



September 15, 2004

Debbi Kring
U.S. Environmental Protection Agency, Region VII
Office of Public Affairs
901 North 5th Street
Kansas City, KS 66101

Re: Comments on The Proposed Plan for Residential Yard Soils at the Omaha
Lead Site in Omaha, Nebraska, Prepared by USEPA, July 16, 2004

Dear Ms. Kring:

The Nebraska Department of Health and Human Services Regulation & Licensure has reviewed the EPA's Proposed Plan and appreciates the opportunity to offer comments on it.

We concur that it is appropriate for the EPA to propose an interim plan that combines soil excavation of priority properties with a treatability study, health education, institutional controls, and attention to exterior lead-based paint and to interior lead dust. We urge, however, that the proposed plan be clarified in several particulars and that it be modified in several particulars. We also propose several editorial changes that we believe will more precisely reflect the underlying circumstances and the intent of the proposed plan.

Necessary Clarifications.

1. *Priority for Cleanup.* The proposed plan identifies several categories of property that would receive immediate attention by having soil excavated and replaced. It is unclear what the priorities are among those categories. Children with elevated blood lead (EBL) must be the first priority. The interim plan needs to clearly specify that residences exceeding 400 ppm, where children with EBL reside, will be the first priority to have soil removed for cleanup. Childcare facilities exceeding 400 ppm must be the second priority for cleanup. High child impact areas exceeding 400 ppm must be the third priority to have soil removed for cleanup. Residences exceeding 800 ppm would then be the fourth priority to have soil removed for cleanup. The importance of continuing to excavate soils where children with EBL reside and at childcare facilities and high child impact areas is recognized in the proposed plan at pp. 9 and 12. Because the focus of the discussion about the Preferred Alternative is on residences with soils exceeding 800 ppm, however, the respective priorities are unclear. The discussion of excavation on pg. 15 does list the four categories for excavation but does not make clear that they are listed in priority order. Please see

our related comments regarding Necessary Changes, 800 ppm Interim Action Level, below.

2. *Interim Cleanup to 400 ppm.* Any property that is being excavated must be cleaned up to a level of not more than 400 ppm. The discussion of the Preferred Alternative does not make this clear. At pg. 6, the proposed plan states: "... the EPA is recommending a risk management cleanup level for lead in residential soils at the site of 400 ppm." At pg. 13, the proposed plan acknowledges: "Since human health risks are associated with soil-lead concentrations between 400 and 800 ppm, this alternative [the Preferred Alternative] cannot be selected as the final action for the site." It can be inferred that excavation of residences of children with EBL, child cares, and high child impact areas will be cleaned up to no more than 400 ppm since that is the action level at which the site is identified. However, it should be made explicit that all sites that are excavated will be cleaned up to no more than 400 ppm.
3. *Institutional Controls.* There appears to be a contradiction regarding Institutional Controls. Alternative 4 relies on institutional controls only to control risks associated with a soil repository. Alternatives 2 and 3 also control the risk associated with potential future development in residential areas. This distinction appears at pg. 11 of the proposed plan. But at pg. 13, discussing the Preferred Alternative, which is based on Alternative 4, the proposed plan says, "the IC program described under Alternatives 2 and 3 would be initiated." This distinction between alternatives 2, 3 and 4 creates confusion that should be clarified by spelling out the Institutional Control that the Preferred Alternative will include institutional controls for the risk associated with future development in residential areas. We also concur with the August 9, 2004 comments filed by the Nebraska Department of Environmental Quality that the ICs should not result in restrictions being placed on the property deed.
4. *Phosphate Stabilization.* The Proposed Plan states on page 11, under Reduction of Toxicity, Mobility or Volume that "phosphate stabilization ... uses treatment as a principle element of the cleanup, which is preferable under the Superfund law and the NCP." Please clarify why it is preferable, with particular attention to the advantages to public health.
5. *Phosphate Study.* Please clarify, on page 17, that the property selected for the Phosphate Stabilization Treatability Study field study will be selected within the OLS.
6. *Exterior Lead-Based Paint.* Please clarify that the contractors who work on removal of lead-based paint will operate in conformity to and meet the requirements of the Residential Lead-Based Paint Hazard Reduction Act, the Toxic Substances Control Act, and Title 178, Chapter 23 of the Nebraska Administrative Code. It is important to the health of the community and of the contractors' employees that only properly trained workers be used to mitigate or remediate lead-based paint and that they use environmentally sound methods. Nebraska has been granted primacy by your agency

to enforce the federal standards. Doing so under Nebraska law will also provide an opportunity to develop economic opportunities both within the OLS and elsewhere for the selected contractors.

