

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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In the Matter of the Application of
NEW YORK CITY COALITION TO END LEAD
POISONING, INC., et al.,

Plaintiffs-Respondents,

for a Judgment pursuant to Article 78 and § 3001 of
the Civil Practice Law and Rules

- against -

PETER VALLONE, as Speaker of the New York
City Council, et al.,

Defendants-Appellants.
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**AFFIRMATION OF
HAROLD M. SHULTZ
IN SUPPORT OF
DEFENDANTS'
MOTION**

New York County Index
No. 120911/99

HAROLD M. SHULTZ, an attorney duly admitted to practice before the courts of the State of New York, affirms the following to be true under penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules:

1. I am the Special Counsel at the City of New York's Department of Housing Preservation and Development ("HPD"). I have been employed by HPD for a total of 23 years. My responsibilities within HPD include numerous facets of the agency's effort to initially implement and then enforce the lead paint poisoning prevention law, Local Law 38 of 1999 ("Local Law 38"). My responsibilities also include various tasks related to HPD's work in complying with Local Law 38 as a landlord of more than 13,000 apartment units. I am fully familiar with the facts and circumstances stated herein based upon personal knowledge and upon conversations with HPD and City employees. I submit this affirmation in support of defendants' motion to declare an automatic statutory stay of the trial court's declaratory judgment pending determination of defendants' appeal, or in the alternative, for a stay pending appeal.

INTRODUCTION

2. Local Law 38 was passed by the New York City Council on June 30, 1999, and Mayor Giuliani signed it into law on July 15, 1999. Local Law 38 repealed Local Law 1 of 1982 ("Local Law 1"), which had been interpreted to mandate the abatement of intact lead paint, and replaced it with a comprehensive framework for preventing and correcting lead paint hazards. Local Law 38 imposes specific duties on HPD, including specific time frames to inspect an apartment unit after it receives a complaint of a possible lead paint hazard, and thereafter to reinspect units where violations were placed to ensure that such violations were properly corrected. Most significantly, Local Law 38 mandates that HPD correct any lead hazard violation if an owner fails to timely do so. To my knowledge, no similar mandate is imposed on any municipality in this country. Local Law 38 also imposes extensive requirements on the owners of multiple dwellings. Owners must annually inspect units in which children under six reside, and must correct lead paint hazards using safe work practices regardless of whether an HPD violation has been issued. (If a violation has been issued, there are precise time periods to correct the violation.) In addition, Local Law 38 requires owners to ensure that windows and doors are properly hung to eliminate binding that may cause lead dust dispersion, and to ensure that floors are smooth and cleanable to eliminate collection of dust. See Exhibit A attached to the accompanying appendix.

3. Local Law 38 became effective on November 12, 1999. Since that time, HPD has actively enforced Local Law 38. Inspections have been conducted in response to lead paint hazard complaints, and as a result of "line of sight" inspections.¹ As a result of these

¹ These are lead paint inspections that occur while HPD is conducting an inspection of some other housing condition.

inspections, HPD has issued nearly 20,000 Local Law 38 lead paint violations. And since some private owners failed to timely or properly correct some of these violations, HPD itself was obligated to do so.² To that end, HPD has performed over 1,300 lead paint jobs in privately owned buildings that have corrected thousands of lead paint violations. In addition, based on its reinspection obligations, HPD determined that some owners incorrectly certified as corrected certain lead paint violations. For these cases, HPD corrected the lead paint violations that had not been corrected, and in a number of cases, HPD's Housing Litigation Division has also commenced false certification cases against owners.

4. Prior to its effective date, HPD undertook an agency-wide effort to redesign and, where necessary, create new procedures to enforce and comply with Local Law 38. This was an enormous undertaking given the complexity of Local Law 38 and its mandates, and the short four-month time frame for implementation. The effort included drafting and enacting new regulations to implement Local Law 38, and incorporating the Local Law 38 mandates into the design of a new computer system. The agency also developed new operational procedures for a host of divisions involved in enforcing Local Law 38 mandates. These included: the Division of Maintenance (including the Emergency Repair Program, the Emergency Services Bureau and the Lead Program's Scoping, Procurement, Repair and Testing units), the Division of Code Enforcement, and the Housing Litigation Division. After these operational procedures were finalized, personnel in these divisions had to be trained accordingly. Finally, HPD met frequently with its sister agency, the Department of Health ("DOH"), to coordinate procedures relating to Local Law 38.

