

**Supplemental Expert Report of Greg Myers
Addressing Newly Submitted Technical Documents Submitted by Marquette
Appeal No. RLH RSA 23-13**

My name is Greg Myers, and my qualifications as a lead and asbestos expert are set forth in my Expert Report dated February 28, 2023 (“Initial Report”), which has been submitted in connection with this Appeal. I have been asked by Housing Justice Center to review third-party technical documents recently submitted by Marquette Management (“Marquette”) during this appeal and state how it affects my opinion as to whether Marquette has been violating lead and asbestos safety laws in conducting renovation activities at The Haven of Battle Creek apartment complex in St. Paul, Minnesota (“Haven”).

I have reviewed the following documents submitted late last week in this Appeal by Marquette: (1) the Phase I Environmental Assessment Report for Grand Pre by the Park Apartments [now called Haven] by Nova Consulting Group dated December 12, 2017 (with earlier Nova Consulting Phase I Environmental Assessment Reports attached) (“2017 Nova Report”) and (2) a letter showing the results of very limited asbestos testing at Haven from Techtron dated October 6, 2021 (“Techtron Report”).¹

These third-party documents reinforce my opinion that Marquette has violated and continues to violate lead and asbestos safety laws. **Most importantly, the 2017 Nova Report expressly warns that prior testing has confirmed the presence of (1) asbestos in textured ceiling plaster and (2) lead coatings in bathtubs at Haven, specifically highlighting them as “issues of environmental concern”:**

The following issues of environmental concern were identified in connection with the Property:

- Previous sampling identified asbestos in textured ceiling plaster within the Site building and lead in the coating of original vintage bathtubs. Operations and Maintenance Programs are reportedly in place to manage the identified building materials. The observed building materials and painted surfaces were generally in good condition at the Site.

Marquette has failed to act on the information in the 2017 Nova Report and has engaged in renovation activity that puts the health and safety of Haven tenants at risk.

¹ Neither of these technical documents are the type of testing documents that would satisfy the lead and asbestos safety inspection law outlined in my Initial Report. The 2017 Nova Report was apparently requested by a prior owner of Haven as part of a general environmental assessment often conducted in connection with attempts by the property owner to satisfy CERCLA law, not lead and asbestos law. The testing in the 2021 Techtron Letter is limited to a very small sample set that appears to have been requested for an isolated project by a company working for Marquette called Renovation Systems.

1. The Technical Documents Confirm Marquette’s Violation of Asbestos Safety Laws

The newly produced third-party technical documents confirm my opinion that Marquette’s renovation activities at Haven since 2021 violate the asbestos safety laws as outlined in my Initial Report. The 2017 Nova Report reveals that Marquette has been informed about the presence of pervasive asbestos-containing and suspect asbestos-containing materials at Haven, yet has nonetheless conducted extensive renovation activities at Haven that expose Haven tenants to asbestos risk.

The key asbestos safety paragraph in the 2017 Nova Report is this one:

4.9 Asbestos-Containing Building Materials (ACBM)

Historically suspect asbestos-containing building materials noted during the Property visit included flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials. The roof was not observed during Nova’s reconnaissance. Prior sampling and testing for asbestos was completed in 1996 and asbestos was detected in textured ceiling plaster from apartment units and hallways. These materials were generally in good condition at the time of Nova’s site reconnaissance. Reportedly, an Operations and Maintenance Plan (O&M) was prepared for the Property in 1996. The current site manager, Lea Gilson, was unaware of an O&M Plan in place at the property.

Prior to demolition or renovation activities, previously untested suspect asbestos-containing materials, if identified, that are likely to be impacted should be sampled by a licensed asbestos inspector and analyzed by an accredited laboratory.

More information about the asbestos testing at Haven is contained at Section 3.1 of the 2007 version of the Nova Consulting Report attached as a reference to the 2017 Nova Report:

Sampling and analysis of building materials identified asbestos in samples of textured ceiling plaster from apartment units and hallways. The report recommended development of an Operations and Maintenance Program to maintain these materials.

The information related to asbestos at Haven appears to have been ignored by Marquette in conducting its renovation activities.

- (1) **“Prior sampling and testing for asbestos was completed in 1996 and asbestos was detected in textured ceiling plaster from apartment units and hallways.”**

As set forth in my Initial Report and during the Appeal hearing, I have seen and heard substantial evidence that Marquette’s maintenance, demolition, and renovation has disturbed the textured ceilings at Haven.

Moreover, there is no mention or documentation that all asbestos bearing materials have been removed from Haven or that all new materials purchased and installed during current renovations were determined to also not contain asbestos. (Note: asbestos products are still allowed to be manufactured and sold.)

