

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Timothy M. Conway
Name of Case Attorney

4/12/11
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number TSCA-01-2011-0011

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Presentation Management, Inc
707 Sable Oaks Drive
South Portland, ME 04106

Total Dollar Amount of Receivable \$ 3,542.00 Due Date: 5/4/11

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
FIVE POST OFFICE SQUARE, SUITE 100, BOSTON, MA 02109-3912

April 6, 2011

Wanda Rivera
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
Five Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

RECEIVED
APR 06 2011
EPA ORC
Office of Regional Hearing Clerk

Re: Preservation Management, Inc. Respondent
Docket No. TSCA-01-2011-0011

Dear Ms. Rivera:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the executed Consent Agreement and Final Order in this matter.

Thank you for your assistance in this matter.

Very truly yours,


Timothy M. Conway
Senior Enforcement Counsel

Enclosures

cc:
Richard Sherman, Esquire
Edwards Angell Palmer & Dodge, LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
Preservation Management Incorporated)	Docket No.
707 Sable Oaks Drive)	TSCA-01-2011-0011
South Portland, Maine 04106)	
)	CONSENT AGREEMENT AND
Respondent.)	FINAL ORDER
)	
Proceeding under Section 16(a) of the)	
Toxic Substances Control Act,)	
42 U.S.C. § 2615(a).)	

I. INTRODUCTION

The United States Environmental Protection Agency - Region 1 ("EPA"), as Complainant, and Preservation Management Incorporated ("PMI"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. By this CAFO Respondent agrees to pay a civil penalty and perform a Supplemental Environmental Project ("SEP") consisting of removal of lead-based paint hazards from residential housing, as specified in this Consent Agreement and Attachment 1 (Scope of Work) for alleged violations of the following two sets of provisions: first, Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Act"), 42 U.S.C. §§ 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property* ("Disclosure Rule"), as set forth at 40 C.F.R. Part 745, Subpart F; and second, Section 406(b) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2686(b), and the federal regulations promulgated thereunder, entitled *Residential Property Renovation* ("Renovation Rule"), as set forth at 40 C.F.R. Part 745, Subpart E. Failure to comply with a regulatory requirement set forth in 40 C.F.R. Part 745, Subparts E or F,

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

constitutes a violation of TSCA Section 409, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, violations of Section 409 of TSCA are subject to the assessment of civil and/or criminal penalties.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 16 of TSCA, 15 U.S.C. § 2615.

Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction, venue and statute of limitations and, without admitting or denying EPA’s factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

2. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

3. This CAFO shall apply to and is binding upon Respondent, its successors and assigns.

III. EPA FINDINGS

4. Respondent is a residential and commercial property management company incorporated in the State of Maine.

5. Between 2004 and 2010, EPA conducted a series of inspections and issued an Information Request Letter to evaluate Respondent's compliance with the Lead Act and the Disclosure Rule, and with Section 406(b) of TSCA and the Renovation Rule.

6. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. §§ 745.83 and 745.103, the housing stock addressed by the Lead Act and Section 406(b) of TSCA is termed "target housing." "Target housing" is defined as any housing constructed prior to 1978, except housing for the elderly or disabled, or any 0-bedroom dwelling.

7. During the time period relevant to this matter, Respondent was a "lessor," as that term is defined in TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, of target housing located in Freeport and Portland, Maine.

8. The Disclosure Rule states that, prior to a lessee becoming obligated to lease target housing, the lessor of such housing must, among other things:

- a. provide the lessee with a lead hazard information pamphlet;
- b. disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being leased;
- c. provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased;
- d. include, within or in an attachment to a lease contract, a Lead Warning

Statement; and

e. include, within or in an attachment to a lease contract, a statement by the lessor either disclosing the presence of known lead-based paint or lead-based paint hazards in the target housing or indicating no knowledge thereof.

9. The Renovation Rule states that, no more than 60 days before beginning renovation activities in any residential housing unit of target housing, the firm performing the renovation shall provide the owner or adult occupant of a unit with a lead hazard information pamphlet, and shall obtain a written acknowledgement of receipt from the adult occupant, or shall obtain a certificate of mailing at least 7 days prior to the renovation. Renovation is defined in 40 C.F.R. § 745.83 to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, excluding actions taken as part of an a TSCA abatement, or minor repair and maintenance activities.