² Since HPD was denied access to correct some of these violations, HPD's Housing Litigation Division was forced to commence approximately 77 proceedings to obtain orders authorizing HPD to enter the subject apartment units to perform the necessary work.

5. In addition to implementing an enforcement program for Local Law 38, HPD also implemented Local Law 38 in its building management programs that oversee more than 13,000 apartment units. The Division of Alternative Management Programs, the Division of Property Management and the Division of Maintenance all had to redesign their operational procedures to, among other things, incorporate Local Law 38's annual notification requirements, and responses thereto. And after these procedures were finalized, personnel had to be trained accordingly.

6. Private multiple dwelling owners were also required to educate themselves and then to implement Local Law 38 requirements into their daily operations.³ In fact, the various associations of real property owners expended considerable resources educating their members on the new Local Law 38 obligations through their newsletters, conferences and meetings.⁴ Indeed, HPD gave presentations on Local Law 38 to many of the major real property owner associations, which were attended by hundreds of members.

7. If the judgment below is not stayed, Local Law 38's comprehensive framework for addressing lead paint hazards will be replaced by Local Law 1, including its antiquated mandate that all intact lead paint -- which is not hazardous -- must be completely abated immediately. Confusion will be the order of the day among City agency staff, private

³ There are approximately three million housing units in New York City, and approximately two-thirds of these units are estimated to contain lead paint.

⁴ See annexed affidavit of Joseph Strasburg, president of the Rent Stabilization Association of NYC, Inc., dated March 12, 2001, at ¶¶ 11-12, 14 ("Strasburg Aff."); the annexed affidavit of Nick LaPorte, executive director of the Associated Builders and Owners of Greater New York, dated March 12, 2001, at ¶¶ 7-8; the annexed affidavit of Dan Margulies, executive director of Community Housing Improvement Program, Inc., dated March 12, 2001, at ¶¶ 5-7; and the annexed affidavit of Steven Spinola, president of the Real Estate Board of New York, dated March 12, 2001, at ¶¶ 6-9.

landlords and tenants as they adjust to a completely different regulatory structure. For example, some of the thousands of Local Law 38 lead paint violations will have not yet been corrected, and will be the subject of litigation in housing court. Without a stay, tenants and HPD attorneys handling enforcement actions will be hard-pressed to insist that these lead paint violations be corrected, since such violations would have been issued pursuant to an inoperative law. Indeed, based on the trial court's decision in this action, since October 2000, Housing Court judges have postponed cases commenced by HPD's Housing Litigation decision that allege that an owner falsely certified correction of Local Law 38 lead paint violations.⁵

8. The burden on HPD of fully enforcing Local Law 1 (which has never occurred) would be enormous. HPD would have to redesign -- perhaps for only the brief appeal process -- numerous procedures that were just established for Local Law 38, and would then have to retrain its staff, some of whom were hired after Local Law 38 became effective, and thus have no familiarity or experience with Local Law 1. Such a massive retooling of its enforcement structure could obviously not be done overnight. In addition, HPD's enforcement obligations would increase dramatically. The time required for inspections of lead paint hazards would increase exponentially, since all intact paint surfaces would have to be tested initially with an XRF analyzer, and if negative, by a paint chip analysis to determine if such surfaces contained lead paint; a significant increase in inspection staff would consequently be needed. If owners did not correct these lead hazard violations, HPD would have to initiate a court proceeding to force the owner to do so, and if the litigation were ultimately not successful, would have to undertake such abatement jobs itself at a tremendous per apartment cost.

⁵ Similarly, as set forth in the accompanying affidavit of Joseph Strasburg, landlords would be faced with a list of questions as to their obligations in handling Local Law 38 lead paint violations. See Strasburg Aff. ¶ 9.

9. The burden on HPD of complying with Local Law 1 as a property owner would also be enormous. HPD, like any private owner, would be required to abate all lead paint, intact or peeling. As is true for HPD's enforcement activities, procedures would have to be redesigned, and staff retrained. More significantly, it is estimated that the number of lead abatement jobs that HPD would have to undertake would increase significantly, at an additional cost to HPD that could quickly run in the millions of dollars. In addition, HPD would have to develop and fund (estimated at \$5.2 million) a relocation program for families when extensive intact lead paint abatement jobs are performed.

