

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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EPA ORC
Office of Regional Hearing Clerk
WR

IN THE MATTER OF:)

Daniel J. Lynch and)
Grace K. Lynch)
One Main Street,)
Foxboro, Massachusetts 02035)

Respondents.)

Proceeding under Section 16(a) of the)
of the Toxic Substances Control Act,)
15 U.S.C. § 2615(a).)
_____)

Docket Number:
TSCA-01-2008-0045

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency (“EPA”), having filed the Complaint herein on March 14, 2008 against Daniel J. Lynch and Grace K. Lynch¹ (“Respondents”); and

Complainant and Respondents having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

¹ Grace K. Lynch passed away on December 10, 2007. Respondent Daniel J. Lynch is the duly appointed executor of the Estate of Grace K. Lynch. Norfolk County Probate and Family Court C.A. 08P0093EP.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 16(a) of the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2615(a).
2. The Complaint alleges that Respondents violated Section 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), 42 U.S.C. §§ 4851 *et seq.*, and the regulations promulgated thereunder, 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”).
3. Respondents moved for and received an extension of time to file an Answer and have not filed an Answer.
4. This Consent Agreement and Final Order shall apply to and be binding upon Respondents and their successors and assigns.
5. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondents. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consent to the terms of this Consent Agreement and Final Order.

6. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint, waive their right to appeal the Final Order accompanying this Consent Agreement, and waive any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

II. TERMS OF SETTLEMENT

7. Respondents certify that they are presently in, and shall remain in, compliance with the requirements of 40 C.F.R. Part 745, Subpart F and 42 U.S.C. § 4852d.

8. Based upon the nature of the violations, Respondents' agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of One Thousand Four Hundred Forty-Two dollars (\$1,442).

9. Respondents consent to the issuance of this Consent Agreement and Final Order, including without limitation, the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEP.

10. Not more than thirty (30) days after the date of issuance of the executed Final Order signed by the Regional Judicial Officer, Respondents shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," which check shall reference the title and docket number (TSCA-01-2008-0045) of this TSCA Consent Agreement and Final Order, in the amount of One Thousand Four Hundred Forty-Two dollars (\$1,442) to:

U.S. Environmental Protection Agency
Fines and Penalties

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P.O. Box 979077
St. Louis, MO 63197-9000

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check shall be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (Mail Code: RAA)
Boston, Massachusetts 02114-2023

and

John W. Kilborn
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (Mail Code: SES)
Boston, Massachusetts 02114-2023

Pursuant to 31 U.S.C. § 3717 and TSCA Section 16(a)(4), EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R.

§ 901.9(d).

11. The penalty specified in paragraph 8 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

12. **Description of the SEP**

a. Respondents shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. Respondents shall replace 60 windows presumed to contain lead-based paint with new, energy efficient windows pursuant to a detailed schedule contained in Appendix A ("Scope of Work") attached hereto and expressly incorporated herein by reference. The SEP shall be completed on or before October 15, 2008, or within six months of the effective date of this Consent Agreement and Final Order, whichever is later.

b. Respondents shall complete the SEP pursuant to the terms and schedule set forth in the Scope of Work.

13. The total expenditure for the SEP shall be not less than \$37,267.00. Respondents shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

14. Respondents hereby certify that, as of the date of this Consent Agreement, Respondents are not required to perform or develop the SEP by any federal, state or local law or regulation, nor are Respondents required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondents further certify that Respondents have not received,

and are not presently negotiating to receive, credit in any other enforcement action for the SEP and that they will not receive any federal, state, or local grant money, loan forgiveness, or tax relief to implement the SEP.

15. SEP Reports

a. Respondents shall submit a SEP Completion Report to EPA by October 31, 2008 or within six months of the effective date of this Consent Agreement and Final Order, whichever is later. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- (vi) Inspection and clearance sampling reports, as described more particularly in the Scope of Work.

b. Respondents agree that failure to complete the work described above in Paragraphs 12 and 13 and in the Scope of Work or to submit the SEP Completion Report required by subsection a. above shall be deemed a violation of this Consent Agreement and Final

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Order and Respondents shall become liable for stipulated penalties pursuant to paragraph 19 below.

