

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

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

To:

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From: On-Scene Coordinator Michelle Tabayoyong,

Date: July 10, 2009

Reporting Period: 5/1/2009 to 7/10/2009

1.0 Introduction

1.1 Background

Background Information

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

1.1.3 Removal Preliminary Assessment/Removal Site Inspection Results

In April 2005, Environmental Protection Agency (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, 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 2, 2009 through April 30, 2009

Please refer to POLREP #1 for action taken during this period.

Reporting Period May 1, 2009 through July 10, 2009:

The week of May 4th, the Emergency Rapid Response Services (ERRS) contractor set up the Command Post & support areas at 5600 Transit Road, Depew, New York.

On May 11th the On Scene Coordinator (OSC) and Removal Support Team 2 (RST2) Site Project Manager (SPM) mobilized to the Site and began meeting with the residents. The OSC discussed the planned removal action which will be taking place on Site and obtained signed access agreements from property owners to conduct the removal action on their property. In addition, the removal of large trees commenced this week.

During the week of May 18th, the OSC, RST2 and ERRS contractor continued to meet and inform the residents of removal activities which pertain to their property and obtain signed access agreements. Clearing of vegetation, in addition to decontaminating rocks, landscape feature, etc. began as well. A signed access agreement to conduct removal action activities on the village right of ways was provided to the OSC, who also met with the Mayor of the Village of Depew (Barabar Alberti) and the Village Administrator (Elizabeth Melock) to answer questions they had, regarding the removal action. On May 22, 2009, the Site was demobilized for the Memorial Day holiday weekend.

On May 26th, the contractors mobilized to the Site to continue removal activities and commenced excavation activities on Tyler Street. A Public Affairs Specialist, Mike Basile, arranged for and attended a Press Availability Session at the Command Post on May 27th. During this hour and a half window, various news reporters (television, paper, and radio) were able to speak with the RAB Section Chief (Dan Harkay) and/or the OSC (Michelle Tabayoyong). The New York State Department of Environmental Conservation (NYSDEC) representatives Martin Doster & William Murray attended as well. On this day excavation activities commenced behind the garage of 26 Tyler Street as well as the south side yard, adjacent to the driveway. Soil removal adjacent to the driveway was sloped approximate 45 degrees, in order not to under mind the condition of the driveway. Soil exceeding 400 ppm may be present in this area. On 16 Tyler Street, excavation activities also began on the northern side yard, adjacent to 26 Tyler Street. Excavation depths exceeded the initial anticipated depth of excavation, in several areas on these properties. In these areas, the soil appeared to be a dark/black colored material.

Several residents requested to keep the wood from the trees being cut down. On May 28th, several wood chip samples were collected and analyzed, which resulted in non-detectable concentrations of lead. In addition, NYSDOH representative Matthew Forcucci, conducted a site visit since he was unable to attend the Press Availability Session the day prior.

The OSC met with the co-owner, Tom Wilcox, of the ABC Daycare Center of WNY, Inc. at 5779 Transit Road on May 29th. At this time the owner provided the OSC with a signed access agreement, which permitted the removal of an ash tree, identified to be on their property. Due to the excavation activities which will be conducted adjacent to the daycare, the roots of the tree could potentially be compromised. In order to eliminate the potential for future damage caused if/when the tree dies/falls, the tree will be taken down. This approach will be implemented on trees located in areas not identified to be excavated but adjacent to areas which will be excavated.

The week of June 1, 2009, excavation activities continued on 16 Tyler Street, in addition to a disposal sample being collected and submitted for laboratory analysis for characterization. Excavation depths have continued to exceed the initial depths of excavation anticipated, as a result of encountering black material. One location on 16 Tyler was excavated to a depth of three feet in order to achieve the cleanup objective of 400 ppm. On June 4th a soil sample was collected from the shed in a contaminated area on 26 Tyler and was identified by RST2, by way of using the x-ray fluorescence (XRF) field instrument, to be above 400 ppm.

Trees & stumps in affected areas continued to be removed. The tree stumps in the backyard of 26 Tyler Street delayed excavation activities on this property. In order to precede with removal activities, on June 5th, excavation commenced in the backyard of 34 Tyler Street.

The week of June 8th, excavation activities took place along the south side yard of 34 Tyler Street simultaneous to the commencement of excavation on the north side yard of the adjacent property, 32 Tyler Street. On 34 Tyler Street, excavation depths continued to exceed the initial depths of excavation anticipated, as a result of encountering black material. On June 11th, excavation activities reconvened in the backyard of 26 Tyler Street. All excavation was complete on 16 Tyler Street by June 12th.