10. Based on the documents and information collected by EPA during its inspections and other information gathering activities, EPA alleges that Respondent failed to comply with the Lead Act and the Disclosure Rule when it entered into the lease agreements referenced in Attachment 2 hereto. Specifically, EPA has identified the following violations of the Disclosure Rule and Section 409 of TSCA:

- a. 1 violation of 40 C.F.R. § 745.113(b)(1);
- b. 7 violations of 40 C.F.R. § 745.113(b)(2); and
- c. 8 violations of 40 C.F.R. § 745.113(b)(3).

11. Based on the documents and information collected by EPA during its inspections and other information gathering activities, EPA alleges that Respondent failed to comply with Section

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

406(b) of TSCA, 15 U.S.C. § 2686(b), and the Renovation Rule, prior to beginning the renovation activity referenced in Attachment 2 hereto. Specifically, EPA has identified one violation of Section 745.84 of the Renovation Rule, 40 C.F.R. § 745.84, and Section 409 of TSCA.

IV. TERMS OF SETTLEMENT

12. By signing this CAFO, Respondent certifies that it is presently operating in compliance with the Lead Act and the Disclosure Rule, and with Section 406(b) of TSCA and the Renovation Rule.

13. Based upon the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and taking into account the factors enumerated in Section 16 of TSCA, EPA's *Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy*, dated December 2007, EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 2010, and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of \$3,542 in settlement of the violations alleged herein.

14. Respondent consents to the issuance of this CAFO and consents to the payment of the civil penalty cited in Paragraph 13.

15. Respondent shall pay the penalty of \$3,542 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

16. Respondent shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$3,542, to:

U.S. EPA, Region 1
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

and shall provide copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code: ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Tim Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES04-3)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Respondent shall include the case name and docket number (*In re: Preservation Management Incorporated*, Docket No. TSCA-01-2011-0011) on the face of the check.

17. If Respondent fails to pay the civil penalty it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, 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 the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. 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). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

18. Description of the SEP

a. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protection and improvements. Pursuant to the SEP, Respondent shall abate lead-based paint hazards identified in common areas of residential housing located in Portland, Maine, pursuant to a detailed schedule contained in Attachment 1 ("Scope of Work"). The SEP shall be completed within 180 days of the effective date of this CAFO.

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

19. The total expenditure for the SEP shall be not less than \$31,884, in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

20. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation, nor is Respondent 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. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP and that it will not receive any federal, state, or local aid, tax deduction or credit, grant money or loan forgiveness to implement the SEP.

21. SEP Reports

a. Respondent shall submit a SEP Completion Report to EPA within 210 days of the effective date of this CAFO. The SEP Completion Report shall contain the following information:

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

- (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, cancelled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (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); and
- (vi) Inspection and clearance sampling reports.

b. Respondent shall submit any additional reports required by the Scope of Work to EPA in accordance with the schedule and requirements recited therein.

c. Respondent agrees that failure to complete the work described above in Paragraphs 18-20 and in the Scope of Work or to submit the SEP Completion Report or any Periodic Report required by subsections a. and b. above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 25 below.

d. Respondent shall submit all notices and reports required by this CAFO by first class mail to Tim Conway at the address specified in Paragraph 16 with a copy to Sharon Hayes, Toxics and Pesticides Unit, U.S. Environmental Protection Agency, Region 1 (Mail Code: OES 05-4), 5 Post Office Square, Suite 100, Boston, MA 02109.

e. In itemizing costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

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. Cancelled 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.

22. Respondent agrees that EPA may inspect Respondent's properties at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

23. Respondent 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, Respondent shall sign and certify under penalty of law that the information 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.

24. EPA Acceptance of SEP Report

a. After receipt of the SEP Completion Report described in Paragraph 21(a) above, EPA will notify the Respondent, in writing: (i) identifying any deficiencies in the SEP Completion

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

Report itself and granting Respondent 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 25 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, Respondent 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 Respondent 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 Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 25 herein.

25. Stipulated Penalties

a. In the event that Respondent fails 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 18 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 19 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) If Respondent fails to pay the penalty amount specified in Paragraph 13 above

by the date required in Paragraph 15 above, Respondent 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 Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$31,884, plus interest from the effective date of the Consent Agreement and Final Order.

(iii) If the SEP is not completed in accordance with Paragraph 18, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certified, 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, \$28,695), Respondent shall not be liable for any stipulated penalty.

