

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 77-4886

COLLYMORE, et. al.,
Plaintiffs
v.
CITY OF CAMBRIDGE, et. al.,
Defendants

CONSENT DECREE

Now come the parties to the above entitled action
and stipulate and agree:

(i) That a high percentage of residential premises in Cambridge have large amounts of paint and other materials containing quantities of lead that are often many times in excess of the safe and legal maximum established by Regulations of the Department of Public Health's Childhood Lead Poisoning Prevention Division, in accordance with M.G.L. c.111, §190 et. seq.

(ii) That the lead based paint on residential premises in Cambridge presents an immediate danger of lead poisoning to children six or under who reside in such premises.

(iii) That effective and vigorous enforcement of the lead poisoning prevention laws by the City through its Department of Health and Hospitals is essential to remedying the emergency situation that such children face.

(iv) That as a result of its own processes of internal review and planning as well as in response to this action by plaintiffs, defendants have revised and amended and

will enforce and carry out a program of lead poisoning prevention consistent with all applicable laws and regulations now in effect, or as subsequently amended, and consistent with all of the following:

Staffing and Organization

1. A new position, administrative assistant to the Commissioner of the City's Department of Health and Hospitals, (hereafter Administrative Assistant) for all Article II, Article X, and lead paint enforcement activities, has been established and filled. The Administrative Assistant will be immediately responsible to the Commissioner and will work out of the Camelia Avenue offices to oversee the day-to-day activities of the housing inspectors and to develop and implement procedures and policies to increase the efficiency and effectiveness of the Department's lead paint prevention program. Funding for this position is presently through the CETA program, but it will be included as a regular budget item beginning July 1, 1978.

2. A person with experience in enforcing lead paint laws will be designated or hired to direct the City's lead poisoning prevention program and to work full-time coordinating and carrying out the City's lead paint prevention program. The lead program director will work with the Administrative Assistant in overseeing the Department's lead paint prevention program.

3. Two full-time lead inspection teams will be established, both responsible to the director of the lead program who may, from time to time, head one team. A second, full-time civil service inspector will head the second team. The second member of each team will be one of the present inspectors or a CETA employee on a rotation of at least one month full-time work on lead enforcement. Spanish and Portuguese speaking inspectors will be available as team members whenever required in an enforcement or prevention effort.

4. The Commissioner of Health and Hospitals, Dr. Francis Commale, or his successor, shall take all steps necessary to assure that his staff and subordinates fully and effectively carry out all provisions of this Decree. This shall include, but not be limited to, investigating complaints from plaintiffs or from staff members that the Decree is not being fully or effectively complied with or carried out and, where necessary to the proper implementation of this Decree and with approval of either the plaintiffs or the Court, transferring, reassigning, increasing or decreasing the duties and responsibilities of, or dismissing members of his staff.

5. One mobile x-ray florescence analyzer will be added to the two the Department has so that both inspection teams will be able to work full-time. Back-up arrangements will be explored for borrowing machines from the State or

(Feb?)

from adjacent cities in order to assure that two machines
are available at all times. If repair problems or inadequate
back-up arrangements regularly leave less than two machines
available for use, an additional machine or machines shall
be purchased.

were not available
lost winter
prob. when machine had to be checked

Reinspection of Dwellings Inspected Between January
1, 1973 and June 30, 1977

6. The Department's records of all buildings in
which one or more units were inspected for lead violations
between January 1, 1973 and June 30, 1977, shall be reviewed
and acted on as follows:

(a) If the Department's records show that (i) no
lead violations were found; or (ii) lead violations were
found and remedied, the residents of the building will be
notified and told to request an inspection if a child under
six lives there. (Form notices to be used are attached
hereto as Exhibits B.1 and B.2 and incorporated herein by
reference.) If violations are found, steps will be taken to
have violations corrected in accordance with all applicable
laws and regulations and with paragraphs 11 through 22 of
this Decree. A list of the addresses of all such buildings,
the name of the present owner, and where appropriate, the
name of the owner at the time of the original inspection shall
be submitted by the Department as Exhibit A.1 of this agree-
ment.

(b) If the Department's records show that lead violations were found but not remedied, steps shall be taken immediately, whether or not a child under six presently resides on the premises, to assure that they are remedied. Enforcement procedures shall be consistent with all applicable laws and regulations and with paragraphs 11 through 22 of this Decree. (Form notices to be used are attached hereto as Exhibits B.3, B.4 and B.5 and incorporated herein by reference.)

