenmount, Rockford, IL 61107	1	1912
13.	1350 Greenwood, Rockford, IL 61107	1	1920
14.	1012 Haskell Ave., Rockford, IL 61103	1	1900
15.	205 Hosmer, Loves Park, IL 61111	1	1957
16.	1440 Jackson St., Rockford, IL 61107	1	1917
17.	625 Lawn Dr., Loves Park, IL 61111	1	1956
18.	2132 Parmele, Rockford, IL 61104	1	1910
19.	2136 Parmele, Rockford, IL 61104	1	1910
20.	2145 Parmele, Rockford, IL 61104	1	1900
21.	948 Ramona Terrace, Machesney Park, IL 61115	1	1950
22.	323 Rome, Rockford, IL 61107	1	1930
23.	401 Rome, Rockford, IL 61107	1	1925
24.	503 Rome, Rockford, IL 61107	1	1930
25.	302 Shaw, Rockford, IL 61104	1	1927
26.	502 Shaw, Rockford, IL 61104	1	1920
27.	2627 Starkweather, Rockford, IL 61107	1	1942
28.	331 Washington, Rockford, IL 61104	1	1925
29.	407 Washington, Rockford, IL 61104	1	1925
30.	1701 2 <sup>nd</sup> Ave., Rockford, IL 61104	1	1900
31.	1331 5 <sup>th</sup> Ave., Rockford, IL 61104	1	1920
32.	1706 8 <sup>th</sup> St., Rockford, IL 61104	1	1910
33.	1814 8 <sup>th</sup> St., Rockford, IL 61104	1	1900
34.	810 10 <sup>th</sup> St., Rockford, IL 61104	1	1915
35.	2121 10 <sup>th</sup> St., Rockford, IL 61104	1	1900
36.	2207 10 <sup>th</sup> St., Rockford, IL 61104	1	1915
37.	2308 10 <sup>th</sup> St., Rockford, IL 61104	1	1930
38.	2339 10 <sup>th</sup> St., Rockford, IL 61104	1	1930

39.	1214 12 <sup>th</sup> Ave., Rockford, IL 61104	1	1900
40.	1904 12 <sup>th</sup> Ave., Rockford, IL 61104	1	1910
41.	2006 12 <sup>th</sup> Ave., Rockford, IL 61104	1	1910
42.	2107 13 <sup>th</sup> Ave., Rockford, IL 61104	1	1930
43.	1356 5 <sup>th</sup> Ave., Rockford, IL 61104	2	1900
44.	1409 Apache, Rockford, IL 61107	1	1963
45.	1510 17 <sup>th</sup> Ave., Rockford, IL 61104	2	1910
46.	1325 21 <sup>st</sup> Ave., Rockford, IL 61104	1	1930
47.	128 Dawn, Rockford, IL 61107	1	1940
48.	323 Dawn, Rockford, IL 61107	1	1968
49.	2611 Skokie, Rockford IL 61108	1	1966
50.	2618 Skokie, Rockford, IL 61108	1	1966

**TOTAL****52**

**APPENDIX 2**

**DENNIS HARDESTY  
LEAD-BASED PAINT HAZARD REDUCTION PLAN**

**DENNIS HARDESTY  
LEAD-BASED PAINT HAZARD REDUCTION PLAN**

**Part 1: GENERAL REQUIREMENTS**

**1.01 Definitions**

Terms of particular interest include:

1. **“Abatement”** means any set of measures intended to eliminate known or presumed lead hazards. Abatement includes:
  - (1) the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or enclosure of lead-contaminated soil; and
  - (2) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with these measures.
2. **“Deteriorated paint,”** means paint that is chipped, peeled, or otherwise separated from its substrate or that is attached to damaged substrate.
3. **“Encapsulation”** means covering a surface coated with paint with a liquid or solid material that adheres to the surface, rather than mechanically attaches to it.
4. **“Enclosure”** means covering a surface coated with paint by mechanically fastening to the surface a durable, solid material; or covering bare soil with an impermeable material, such as asphalt or concrete.
5. **“Intact paint”** means paint that is not chipped, peeled, or otherwise separated from its substrate or attached to damaged substrate. Painted surfaces which may generate dust but are not chipped, peeled, or otherwise separated from their substrate or attached to damaged substrate are considered to be intact paint.
6. **“Friction Surface”** shall mean an interior or exterior surface that is subject to abrasion or friction, including, but not limited to window components, tight fitting or rubbing doors, cabinet doors and drawers, stairway treads and railings, floors, and similar components on outside decks and porches.
7. **“Impact Surface”** shall mean an interior or exterior surface that is subject to damage by repeated sudden force such as doorjamb, door trim, door stops, outside corners of walls, baseboards and shoe moldings, stair risers, and chair rails.
8. **“Lead-based paint inspection”** means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation. For this Hazard Reduction Plan, a Lead-Based Paint inspection shall be either fully compliant with Chapter 7 of the HUD Guidelines or limited to paint-chip sampling or XRF testing of surfaces and components to determine the presence or absence of Lead-Based Paint which would require Lead-Based Paint Hazard Reduction Work as outlined in paragraph 16.E(i). Either type of inspection shall include a visual

evaluation for deteriorated paint.

- A. Documents and regulations: For each document or regulation cited in this Lead-Based Paint Hazard Reduction Plan, the edition or version that is current at the time and location of work at a particular housing unit applies to that work.
- B. Lead-Based Paint Hazard Reduction shall be performed in accordance with all applicable Federal, state and local requirements, the Consent Decree, and Chapters 8, 9, 11, 12 and/or 13 (as applicable) of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (“HUD Guidelines”).

**1.02 Certification Documents and Insurance Certificates:**

- A. Respondent shall maintain for audit copies of contractors and staff certificates, documenting successful completion of EPA accredited training courses in Lead Supervisor, Worker, and in Lead Safe Work Practices, as appropriate for the Lead Supervisor and Workers, completing the lead hazard control remediation.
- B. The Lead Supervisor shall maintain for audit, copies of lead worker certificates for all individuals (whether staff to the Lead Supervisor, an independent subcontractor, or staff to a subcontractor) performing lead abatement work.
- C. The Lead Supervisor, if it hires any subcontractor to perform lead Hazard Reduction work, shall keep contractor certificates of insurance covering the performance of work under this Hazard Reduction Plan.

**1.03 Records:**

- A. Surfaces and components: The Lead Supervisor shall prepare and maintain for audit:
  - 1. A list of all surfaces and components that have been enclosed, for ongoing monitoring.
  - 2. A list of all surfaces and components that have been encapsulated, for ongoing monitoring.
  - 3. A list of all surfaces and components stabilized for ongoing monitoring purposes
- B. Reports: The Lead Supervisor and property owner shall retain and maintain for audit:
  - 1. Any lead-based paint inspection reports regarding the building(s).
  - 2. Any lead risk assessment reports regarding the building(s).
  - 3. All abatement reports regarding the lead hazard reduction work.
  - 4. Clearance reports of all the units that have been abated.

**1.04 Testing:**

- A. Lead Based Paint Inspection: A certified Lead Inspector or Lead Risk Assessor shall conduct any lead-based paint inspection and a laboratory recognized by the EPA for lead



in paint analysis and/or lead in dust analysis, as applicable, shall analyze any paint chips or dust wipes for lead, as applicable. Per the Consent Decree, all paint on windows is presumed to be lead-based paint and any inspection report shall identify where all windows are located.

- B.** Clearance examinations: In accordance with all applicable Federal, state and local requirements a certified Lead Risk Assessor shall perform clearance examinations. This Lead Risk Assessor shall not be an individual and/or the same or affiliated business entity conducting the lead-based paint abatement work that is being evaluated. After the final clean up and waste removal, a clearance examination will be performed in accordance with Chapter 15 of the HUD Guidelines. This examination shall include a visual inspection and dust wipe tests. Test results indicating that the lead dust level in the tested unit is below that allowable by the regulatory agencies is required to achieve clearance (not to exceed 40 micrograms per sq. ft. for the floors, 250 micrograms per sq. ft. for window sills and 400 micrograms per sq. ft. for the window wells). If the visual inspection fails, or if the test results fail, the Lead Supervisor shall conduct additional clean up and shall repeat this procedure until the unit passes the clearance examination, and before the occupants are allowed to re-enter the original work site.
- C.** Surface dust sampling shall take place no sooner than one hour after the completion of post abatement clean-up activities. Wipe samples conducted outside the containment area (exterior) shall be made within 10 feet of the containment area. If any of the residual lead dust level results exceeds the appropriate clearance criteria, the area shall be cleaned again and retested until acceptable results are achieved.

