

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION II**

**Subject:** Pollution Report (Initial) # 1  
NL Phase 2 Residential Properties Site  
Site ID: A203  
Village of Depew, New York 14043

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**From:** On-Scene Coordinator Michelle Tabayoyong,

**Date:** April 30, 2009

**Reporting Period:** 10/2/2008 to 4/31/2009

**1.0 Introduction**

**1.1 Background**

**Background Information**

<b>Site No.:</b>	A203
<b>Delivery Order/Task Order No.:</b>	063 Earth Tech, Inc./AECOM (ETI)
<b>Response Authority:</b>	CERCLA
<b>Response Type:</b>	Time-critical
<b>ERNS No.:</b>	N/A
<b>CERCLIS No.:</b>	NYC200400133
<b>Operable Unit:</b>	N/A
<b>Type of Removal Action:</b>	RV - Removal
<b>Lead:</b>	EPA financed
<b>NPL Status:</b>	Non-NPL
<b>State Notification:</b>	NYSDEC Notified
<b>Action Memorandum Status:</b>	Approved on September 11, 2008
<b>Start Date:</b>	October 2, 2008
<b>Demobilization Date:</b>	Pending
<b>Completion Date:</b>	Pending

### **1.1.1 Incident Category**

CERCLA incident category: Other

Available information suggests the influence from historic industrial facilities located in the area of Depew, New York (NY) contributed to Site contamination. These facilities released lead-contaminated particles and dust that migrated off site onto the Phase 2 Residential Properties and contaminated the soil.

### **1.1.2 Site Description**

#### **1.1.2.1 Site Location**

The NL Phase 2 Residential Properties site (Site), also known as the Phase 2 area, is residential properties and Rights-of-Ways (ROW) located in the Village of Depew, Erie County, NY. The Site consists of 66 properties, 64 of which are located east of Transit Road on Tyler, Rumford, Brewster, and Lincoln Streets as well as Walden Avenue, which borders the southern portion of the Site. The residential properties on the east side of Lincoln Street border an industrial/commercial property to the east. The northern border of the Site is the Scajaquada Creek. The other two properties are located west of Transit Road on Harvard Avenue. There are approximately three hundred residents that live in this densely populated neighborhood of mostly single family homes, which encompasses an area of approximately 25 acres.

#### **1.1.2.2 Description of Threat**

The presence of lead at the residential properties poses a significant risk to human health because of the potential for contact with and ingestion of lead-contaminated soils by residents, especially children. In addition, indoor residential contamination could result from foot traffic on and through soils containing elevated levels of lead. The potential for increased exposure to lead exists when residents perform yard maintenance such as cutting grass, gardening or working in flower beds and especially in areas with bare soil. The New York State Department of Health (NYSDOH) issued a Letter Health Consultation for the Site, discussing the health hazards present on Site and recommended measures for implementation to reduce the potential for increased exposure to soil contaminated with lead exceeding 400 mg/kg.

### **1.1.3 Removal Preliminary Assessment/Removal Site Inspection Results**

In April 2005, EPA directed the delineation soil sampling events conducted on the Phase 2 Residential Properties. As a result of the delineation sampling, EPA identified 61 additional properties, known as

the Phase 2 Residential Properties, to contain lead-contaminated soil at concentrations greater than 400 ppm. The results for lead in surface soil samples ranged from 55 ppm to 2,800 ppm, with an average concentration of 510 ppm. The results for lead in subsurface soil samples ranged from 45 ppm to 4,900 ppm, with an average concentration of 411 ppm.

In October 2008, Environmental Protection Agency (EPA) directed delineation soil sampling at 15 additional homes in the Phase 2 area, which identified 5 properties or property parcels with lead-contaminated soil at concentrations greater than 400 ppm. The results for lead in surface soils samples ranged from 23 ppm to 3,020 ppm. The results for lead in subsurface soil samples ranged from 27 ppm to 938 ppm.

## **2.0 Current Activities**

### **2.1 Operations**

#### **2.1.1 Narrative**

##### **Reporting Period October 1, 2008 through March 31, 2009:**

On October 1-2, 2008, EPA hosted a series of public availability sessions with the affected residents, at the Village of Depew Town Hall. The purpose of these sessions was to outline the proposed cleanup for the Phase 2 area.

On October 2, 2008, the EPA On-Scene Coordinator (OSC) and Emergency Rapid Response Services (ERRS) Response Manager (RM) conducted a Site visit of the NL Phase 2 Residential Properties and discussed the proposed removal activities. This meeting with the ERRS RM is the official start of the removal action.

On October 6, 2008, the EPA OSC and the Removal Support Team (RST 2) Site Project Manager (SPM) mobilized to the Site. From October 7 through October 9, 2008, EPA and RST 2 conducted a removal assessment and survey activities at fifteen residences. RST 2 prepared a field sketch for each residence to identify the property dimensions, structures, landscape features, and proposed quadrant locations in preparation for delineation samples schedule the week of October 13, 2008. EPA provided information to residents regarding the delineation sampling activities and also obtained signed access agreements in preparation for the sampling activities.