Necessary Changes.

1. *One Remediation for Each Property.* It is important that once remediation on a particular property is begun that it be completed expeditiously. The proposed plan, at page 14, states that a property that has one or more sections in which the composite sample exceeds the action level will become eligible for Superfund response. The excavation response, however, is limited to the “removal of contaminated soils in the sections that exceed the action level”. (Emphasis added). In the case of a residence of a child with EBL, for example, the action level is 400 ppm. In some cases, the action level is 800 ppm. It is not acceptable for the EPA to remediate a single property in two different phases. A number of properties may have one or more section with greater than 800 ppm and one or more sections with greater than 400 ppm but less than 800 ppm. The proposed plan would result in soil being excavated and replaced in those sections exceeding 800 ppm but no action taken on the other sections that exceed 400 ppm until the treatability study is complete. Once the treatability study is complete, depending on the results of the study and the final ROD, it might be necessary to excavate additional sections or to treat those sections with phosphate. Under either scenario, it would be necessary to again enter upon and disrupt the property. Any property eligible for a Superfund response should have all aspects of remediation dealt with in a single phase, including removal of exterior lead-based paint and interior cleaning. In his January 29, 2002, correspondence to Regional Administrator Gulliford, Governor Johanns made clear his expectation that once a yard was remediated, it would be removed from the NPL “as expeditiously as possible, on a quarterly basis if practicable.” Splitting remediation into two phases and delaying final remediation for three years or longer clearly would violate one of the Governor’s conditions upon which he based his concurrence to include the Omaha Lead Site on the National Priorities List.
2. *800 ppm Interim Action Level.* We understand that it is desirable to have a treatability study that may reduce the need to excavate some residential locations. It is very important, however, that cleanup proceeds as rapidly as possible and that it not be unexpectedly delayed pending the results of the treatability study. An action level of 800 ppm is no more justified scientifically than any other action level and is considerably more suspect than 400 ppm for the reasons set for in the proposed plan and referred to in these comments, above. 800 ppm is a planning tool that sets one of the planning parameters. No one knows for sure, however, how long the treatability study will take, how long the process will take to adopt a final ROD, or what the contents of the ROD will be. The Preferred Alternative needs to be modified to recognize that after addressing the priority sites, discussed above, that cleanup by soil

excavation and related remedies will continue in residential sites below 800 ppm until the final ROD is issued.

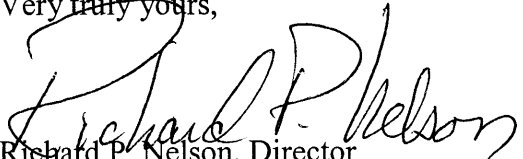
3. *Exterior Lead-Based Paint.* We concur with the EPA's position that it has the authority to and appropriately has included attention to exterior lead-based paint in its Preferred Alternative to protect the soil from recontamination. The proposal to do a power washing and some minor wet scraping, as described on page 17, is inadequate, however, to protect the soil from recontamination. There are two appropriate ways to protect the soil from recontamination if the exterior lead-based paint is power washed and scraped. The first is to encapsulate the exterior through application of specialized coatings that have a minimum 20-year life expectancy. The second is to enclose the lead-based paint through the use of an exterior covering such as siding. Failure to encapsulate or enclose the exteriors will result in recontamination of the soils over time. The Preferred Alternative needs to include the proper protection of the excavation remedy and for all those residences that have received remediation to be removed promptly and permanently from the NPL.

Editorial Changes.

1. Page 4, Scope and Role of Response Action, second paragraph, first sentence. We believe it is more precise to say: "The lead contamination is located *primarily in the surface soil* of residential properties. The report, at pg. 8, recognizes that there are circumstances under which contamination at deeper than one foot may need to be dealt with.
2. Page 5, Summary of Site Risks, first sentence. We believe this sentence should read: "A HHRA was developed for the OLS using site-specific information *where available.*"

In conclusion, we join other commentators in supporting the adoption of the most comprehensive remedy practicable. It is extremely important to address the public health issues presented by other possible pathways of lead exposure, especially to children.

Very truly yours,


Richard P. Nelson, Director
Department of Health & Human Services
Regulation & Licensure

xc: Governor Mike Johanns
Mayor Mike Fahey
Adi Pour, Douglas County Health Department
Mike Linder, Department of Environmental Quality
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