7. Owners and occupants will be notified in writing of the need for an inspection and a suggested time for carrying it out. (Forms to be used are attached as Exhibits B.1 through B.5.)

8. Procedures for certifying that no child six or under lives in the building will be as follows: (a) notice to this effect in writing from the present occupant of the building (the form to be used is attached as Exhibit B.4 and incorporated herein by reference); or (b) by affidavit from the present owner (the form to be used is attached as Exhibit C and incorporated herein by reference).

9. Priorities and standards for these inspections will be the same as set out below, except that they will be completed on or before October 1, 1978. Once it is clear how many buildings have to be inspected, monthly quotas will be set to assure that inspections will be completed by October 1, 1978.

10. Whenever illegal lead conditions are found, enforcement will proceed in accordance with all applicable laws and regulations and the standards set out in paragraphs 11 through 22 of this Decree.

Lead Inspection Procedures

11. Written policies and procedures consistent with State law and regulations will be established by the Department. At least the following will be included:

- (a) Article II inspections shall be done at the same time that an initial lead inspection is done.
- (b) Lead inspections will be done as part of every Article II inspection whenever a child six or under lives in the unit. Lead inspections will be done within ten working days of the initial Article II inspection.
- (c) Whenever illegal lead paint conditions are found, tenants will be referred to a community health clinic to have their child's blood lead level monitored while the lead is being removed from the premises. (Forms to be used are attached as Exhibits D.1 and D.2 and incorporated herein by reference.)
- (d) When illegal lead conditions are found in a unit, all other residents in the building will be notified on a standard form on the day the initial inspection is made. (The form notice to be used is

attached as Exhibit E and incorporated herein by reference.)

(e) Notices to owners of initial inspection results will be served by a constable or, where this is not possible, by certified mail. Notice to owners of all subsequent inspections will be in writing by first-class mail. Notice of initial inspection results and of subsequent inspection results will be given to tenants at the time of the inspection.

(f) Tenants and owners will be notified of all areas where levels of lead above 1.2 mg/cm^2 may legally remain on the premises at the end of the enforcement process. (The form to be used is attached as Exhibit F and incorporated herein by reference.)

Priorities in Inspection and Enforcement

12. The Department's priorities in scheduling initial lead paint inspections will be as follows:

- (a) Residence of a hospitalized child (immediately);
- (b) Residence of a poisoned child (within 24 hours);
- (c) Residence of a child with borderline levels (within 24 hours);
- (d) Other units in a building where illegal lead levels have been found (within 5 working days if a child six or under resides there; or within 20 working days if no child under six resides there).
- (e) Adjacent buildings owned by the same landlord (within 5 working days if a child six or under resides there, or within 20 working days if no child under six resides there).

(f) Units for which an Article II inspection has been requested and where a child six or under lives (within 10 working days of the Article II inspection).

(g) Buildings, to be identified by the parties, in which a unit was inspected for lead between January 1, 1973 and June 1, 1977, except that these units will have priority over categories (d), (e) and (f) if it appears that these inspections will not be completed by October 1, 1978

(h) Requests by tenants or owners (within ten working days);

(i) Buildings adjacent to units where illegal lead levels have been found which are owned by different landlords; and,

(j) Real estate transfers.

13. If the two inspection teams cannot inspect units in categories (a), (b) and (c) within the time limits established by the state regulations, or have backlogs in categories (d) through (i) of more than twenty working days a month, or cannot maintain all enforcement efforts when illegal levels of lead are found in accordance with applicable law and regulations and the standards set out below, additional inspectors will be assigned on an emergency basis to lead paint enforcement until all backlogs are cleared up. If such backlogs or inability to comply occur regularly at the end of the six-month period from April 1, 1978 to October 1, 1978, an additional full-time inspection team will be established.

14. Priorities for landlords in deleading individual apartments will be:

(a) Units where a hospitalized child lives;

(b) Units where a poisoned child lives;

- (c) Units where a child with borderline lead levels lives;
- (d) Units where a child six or under lives;
- (e) Units where a child six or under will soon be living; and,
- (f) All other units.