On October 13, 2008, the EPA OSC and three RST 2 personnel mobilized to the Site to conduct the delineation soil sampling activities. From October 14 through October 17, 2008, RST 2 conducted soil sampling on the fifteen (15) residential properties and several Depew owned ROW located in the Phase 2 investigation area to determine the extent of lead-contaminated soil.

In November 2008, the RM provided the OSC with the draft Health and Safety Plan (HASP) and Work Plan for the Site.

In December 2008, the OSC started reviewing the draft HASP and Work Plan for the Site. In support of the enforcement case for the Site, an EPA civil investigator began interviewing residents, via telephone, on their knowledge of historic industrial activities relating to their properties.

From January to April 2009, the OSC reviewed the Work Plan and provided comments to the RM. In addition, work orders were issued to the RM to prepare for the removal action i.e. set up the Command Post, connect utilities, coordinate with subcontractors for; backfill, tree cutting, property landscape inventory, equipment, etc.

#### **2.1.1.1 Current situation**

On-site activities are anticipated to begin in the middle of May 2009. The RM initiated set up of the Command Post and Support Areas located at 5600 Transit Road, Depew, NY.

#### **2.1.2 Response activities to date**

On October 21, 2003, EPA met with the New York State Department of Environmental Conservation (NYSDEC) for a project briefing and site visit. Following the site meeting with NYSDEC, EPA drafted an Administrative Order on Consent (AOC) and entered into negotiations with NL Industries. On September 26, 2004 the AOC was signed by NL Industries and executed by the Regional Administrator (RA) on September 29, 2004.

As a result of concerns expressed by residents living west of Transit Road, which is adjacent to the areas of contamination slated for remediation by NL Industries, EPA agreed to conduct additional soil sampling at four properties. In order to confirm that delineation of the lead contamination was complete, five additional properties were selected to be sampled which lie in the area surrounding the site.

On April 25, 2005, EPA and the RST mobilized to the site to conduct the additional delineation soil sampling of the Phase 2 residential properties. The delineation was initiated along the west side of Tyler Street and expanded in successive sampling events to the east and to the north to establish a perimeter “clean boundary” around the Site. The results were evaluated to determine which additional properties should be included in the supplemental delineation sampling. The sampling followed the contamination initially identified along the west side of Tyler Street to Rumford, Brewster, and Lincoln Streets as well as Walden Avenue.

On June 1, 2005, NL Industries mobilized remediation contractors Environmental Restoration Inc., (ERI) and engineering consultant Advanced GeoServices Corporation (AGC) to initiate the removal action in the Phase I area and complete delineation of the lead contamination.

In May 2006, ERI remobilized to the site to complete restoration and maintenance of the 36 properties remediated in 2005. ERI placed sod at five properties which were not sodded in 2005 due to frost. In addition, ERI addressed other restoration needs such as soil settling, planting and sidewalk repair.

On May 25, 2006, a final site walk was held at the site and attended by EPA, AGE and ERI. During the site walk, each of the 36 properties was visited and any restorative needs were discussed. Minor areas were identified for additional restoration, but overall all parties were satisfied with the status. The Phase I Residential Properties removal action as specified in the Administrative Order on Consent was completed on February 14, 2007 with the submission of the final reports.

An Action Memorandum requesting funding to support the removal action on the NL Phase 2 Residential Properties Site was approved by the RA on September 11, 2008. EPA RA Alan J. Steinberg was joined by Congressman Thomas Reynolds and Village of Depew Mayor Barbara Alberti at a press event where the RA announced EPA's commitment to address threats posed by lead-contaminated soils at the NL Phase 2 Residential Properties Site in the Village of Depew, NY.

A public availability session was held to answer questions property owners/residents had pertaining to the removal action. At this time, the OSC was also able to obtain access from property owners to conduct the removal action on their property.

The OSC has kept the NYSDOH and the NYSDEC informed of the progress of the Site and will continue throughout the removal.

### **2.1.3 Enforcement Activities, Identity of Potentially Responsible Parties (PRPs)**

EPA has notified four Potentially Responsible Parties (PRPs) of their possible liability at the Site. These include NL Industries, which conducted the Phase 1 response activities under an AOC, the Halliburton Company, Exide Technologies, and Gould Electronics, Inc.

The PRPs for the Site are not willing to perform the Phase 2 cleanup under an AOC. EPA has assumed responsibility of the Site clean up. EPA will evaluate enforcement options against the PRPs as the removal action continues.