**1.05. Worker Protection:**

- A.** The Contractor shall adhere to worker protection practices as described in the Occupational Safety and Health Administration's (OSHA's) Document 3142-09R, Lead in Construction, 29 CFR 1910.1025 and 29 CFR 1926.62.
- B.** Protection practices shall include, but are not limited to:
  - 1. Selection and usage of appropriate respirator.
  - 2. Provision and usage of protective work clothing.
  - 3. Housekeeping of work area surfaces.
  - 4. Medical surveillance as required.
  - 5. Biological monitoring.
  - 6. Medical examinations.
  - 7. Record keeping and reporting.

**Part 2: PRODUCTS**

**2.01 Encapsulants:**

- A.** Any encapsulation product or system used shall be:
  - 1. Warranted by the manufacturer to perform for at least 20 years as a durable

- barrier between the lead-based paint and the environment in locations or conditions similar to those of the planned application; and
2. Successfully patch tested and used in accordance with the manufacturer's recommendations.
  3. Be applied in accordance with Chapter 13 of the HUD Guidelines.

### **Part 3: EXECUTION**

#### **3.01 Scope:**

- A. Lead-Based Paint Hazard Reduction shall be performed in accordance with all applicable Federal, state and local regulations, the Consent Decree, and Chapters 8, 9, 11, 12 and/or 13 (as applicable) of the HUD Guidelines.
- B. To comply with the Consent Decree, the hazard reduction options will include: removal and replacement of all windows, including window sills, not determined to be lead-based paint free; abatement of all friction and impact surfaces that contain lead-based paint; stabilization of any other non-Friction and non-Impact surfaces or components that contain deteriorated lead-based paint; removal or HEPA vacuuming and steam cleaning of all carpeting; rendering of all interior rough, pitted, or porous horizontal surfaces smooth and cleanable; and covering of bare soil with a vegetative ground covering, mulch, or other appropriate covering.
- C. The Lead-Based Paint Hazard Reduction work shall be supervised by a certified Lead Supervisor. The intended Abatement Contractors name and license will be submitted to HUD and EPA for review prior to beginning work.
- D. The Lead Supervisor shall adhere to worker protection requirements as described in OSHA's Document 3142-09R, Lead in Construction, 29 CFR 1910.1025 and 29 CFR 1926.62. OSHA's rules and related information are available at [www.osha.gov](http://www.osha.gov).

#### **3.02 Worksite Preparation and Occupant Protection:**

- A. The Lead Supervisor shall adhere to requirements established by federal, state, local law and regulations.
- B. The individuals performing the work shall adhere to worksite preparation practices as described in Chapter 8 of the HUD Guidelines, and OSHA Lead in Construction rule requirements.
- C. Regardless of the extent of the work, residents shall never be permitted to enter the work area while work is under way, even if the work only disturbs a small area. Resident reentry into the work area is permitted only after the area has been cleaned and has passed clearance (see paragraph 3.04 below). Where the extent of the work area exceeds 10 square feet, the work area or entire room shall be isolated in accordance with Chapter 8 of the HUD Guidelines to prevent resident access. Reasonable effort shall be made to perform work in unoccupied units. Reasonable effort shall be made to relocate occupants to lead-safe units as determined by the

scope of the individual unit work plan and occupant consent.

- D. If the paint is severely deteriorated and/or there are numerous paint chips on the floors, the paint chips shall be removed by high efficiency particulate air (HEPA) vacuuming before any plastic is laid down.
- E. Work area preparation shall be based on Chapter 8 of the HUD Guidelines and considering the following factors:
  - 1. The size of the surface(s) needing work.
  - 2. The extent of existing contamination.
  - 3. The building layout.
  - 4. The vacancy status of the dwelling.
  - 5. The types of worker protection needed.
  - 6. The need for other construction or abatement work (e.g., renovation or asbestos abatement).