10. The burden on owners to comply with Local Law 1 would similarly be enormous. Owners would have to be educated anew that Local Law 38 was no longer operative. In addition, any owner that received lead paint violations would be required to abate these violations within twenty-four hours, and would face lead abatement bills that could easily reach \$15,000 to \$20,000 per apartment. Many owners would be unwilling or unable to incur such costs. Alternatively, if history is any guide, some owners would attempt to correct the lead paint violations in a less expensive, albeit unlawful, manner, thereby dramatically increasing the dangers of lead poisoning.

11. Regardless of whether private owners or HPD abated these violations, all such abatements would have to utilize EPA certified workers in accordance with the new Title X regulations. See 40 C.F.R. Part 745. However, there is currently a severe shortage of EPA certified workers in the New York City metropolitan area, a fact which has been recognized by the Federal Department of Housing and Urban Development by its delay of the implementation of new lead paint rules as a result of the shortage. Local Law 1's mandate of abating intact lead paint would exacerbate this already severe shortage. As a result of this severe shortage of

qualified workers, it is probable that many jobs involving real lead paint hazards (such as units with deteriorated lead paint where children reside) would not be performed in a timely manner, thereby increasing the incidence of lead poisoning.

12. Finally, if Local Law 1 goes into effect and then defendants here ultimately prevail on appeal, Local Law 38 will come back into force. It is safe to say that at that point there would be massive further confusion among both private multiple dwelling owners and tenants as they try to determine their rights and responsibilities under a lead paint regime that has repeatedly changed. HPD would also have to change course yet again to begin enforcing and complying with Local Law 38. These repeated changes would place significant economic burdens on HPD as it once again would have to change its procedures and retrain its staff. The chaos that would result in Housing Court and among tenants and owners as the lead paint laws are repeatedly changed would not be conducive to the principal goal of any of the parties here: protecting children from lead paint hazards.

**MAINTAINING THE STATUS QUO DURING THE APPEAL WILL ENSURE THAT
LEAD PAINT ENFORCEMENT EFFORTS WILL NOT BE THROWN INTO
DISARRAY, TO THE DETRIMENT OF YOUNG CHILDREN**

13. As set forth in subsection A below, Local Law 38's enforcement program is a comprehensive scheme to address lead paint hazards. And as detailed in subsection B below, the development of that enforcement program required a significant effort among numerous divisions within HPD. Subsection B also discusses the enormous HPD effort that would be required to fully enforce Local Law 1. Finally, subsection C briefly describes the significant effort and costs that would be incurred by HPD divisions responsible for in rem housing if Local Law 1 was resurrected.

A. HPD's Local Law 38 Enforcement Program

14. HPD developed a Local Law 38 enforcement program by defining and outlining the process for receiving complaints, responding in a timely manner, issuing violations, and ensuring that violations were corrected. The process that evolved is as follows.

15. Complaints are received for Local Law 38 lead paint violations in the same manner that all complaints are received. Complaints are called into HPD's Central Complaint Bureau ("CCB") by tenants. CCB operates twenty-four hours a day, seven days a week, 365 days a year. Unlike most complaints, for lead paint hazard complaints CCB operators are required to obtain information regarding any children in the household, including the name and age of any children under six. Thereafter, the complaint is automatically forwarded as an immediate emergency to the appropriate Code Enforcement Borough Office, which ascertains the age of the building at issue. The Borough Office must schedule an inspection within ten days of the date of the complaint between June 1st and September 30th. During the heating season, between October 1st and May 31st, the inspection must be attempted within fifteen days. See NYC Administrative Code § 27-2056.7(a).