#### 2.1.4 Progress Metrics

Date	Waste stream	Quantity	Treatment/Disposal Method	Disposal Facility

## 2.2 Planning

### 2.2.1 Anticipated activities for next reporting period

#### 2.2.1.1 Planned Response Activities

EPA will remediate 66 residential properties located downwind of the former industrial facilities where lead soil concentrations exceed 400 mg/kg. Remediation activities will include removal of trees and shrubs (if necessary), excavation of contaminated soil, post excavation sampling, backfilling with certified clean fill, cover with certified clean topsoil, installation of sod, replacement of trees, shrubs, etc. and off-site disposal of contaminated soil.

#### 2.2.1.2 Next Steps

EPA will prepare for the implementation of the removal action in order to mitigate the threats to the public health and the environment at the Site by reviewing the Site-Specific HASP, Work Plan, and Quality Assurance Project Plan (QAPP) for the removal project. Remediation work will be initiated in May 2009 and anticipated to continue until November 2009, when weather conditions are suitable for the excavation activities. Soil removal will be suspended during the winter months from November to March/April because of snow cover and freezing temperatures, which will negatively impact the mitigation activities. The remediation activities will include the excavation of contaminated soil, post excavation sampling, and site restoration to pre-cleanup conditions.

The OSC will coordinate with the property owners to obtain access to conduct the removal action. The OSC will continue the resident interviews during the removal action in support of the enforcement case.

The RM will arrange for the setup of the Command Post and Support Areas, as directed by the OSC. The sub-contractors for the backfill, topsoil, sod, landscape features, etc. will be identified and awarded by the ERRS contractor.

The remediation activities will commence on the west side of Tyler Street and proceed east to Rumford, Brewster, Lincoln Streets and Walden Avenue, respectively. When the NL Phase 2 Residential

Properties to the east of Transit Road are remediated, removal activities will commence on Harvard Avenue.

#### **2.2.2 Issues**

None

#### **2.3 Logistics**

The Command Post and Support Areas are in the process of being set up by the ERRS contractor. Delays have been encountered with the connection of the phone and internet services.

#### **2.4 Finance**

##### **2.4.1 Narrative**

The below accounting of expenditures is an estimate based on figures known to the OSC at the time this report was written. The cost accounting provided in this report does not necessarily represent an exact monetary figure which the government may include in any claim for cost recovery.

##### **2.4.2 Metrics**

<b>Removal Action</b>	<b>TOTAL CEILING</b>	<b>COSTS TO DATE</b>	<b>TOTAL REMAINING</b>
EPA Cleanup Contractor Costs (ERRS) (As of 4/17/09)	\$ 4,285,000	\$ 4,230	\$ 4,280,770
RST 2 Contractor Costs (As of 4/31/09)	\$ 381,000	\$ 7,733	\$ 373,267
Extramural Costs Contingency	\$ 933,000	\$ 0	\$ 933,000
<b>Totals</b>	<b>\$ 5,599,000</b>	<b>\$ 11,963</b>	<b>5,587,037</b>
<b>Removal Assessment</b>			
RST 2 Contractor Costs (As of 4/31/09)		\$ 44,806	

#### **2.5 Safety Officer**

N/A

#### **2.6 Liaison Officer**

N/A

**2.7 Information Officer**  
N/A

**3.0 Participating Entities**

**3.1 Unified Command**  
N/A

**3.2 Cooperating and Assisting Agencies**

The NYSDOH is assisting the EPA with reviewing the analytical data of the backfill and topsoil material which will be used in the residential properties. This effort is to determine if the material is in compliance with state standards. The NYSDOH has expressed their commitment to assist the NL Phase 2 residents with health questions/concerns they may have.

The NYSDEC has also showed support to the EPA for this project and has assured the OSC that assistance will be available throughout the removal action.

The Village of Depew municipality has been very cooperative with providing information to the residents regarding the removal action. The Village has provided EPA assistance when ever asked and always aim to accommodate EPA's needs.

**4.0 Personnel On Site**

- 1 EPA OSC
- 4 ERRS – ETI
- 2 START – RST

**5.0 Definition of Terms**

New York	NY
NL Phase 2 Residential Properties Site	Site
Right-of-Way	ROW
The New York State Department of Health	DOH
Environmental Protection Agency	EPA
On-Scene Coordinator	OSC
Emergency Rapid Response Services	ERRS
Response Manager	RM
Removal Support Team 2	RST
Site Project Manager	SPM
Health and Safety Plan	HASP
The New York State Department of Conservation	NYSDEC
Administrative Order on Consent	AOC
Environmental Restoration, Inc.	ERI
Advanced GeoService Corporation	AGC
Potentially Responsible Parties	PRPs
Quality Assurance Project Plan	QAPP



## **6.0 Source of Additional Information**

### **6.1 Internet location of additional information/reports**

For additional information, please refer to “Documents” on [www.epaosc.org/](http://www.epaosc.org/).” This will enable the Polreps to refer to previous documents, and enable anyone interested in those documents to obtain them. This includes documents such as sampling plans, maps, previous Polreps, etc. that will be posed to the website.

### **6.2 Reporting Schedule**

Polreps will be submitted weekly.