G. Set-up practices shall include, but are not limited to:

- 1. Isolation of work areas including proper signage on work area access and building exterior near main and secondary entryways where necessary.
- 2. Barriers denying access to site.
- 3. Removal of furniture and occupant personal items from work area, and if immovable, sealed with a single layer of plastic sheeting.
- 4. Preparation of work area including the sealing of vents, windows, doors and non-abated areas with one layer of six-mil plastic securely fastened.
- 5. Creation and use of decontamination areas.

### 3.03 Lead-Based Paint Abatement Methods to Be Used:

The Consent Decree requires all windows, including window sills, not identified as Lead-Based Paint Free to be replaced; Abatement of all Friction and Impact Surfaces that contain Lead-Based Paint; Stabilization of any other non-Friction and non-Impact surfaces or components that contain deteriorated Lead-Based Paint as presumed or identified in the Inspection Report; Removal or HEPA vacuuming and steam cleaning of all carpeting; and Rendering of all interior rough, pitted, or porous horizontal surfaces to be smooth and cleanable

A. Abatement- The following summarizes the abatement methods to be used on this project

- 1. **Replacement:** All windows and/or movable window components must be replaced per requirements of the Consent Decree. In addition, the following components may be replaced on this project: doors, doorjamb, baseboards, stair components, door thresholds, hand rails, and porch flooring. Door and window casings, or decorative trim, that is not subject to friction, will be made intact without replacement. Paint stripping of the contact areas on hand rails is permitted in lieu of removal.
- 2. **Encapsulation:** Encapsulation will not generally be used on this project but may be selected for certain components. Encapsulation may only be used on those surfaces that have

successfully passed patch tests, and are not subject to friction or impact. Encapsulants shall be applied in accordance with the procedures in Chapter 13 of the HUD Guidelines and monitored in accordance with Chapter 6 of the HUD Guidelines and the O&M Plan. As such, the following components shall not be encapsulated on this project:

- a. Friction surfaces, including doorjambs or stairway treads.
- b. Surfaces with substrates or existing coatings that have a high level of deterioration that have not been corrected.
- c. Surfaces in which there is a known incompatibility between two existing paint layers.
- d. Surfaces that cannot support the additional weight stress of encapsulation due to existing paint thickness.
- e. Metal surfaces that are prone to rust or corrosion.

The following components may be encapsulated providing they have successfully passed patch tests: Exterior brick/wood surfaces, Exterior trim, Windowsills after scraping to bare wood, certain stair components (Stringers and risers). Areas failing the patch test will be replaced, enclosed or the paint removed based on the situation.

3. **Enclosure:** The following components may be enclosed as part of this project: porch systems, including columns, ceilings railings and floors; interior wood floors; stair treads and stair risers; and exterior siding. Enclosures systems include drywall, paneling, lauan, rubber tread covers and sheet vinyl. See Chapter 12 and Appendix 7.2 of the 2012 HUD Guidelines
4. **Paint removal:** The following components may be wet scraped, planed with HEPA vacuum attachment or stripped in accordance with Chapter 12 of the HUD Guidelines: doorjambs; door stops; door impact/friction areas; window sills; handrails (the friction areas); and door thresholds. It is necessary to abate only the surface area subject to friction or impact which could result in hazardous conditions.
5. **Paint Stabilization:** Stabilization of any other non-Friction and non-Impact surfaces or components that contain deteriorated presumed Lead-Based Paint or identified in the Inspection Report. Potential surfaces include but are not limited to interior and exterior walls; ceilings; porch systems, including ceilings, columns and trim; and other surfaces not required to be abated.

**B. Prohibited Lead-Based Paint Abatement Methods:**

1. Open-flame burning, torching or charring of lead-based paint;
2. Machine sanding or grinding or abrasive blasting or sandblasting lead-based paint unless the machine used is equipped with a high efficiency particulate air (HEPA) exhaust control;
3. Dry sanding lead-based paint;
4. Dry scraping lead-based paint unless the scraping is done in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any one room, hallway, or stairwell, or totaling no more than twenty square feet on exterior surfaces;

5. Use of a heat gun on lead-based paint above 1100 degrees Fahrenheit;
6. Uncontained hydro-blasting or high pressure washing of lead-based paint; or
7. Paint stripping in a poorly ventilated space using a volatile stripper considered a hazardous substance or a hazardous chemical.

