

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

2007 SEP 19 P 11:01

In Re HERBERT E. THAYER, JR.,)
and KAREN THAYER, d/b/a)
HERB & KAREN THAYER PAINTING)

Washington Superior Court)
Docket No. 627-9-07 Wncv)
SUPERIOR COURT)
WASHINGTON COUNTY)

ASSURANCE OF DISCONTINUANCE

WHEREAS Herbert E. Thayer, Jr., and Karen Thayer (“Herbert and Karen Thayer” or “the Thayers”), husband and wife, are residents of Walden, Vermont;

WHEREAS the Thayers own and operate an unincorporated painting contracting business under the name “Herb & Karen Thayer Painting”;

WHEREAS in April 2007, the Thayers entered into a contract to paint the exterior of a five-unit apartment building at 175 Main Street in Montpelier, Vermont, owned (but not occupied) by Leeds Brewer and constructed in 1850;

WHEREAS on April 23, the owner of the building next door indicated that she witnessed Mr. Thayer water-blasting the exterior of the building at 175 Main Street. According to the neighbor, Mr. Thayer washed the surface down to bare wood in many places and showered the neighbor’s property with paint chips, including windows, birdfeeders, composters and perennial gardens, and did not use plastic sheeting to cover the area surrounding the work;

WHEREAS a complaint to this effect was filed with the Montpelier Health Officer, Glenn A. Moore, who investigated the matter;

WHEREAS, according to the Health Officer’s investigation, there were a large number of paint chips around the apartment building and garage, and the building owner confirmed that water-blasting of paint had taken place;

Office of the
ATTORNEY
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109 State Street
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WHEREAS the Thayers thereupon stopped work on the building at 175 Main Street;

WHEREAS due to possible lead contamination, the Health Officer ordered the building owner to immediately retain the services of a Vermont certified lead abatement consultant to perform a risk assessment of the property and arrive at a remediation plan to be approved by the Health Officer;

WHEREAS prior to this time Herb Thayer had already retained the services of Clay Point Associates due to the neighbor's complaints;

WHEREAS such a risk assessment was conducted by Clay Point Associates, Inc., and a remediation plan arrived at, requiring, among other things, a cleanup of paint chips in areas at and surrounding the 175 Main Street property;

WHEREAS remediation was carried out by EnviroVantage, Inc., in June 2007, at a cost in excess of \$30,000, for which the Thayers or their insurance company was responsible;

WHEREAS on July 17, 2007, the Health Officer issued a letter stating that the remediation had been completed and painting could resume;

WHEREAS lead poisoning poses a serious health hazard for Vermonters, particularly young children;

WHEREAS lead is deposited in the bones, where it maintains a half-life of up to 19 years and can cause irreversible damage that results in long-lasting or permanent consequences;

WHEREAS even very low levels of lead can cause decreases in IQ and reading and arithmetic skills, as well as problems with attention, executive function, visual-motor integration, social behavior and motor skills;

WHEREAS lead exposure has also been associated with school failure, delinquency and criminal behavior;

WHEREAS lead paint is the major source of lead exposure to young children in Vermont;

WHEREAS toxic lead dust is created by day-to-day use of painted friction surfaces such as windows and doors, and by deteriorated paint and unsafe home renovation;

WHEREAS in addition, soil around older housing can be lead-contaminated from paint dust and chips;

WHEREAS lead poisoning occurs when very young children get paint dust on their hands and put their hands in their mouths;

WHEREAS lead paint was not banned in Vermont until a federal prohibition on the product went into effect in 1978;

WHEREAS the State of Vermont has identified a set of practices for painting contractors to minimize the risk of lead contamination and protect human health;

WHEREAS among those standards are the following, set out in 18 V.S.A.