Standards for Lead Inspections, De-Leading and Enforcement

15. De-leading by landlords shall be completed within the seven (7) days allowed by law. In any case, de-leading by the landlords shall, at a minimum, proceed according to the above priorities, on the following schedule, to avoid court action:

- (a) 20 hours of de-leading or two rooms per week;
- (b) De-leading on any unit to begin within two (2) working days where a child is hospitalized, within seven (7) working days where a child is poisoned or has elevated blood lead levels and within ten (10) working days for all other units. (Beginning de-leading on one of several of such units will satisfy this requirement.)

16. City inspectors have failed to meet minimum standards for adequate initial lead paint inspections where the following errors were made:

- (a) Leaving out an entire room, common area or exterior area more than once per month;
- (b) Leaving out the same item (e.g. baseboards, loose paint, stair railings) on more than one inspection per

month;

(c) Leaving out more than five items on any single inspection in one month;

(d) Leaving out a weekly total of more than ten items for every four inspections in any given week;

(e) Lead count readings that are incorrect by more than a factor of two more than once per month; and,

(f) Any failure to properly complete reports or notify occupant and other tenants of a building or serve notice on an owner.

17. City inspectors have failed to meet minimum standards for reinspections where the following errors were made:

(a) Same as for initial inspections;

(b) Any failure to list items corrected or portion of work completed; and,

(c) Any failure to provide written notice to a landlord or to tenants of each reinspection.

18. City inspectors have failed to meet minimum standards for final inspection and clearance of lead paint violations where the following errors were made:

(a) Missing any item or area where illegal lead paint remains; and,

(b) Any failure to notify tenant and owner in writing of any lead paint above 1.2 mg/cm^2 that may legally remain on the premises.

19. If inspectors fail to meet any of the standards set out in paragraphs 16 through 18, above, an intensive review of

their work will be done and, where appropriate, careful day-to-day oversight of the inspector's work, special training or sanctions will follow. Performance of each inspector will be carefully documented by the lead program director and Administrative Assistant, and periodically reviewed and discussed with each inspector.

Work Levels of Inspectors

20. The general standard that each team should be able to meet is three initial inspections and four reinspections or final inspections per day (or their equivalent in inspections or reinspections). It is expected that the inspection teams will reach this level of work by April 30, 1978. In the meantime, the standard will be two initial inspections and four reinspections or final inspections per day.

21. As of April 30, 1978, work and performance levels will be reviewed by the parties to determine whether the standards established are workable or whether they should be revised or modified (up or down). They will be reviewed on a quarterly basis by the parties thereafter.

Enforcement

22. Court action will be commenced against any landlord on the first working day after the landlord fails to comply with the performance standards set in paragraphs 14 and 15, above. The City will seek complaints forthwith without a show cause hearing.

23. A city attorney will be assigned full-time to lead
paint and Article II enforcement. The attorney will be avail-
able to:

- (a) Bring civil and criminal proceedings against
non-complying landlords.
- (b) Recruit and supervise a staff of law students
who will assist in enforcement activities in accor-
dance with S.J.C. Rule 3:11.
- (c) Consult with and train housing code inspectors
in the legal and strategic requirements for bringing
enforcement proceedings.
- (d) Assist in developing procedures and policies and
attend meetings with tenants and property owners to
assure their understanding and enlist their support
in prevention and enforcement programs.

24. A systematic enforcement plan will be developed and
submitted to the Court by June 1, 1978. It will include the
following:

- (a) Time tables for achieving specific goals;
- (b) Aggressive prosecution (including seeking maxi-
mum fines and penalties, and court and enforcement
costs) of landlords who delay or who do not meet the
performance standards established by the Department;
- (c) Focusing on certain areas of the city or certain
properties;
- (d) Opportunities for agreements or consent arrange-
ments (including deferral of court proceedings) where

landlords cooperate and move according to the schedule set out above and where no child has been poisoned or suffers elevated blood lead levels; and,

(d) Assistance and cooperation in obtaining financial assistance for landlords who make a showing satisfactory to the Department that de-leading costs will impose a severe financial hardship. (~~This might include~~ having work done at city expense under M.G.L. c.111, §127A).

Outreach

25. Systematic screening efforts by the community health clinics will be maintained and publicized in all residential communities.