C. Covering bare soil: Any bare soil identified on the grounds of each Subject Property shall be covered with a vegetative ground covering, mulch, or other appropriate covering in accordance with Chapter 11 of the HUD Guidelines.

### **3.04 Clean Up of Work Area**

A. Daily and final clean up of work area shall be performed by certified abatement workers in accordance with Chapter 14 of the HUD Guidelines as follows. Work practices shall include the following practices:

1. Conduct ongoing cleaning during the job, including regular removal of large and small debris and dust. Decontamination of all tools, equipment, and worker protection gear is required before it leaves containment areas. Electrical equipment should be wiped and high-efficiency particulate air (HEPA) vacuumed, not wetted down, to minimize electrocution hazards.
2. Schedule sufficient time (usually 30 minutes to an hour) for a complete daily cleaning of horizontal and vertical surfaces, starting at the same time near the end of each workday after lead abatement activities has ceased.
3. For final cleaning, wait at least 1 hour after active lead-based paint abatement activity has ceased to let dust particles settle before performing clearance exam.
4. Use a vacuum cleaner equipped with a HEPA exhaust filter. HEPA vacuum all surfaces in the room (ceilings, walls, trim, and floors). Start with the ceiling and work down, moving toward the entry door.
5. Completely clean each room before moving on.
6. Wash all surfaces with a lead-specific detergent, non-phosphate detergent, or other suitable cleaning agent to dislodge any ground-in contamination, and then rinse with clean water. Change the cleaning solution after every room is cleaned.
7. After final cleaning, perform a visual inspection before the clearance examination is conducted by the independent certified Lead Risk Assessor, to ensure that all surfaces requiring lead-based paint abatement have been abated and all visible dust and debris have been removed. Record findings and correct any incomplete work.

### **B. Waste Disposal**

1. The Lead Supervisor shall be responsible for the removal of all lead waste from the site within forty-eight (48) hours after completing the final clean up in accordance with all applicable Federal, state, and local requirements. When multiple housing units in a single building are being abated concurrently, this

48-hour period will start at final clean up of the last of the units.

2. The Lead Supervisor shall determine whether any of the waste materials (including solid wastes, and wastewater generated from the work) are hazardous wastes, and shall dispose of all wastes (including hazardous waste, lead debris, leaded dust, leaded soil, and other non-hazardous waste) in accordance with all applicable Federal, state, and local requirements.

### **C. Clearance Examination**

1. After the final clean up, the Lead Risk Assessor shall perform a clearance examination in accordance with Chapter 15 of the HUD Guidelines.
2. If deteriorated painted surfaces, visible dust, paint chips, debris, residue or other lead hazards are identified during the visual assessment portion of the clearance examination, the Lead Supervisor shall eliminate or control these conditions. The Lead Risk Assessor shall not collect dust samples until the clearance area passes the visual assessment.
3. If the Lead Risk Assessor determines that the dust sample analytical results from the laboratory indicate that lead levels equal to or exceed the clearance levels of standards of Chapter 15 of the HUD Guidelines, the Lead Supervisor shall conduct additional clean up as specified in paragraph 3.04.A, followed by a new clearance examination. The Lead Supervisor shall repeat this procedure until the unit passes the clearance examination, and before the occupants are allowed to re-enter the work area.
4. After unit passes clearance, the clearance report shall be submitted to HUD as required by the Consent Decree.

### **Completion**

5. The Lead Supervisor shall provide to the owner and management company a report with the following information in compliance with the Illinois Administrative Code Section 845.300:
  - (i) The name and address of the owner or its agent for whom the project was conducted;
  - (ii) A copy of the abatement/mitigation notification form submitted to the Department prior to commencement;
  - (iii) Copies of the results of any lead inspection or lead risk assessment conducted in the regulated facility and provided to the lead abatement contractor;
  - (iv) A copy of the Work Practice and Occupant Protection Plan developed for the regulated facility;
  - (v) A copy of the OSHA personal monitoring results conducted for the project;
  - (vi) A list of the names of the licensed lead workers and lead supervisors employed for each project, including their license numbers;
  - (vii) A copy of the written assurance statement provided by the licensed lead

supervisor as required in Section 845.155, which states that all lead mitigation and lead abatement identified in the Work Practice and Occupant Protection Program have been completed; and  
(viii) A copy of the written compliance investigation report required by Section 845.225, indicating that the project met the clearance criteria.35, subpart A).