(iv) If the SEP is completed in accordance with Paragraph 18, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in an amount that is equal to the difference between \$28,695 (the amount required to be spent on the SEP) and the amount actually spent on the SEP, plus interest from the effective date of this Consent Agreement and Final Order.

(v) If the SEP is completed in accordance with Paragraph 18, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(vi) For failure to submit the SEP Completion Report required by Paragraph 21(a) above, Respondent 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 to EPA.

(vii) For failure to submit any other report required by Paragraph 21(b) above, Respondent 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 to EPA.

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

c. Stipulated penalties for subparagraphs (vi) and (vii) 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. Respondent 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 16 above. Interest and late charges shall be paid as stated in Paragraph 17 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 Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

26. Any public statement, oral or written, in print, film, or other media, made by Respondent 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

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

Protection Agency for violations of the Residential Lead Based Paint Hazard Reduction Act, the Toxic Substances Control Act, and the Disclosure and Renovation Rules.”

27. This CAFO shall not relieve Respondent of its 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 Respondent in connection with the SEP undertaken pursuant to this CAFO.

28. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

29. For Federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP. In addition, Respondent hereby agrees 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 Tim Conway of EPA, at the address in Paragraph 16 above, certification that any funds expended in the performance of the SEP have not been deducted from Federal taxes.

30. This CAFO constitutes a settlement of the claims set forth in Paragraphs 1 through 11 of this CAFO for civil penalties pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for violations of TSCA Section 409, 15 U.S.C. § 2689, and 40 C.F.R. Part 745, Subpart F. Except as otherwise

provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

31. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

32. Dispute Resolution

a. All disputes arising from this CAFO shall be resolved pursuant to this Dispute Resolution provision. The parties to this CAFO shall attempt to resolve, expeditiously and informally, any disagreement concerning this CAFO, including the Supplemental Environmental Project. If Respondent objects to any EPA action taken pursuant to this CAFO, Respondent shall notify EPA in writing of its objection and the reasons for the objection within 14 days of such action, unless the objection has been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondent's position, and all supporting documentation on which Respondent relies (hereinafter "Statement of Position").

b. EPA and Respondent shall attempt to resolve the dispute through negotiations ("Negotiation Period"). The Negotiation Period shall not exceed 20 days from EPA's receipt of Respondent's written objection and Statement of Position. The Negotiation Period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution.

c. Any agreement reached by the parties pursuant to this Dispute Resolution provision shall be in writing, signed by both parties, and shall, upon signature of both parties, be incorporated into and become an enforceable element of this CAFO. If the parties are unable to reach an agreement within the Negotiation Period, the Legal Enforcement Manager of the Office of Environmental Stewardship (“Manager”) will issue a written decision on the dispute to Respondent. The Manager’s decision shall be considered binding and shall be incorporated into and become an enforceable element of this CAFO upon Respondent’s receipt of the Manager’s decision regarding the dispute.

33. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:



Name: DAVID T. FLANAGAN
Title: PRESIDENT & CEO
Preservation Management Incorporated

Date: March 23, 2011

In Re Preservation Management Inc./Docket No. TSCA-01-2011-0011

For Complainant:




Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
EPA Region 1

Date: 3/31/11

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Preservation Management Incorporated, is ordered to comply with the terms of the above Consent Agreement, effective upon the date it is filed with the Regional Hearing Clerk.

Date: April 4, 2011



Jill T. Metcalf
Acting Regional Judicial Officer
EPA Region 1

ATTACHMENT 1 - SUPPLEMENTAL ENVIRONMENTAL PROJECT SCOPE OF WORK

1. Description of Project:

Pursuant to this project, Respondent shall, by the end of 180 days after the effective date of the CAFO, spend a minimum of \$31,884 to remove Lead-Based Paint (LBP) hazards in some of the most heavily utilized common areas of Lafayette Square Apartments, located at 638 Congress Street, Portland, Maine. This 97 unit building has a substantial amount of lead-based paint on the woodwork in the common areas.

The work plan includes: 1. removal and replacement of 14 elevator door casings, and associated baseboards and cap moldings (approximately \$16,000); 2. removal and replacement of the interior trim on 10 common area hallway windows, including stops, casings, jambs, and aprons (approximately \$12,000); and 3. inspection, testing and clearance of each work area after completion of work by a licensed lead inspector or sampling technician according to EPA testing standards for LBP Renovations in Pre-1978 properties (approximately \$4,000). Items 1 and 2 outlined above include the cost to construct isolation barriers to perform removal/remediation work in a lead safe manner.