26. Personnel at all community health clinics will be trained so that they are fully knowledgeable in (i) the dangers of lead paint poisoning; (ii) the Department's procedures and policies of lead paint prevention; (iii) proper monitoring and follow-up of poisoned or high lead-level children; and (iv) counseling and support for parents of poisoned children and children who may be exposed to poisoning.

27. One individual from each community health center will be assigned to childhood lead poisoning prevention and care and will be available to take blood samples of children, in their homes if necessary, and to explain and counsel parents on lead poisoning dangers and enforcement practices. These individuals will be in regular contact with the lead paint inspectors and will participate in training and information programs sponsored or

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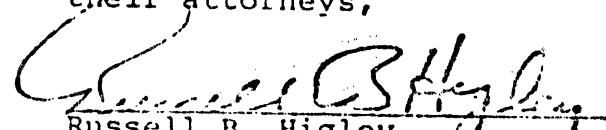
MOTION OF THE PARTIES

Now come the parties on the basis of the attached Consent Decree and the pleadings heretofore filed on this action and move as follows:

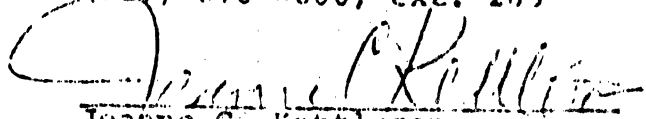
(1) that the Court approve and enter the Decree as a preliminary order in the above-titled action; and,

(2) that a Justice of the Superior Court assume jurisdiction for (a) monitoring the Decree, (b) hearing any matters brought before the Court by any party in the course of implementing the Decree, and (c) hearing any party on any other interlocutory, preliminary or discovery matter in the above-titled action.

Respectfully submitted by
their attorneys,



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Jeanne C. Kettlerson
Attorney for Plaintiffs
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(617) 495-2944

DATED _____

conducted by the City and others.

28. Clear, detailed and attractive written material will be made available to inform parents and community service workers of the nature and dangers of lead paint poisoning and of the Department's prevention and enforcement activities.

Training

29. The Administrative Assistant and lead program director shall organize, sponsor, or conduct such training and instructional programs from time to time as required to assure compliance with this Decree and effective enforcement and implementation of all laws, regulations and policies concerning lead poisoning prevention. Between April 1 and October 1, 1978, training shall be provided on all of the topics set forth in Exhibit G, attached hereto and incorporated herein by reference. This training will be required for all Code inspectors and all personnel from the Community Health Centers assigned to lead poisoning prevention and care.

Monitoring and Reporting

30. The work of each inspection team will be monitored on site at least once each week by the lead program director or the Administrative Assistant to insure compliance with performance standards in 16, 17 and 18, above, and all applicable policies and regulations.

31. All reports and records of each inspection team will be reviewed each month by the lead program director or the Administrative Assistant to insure compliance with performance standards

and department policies and regulations.

32. An outside monitor agreed upon by the parties shall be employed by the Department for one year, beginning no later than May 15, 1978. The outside monitor will conduct at least four on site inspections (two of each team) each month to assure completeness, accuracy, and general compliance with the performance standards in paragraphs 11 through 22 above, and all applicable policies, rules and regulations. The outside monitor will also review, on at least a monthly basis, the files and records of lead paint cases to assure that enforcement efforts are proceeding promptly and are being adequately documented. The outside monitor will be available at least five working days per month during the one year period.

33. Outside monitoring shall cease at the end of one year if there is compliance with the Department's policies, regulations and procedures, or at such earlier time as the parties agree and the Court approves. If the lead paint inspection teams have not complied with the standards set out in 16, 17 and 18, above, outside monitoring shall be extended for an additional six month period or such further time as the Court may order.

Court Supervision of This Decree

34. Aggregate data will be compiled on a monthly basis and filed with the Court. The data will include at least the following:

- (a) Number of requests for lead inspections and the source, reason for, and location of unit to be inspected;

(b) Number of inspections done and the location of each;

(c) Findings of the initial inspections;

(d) Follow-up activities including the number, nature and date of subsequent inspections, and the date, nature and outcome of any court action.

35. Reports will be compiled and filed with the court on a monthly basis that will fully document the workload and performance record of each inspection team.