6. The work shall be completed as required by the terms of the Consent Decree.
7. This work plan and included methods and requirements applies to the work performed under the terms of the Consent Decree, and shall not be construed to apply to maintenance and/or work practices after clearance is achieved or the Consent Decree has been Terminated according to its terms.

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Date

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Dennis Hardesty  
Owner

**APPENDIX 3**

**DENNIS HARDESTY  
Lead-Based Paint Ongoing Operations and Maintenance (O&M) Plan**



## **Lead-Based Paint Ongoing Operations and Maintenance (O&M) Plan**

### **Consent Decree DENNIS HARDESTY**

The information provided in this plan is based on recommendations provided in Chapter 6 of the HUD Guidelines. For more information, refer to the HUD Guidelines at:

<http://www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm>

### **OBJECTIVE**

This Operations and Maintenance Plan (“O&M Plan”) provides for:

- Initial and ongoing training for maintenance and other staff performing O&M activities;
- Lead Safe and Renovation Repair and Painting Work Practices training for staff that may disturb known or presumed lead-based paint as part of normal maintenance or renovation activities;
- Ongoing and annual visual assessments of known or presumed lead-based paint and hazard abatement work;
- Retention of records related to O&M activities, the location of known or presumed lead-based paint, the Hazard Abatement Plan, and Clearance Examination reports and provision of records to property staff; and
- Management of the program by a trained or certified O&M Manager.

### **PROGRAM ELEMENTS**

#### ***Training***

All superintendents, maintenance workers, and other maintenance personnel tasked to implement the O&M plan shall attend an EPA approved Renovation, Repair and Painting (RRP) training program from an approved training provider. This training will address:

- Why lead-based paint is a problem during renovations.
- What the EPA and HUD regulations require of Certified Firms and Certified Renovators.
- How to determine if lead-based paint affects work.
- How to begin the work.
- How to set up the work area to contain dust.
- How to work in a lead-safe manner.
- How to clean the work area and verify cleanliness.
- How to dispose of waste safely.
- How to document your work.
- Procedures for responding to hazardous conditions within the framework of the Hazard Abatement Plan and O&M Program.
- Related regulatory requirements (City/State/Federal).

In addition to the training, all personnel involved in O&M activities shall be provided access to the O&M Program File and receive additional training from the O&M Manager regarding:

- Location of lead-based paint and hazard abatement performed.
- Lead-based paint reports (inspections/risk assessments) and the Hazard Abatement Plan.
- Procedures for responding to hazardous conditions within the framework of the Hazard Abatement Plan and the O&M Program.
- Procedures for assessing units at tenant turnover, and other building common areas at frequency established by Chapter 6 of the HUD Guidelines.

**Note:** Any personnel involved in visual assessments of units shall be trained using the online Visual Assessment course found under “Healthy Homes Training” at [www.hud.gov/lead](http://www.hud.gov/lead).

### ***Other Building Personnel***

All maintenance and custodial staff shall be made aware of the presence and locations of known or presumed lead-based paint and trained in lead-safe work practices if their work will disturb lead-based paint. Any damaged lead-based paint or failed hazard abatement identified by maintenance personnel or tenants shall be brought to the immediate attention of the O&M Manager, and owner, as appropriate.

If any maintenance activities occur on surfaces containing known or presumed lead-based paint, the activities must be performed using lead safe work practices in accordance with the O&M Plan, the Hazard Control Plan, the EPA RRP and the HUD Guidelines.

### ***Lead Paint Certification/Licensing Requirements***

Any persons performing disturbance of Lead-Based Paint shall have completed the approved Renovation Repair and Painting training and certification.

Any persons performing Clearance Examinations shall have a current, valid Illinois certification as a Risk Assessor, or as required by the jurisdiction where the property is located in accordance with all state and local laws.