16. An inspection consists of an HPD code inspector checking all painted surfaces in the apartment unit for the presence of peeling or deteriorated paint and gathering pertinent information regarding children. At that time, the inspector also gives the unit occupants a copy of the DOH lead paint information pamphlet. See NYC Administrative Code § 27-2056.7(c). A copy of the DOH pamphlet is attached to the accompanying appendix as Exhibit H. After the inspector's supervisor authorizes issuance of the violation, the computer system automatically sends it to HPD's Emergency Services Bureau's ("ESB") owner notification computer mailbox.⁶ A printed Notice of Violation is also sent to the owner along with a copy of the HPD booklet on safe work practices. A copy of the HPD booklet is attached to the accompanying appendix as Exhibit I.

17. As a pro-active measure to protect children, during a non-lead inspection, HPD also conducts line-of-sight inspections for lead hazards in the entire apartment. Thus, if an HPD code inspector is in an apartment unit on a complaint unrelated to lead paint (e.g., a complaint for lack of heat and hot water) and observes a child under 6, the inspector conducts a Local Law 38 inspection and issues violations for any surfaces that are peeling or deteriorated.

18. After ESB receives a lead paint violation, the ESB supervisor sends the violation (along with any associated violations for the same address) via the computer system to an ESB researcher, who attempts to contact the owner. If the researcher speaks with the owner, the researcher informs the owner about the violations and what should be done to correct them.

⁶ If the peeling paint condition is in a building constructed after 1960, the process is slightly different, since Local Law 38's presumption of lead paint does not apply in post-1960 buildings. If the HPD code inspector finds a child under 6 and peeling paint, a request is made to the XRF unit coordinator to test the areas identified. The XRF coordinator advises Code Enforcement of the results, and if there are positive results, Code enters a lead violation, which is forwarded to ESB for owner contact as in the pre-1960 process.

If the owner states that he or she intends to comply, ESB sends a letter to the tenant informing the tenant that the owner has promised to comply by a certain date and that the tenant should call HPD if the owner fails to do so. ESB also sends a confirming letter to the owner. If ESB does not make contact with the owner, a letter is sent to the owner advising of the violations and warning that HPD will do the work if the owner does not do so in a timely manner. A notification letter is also sent to the tenant. See NYC Administrative Code § 27-2056.7(d).

19. In either event, the ESB unit informs the owner of the date by which the owner must correct the lead paint violation using the safe work practices specified in Local Law 38. See NYC Administrative Code § 27-2115(l)(1). This is the first date set for correction in the notice of violation. If the owner does not do the work by the first correction date, the work must then be done in the next 15 days (the second correction date), following DOH safety procedures. Id., see also NYC Health Code § 173.14. ESB monitors these dates by means of computer reports. A violation that has not moved out of ESB by the first correction date is sent to the Division of Maintenance Lead Program's Scoping Unit so that it can prepare a scope of work if HPD must correct the lead violations. If the owner does not correct the lead violation in a timely manner, the Scoping Unit creates an Open Market Order ("OMO") based upon the scope that was already prepared, and (depending on the size of the job) forwards it either to the Division of Maintenance Procurement Unit or the HPD site office to correct the violation.⁷

⁷ To ensure that the work is done following safe work practices, when an OMO is awarded to a contractor, HPD's Bureau of Environmental Hazards monitors the contractor's work and a post-work lead dust test is done when the job is completed to insure that all hazardous lead dust has been cleaned up after the work was completed. If the HPD site office does the work, site office staff monitor the work and BEH performs the lead dust test after the work is complete. When the dust test passes, the job is closed.

20. Should the owner certify that the condition has been corrected within the Local Law 38 correction period, a notice is automatically generated to the tenant.⁸ See NYC Administrative Code § 27-2115(1)(2). This notice indicates that the owner has certified that the condition has been corrected, and provides the tenant with information on how to challenge that certification. Whether or not a tenant protest is received, the Code Enforcement unit attempts to re-inspect the condition based on the owner certification. See NYC Administrative Code § 27-2115(1)(4).