On June 15th, the phone and internet service was connected at the Command Post and the contact information is as follows:

Contact	Phone #
EPA On-Scene Coordinator	716-393-3177
Removal Support Team 2	716-393-3178
Earth Tech Inc./AECOM	716-393-3179
Fax	716-393-3180

The week of June 15th, excavation activities continued in the back and side yard of 26 Tyler and the side yard between 34 & 44 Tyler Street. The east property line of 26 Tyler extended beyond the wood fence, which borders the ABC Daycare Center’s playground. EPA previously identified that this area to have asphalt ground, which was verified by EPA on June 15th. With approval from the daycare center’s co-owner, EPA determined that excavation activities should be extended approximately one foot beyond the property line, to the asphalt ground.

Backfilling activities commenced on July 15th, as well. During this week 320 tons was delivered on site and spread on 16 & 26 Tyler Street, in addition to the area excavated on the ABC Daycare Center. On June 18th, when backfill material was delivered for the back of 26 Tyler and the daycare, EPA requested that the truck back onto the driveway of 32 Tyler Street in order to place the backfill closer/into the cleared area. The driveway was unfortunately damaged but will be repaired, in addition to sidewalks identified to be damaged as a result of this removal action.

Also during the week of June 15th, excavation activities continued on 32 Tyler Street where deeper excavation activities were minimal. There were small areas, such as below the rain water drain on the north side of the house and a strip between the south of the house and the walk way that required hand digging below the original identified depth. Soil removal

activities on 32 Tyler Street were complete by the end of this week, with the exception of the easement between the sidewalk and street.

On June 16th, RST2 started collecting flower bed/specific area delineation sampling on 44 & 68 Tyler Street, to identify if lead concentrations in these areas were below the cleanup objective. EPA presented this option to the home owner as a way to save flower beds/trees, if they wish. On June 18th, flower bed delineation sampling commenced at 87 Tyler Street. The ERRS contractors started pumping the water out of the swimming pool at 56 Tyler Street, which continued to the following week.

On June 19th, the transportation and disposal (T&D) of non-Resource Conservation and Recovery Act (RCRA), non-regulated lead contaminated soil commenced, in addition to excavation activities on 50 Tyler Street.

Excavation activities continued on 26, 34, 44 and 50 Tyler Street the week of June 22nd. During this week, soil removal activities under the backyard deck of 50 Tyler Street were conducted several times in order to meet the cleanup objective. Soil in an area adjacent to the southwest corner of the garage at 50 Tyler Street was identified to greater than 400 ppm, but was not remediated in order not to compromise the integrity of the garage. This area is approximately a one foot diameter circle, 18 inches below grade. Excavation activities in the backyard, south side yard and front yard are complete, pending analytical results. During this week, 10 tons of backfill material was delivered to 32 Tyler Street and 20 tons was deliver to 34 Tyler Street. Toward the end of the week, weather conditions delayed removal activities.

On June 23rd, the NYSDOH representative Matt Forcucci conducted a site visit to check on the progress of the removal action and the next day, Bill Murray with NYSDEC came by the Site as well. The pool at 56 Tyler Street was completely drained and RST 2 collected delineation samples to identify if the soil is below the cleanup objective. The fix laboratory analytical results were below 400 ppm, so the pool will not be removed.

According to XRF analysis, conducted on June 29th, soil with lead exceeding 400 ppm extended under the condenser/compressor unit at 26 Tyler Street. No soil removal was conducted under the unit since it is a permanent insulation.

The week of June 29th, soil excavation continued on the north side yard of 26 Tyler Street, along the property line between 34 & 44 Tyler Street, in the backyard of 44 Tyler Street and the southwest portion of 56 Tyler Street. In addition, the easements in front of 26, 32 and 34 Tyler Street were excavated and all excavated soil this week was stage at 44 Tyler

Street for disposal. Excavation activities on 26 and 34 Tyler Street are complete, pending analytical results. During this week, the sheds on 21, 35 & 45 Tyler Street were sampled and analyzed for lead. All were greater than 400 ppm, with the exception of the samples from the shed at 45 Tyler Street.