All lead-based paint hazard abatement work shall be performed by Illinois state-certified Lead Supervisors and Workers, as required by the jurisdiction where the property is located in accordance with all state and local laws.

Interim controls and ongoing maintenance activities will be performed by individuals trained in Lead Safe Work Practices and supervised by a Certified Renovator.

For more information on the definition of abatement and interim controls consult Chapters 11 (interim controls), 12 (abatement), and 13 (encapsulation) of the HUD Guidelines.

### ***O&M Recordkeeping***

At each Subject Property, the O&M Manager will create and maintain an O&M Program File that contains this O&M Plan and related records including:

- Lead-based paint inspection and/or risk assessments;
- Hazard Abatement Plan;
- Clearance Examination reports;
- Names and certification numbers for any outside contractors performing abatement and lead-based paint inspections/risk assessments, if not already contained in the reports or Hazard Abatement Plan;
- Encapsulation summary, that includes a list of components encapsulated, the location, and date completed;
- Dates of visual inspections of units, common areas, and exteriors; and
- Any tenant complaints regarding deteriorated paint or failed hazard abatement.

The O&M Program File shall be made available to the property manager, staff performing O&M activities, and any maintenance staff that may disturb lead-based paint as part of normal work activities. (*Note: Disclosure of information related to lead-based paint shall be provided to tenants as part of compliance with the federal Lead Disclosure Rule.*)

O&M records shall be updated as necessary to indicate new information, including:

- Dates of visual assessments and results (use attached form(s) for each visual assessment);
- Tenant complaints regarding deteriorated paint or failed hazard abatement;
- Disturbance of lead-based paint through maintenance or renovation work;
- Types and dates of hazard abatement work performed, including work to repair any hazard abatement methods that may have failed;
- Any additional lead-based paint testing performed, including Clearance Examinations. (*Note: If any hazard abatement or renovation work is performed that disturbs more than a *de minimis* level of lead-based paint as defined in 24 CFR Part 35, the O&M Manager and owner shall ensure that a Clearance Examination is performed in accordance with the Settlement Agreement/Consent Decree in effect at that time.*)

### **ONGOING AND ANNUAL MONITORING**

In accordance with Chapter 6 of the HUD Guidelines, the O&M Manager shall ensure ongoing monitoring of properties where lead-based paint is known or suspected to be present, regardless of condition. O&M activities shall occur on a regular basis as described below or if a tenant notifies management of a paint defect or failed hazard abatement.

Ongoing monitoring consisting of visual surveys shall be performed by persons that have completed training described above in Program Elements: Training. Any surfaces that have been encapsulated shall be visually assessed at one (1) month and six (6) months after the remediation work is completed and yearly thereafter.

For those units that have undergone lead hazard abatement in accordance with the referenced Settlement Agreement/Consent Decree, the O&M Manager will ensure that encapsulation and enclosure methods have not failed. If upon reevaluation, the visual assessment notes failed hazard abatement, the O&M Manager or the owner shall ensure that area is repaired in accordance with Chapters 12 and/or 13 of the HUD Guidelines within 30 days of discovery.

In the event that new damage is noted to known or presumed lead-based paint or abatement has failed, a certified EPA or state lead abatement contractor shall be engaged to conduct any necessary hazard abatement. Interim controls will be performed by individuals trained in Lead Safe Work Practices and supervised by a Certified Renovator. Additionally, clearance sampling per Chapter 13 of the HUD Guidelines will be taken if the work exceeds the *de minimis* standards in 24 CFR Part 35. O&M records should be updated to record this activity.

If ongoing re-inspections reveal no changes in the condition of lead-based paint and/or hazard abatement methods, and that all painted surfaces are in good condition, the O&M Manager should record this in the O&M Program File.

### ***Visual Evaluation Frequency***

Visual Evaluations of units shall occur annually, at tenant turnover, upon tenant complaint of deteriorated paint or failed hazard abatement. However, surfaces encapsulated shall be visually evaluated at one (1) month and six (6) months after the remediation work is completed and yearly thereafter. The Visual Evaluation shall include a visual assessment of lead-based paint, hazard abatement, and encapsulation.