21. Local Law 38 requires HPD to attempt such a reinspection within thirty days. During the reinspection, in addition to ensuring that the lead paint violations have been corrected, the HPD code inspector must also check all windows, doors and cabinets to make sure that the painted surfaces move freely and do not bind, since the correction of these binding surfaces is required when a lead violation is corrected. See NYC Administrative Code § 27-2056.5(b)(10 & 11). If the inspector finds noncompliance with any aspect of the required work, he or she must indicate that the original violation condition was not corrected (a false certification). See NYC Administrative Code § 27-2115(1)(4). A false certification is automatically referred to HPD's Housing Litigation Division for appropriate action in Housing Court.⁹ In addition, the notice that the violation has been falsely certified is sent to the Division of Maintenance Lead Program's Scoping Unit so that the lead violation can be properly

⁸ Certain lead paint violations require that a dust wipe test be submitted with a certification that the violation has been corrected. In such cases, the Code Enforcement Borough Office staff must fax a copy of the certification and the dust wipe test results to HPD's Bureau of Environmental Hazards for interpretation of the dust wipe. BEH then notifies the Borough Office whether the certification is valid.

⁹ As noted above, however, as a result of the trial court decision in this action, since October 2000, Housing Court judges have been postponing false certification cases brought by the Housing Litigation Division.

corrected. See NYC Administrative Code § 27-2115(l)(3). If the inspector finds that the condition has been corrected, the violation is dismissed. See NYC Administrative Code § 27-2115(l)(4).

B. HPD's Efforts to Implement a Local Law 38 Enforcement Program, and the Significant Effort Required to Implement Local Law 1

22. The creation of the Local Law 38 enforcement program required a major agency effort. Between July and November 1999, high level personnel from each program area devoted some to all of their time to implementing Local Law 38. These individuals had to consider all of the statutory time frames under Local Law 38, which added great complexity to HPD's existing operational plans, and in particular to the process for interaction between various program areas. It was also necessary to create a procedure to track the various time frame checkpoints; design the manner in which information and work should flow; and ensure that the program areas would be able to communicate to effectively enforce the law. In addition, the new computer system then in development had to be able to track all the information generated and to account for the information being transferred between program areas.

23. To establish a Local Law 1 enforcement program to fully comply with Local Law 1 would require a similar enormous agency effort. HPD would have to completely re-engineer all program areas that are currently enforcing Local Law 38. In addition, the computer system would have to be redesigned and reprogrammed. The cost to the City in time, effort and money would be enormous.

24. The following explains in precise detail the steps taken by various HPD units and divisions to implement Local Law 38; immediately following each paragraph on Local Law 38 implementation is a paragraph that describes the steps that would have to be taken to fully implement a Local Law 1 enforcement program.

25. The Code Enforcement unit implemented Local Law 38 by creating procedures for accepting complaints, conducting inspections, issuing violations, enforcing violations and, where appropriate, noting that a violation has been corrected. Code Enforcement personnel also underwent extensive training prior to Local Law 38's effective date. Both Central Complaint Bureau staff and inspection staff were trained on the new computer database. Central Complaint Bureau operators were also trained, since Local Law 38 complaints require operators to obtain more information than usual. Code Enforcement inspector field staff required training in: (a) Local Law 38 requirements regarding the surfaces and the definitions of surface conditions which required issuance of specific violations; (b) how to designate the surfaces in a uniform way (i.e., size of surfaces, compass location of wall, compass location of room) to ensure that the proper area is identified and remediated by the owner or HPD; (c) the new violation order numbers.¹⁰ Inspectors also received lead awareness training. In addition, prior to Local Law 38, there was no requirement regarding correction of binding surfaces as separate from other surfaces; inspectors were trained to inspect for these conditions upon reinspection. To meet the short timeframe of Local Law 38 implementation, Code Enforcement employed a train-the-trainer program in which Supervisory Inspectors were trained and then trained the inspectors in the Borough offices.¹¹

¹⁰ Prior to Local Law 38, there was only one order number written for possible lead paint – 555. Local Law 38 required the creation and use of six individual violations which could be issued by an inspector, based on the age of the building and the type of surface where the violation existed, because lead hazard conditions on particular surfaces require different corrective actions on the part of the owner.

¹¹ Due to the short inspection timeframes and the additional time necessary for each inspection, Code Enforcement hired approximately 39 new staff to meet these new obligations.

26. Under Local Law 1, the Code Enforcement unit would be forced to drastically increase its activities since Local Law 1 requires lead paint violations to be written where a child six or under resides regardless of the condition of the paint. This will result in a significant increase in the number of Local Law 1 inspections performed, both complaint driven inspections and line of sight inspections. In light of the probable increase in complaints and inspections, a shorter time frame in which to conduct inspections, and the matching of test results with inspections, it is anticipated that the Code Enforcement unit would require a significant increase in staff.