- (2) **“Historically suspect asbestos-containing building materials noted during the Property visit [by Nova include] flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials.”**

As set forth in my Initial Report and during the Appeal hearing, I have seen and heard substantial evidence that Marquette has disturbed suspect asbestos-containing building materials during renovation and maintenance activities at Haven, including “flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials.”

- (3) **“[A]n Operations and Maintenance Plan (O&M) was prepared for the Property in 1996.”**

Marquette has produced no such operation and maintenance plan to address the known asbestos risk at Haven.

- (4) **“Prior to demolition or renovation activities, previously untested suspect asbestos-containing materials, if identified, that are likely to be impacted should be sampled by a licensed asbestos inspector and analyzed by an accredited laboratory.”**

As set forth in my Initial Report and during the Appeal hearing, Marquette has conducted extensive demolition and renovation throughout the units and common areas of Haven without first performing the required testing on confirmed and suspect asbestos-containing materials that are likely to be impacted. I know from my inspection of the property and review of the evidence that Marquette has disturbed exactly the Nova Report-identified suspect asbestos-containing building materials during renovation and maintenance activities at Haven, including “flooring and mastic, ceiling tile, textured ceiling plaster, sheetrock and taping compound, and roofing materials.”

This is a flagrant violation of the asbestos safety laws identified in my Initial Report.

The only record of pre-renovation asbestos testing that Marquette has produced is the 2021 Techtron Report, which reports limited testing of only a collective total of 16 samples from 3 units and 3 hallway areas. This testing comes nowhere near the comprehensive property-wide pre-renovation asbestos testing required under federal and state OSHA laws (29 CFR § 1926.1101(k)(5); Minn. R. 5207.0035; 40 CFR Part 61 M) for a large multifamily complex with 216 units and extensive common areas that totals 335,446 square feet as stated in Section 1.1 of the Nova Report. This testing is especially deficient when there has already been an affirmative finding of asbestos in units and common areas in the building complex, as is reported in the 2017 Nova Report. Moreover, even in the three units in which Techtron did perform limited asbestos testing,

it did not test the flooring material and mastic that were identified as suspect materials in the 2017 Nova Report and were extensively disturbed and removed during Marquette’s renovation activities.

Equally important, the 2021 Techtron Report itself expressly cautions that any additional “suspect materials” “**must not be disturbed until they are positively identified**”—a warning that Marquette has chosen to ignore:

There is no guarantee, implied or otherwise, that all asbestos containing materials have been identified. If suspect materials are encountered during renovation and/or demolition that have not been addressed in this report, the materials must not be disturbed until they are positively identified.

In sum, Marquette’s renovation activity has exposed Haven tenants to asbestos risk by (1) disregarding the warnings in the 2017 Nova Report about the presence of asbestos at Haven and the need for extensive asbestos testing and (2) ignoring the instruction in the 2021 Techtron Report that untested suspect materials “must not be disturbed until they are positively identified.”

2. The Technical Documents Confirm Marquette’s Violation of Lead Paint Safety Laws

The newly produced third-party technical documents also confirm my opinion that Marquette has violated the lead safety laws as outlined in my Initial Report, as well as violating the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. Chapter 63A, and associated EPA and HUD regulations, by failing to disclose a known lead-paint risk to Haven tenants.

The key lead paint safety paragraph in the 2017 Nova Report alerting the property owner to the lead-based paint risk is this one:

4.10 Lead Based Paint

In accordance with the Scope of Services, Nova has conducted a limited, visual evaluation to note the condition of painted surfaces at the Property. Due to the date of construction (1977), lead-based paint may be present. The objective of this visual survey was to note the presence and condition various painted surfaces. Prior sampling and testing completed in 1996 identified lead-containing enamel coating on a bathtub. The identified lead-containing surface was reported to be in good condition and the reports indicated the material is managed in an O&M Plan reportedly in place for the building. In general, the painted surfaces appeared in good condition, as no chalking, peeling or flaking paint was observed.

The Property falls under the definition of *Target Housing*, and is regulated under Title X. The seller or renter of the Property will need to make available a federally approved lead hazard information pamphlet and must disclose known lead-based paint and/or lead-based paint hazards to purchasers and renters of the Property pursuant to the requirements of 24 CFR 35.92 and 40 CFR 745.113.

The Nova Report expressly warns that (1) “Prior sampling and testing completed in 1996 identified lead-containing enamel coating on a bathtub” and (2) “The seller or renter of the Property will need to disclose known lead-based paint and/or lead-based paint hazard to purchasers and renters of the Property pursuant to the requirements of 24 CFR 35.92 and 40 CFR 745.113.”

