

Office of the
NYCHA FEDERAL MONITOR
Bart M. Schwartz
Pursuant to Agreement dated January 31, 2019
415 Madison Avenue
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New York, New York 10017
212.817.6733

May 30, 2019

VIA EMAIL

Kathryn Garcia
Interim CEO and Chair
New York City Housing Authority (NYCHA)
250 Broadway
New York, NY 10007

Re: Concerns Relating to NYCHA's Handling of Lead-Based Paint Imperatives

Dear Interim CEO and Chair Garcia:

Because of your testimony before the City Council on May 7th - and considering our meeting at City Hall on May 22nd - I have concluded that it is necessary to set out in writing the reasons that caused me to express concern to you about NYCHA's efforts to comply with the letter and spirit of the January 31st Agreement into which NYCHA entered with federal authorities (the "Agreement").

I am focusing now on lead-based paint because of the seriousness of the issue and the associated urgent responsibilities of NYCHA to protect children under six, the most vulnerable segment of the population in NYCHA housing. I also raised these issues in a meeting with your office on May 14th.

Initially, as discussed below, I believe that your testimony before the City Council on May 7th omitted material details about lead paint issues that are required to be addressed now and in the future by the NYCHA, and thereby may have resulted in a misleading impression being given to City Council members and the public about how these issues are being addressed.

Failure to Make an Acceptable Effort to Identify Lead Paint Units Inhabited or Routinely Visited by Children Under Six

Regarding NYCHA's obligations under the Agreement respecting "Priority Action Units and Common Areas" [see Exhibit A, Paragraphs 4 and 5], in the prepared remarks you read to the Council, you said "as of May 6, [2019] NYCHA has

corrected presumed lead paint failures in 2,336 apartments with a child under six and attempted to remediate 223 apartments.” I believe that this left the Council with the misimpression that these 2,559 apartments represented the complete universe of apartments that NYCHA, after conducting proper diligence and investigation, could reasonably identify as being occupied by children under six. Indeed, in an Authority with over 400,000 known residents, and perhaps as many as 200,000 additional off-the-record inhabitants at any given time, the Council and public would have benefitted from knowing that NYCHA relied solely on resident disclosure forms to determine where children under six reside. In response to my questions to you, you informed me that NYCHA made no other efforts to identify children at risk by virtue of inhabiting or routinely visiting lead paint units. This reliance solely on resident disclosure forms to identify children at risk was confirmed by various NYCHA employees during Monitor team interviews. NYCHA did not speak with or survey building managers and superintendents or others, did not conduct any site visits, did not review any other city records and/or engage in any other actions that might reasonably lead to the identification of apartments occupied by children under six.

I have also confirmed that NYCHA’s own Resident Engagement unit was ignored in this identification process, despite that communicating with residents is its job. Indeed, recent press stories report that NYCHA is sending its employees to developments to convince residents to support NYCHA financing and other plans. (See NY1 – “NYCHA Goes Door to Door to Sell Its Development Plan”). Look at NYCHA’s efforts at the Fulton Houses to get residents to understand new development ideas and to support them by sending emissaries to the development for face to face meetings and compare it to the total lack of effort to personally contact residents about the safety of their youngsters and accurately determine where they are living and regularly visiting.

This is not the first time I am raising this issue and I raised it long prior to your May 7th testimony.

Under the Agreement, NYCHA is also required to identify apartments that NYCHA has reason to believe are routinely visited by a child under the age of six. However, despite this vital obligation, it appears that no effort whatsoever was made to identify apartments in which children under six regularly visit. For example, it is common knowledge that children visit grandparents in senior developments while their parents work or are unavailable. All one needs to do is stand outside a senior development to see all the children who visit there. I am certain that NYCHA employees at these senior developments have reason to believe that many apartments in these developments are routinely visited by children under six.

In response to a question posed by Council Member Barron on May 7th you testified that NYCHA does not know “the number of apartments where children under six are living with lead paint.” With this I agree, but the Council and public

have a right to know how little effort NYCHA undertook to identify such apartments. The health and welfare of NYCHA's children and the letter and spirit of the Agreement require much greater efforts than those in which NYCHA is presently engaging.