§ 1759(a)(1)(A)-(C):

(A) A general prohibition against lead-based paint removal by burning, water blasting, dry scraping, power sanding, and sandblasting;

(B) Use of good work practices and safety precautions to prevent the spread of lead dust, including limiting access to work areas to workers, covering the work area with six mil polyethylene plastic or the equivalent, wearing of protective clothing by workers, protecting belongings of occupants by covering or removing them from the work area, misting painted surfaces before disturbing the paint and wetting sweeping debris; and

(C) At the conclusion of the work, specialized cleaning of the work area using methods designed to remove lead dust;

WHEREAS the Thayers water-blasted paint at the 175 Main Street property that led to the Health Officer issuing his order in April;

WHEREAS under a regulation promulgated by the U.S. Environmental Protection Agency (EPA), 40 C.F.R. Part 745, Subpart E, a person who renovates a pre-1978 multi-family dwelling—including scraping or other such activities that may generate paint dust—must provide written notice of the planned work to both the owner of the building and each unit in the dwelling, such notice to include (a) provision of a prescribed EPA pamphlet entitled “Protect Your Family From Lead In Your Home” to the owner of the property, and (b) written notice to each dwelling unit describing the general nature and locations of the planned renovation, the expected starting and ending dates, and a statement of how the occupant can obtain the EPA pamphlet from the renovator at no charge, 40 C.F.R. § 745.85(b);

WHEREAS under 40 C.F.R. § 745.85(b), the renovator must document these notifications by obtaining written acknowledgements of receipt or certifying the renovator’s efforts to notify;

WHEREAS the Thayers did not notify the occupants of 175 Main Street of their planned renovation of that property;

WHEREAS the Vermont Attorney General alleges that Herbert and Karen Thayer engaged in an unfair trade practice under the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), by failing to follow prescribed practices to minimize the hazard of lead paint to the occupants and neighbors of that property, and by failing to comply with EPA notification requirements;

AND WHEREAS the Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459;

THEREFORE, the parties agree as follows:

1. In the course of undertaking any future painting or other renovation work on a pre-1978 rental target housing in Vermont, as that term is defined in Chapter 38 of Title 18, Herbert and Karen Thayer shall undertake the following practices:

Setting up the work area

- a. Tape or staple polyethylene plastic of at least 6 mil thickness ("poly") to the underside of any clapboards and extend at least ten feet out;
- b. When working, check where chips *are* falling, to determine if additional poly is required;
- c. Place weights or wire wickets to hold the poly in place; never use toys or items that should not be contaminated for weights;
- d. Tape overlapping areas on poly sheets together;
- e. Never use a cloth tarp by itself to collect paint chips. (Cloth is hard to decontaminate and allows fine lead dust to pass through to the ground.);
- f. If necessary to prevent a ladder from slipping, cut slits in the poly and place the ladder footings through the slits and tape the poly to the ladder;
- g. Close all windows and tell the tenants to keep them closed and to stay out of the work area;
- h. Warn the occupants of any adjoining property with a property line within 150 feet of the structure being worked on (including property across the street or road) to keep their windows closed and stay out of work area;

- i. Post warning signs on inside of doors that exit into the work area, and warning tape, rope or some other barrier in high-traffic areas to limit access to the work area;
- j. Move any children's toys and cover sandboxes;
- k. Cover vegetable gardens, shrubs and similar areas with poly or a poly "tent";
 - l. If it is necessary to work from a lower roof to reach an upper level, do not put poly on a sloped roof;
 - m. Delay the work if it is a windy or rainy day; any time chips are observed falling outside the set-up area, either wait for calmer conditions to work, or put more poly on the ground;
 - n. Stop all work before rain occurs with enough time to clean up contamination from flat surfaces and ground poly. (Heavy rain will wash chips and contamination from the poly very quickly.) If rain occurs before the poly is cleaned, carefully fold the poly on itself and discard; do not roll poly up for reuse;

Exterior Paint Stabilization

- o. Will not use power washing, power sanding or grinding, dry scraping, burning, or sandblasting, all of which can cause dangerous amounts of contamination, except that, after all uncontact paint has been removed, may use low impact washing techniques for cleaning only, as long as such activity does not disturb paint;
- p. Minimize dust and other debris; if there is visible airborne dust during any work activity, stop that activity and assess what is needed to prevent dust from being produced;