Yet Marquette has failed to disclose the presence of this known lead-based paint to the tenants at Haven. *See* 24 CFR § 35.86; 40 CFR § 745.103 (“lead-based paint means paint or surface coating”). This failure to disclose the lead-based paint is a significant violation of Residential Lead-Based Paint Hazard Reduction Act and associated regulations, a violation the Nova Report itself warned about when it stated that “the seller or renter of the Property will need to disclose known lead-based paint and/or lead-based paint hazard to purchasers and renters of the Property pursuant to the requirements of 24 CFR 35.92 and 40 CFR 745.113.”

In fact, the standard Haven lease I have reviewed (attached as Exhibit C to Sumeya Mohamed’s DSI Complaint) both fails to disclose the presence of lead identified in the Nova Report and wrongly states that “Lessor has no knowledge of lead-based paint and/or lead-based paint hazards are present in housing” and “Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.”

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Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

In addition, the 2017 Nova Report refers to a 2005 lead-based paint inspection report from my firm Midwest Environmental Consulting as the source of the finding that Haven bathtubs contain lead-based paint. The 2017 Nova Report does not attach the actual report and Marquette has not itself produced a copy of this report. However, after seeing this reference, I searched our firm's files and found a copy of the original lead inspection report dated April 26, 2005 that was commissioned by the representative of a prior owner of Haven ("2005 MEC Report"). The 2005 MEC Report is being submitted with this supplemental opinion.

As stated in the 2017 Nova Report, the lead-based paint testing in the 2005 MEC Report affirmatively found lead present in bathtub enamel and instructed on methods to mitigate the risk:

DISCUSSION

The mere presence of lead does not constitute a lead hazard. However, lead was found in an intact state within bathroom bathtub in Unit 240. It should be assumed that all original vintage metal bathtubs that were not sampled, contain lead coatings.

Based on this finding of lead-based enamel in the bathtubs at Haven, the 2005 MEC Report then provided several important instructions related to this finding at pages 17-20:

Site 18, Unit 240:

- Enamel coating on bath tub (*Assume all original vintage bath tubs in the complex, not tested, to contain lead coatings): Currently in intact condition. At a minimum, include into the ongoing maintenance and monitoring plan for the complex. Do not use harsh abrasives or cleaning products to clean bathtub surfaces, as this damages the surface coating which may allow lead to leach into the bath water where hand-to-mouth activities of young children may provide an avenue for possible lead poisoning. The bathtub(s) may be removed and replaced with new units, or have a tub insert installed, as options for remediation.

The 2005 MEC Report also instructed that the bathtub lead risk must be disclosed to tenants under law "to ensure that parents have the information they need to protect their children from lead-based paint hazards":

A copy of this lead inspection/risk assessment summary must be provided to purchasers or lessees (tenants) of this property under Federal Law (24 CFR Part 35 and 40 CFR part 745) before they become obligated under a lease or sales contract. The complete report must also be provided to new purchasers and it must be made available to new tenants. Landlords (lessors) and sellers are also required to distribute an educational pamphlet approved by the U.S. Environmental Protection Agency and include standard warning language in their leases or sales contracts to ensure that parents have the information they need to protect their children from lead-based paint hazards.

The 2005 MEC Report also instructed that contractors must be informed of the bathtub lead risk and follow the extensive workplace lead safety practices that apply to “[n]ew construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead” under OSHA. 29 CFR § 1926.62(a)(3).

If work is going to be performed on these surfaces, individuals and/or contractors should be informed of the results of testing. At a minimum, the person(s) performing the work should follow the requirements of the Occupational Safety and Health Administration (OSHA) Standard 29 CFR 1926.62, Lead in the Construction Industry.

Please maintain a copy of the lead inspection report for your records and provide a copy of the report to any contractors that may be involved in any future renovations or remodeling projects.

Finally, the 2005 MEC Report instructed that only lead certified/licensed renovation firms should be used to perform work affecting bathtub surfaces:

For the protection of the occupants and workers, and if federal funds are involved, you should use qualified firms who are knowledgeable about the hazards associated with lead and are certified/licensed to perform the work.

Based on the information available to me, Marquette has taken none of these legally required precautions at Haven, even though Marquette had notice of the lead-based enamel in Haven’s bathtubs from the 2017 Nova Report. It has not included protection against lead exposure in any “ongoing operation and maintenance plan.” It has not disclosed the presence of lead in bathtubs to tenants. It has not disclosed the presence of lead in bathtubs to maintenance employees or renovation contractors. It has not used certified/licensed firms to perform work on bathtubs at Haven who are following OSHA lead safety practices.