Potentially Setting NYCHA Up for Failure Based on Unnecessarily Optimistic XRF Testing Projections

With respect to your testimony regarding the recently commenced XRF testing, based on my office's discussion with experts, and certain NYCHA personnel, I believe that there is currently very little likelihood that XRF testing of the 135,000-targeted units can be completed by the end of 2020 and that number may grow if your "exemptions" are not supported. Such a schedule requires the testing of some 6,750 units per month (based on 20 months). Data posted on NYCHA's website shows that (including three days in April when 54 units were tested) only 1,740 apartments were tested through May 17th (1.3% of the total). Continuing the current pace of testing (109 units per day), approximately 2,300 units would be tested in an average month, which would mean it would take approximately 58 months to complete the testing of all 135,000 units.

When I first raised this issue, I was told by your office that the 2020 date in your testimony was based on the contract language. I do not believe that was a proper basis for your testimony in view of the facts known.

In addition to the imperative of mitigating risks to children, the proper scheduling of the completion of testing is vitally important to the prioritization and implementation of the abatement process, as well as determining when funding for abatement must be made available.

Exempt Unit Status and Supporting Records

You also testified that documentation used by NYCHA to support exempting over 50,000 pre-1978 apartments from lead paint status was provided to the Monitor. In my view, you should have made plain that the section of the Agreement to which this pertains [Exhibit A, Paragraph 6] required NYCHA to submit these documents "to the United States" so that "HUD and SDNY" can review the documents and in their discretion "may reject that determination" of exempt status. We understand that such review is ongoing. Your testimony incorrectly left the impression that the Monitor had somehow accepted the purported documentation or that the United States Attorney's office had done so.

No Disclosure of Painting Contractor Transgressions

You have characterized NYCHA's relationship with the Monitor as a "partnership." However, my office had to learn through its own efforts of multiple painting vendors having been caught violating lead safe work rules by DSNY

inspectors assisting NYCHA. These fundamental rules help insure the health and safety of residents and workers alike. We continue to look at other such possible violations to ascertain the extent of the issue. While the work of the DSNY inspectors on behalf of NYCHA is commendable, if NYCHA considers the Monitor to be a partner, it should be routinely disclosing such problematic behavior to my office upon it being discovered or even reasonably suspected.

Accountability

Considering the foregoing, perhaps the most frustrating recent development has been that at the meeting of May 22nd, despite NYCHA's claims of diligent efforts to address the lead-based paint crisis, you and your staff were unable to identify for me the person at NYCHA in charge of and accountable for getting this most urgent work done promptly and correctly.

Immediate Actions That Should Be Taken by NYCHA Regarding Lead

I believe that the following are required:

1. Promptly take steps to clarify your testimony for the City Council and the public.
2. Immediately develop a plan acceptable to the Monitor to identify apartments in which children under six reside or regularly visit and make that plan public.
3. Arrange priority XRF testing of apartments containing lead paint and routinely visited by children under six not previously scheduled for testing and make that schedule public.
4. Announce a realistic schedule for completing the current XRF testing.
5. Meet with the Monitor and representatives of HUD, and the U.S. Attorney's office, to (i) disclose and explain any pending inability to promptly and lawfully comply with lead-based paint responsibilities under the Agreement and federal law and to (ii) discuss your purported evidence supporting unit exemptions, including giving a presentation supporting your claims of exemption, and then, make the evidence public.
6. Establish a "Lead Project Page" on the NYCHA website which is easily accessible and populate that page with project details, goals and status reports as well as how NYCHA is insuring compliance with the Agreement and federal law.

While this letter is focused on issues relating to lead because of the severity of the issues raised and their effect on children under six, it should not be taken as an indication that I believe that NYCHA has met its obligations in other areas

covered by the Agreement. There are other areas of potential violations which we are currently reviewing which may be addressed in our initial report or sooner.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bart M. Schwartz", with a long horizontal flourish extending to the right.

Bart M. Schwartz
Federal Monitor Appointed
Pursuant to January 31, 2019 Agreement

Cc: VIA EMAIL

Vicki Been, Deputy Mayor
Zachary W. Carter, Corporation Counsel, City of New York
Arden Sokolow, Chief of Staff, Office of the Chair, NYCHA
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