- q. If paint chips or debris is noticed outside of the set up poly, increase the area to be covered or use a different method or technique;
- r. Once work begins, try to complete all work in the set up area before moving to another area;
- s. Do not smoke or eat in the work area;
- t. After work has been completed, wash hands and face before eating or smoking;
- u. Remove contaminated work clothes before leaving the job site and launder them separately;
- v. Mist surfaces with water before scraping and scrape loose paint (including deteriorated, peeling, chipping, flaking or chalking paint), or drape a damp cloth over the paint scraper while scraping loose paint;
- w. Use only sharp scrapers, sharpening metal scrapers prior to use and re-sharpening them several times during a typical workday (carbide scrapers should be replaced if dull and will last much longer than steel blades before becoming dull);
- x. If necessary, use specialized detail scrapers with different shaped blades on ornate woodwork details;
- y. Fill deep gaps with suitable filler material for exterior use, and caulk cracks in the siding;
- z. Use wet sandpaper to smooth edges;
- aa. Put the first coat of primer or paint on before inclement weather;

bb. Do not scrape more surface than can be covered in the same workday. (Rain will cause paint on previously scraped unprimed edges to lift and will require additional stabilization before priming);

cc. Never apply paint or primer to wet wood. (Ideal moisture content for painting is 12% or less.);

dd. Apply a second coat when the first is dry;

ee. Cover primer with additional paint within 30 days. (The sun will start to break down the surface of the primer and may result in poor adhesion if too much time passes before the next coat of paint is applied);

Clean up

ff. Clean the work area at the end of each job or the end of each workday;

gg. Pick up larger debris with wet paper towels and dispose in poly contractor bags of at least 6 mil or doubled poly garbage bags;

hh. Wet-sweep or HEPA-vacuum;

ii. HEPA-vacuum flat surfaces and horizontal ledges where paint chips or dust are likely to have collected, including window wells, exterior sills, tops of window and door trim or other flat surfaces in the work area;

jj. Remove protective shoe covers and place on the poly;

kk. Fold up the poly from all corners and place in poly contractor bags of at least 6 mil or doubled poly garbage bags;

ll. If paint chips have fallen on a deck, porch or patio, wet-sweep or HEPA vacuum and dispose of debris in poly contractor bags of at least 6 mil or doubled poly garbage bags;

mm. Avoid HEPA-vacuuming large amounts of soil or wet debris as this can damage HEPA filters;

nn. Change HEPA vacuum bags at the end of the workday if any damp material has been vacuumed up; and

oo. At the end of the work day, change out of work clothes and wash up.

2. The Thayers shall watch the DVD on renovation practices that the Attorney General's Office provided to them through their attorney.

3. In the event of a violation of any of the required practices described in paragraph 1, above, other than a *de minimis* violation, Herbert and Karen Thayer shall pay to the State of Vermont a liquidated civil penalty of up to \$10,000.00 (ten thousand dollars), regardless of their ability to pay, in addition to the cost of the cleanup or other required remediation of the work site; such amount shall be determined by the Attorney General's Office based upon the degree of violation and other available evidence.

4. Based on their demonstrated inability to pay, and on their having already paid a substantial amount, in relation to their circumstances, toward remediation of 175 Main Street and environs, Herbert and Karen Thayer are not required to pay a civil penalty to the State in connection with the contamination associated with that site, *provided that* if it is determined that the financial information or the information on painting work done in the past two seasons (2006-2007) provided by the Thayers to the Attorney General's Office is inaccurate in any material respect, the Attorney General may seek to impose an appropriate penalty in that connection.

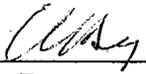
5. At least five (5) days prior to undertaking any painting work on pre-1978 rental target housing in Vermont through 2009, Herbert and Karen Thayer shall notify the Attorney General's Office in writing of the nature of the work, the location, the name and address of the property owner, and the expected starting date.

6. This Assurance of Discontinuance resolves all existing claims the State of Vermont may have against Herbert and Karen Thayer stemming from violations of the Vermont Consumer Fraud Act in connection with painting work disclosed by the Thayers to the Attorney General's Office in the course of its investigation.

Date: 9/7/07

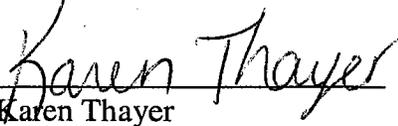
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

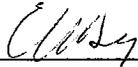
Date: 9/9/07

by: 
Herbert Thayer

by: 
Karen Thayer

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