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Via Electronic Mail Only

October 25, 2018

E. Bonnie Silvers, Chair
Southern Berkshire Regional School Committee
ebsilvers1@gmail.com

Re: Potential Remediation of Lead Paint at South Egremont School

Dear Bonnie:

This letter is intended to provide a general overview of the process for potential remediation of lead paint at the South Egremont School and to facilitate your access to government resources regarding child-occupied facilities where lead-based paint is present. For any specific questions regarding lead law requirements and/or remediation, a more detailed analysis of applicable laws under the specific facts of the inquiry will be required.

As indicated by Section 5, Conclusions, of the Limited Lead Paint Determination Report from ATC Group Services LLC, dated September 24, 2018, there are several legal requirements that apply to renovations in buildings containing lead-based paints. In particular, the presence of lead-based paint triggers requirements related to written programs, medical monitoring, exposure assessment testing, engineering controls, and waste-disposal under Occupational Safety and Health Administration's (OSHA) "Lead in Construction Regulations", located at 29 CFR 1926.62, as well as certain licensing, education, work practice, public notification, cleaning, inspection, and recordkeeping requirements under the Massachusetts Division of Occupational Safety "Deleading and Lead-Safe Renovation Regulations" regulations, located at 454 CMR 22.00 *et seq.* (hereinafter, the "Lead-Safe Renovation Rules").

Note that in most of the United States, United States Environmental Protection Agency (EPA) regulations govern the lead-safe renovation of buildings. However, the Commonwealth of Massachusetts is one of the few states that has been authorized by EPA to regulate its own lead-safe renovation within state boundaries and, due to the presence of significant levels of lead-based paint at the South Egremont School, to the extent any renovation and/or remediation is conducted at the South Egremont School, it must comply with the Commonwealth's Lead-Safe Renovation Rules. For reference, the EPA has published guidance for Lead-Safe Renovation at https://www.epa.gov/sites/production/files/2013-11/documents/steps_0.pdf and https://www.epa.gov/sites/production/files/documents/renovaterightbookletsept2011.pdf, and the Commonwealth's Executive Office of Labor and Workforce Development has posted a comparison of federal and state lead-safe renovation requirements at http://www.mass.gov/lwd/labor-standards/deleading-and-lead-safety/documents/comparison-of-epa-and-dls-rrp-rule-requirements.html.

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When renovation and/or remediation is conducted in compliance with the Commonwealth's Lead-Safe Renovation Rules, a post-renovation cleaning and testing process is carried out by the certified lead-safe renovation contractor. The Commonwealth's Lead-Safe Renovation Rules set forth Procedures for Post-renovation Cleaning Verification at 454 CMR 22.91, Appendix 1, a copy of which is available at https://www.mass.gov/files/documents/2017/10/23/454cmr22.pdf.

However, it is not clear whether the Town of Egremont complied with Lead-Safe Renovation Rules for several reasons. Specifically, by letter to counsel for Egremont dated September 14, 2018, a draft of which was reviewed and approved by the School Committee on or about September 13, 2018, our office requested documentation of Egremont's compliance with Lead-Safe Renovation requirements, but to date we have not received any such documentation from Egremont. Furthermore, as noted by our September 14 letter, photographs that show the building elevated from its foundation during Egremont's renovation work appear to reveal one or more instances of noncompliance with Lead-Safe Renovation Rules. As such, we have not received any information indicating that Egremont satisfied any of the requirements of the Lead Safe Renovation law.

I must caution that even if one or more Lead-Safe Renovation Rules, including in particular the Lead-Safe Renovation Procedures for Post-renovation Cleaning Verification, were satisfied during the renovations and/or retroactively, that would not establish conclusively that the building is "safe" for occupancy by children. Lead-Safe Renovation Procedures are designed to protect against unnecessary disturbance of lead-based paint and lead dust contamination resulting from renovation/deleading work, but they do not provide procedures for remediation of lead-based paint that is in poor condition. As such, we continue to recommend that the School Committee engage a qualified contractor to determine whether the South Egremont School building is safe for occupancy by children notwithstanding the presence of lead-based paint.

For example, for residential buildings in Massachusetts, building owners are required to comply with the Massachusetts Lead Poisoning Prevention and Control regulations, located at 105 CMR 460.00 *et seq.*, prior to occupancy of the building by a tenant. *See also, e.g.,* 606 CMR 7.07(16)(a) (requiring Massachusetts group child care programs serving children younger than five years old to comply with Lead Poisoning Prevention and Control regulations). These regulations are designed to prevent lead poisoning of young children from the presence of lead in residential buildings, particularly older buildings that contain lead-based paint. While the lead-paint requirements of these regulations do not expressly apply to public school buildings, they do provide guidance as to what factors may make a building unsafe for occupancy in relation to the presence of lead. In particular, under these regulations, a Lead Violation occurs when any "surface that meets the definition of Lead Hazard [is present] in a residential premises of a child younger than six years old." 105 CMR 460.020. "Lead Hazard" means "a surface with dangerous levels of lead that meets the definition of Loose, Accessible, Mouthable Surfaces, Moveable, Impact Surfaces, or Friction Surfaces." "Loose" means that paint, other coating, plaster or putty on a surface is peeling, flaking, chipping, crumbling, cracking, deteriorated or damaged in any manner"; "Accessible, Mouthable Surfaces" means "windowsills five feet or less from the floor, stair tread, or ground; handrails; and railing caps"; "Moveable, Impact Surfaces" means "surfaces

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on windows with sills five feet or less from the floor, stair tread or ground, that either move or come in contact with window surfaces that move, and include, but are not limited to, window sashes, wells, parting beads, stops and windowsills"; and, "Friction Surfaces" means "doors, door jambs, and stair treads." *Id.*

These Lead Poisoning Prevention and Control regulations provide several avenues for making buildings safe notwithstanding the presence of lead-paint, including removing and replacing components with lead hazards, containing lead hazards using approved coverings and encapsulants, and implementing certain safety precautions and clean-up procedures. *See, e.g.,* 105 CMR 460.100 *et seq.* As such, while these requirements are not specifically applicable to public school buildings under the terms of the regulations, many of the lead hazards identified for residential buildings could potentially be present in the South Egremont School and could impact whether the building is actually "safe" for occupancy by the young children enrolled in the South Egremont School program.

The Lead Paint Determination Table attached to the report from ATC dated September 24, 2018, includes data showing the presence of lead paint in mg/cm^2 and corresponding notes on the condition of the paint in numerous testing locations throughout the interior and exterior of the South Egremont School building. Given the definitions in the Massachusetts Lead Poisoning Prevention and Control regulations cited above, the indication in ATC's Lead Paint Determination Table that the condition of paint is "Poor" in many testing locations throughout the building raises concerns as to whether the paint in those areas is safe; however, it is unclear exactly how the notes on the condition of the paint, ranging from Good to Fair to Poor, correspond to the definition of a Lead Hazard under the regulations cited above, if at all.

Finally, you have asked if I could provide you with links to any other helpful resources. The Commonwealth's Trial Court Law Library has posted many resources regarding the legal requirements for lead remediation online at https://www.mass.gov/info-details/massachusetts-law-about-lead-poisoning-and-control. For information regarding the risks of lead paint exposure and/or poisoning in children, the Commonwealth's Childhood Lead Poisoning Prevention Program has published numerous educational resources in multiple languages online at https://www.mass.gov/lists/lead-brochures-and-fact-sheets.

Please feel free to contact our office with further questions. Thank you.

Very truly yours,

Peter C. Sumners