Removal of the trim from the 14 elevator doors, servicing 7 floors, will be performed individually so that one elevator servicing each floor can remain in service at all times. Each door area will be sealed in an isolation barrier, and all abatement work will be performed in accordance with all applicable laws and regulations.

Removal of the interior trim from the 10 common area hallway windows will also be performed individually due to the physical separation between each window. Each window area will be sealed in an isolation barrier, and all abatement work will be performed in accordance with all applicable laws and regulations.

Upon completion of the LBP abatement for each isolation barrier work area, initial inspection and testing will be conducted using the EPA standards for LBP Renovations in Pre-1978 Properties. A Lead-In-Dust wipe test will be conducted in each isolation barrier work area, and samples will be sent to EMSL Analytical, Inc. for laboratory analysis. A final written report containing the laboratory analysis results will be prepared for submission in the Progress Report and/or the Completion Report. All inspection and testing will be conducted by either a Licensed Lead Inspector or Licensed Sampling Technician in accordance with all applicable laws and regulations.

The LBP in these areas could contribute to lead poisonings in residential settings because: 1. the common area hallway window sills are in constant use by residents, visitors, and staff, and often act as *de facto* areas for congregating, socializing and seating while waiting for the elevators, which can abrade LBP, creating lead-contaminated dust that can be ingested; 2. the elevator trim is subject to nicking, chipping and abrading actions from regular resident move-in/move-out activities, transporting bikes, and wheelchair passengers; and 3. young children can mouth window sills. Accordingly, the replacement of elevator and window trim currently finished with LBP can help reduce the risk of lead poisonings in residential housing.

In the Matter of Preservation Management, Inc.
Docket No. TSCA-01-2011-0011

ATTACHMENT 1 - SUPPLEMENTAL ENVIRONMENTAL PROJECT SCOPE OF WORK

1. Description of Project:

Pursuant to this project, Respondent shall, by the end of 180 days after the effective date of the CAFO, spend a minimum of \$31,884 to remove Lead-Based Paint (LBP) hazards in some of the most heavily utilized common areas of Lafayette Square Apartments, located at 638 Congress Street, Portland, Maine. This 97 unit building has a substantial amount of lead-based paint on the woodwork in the common areas.

The work plan includes: **1.** removal and replacement of 14 elevator door casings, and associated baseboards and cap moldings (approximately \$16,000); **2.** removal and replacement of the interior trim on 10 common area hallway windows, including stops, casings, jambs, and aprons (approximately \$12,000); and **3.** inspection, testing and clearance of each work area after completion of work by a licensed lead inspector or sampling technician according to EPA testing standards for LBP Renovations in Pre-1978 properties (approximately \$4,000). Items 1 and 2 outlined above include the cost to construct isolation barriers to perform removal/remediation work in a lead safe manner.

Removal of the trim from the 14 elevator doors, servicing 7 floors, will be performed individually so that one elevator servicing each floor can remain in service at all times. Each door area will be sealed in an isolation barrier, and all abatement work will be performed in accordance with all applicable laws and regulations.

Removal of the interior trim from the 10 common area hallway windows will also be performed individually due to the physical separation between each window. Each window area will be sealed in an isolation barrier, and all abatement work will be performed in accordance with all applicable laws and regulations.

Upon completion of the LBP abatement for each isolation barrier work area, initial inspection and testing will be conducted using the EPA standards for LBP Renovations in Pre-1978 Properties. A Lead-In-Dust wipe test will be conducted in each isolation barrier work area, and samples will be sent to EMSL Analytical, Inc. for laboratory analysis. A final written report containing the laboratory analysis results will be prepared for submission in the Progress Report and/or the Completion Report. All inspection and testing will be conducted by either a Licensed Lead Inspector or Licensed Sampling Technician in accordance with all applicable laws and regulations.

The LBP in these areas could contribute to lead poisonings in residential settings because: **1.** the common area hallway window sills are in constant use by residents, visitors, and staff, and often act as *de facto* areas for congregating, socializing and seating while waiting for the elevators, which can abrade LBP, creating lead-contaminated dust that can be ingested; **2.** the elevator trim is subject to nicking, chipping and abrading actions from regular resident move-in/move-out activities, transporting bikes, and wheelchair passengers; and **3.** young children can mouth window sills. Accordingly, the replacement of elevator and window trim currently finished with LBP can help reduce the risk of lead poisonings in residential housing.