27. The Code Enforcement unit would also have to design new business rules for the design of a new computer program for Local Law 1. After design, programming and testing of the new computer program, Code would need to retrain Inspectors and Central Complaint Bureau staff on the new computer program and rules. Procedures would also need to be established and inspectors trained on how to evaluate the extent of testing required when no peeling paint is observed in a dwelling unit in which a child six years of age or under resides.

28. The Emergency Services Bureau ("ESB") and the Emergency Repair Program ("ERP") implemented Local Law 38 by embarking on a major staff hiring and training initiative, as well as completing its operational plans and protocols. Fifty inspectors and supervisors received classroom and on-the-job training which explained the mandates and the enforcement of Local Law 38, including the violation issuance process; new definition of lead paint hazard; lead repair requirements; interim control procedures for the first correction period; Health Code § 173.14 safety measures for the second correction period; binding surface testing; cleaning and dust wipe protocols. In addition to in-house training, ESB and ERP contracted with outside educators to provide training to over 250 staff members in Inspector, Risk Assessor,

Lead Abatement Worker, Lead Abatement Supervisor and Lead Awareness courses. Local Law 38 was explained as a significant portion of the training. Major training efforts also focused on ESB staff. Owner notification staff were instructed in explaining the new law to landlords and tenants, including explaining to owners how to safely remediate peeling paint, and how to certify that corrective action was taken.

29. To implement Local Law 1, ESB and ERP workload would increase exponentially. Specifically, under Local Law 1, every code inspection in which a child was observed in an apartment would have to be referred to ESB for testing of intact surfaces. For areas that tested negative or inconclusive with an XRF machine, ESB would have to perform paint chip sampling and analysis. (The process of obtaining a paint chip sample also creates a hazard, since the surface to be tested must be broken, which may generate lead dust.)¹² Further, to comply with Local Law 1, the ESB scoping unit would have to write scopes that required complete abatement of any surface that tested positive for lead paint, whether or not that surface was intact. We expect that owners who are informed that a scope of work to correct violations includes sheet rocking of a unit would be generally unwilling -- and indeed often economically unable -- to perform the work. As a result, HPD would have to litigate to force owners to perform this work. If such litigation is ultimately unsuccessful in remediating the violation, HPD would have to perform the work to remediate. The cost of full abatement of all lead paint surfaces would be enormous. Moreover, these costs could further increase in units where extensive abatement was mandated, and the occupants would have to be relocated during the abatement process.

¹² For post-1960 buildings, inspectors would be unable to write any violations upon a first inspection, since the presumption does not apply, and would have to refer the units to ESB for testing of the entire unit, both peeling and intact paint.

30. A significant increase in ESB/ERP staff would be required to perform all this work. As noted, Local Law 1 mandates XRF testing of intact surfaces, and paint chip sampling for those areas where XRF test results are negative or inconclusive. (Areas from which paint chips are taken would need to be patched so that they are not hazardous.) This testing and patching process will quadruple the time needed for one scoping inspection. HPD is now able to perform approximately two scoping inspections per day; under Local Law 1, scoping teams would not be able to do more than one per day. As a result, a significant increase in technical staff would be needed. Clerical staff would also be required to perform an enormous amount of data entry in order to track the results of testing and scoping. In addition, many more lead abatement workers and supervisors would be needed to actually perform abatement work, since the amount of time necessary to perform the work will increase dramatically, as will the number of jobs HPD performs as a result of owners' failure to do so. A significant increase in the number of industrial hygienists to do dust wipe clearance would also be required, and of staff to monitor ongoing work and coordinate responses among the various involved programs.

31. ESB staff would also have to be educated regarding the new law, particularly to explain the differences between Local Law 38 and Local Law 1 to confused landlords and tenants.¹³ New procedures would have to be implemented for referring cases to the Housing Litigation Division when owners fail to correct, particularly since, under Local Law 1, the statutory time period for an owner to correct a lead violation is 24 hours.

¹³ HPD would also have to retrain all existing staff and train all new staff involved in lead paint. This is a massive undertaking which would involve for ESB technical staff: writing and teaching new protocols for inspections, including a much more extensive use of XRF instruments, due to the requirement that all intact surfaces be tested; extensive paint chip sampling, and patching and painting after sampling.