c. Respondents shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to John W. Kilborn at the address specified in paragraph 10 with a copy to Jeff Norcross, U.S. Environmental Protection Agency Region 1, One Congress Street, Suite 1100 (Mail Code: SEL), Boston, MA 02114-2023.

d. In itemizing their costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

16. Respondents agree that EPA may inspect Respondents' properties at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

17. Respondents shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondents shall sign and certify under penalty of law that the information

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contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. EPA Acceptance of SEP Report

a. After receipt of the SEP Completion Report described in paragraph 15.a. above, EPA will notify the Respondents, in writing: (i) identifying any deficiencies in the SEP Completion Report itself and granting Respondents an additional thirty (30) days to correct any deficiencies; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 19 herein.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondents may correct the deficiencies within thirty (30) days or object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondents, which decision shall be final and binding upon Respondents.

Respondents agree to comply with any requirements imposed by EPA as a result of any failure to

comply with the terms of this Consent Agreement and Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondents to EPA in accordance with paragraph 19 herein.

19. Stipulated Penalties

a. In the event that Respondents fail to comply with any of the terms or provisions of this Agreement relating to payment of the penalty, the performance of the SEP described in paragraph 12 above and the Scope of Work, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 13 above,

Respondents shall be liable for stipulated penalties according to the provisions set forth below:

(i) If Respondents fail to pay the penalty amount specified in paragraph 10 above by the date required in paragraph 10 above, Respondents shall pay stipulated penalties in the amount of \$500 per day until payment is received by EPA.

(ii) Except as provided in subparagraph (iii) immediately below, for a SEP that has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondents shall pay a stipulated penalty to the United States in the amount of \$12,978.

(iii) If the SEP is not completed in accordance with paragraph 12 and the Scope of Work, but the Complainant determines that the Respondents: (a) made good faith and timely efforts to complete the project; and (b) certify, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP (that is, \$33,540), Respondents shall not be liable for any stipulated penalty.

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(iv) If the SEP is completed in accordance with paragraph 12 and the Scope of Work, but the Respondents spent less than \$12,978, Respondents shall pay a stipulated penalty to the United States equal to the difference between \$12,978 and the amount of SEP costs actually incurred, plus interest accrued from the effective date of this CAFO, or, with EPA approval, Respondents may complete additional window replacement work at another location.

(v) If the SEP is completed in accordance with paragraph 12 and the Scope of Work, and the Respondents spent at least 90 percent of the amount of money required to be spent for the project, Respondents shall not be liable for any stipulated penalty.

(vi) For failure to submit the SEP Completion Report required by paragraph 15(a) above, Respondents shall pay a stipulated penalty in the amount of \$200 per day for each day after the report was originally due until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondents have made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties for subparagraphs (i) and (vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 10 above. Interest and late charges shall be paid as stated in paragraph 10 herein.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.

20. Any public statement, oral or written, in print, film, or other media, made by Respondents making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Residential Lead Based Paint Hazard Reduction Act, the Toxic Substances Control Act, and the Disclosure Rule."

21. This Consent Agreement and Final Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondents in connection with the SEP undertaken pursuant to this Agreement.

22. For Federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP. In addition, Respondents hereby agree that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year in which the above-identified SEP is completed, it will submit to EPA certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

23. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the violations

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alleged in the Complaint. Complainant reserves any rights and remedies available to it to enforce the provisions of this Consent Agreement, of the RLBPHRA, TSCA, and the Disclosure Rule. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Nothing in the Consent Agreement and Final Order shall be construed to limit the authority of the United States to undertake any action against Respondents in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

24. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

25. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Final Order.

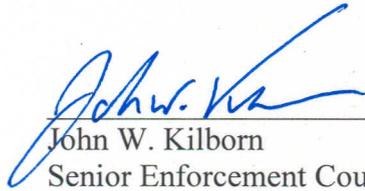
FOR COMPLAINANT:



Joel Blumstein
Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street
Boston, Massachusetts 02114

6/5/08
Date

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John W. Kilborn

Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
One Congress Street (Mail Code: SES)
Boston, Massachusetts 02114
(617) 918-1893

06/03/2008
Date

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FOR RESPONDENT:



Daniel J. Lynch

5.29.08
Date



Daniel J. Lynch, Executor
of the Estate of Grace K. Lynch

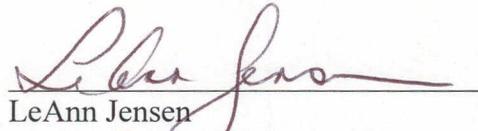
5.29.08
Date

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III. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ordered to comply with the terms of the above Consent Agreement, effective upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Date: 6/19/08



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency Region I

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Appendix A: SUPPLEMENTAL ENVIRONMENTAL PROJECT "SCOPE OF WORK"

1. Description of Project

This is a lead safe renovation project. Pursuant to this project, Respondent shall spend \$37,267.00 to replace 60 windows at One Main Street, Foxboro MA (Centennial Court). This represents all of the windows in Centennial Court, a 12 unit apartment building. Because of their age, the existing windows are assumed to contain lead-based paint. The cost includes approximately \$33,082 for windows, parts, and labor and approximately \$4,185 for required clearance inspections.

Older windows such as those present at Centennial Court are known to contribute to lead poisonings in residential settings because (1) opening and closing windows can abrade lead-based paint, creating lead-contaminated dust that can be ingested; and (2) the paint around the windows is exposed to the elements, causing paint to flake and chip. Accordingly, the replacement of windows finished with lead-based paint can help reduce the risk of lead poisonings in residential housing.

Respondent will replace all existing windows at Centennial Court as follows:

- Remove existing window stops
- Remove existing sash, counterweights, and cables
- Fill inside void with expanding foam insulation
- Seal exposed areas inside window opening
- Install replacement windows per manufacturer's specifications and applicable building codes and install new window stops.

2. Energy Efficiency

The replacement windows will be substantially greater in energy efficiency than the existing single glazed windows and shall have the following characteristics:

- Double glazed
- Low-E glass
- Argon filled
- Energy Star Certified
- National Fenestration Rating Council (NFRC) U Rating =.32

3. Standard of Care

- a. This is a lead safe renovation project. Respondents shall perform the SEP in accordance with the Massachusetts standards for moderate risk deleading. See 454 CMR 22.12(3), the applicable sections of 454 CMR 22.00 and 105 CMR 460.000, and the state-approved training materials for moderate risk deleading, which materials are consistent with the United States Department of Housing and Urban Development Guidelines for

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Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995, as revised in 1997). This is not a deleading project.

- b. All of the work shall be conducted by Scott McCauley, a general contractor (K & S Remodeling, 790 Read Street, Attleboro MA 02703), who has taken the necessary training to become a "Lead-Safe Renovator Contractor" pursuant to 454 CMR 22.00.
- c. Respondents shall meet the applicable inspection requirements of 105 C.M.R. 460.760 at all times. After the work is complete, window units and unit floors shall be tested with swabs to determine the presence or absence of lead dust. If lead dust is found, the unit shall be re-cleaned and retested until lead dust is no longer present in quantities in excess of that permitted by applicable regulations. Upon the completion of the project Respondents' lead inspector shall issue a report in letter form including (a) confirmation of post-work testing including swab tests and unit inspections; and (b) supporting materials including laboratory results and chain of custody information.

4. Schedule

- a. Respondents' Contractor, Scott MacCauley, attended and satisfactorily completed an approved Lead Safe Renovator Contractor course on April 23, 2008.
- b. By June 30, 2008, Respondents shall have applied for and received a building permit for the window replacement from the Foxborough Building Commissioner. A copy of the permit shall be forwarded to EPA.
- c. By July 15, 2008, Respondents shall commence the SEP.
- d. By October 15, 2008, or within six months from the effective date of the Consent Agreement and Final Order ("CAFO"), whichever is later, Respondents shall complete the SEP.
- e. By October 31, 2008, or within six months from the effective date of the CAFO, whichever is later, Respondents shall submit the SEP Completion Report, containing the information specified in Paragraph 5 below and the certification referenced in Paragraph 6 below.
- f. Provided that Respondent has exercised reasonable due diligence to complete the SEP in a timely manner, Respondent may extend the deadlines set forth in Subparagraphs (d) and/or (e) by a period of 30 days, subject to EPA approval.

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5. Completion Report

The SEP Completion Report required by subparagraph 4(e) shall contain the information described in Paragraph 15(a) of the CAFO.

6. Certification

All reports submitted by Respondents must contain the certification language required by Paragraph 17 of the CAFO.