For all units under the Settlement Agreement/Consent Decree, any damaged or deteriorated lead based paint found as part of the visual evaluation will be brought to the immediate attention of the O&M Manager. The O&M Manager will schedule repair and/or abatement of damaged surfaces immediately, and keep a record in the O&M Program File. Damaged surfaces controlled using interim controls as part of O&M shall later be addressed using abatement methods when the area (unit, common area, or exterior) undergoes hazard abatement in accordance with the Settlement Agreement/Consent Decree.

Re-evaluation of lead-based paint in common areas and exteriors shall be performed at least annually, unless prompted by a tenant complaint of deteriorated paint or failed hazard abatement.

<b>VISUAL INSPECTION FORM</b>			
<b>BUILDING ADDRESS</b> _____			
INSPECTION DATE _____			
INSPECTORS NAME _____		PAGE _____	OF _____

AREA INSPECTED	IS THE PAINT INTACT?		DESCRIBE CONDITION	RRA CODE
	YES	NO		
<b>LBP LOCATION</b>				

- RRA CODES** (Recommended Response Actions)
- 1     Repair
  - 2     Remove
  - 3     Encapsulate
  - 4     Enclose
  - 5     Sample (is currently assumed Lead-Based Paint)
  - 9     O & M Program

- PRIORITY**
- A     Urgent (Immediate)
  - B     Moderate (Short - Term)
  - C     Low (Long - Term)



## Form 6.3 Lead-Based Paint Inventory

Property address \_\_\_\_\_  
\_\_\_\_\_

Dwelling Unit Number, Common Area, or Exterior Wall \_\_\_\_\_

Room Identifier \_\_\_\_\_

Room or Space	Component or Surface	Known Lead-Based Paint	Suspected Lead-Based Paint	Known Not To Be Lead-Based Paint <sup>1</sup>

<sup>1</sup>Indicate date of test that determined not lead-based paint

Property address \_\_\_\_\_ Apt. No. \_\_\_\_\_ Page \_\_\_\_ of \_\_\_\_

Name of property owner \_\_\_\_\_

Name of risk assessor \_\_\_\_\_ Date of assessment \_\_\_\_/\_\_\_\_/\_\_\_\_

Area Description		Deteriorated Paint			Friction or Impact Surface? (F or I)	Visible Teeth Marks? (Y or N)	Paint Testing Results (Use codes below) <sup>4</sup>	Notes [e.g., paint testing (e.g., XRF, lab analysis) indicates paint is or is not lead-based paint; cause(s) of hazard control failures]
Location of Building Component, Dust or Bare Soil <sup>1</sup>	Building Component, Dust, or Bare Soil Play Area/ Non-Play Area	Area (sq. ft.)	Is Area Small? <sup>2</sup> (Y or N)	Probable Cause(s) of Deterioration if Known <sup>3</sup>				

<sup>1</sup>Include room equivalent or exterior side or wall, as appropriate.

<sup>2</sup>Lead-safe work practices and clearance/cleaning verification are not required if work does not disturb painted surfaces that total more than

- ♦ For assisted housing: HUD's *de minimis area* of: 20 ft<sup>2</sup> or less on exterior surfaces, 2 ft<sup>2</sup> or less in any one interior room or space, or 10 percent of the total surface area on an interior or exterior type of component with a small surface area (such as trim, window sills, baseboards);
- ♦ For unassisted housing, and for child-occupied facilities, EPA's minor repair and maintenance activities threshold of: 6 ft<sup>2</sup> or less per room; or 20 ft<sup>2</sup> or less for exterior activities; provided that no prohibited or restricted work practices were used and no window replacement or demolition of painted surface areas is to be done.

<sup>3</sup>Common causes of paint deterioration are: moisture (indicate source if apparent), mildew, friction or abrasion, impact, damaged or deteriorated substrate, and severe heat.

<sup>4</sup>Codes based on previous paint testing or lead-based paint (LBP) inspection: *Code 1*: Surface known to be LBP; *Code 2*: Surface known to be LBP; *Code 3*: Presumed to be LBP. If paint testing results are obtained on site, use this column to record the result. If a paint chip sample is sent to the laboratory, use this column to record the sample number (or other unique identifier) as a reference to another record containing the sampling data and laboratory results.