32. To implement Local Law 38, ERP and ESB also entered into 12 contracts for lead hazard reduction at a cost of \$12 million. Contracts were also written and let for dust wipe tests and analysis. HPD is also currently bidding out 7 additional contracts to fulfill the requirements of Local Law 38.

33. If Local Law 1 was fully in force, HPD's requirements contracts would have to be modified to change the scope of work from the wet scraping done under Local Law 38 to the abatement method required under Local Law 1. The added burden of performing abatement work under Local Law 1, as noted above, will undermine HPD's ability to procure abatement services under current contracts let for bid.

34. The cost and difficulty of performing Local Law 1 abatements would also be exacerbated by recently enacted EPA regulations, mandating that all workers, contractors and supervisors involved in Local Law 1 abatements be trained and certified as Lead Abatement Workers and Supervisors. However, since EPA did not offer training and certification programs until May 2000, the availability of certified workers is scarce. At present there are only eight organizations in the New York City area that offer EPA training and certification courses, and not all these organizations offer these courses to everyone. Although HPD currently requires that its contractors obtain EPA certification, the increase in abatement work resulting from Local Law 1 would certainly strain the already severely limited resource of trained workers available to the City as well as to private owners.

35. To implement Local Law 38, HPD incorporated the laws, various time frames and mandates into the design and program of a new computer system that was being developed. A component of the new computer system was designed that could calculate, flag, and track each lead complaint, route the complaint to various agency borough offices, and ensure

that they were addressed expeditiously. This process involved: obtaining budgetary authority; system design by a user team and analytic consultants; programming by consultants; testing by the users and purchase of hardware. The cost of the new computer system was approximately \$1.7 million overall. Staff from all areas of the agency were involved with assisting in design of the system. In addition, staff throughout the affected program areas were trained to use the new computer system. This training was intensive and time-consuming, given the complexity of the system developed to implement Local Law 38 and the agency-wide impact of Local Law 38.

36. If Local Law 1 was in force, the new computer system would require extensive reprogramming. To redesign the existing system to conform to Local Law 1's requirements would require a significant additional investment in staff time and tax-payer funds. System design and programming will again be done by users and consultants. This will involve de-engaging modules or flows dealing with Local Law 38 procedures and designing procedures to handle Local Law 1 workflow. The redesign would then have to be programmed and then tested. Once the system is established, HPD would have to once again train all program personnel to use the system in implementing Local Law 1.

C. The Effect of Local Law 1 on the City's In Rem Housing Stock

37. In addition to implementing a process for enforcement of Local Law 38, HPD as the owner of hundreds of multiple dwelling buildings implemented Local Law 38 in its building management programs. The Divisions of Alternative Management Programs, Property Management and Maintenance all modified their operational procedures. For instance, Property Managers were trained to perform visual assessments to identify peeling and deteriorated paint surfaces in order to respond more effectively to Local Law 38 notifications and complaints.

38. HPD, like any private owner, would be greatly impacted by Local Law 1's mandates that all lead paint, intact or peeling, in a unit with a child six years of age or under, be

completely abated. The residents of these in rem buildings, as tenants in private dwellings, would also be detrimentally affected. Tenants would likely be subject to lengthy inspections since every surface and component in an apartment unit would have to be tested. Moreover, if surfaces could not be tested with an XRF, paint chip samples would have to be taken, and the testing surface would have to be patched. I am informed by my colleagues at DOH that these testing requirements could easily take more than seven hours to complete. Most troubling, however, is the significant increase in unnecessary lead abatements, with the added risk that tenants could be subject to significant lead hazards during the abatement.

39. Finally, if abatements are extensive and it is not feasible to perform a room-by-room abatement, families would have to be relocated. The process of relocation would be a significant upheaval for most families. HPD also would have to develop a new set of procedures, as well as fund for and identify appropriate relocation sites. It is estimated that the City, as owner, could expect to spend millions on relocation costs for tenants in in rem buildings.

40. For the foregoing reasons, it is respectfully requested that the defendants' motion be granted.

Dated: March 12, 2001.
New York, New York



HAROLD M. SHULTZ