36. The data required to be collected in paragraphs 34 and 35, above, will be fully discussed among the inspection teams and administrators in the Department responsible for lead paint enforcement and will be made available each month to counsel for plaintiffs. The director of the lead poisoning prevention program and the Commissioner or his assistants will be available on a quarterly basis to review and discuss monitoring and reporting efforts and to consider any modifications or revisions necessary to ensure effective prevention and enforcement activities.

37. Whenever this Decree specifies that the parties are to agree on some decision, procedure or modification and the parties are unable to agree, the Court shall make such order, after hearing, as it deems just and proper and most likely to effectuate the goals of M.G.L. c.111, §190 et seq., and the regulations promulgated thereunder and the principles of this Decree.

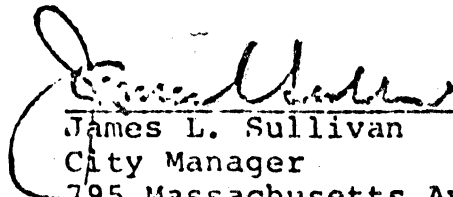
38. In April, 1979, or such earlier time as the parties agree, and the Court approves, if the Department has complied

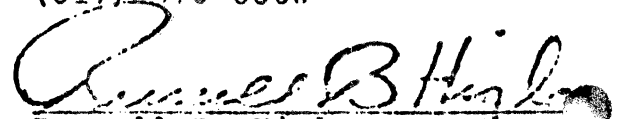
with the Consent Decree, outside monitoring and monthly reports to the Court will be terminated and the Decree as modified by agreement of the parties or order of the Court shall be entered as a final order.

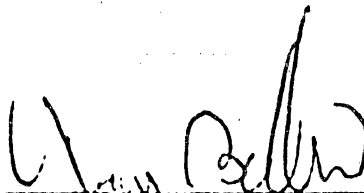
This Consent Decree is agreed to and entered into by the parties, through their attorneys, this

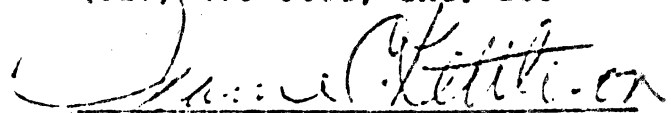
26th day of April, 1978.

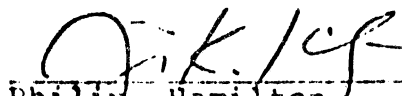
Respectfully submitted,

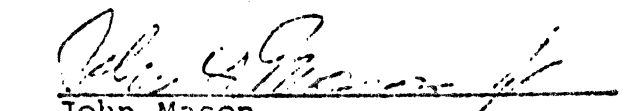

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(617) 492-5520

I hereby approve and enter this Decree as a Preliminary Order in the above entitled action this _____ day of _____, 1978.



City of Cambridge

3.

IN CITY COUNCIL

December 6, 1982

COUNCILLOR D. SULLIVAN

WHEREAS:

On November 29, 1982 a Superior Court judge entered judgment in accordance with a jury verdict, awarding damages of \$1.2 million because of brain damage to three young children living at 22 Marcella Street, resulting from lead paint poisoning; and

WHEREAS:

Chapter III, section 190 to 199 of the Massachusetts General Laws and regulations of the State Department of Public Health impose primary responsibility for inspection and enforcement of the lead paint poisoning prevention law on local health officials; and

WHEREAS:

On April 26, 1978, the city government entered into a consent decree (a copy of which is attached) in Collymore v. City of Cambridge, a Superior Court action based in part on the events at 22 Marcella Street, in which the city agreed, among other things, to carry out a lead paint poisoning prevention program, to establish two full-time lead inspection teams, and to improve inspection and enforcement procedures; and

WHEREAS:

Preventing lead paint poisoning of Cambridge citizens remains an extremely important goal of the city government; therefore be it

ORDERED:

That the City Manager obtain from the Health and Law Departments within two weeks a detailed written report on compliance with the lead paint poisoning prevention law and the Collymore consent decree, and specifically on their enforcement procedures, including the number and a description of the enforcement actions which have been brought in court to date.

In City Council December 6, 1982.

Adopted by the affirmative vote of 8 members.

Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-

Order # 3

F-328

C.D. Sullivan order re: City Manager to report on compliance with the lead paint poisoning prevention law and the Collymore consent decree.

In City Council,

December 6, 1982

12/6/82

CDL
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