2. Standard of care:

- a. Respondent shall perform the SEP in accordance with Maine state law and regulations on lead abatement (Chapter 424 of Maine DEP regulations) and all other applicable federal and state requirements and standards for lead abatement activities.
- b. All lead removal and abatement activities shall be performed by a certified/ licensed lead abatement firm using technicians properly certified/licensed in lead abatement in accordance with applicable Maine and federal laws and regulations. An occupant protection plan will be developed and followed, and clearance sampling will be conducted, in accordance with applicable Maine and federal laws and regulations.
- c. Respondent shall use a properly certified/licensed lead inspector, risk assessor, or sampling technician to inspect and test each work area according to EPA testing standards for LBP Renovations in Pre-1978 target housing.

3. Respondents shall complete the SEP on the following schedule:

- a. By the end of 90 days after the effective date of the CAFO, Respondent shall submit its progress report, which shall contain the information specified in paragraph 4 below.
- b. By the end of 180 days after the effective date of the CAFO, Respondent shall complete the SEP work.
- c. By the end of 210 days after the effective date of the CAFO, Respondent shall submit the SEP Completion Report, containing the information specified in paragraph 5 below.

EPA shall consider appeals of denials to issue any required building permits to be Force Majeure events if EPA agrees that Respondent has taken all reasonable measures to avoid or mitigate schedule delays associated with such appeals.

4. The progress report required by subparagraph 3(a) above shall contain the following information:

- a. A summary of the elevator and window trim replacement activities completed during that period;
- b. A summary of the SEP costs incurred during that period, with costs itemized (documentation of these costs shall be provided at the end of the project, when Respondent submits the SEP Completion Report); and
- e. Copies of all inspection, testing and clearance sampling reports for that period, giving inspection, testing and clearance sampling locations, testing and clearance sampling results, and documentation of analytical quality assurance/quality control.

5. The SEP Completion Report required by subparagraph 3(c) above shall contain the following information:

- a. Description of the elevator and window trim replacement activities completed, including representative photographs;
- b. Any inspection, testing or clearance sampling reports and data not already submitted in the progress report;
- c. Itemized costs of goods and services used to complete the elevator and window trim replacement, documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual costs of the goods and services;

- d. Itemized costs of services used to complete the inspection, lead testing and clearance sampling, documented by copies of invoices or canceled checks that specifically identify and itemize the costs of the services;
- e. Certification that the individuals who performed the SEP work, inspection and clearance sampling are authorized to perform such work in accordance with applicable law;
- f. Certification that Respondent has completed the SEP in compliance with this CAFO;
- g. A statement that no federal or state tax returns filed or to be filed by Respondent have contained or will contain deductions or depreciations for any expenses associated with the SEP; and
- h. A description of any operating problems encountered and the solutions thereto.

In itemizing their costs in the SEP Completion Report, Respondent 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, without limitation, 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 shall 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.

6. All reports submitted by Respondent must contain the certification language provided in paragraph 23 of the CAFO.

In re: Preservation Management, Inc., TSCA-01-2011-0011 - Violation Chart - Attachment 2

	APARTMENT and LEASE DATE (WORK ORDER # & DATE)	AGE OF YOUNGEST OCCUPANT	ALLEGED VIOLATIONS OF THE LEAD DISCLOSURE RULE				ALLEGED VIOLATIONS OF THE PRE-RENOVATION RULE
			40 CFR 745.107(a)(1)	40 CFR 745.113(b)(1)	40 CFR 745.113(b)(2)	40 CFR 745.113(b)(3)	
1	Lafayette Square Apts, Unit # 211, April 1, 2008	adult			X	X	40 CFR 745.84 (a)(2)
2	Lafayette Square Apts, Unit # 707, July 16, 2008	under 6 y.o.			X	X	
3	Lafayette Square Apts, Unit # 502, November 1, 2008	under 6 y.o.			X	X	
4	Lafayette Square Apts, Unit # 401, March 3, 2009	adult			X	X	
5	Lafayette Square Apts, Unit # 601, April 1, 2009	adult			X	X	
6	Lafayette Square Apts, Unit # 315, May 12, 2009	adult			X	X	
7	Maplewood Terrace, Unit # W7, March 29, 2008	under 6 y.o.				X	
8	Maplewood Terrace, Unit # E9, May 8, 2008	adult		X	X	X	
9	Lafayette Square Apts, Work Order # A36455, October 13, 2009	adult					X