The morning of July 2nd, the property owner of 16 Tyler Street contacted the OSC to report that their property, which has been backfilled with clean material, was covered in water that was leaking into their basement. This was a result of heavy rain the night prior, the absence of topsoil & sod to absorb the water, and no way for the water to drain/run off properly. The ERRS contractors pumped the water from the property and added backfill material in areas where water could potentially leak into the basement. Also on this day, 30 tons of backfill material was delivered to 34 Tyler and that afternoon, the Site was demobilized for the Fourth of July holiday weekend.

The contractors mobilized to the Site on July 6, 2009, to continue excavation, backfilling and T&D activities on Site the following day. During this week, excavation activities continued on 44 & 56 Tyler Street. Excavation depths have continued to exceed the initial depths of excavation anticipated at 44 Tyler Street, as a result of encountering black material. Soil excavated & removal via shovels around the pool on 56 Tyler Street is being staged at 44 Tyler Street while awaiting disposal. 32 Tyler Street has been completely backfilled, with the exception of the easement and this week 50 tons of backfill material was delivered for 26 & 50 Tyler Street. The ERRS contractors pumped the water out of the swimming pool at 51 Tyler Street and RST collected a delineation sample.

2.1.1.1 Current situation

Excavation and backfilling activities continue on the Tyler Street. The topsoil and sod subcontractor consent package is being reviewed by the Contracting Officer (CO). Once CO consent has been established, the topsoil and sod installation will begin.

2.1.2 Response activities to date

On October 21, 2003, EPA met with the 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
6/19/09	Non RCRA, Non DOT Regulated Material	243.43 tons*	Landfill	Chaffee Landfill
6/22/09	Non RCRA, Non DOT Regulated Material	223.56 tons*	Landfill	Chaffee Landfill
6/23/09	Non RCRA, Non DOT Regulated Material	204.38 tons*	Landfill	Chaffee Landfill
6/24/09	Non RCRA, Non DOT Regulated Material	154.32 tons*	Landfill	Chaffee Landfill
6/25/09	Non RCRA, Non DOT Regulated Material	129.07 tons*	Landfill	Chaffee Landfill
6/26/09	Non RCRA, Non DOT Regulated Material	40.06 tons	Landfill	Chaffee Landfill
6/30/09	Non RCRA, Non DOT Regulated Material	66.15 tons	Landfill	Chaffee Landfill
7/1/09	Non RCRA, Non DOT Regulated Material	66.38 tons	Landfill	Chaffee Landfill
7/7/09	Non RCRA, Non DOT Regulated Material	40 tons**	Landfill	Chaffee Landfill
7/8/09	Non RCRA, Non DOT Regulated Material	40 tons**	Landfill	Chaffee Landfill
7/10/09	Non RCRA, Non DOT Regulated Material	100 tons**	Landfill	Chaffee Landfill

* Includes the disposal of roll off boxes which were staged at the support area near the Command Post awaiting disposal.

**Estimated weights

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 continue the implementation of the removal action in order to mitigate the threats to the public health and the environment at the Site. Remediation work is 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 remediation activities will continue 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. After waiting almost two months, this service was connected on June 15, 2009.

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

Removal Action	TOTAL CEILING	COSTS TO DATE	TOTAL REMAINING
EPA Cleanup Contractor Costs (ERRS) (As of 7/10/09) (Obligated: \$1,307,668)	\$ 4,285,000	\$ 291,838	\$ 3,993,162 (\$1,015,830)
RST 2 Contractor Costs (As of 6/30/09)	\$ 381,000	\$ 88,051	\$ 292,949
Extramural Costs Contingency	\$ 933,000	\$ 0	\$ 933,000
Totals	\$ 5,599,000	\$ 379,889	\$ 5,219,111
Removal Assessment			
RST 2 Contractor Costs (As of 4/31/09)		\$ 48,051	

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
- 7 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
parts per million	ppm
Environmental Protection Agency	EPA
Emergency Rapid Response Services	ERRS
On-Scene Coordinator	OSC
Removal Support Team 2	RST
Site Project Manager	SPM
The New York State Department of Conservation	NYSDEC
x-ray fluorescence	XRF
Transportation & Disposal	T&D
Resource Conservation and Recovery Act	RCRA
Contracting Officer	CO
Administrative Order on Consent	AOC
Regional Administrator	RA
Environmental Restoration, Inc.	ERI
Advanced GeoService Corporation	AGC
Potentially Responsible Parties	PRPs
Not applicable	N/A

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/.” 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.