In fact, a review of Marquette’s General Ledger submitted to DSI attached as Exhibit D to my Initial Report shows that substantial bathtub resurfacing has been taking place during recent renovation by the company Surface Renew. Bathtub resurfacing creates exactly the kind of “damage[] [to surface coating]” that the 2005 MEC Report warned **not** to engage in because it “damages the surface coating which may allow lead to leach into the bath water where hand-to-mouth activities of young children may provide an avenue for possible lead poisoning.” Surface Renew is not listed as a certified RRP renovator and there is no evidence that it complied with the notice, training, safety, or documentation requirements of RRP Rule or OSHA’s 29 CFR § 1926.62.

7500-0115	C/I - TUB & SHOWERS							0.00 = Beginning Balance =
46hbc	The Haven of Battle Cre 1/21/2022	01-2022	Surface Renew (surfacere	P-1180226	36090	545.00	0.00	545.00 200-334 Resurface
46hbc	The Haven of Battle Cre 2/22/2022	02-2022	Surface Renew (surfacere	P-1185285	36239	395.00	0.00	940.00 338-215 Shower resurface
46hbc	The Haven of Battle Cre 2/23/2022	02-2022	Surface Renew (surfacere	P-1184887	35798	645.00	0.00	1,585.00 446 Shower resurface
46hbc	The Haven of Battle Cre 2/28/2022	03-2022	Surface Experts-Minneapolis West (surface7:	P-1186857	555361	323.62	0.00	1,908.62 215-336 Shower Damage
46hbc	The Haven of Battle Cre 3/1/2022	03-2022	Surface Renew (surfacere	P-1186853	36267	790.00	0.00	2,698.62 240-249 bath tub resurface
46hbc	The Haven of Battle Cre 3/1/2022	03-2022	Surface Renew (surfacere	P-1186853	36267	0.00	790.00	1,908.62 240-249 bath tub resurface
46hbc	The Haven of Battle Cre 3/1/2022	03-2022	Surface Renew (surfacere	P-1186853	36267	790.00	0.00	2,698.62 240-249 bath tub resurface
46hbc	The Haven of Battle Cre 3/10/2022	03-2022	Surface Renew (surfacere	P-1187723	36423	595.00	0.00	3,293.62 215 resurafce
46hbc	The Haven of Battle Cre 3/10/2022	03-2022	Surface Renew (surfacere	P-1187723	36423	0.00	595.00	2,698.62 215 resurafce
46hbc	The Haven of Battle Cre 3/10/2022	03-2022	Surface Renew (surfacere	P-1187723	36423	595.00	0.00	3,293.62 215 resurafce
46hbc	The Haven of Battle Cre 4/21/2022	04-2022	Docl Inc (docl)	P-1194368	22276	1,095.00	0.00	4,388.62 U=315-200 U =315-200:Shower Surround and Subfloor
46hbc	The Haven of Battle Cre 5/5/2022	05-2022	Surface Renew (surfacere	P-1197769	36686	595.00	0.00	4,983.62 200 Bathtub
46hbc	The Haven of Battle Cre 7/11/2022	07-2022	Surface Renew (surfacere	P-1209096	36973	595.00	0.00	5,578.62 200 Bathtub/Enclosure
46hbc	The Haven of Battle Cre 7/11/2022	07-2022	Surface Renew (surfacere	P-1209096	36973	0.00	595.00	4,983.62 200 Bathtub/Enclosure
46hbc	The Haven of Battle Cre 7/11/2022	07-2022	Surface Renew (surfacere	P-1209096	36973	595.00	0.00	5,578.62 200 Bathtub/Enclosure
46hbc	The Haven of Battle Cre 10/18/2022	11-2022	Surface Experts St. Paul Metro East (surface!	P-1234007	86833	377.56	0.00	5,956.18 U=466-215 :Tub Surround Repairs
Net Change=5,956.18						7,936.18	1,980.00	5,956.18 = Ending Balance =

In sum, the 2017 Nova Report and the 2005 MEC Report confirm that Haven has violated and continues to violate lead paint safety laws and has put tenants at significant risk of exposure to lead.²

Under Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this supplemental report is true and correct to the best of my knowledge.

Kanabec County, Minnesota
August 28, 2023

s/Greg Myers
Greg Myers

² In addition to finding lead in the bathtub surface coating, the 2005 MEC Report found no lead in other tested paint samples at Haven. However, Marquette has produced no document indicating it relied on these test results in a manner that would comply with the RRP Rule. Thus, the 2005 MEC Report does not change my opinion that Marquette violated the RRP Rule with respect to its renovation of all regulated painted surfaces at Haven.