

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

JUNE 11 - 7 PM 3: 24

In the Matter of: )

OMAHA LEAD SUPERFUND SITE )  
OMAHA, NEBRASKA )

) ADMINISTRATIVE ORDER DIRECTING  
) COMPLIANCE WITH REQUEST FOR  
) ACCESS

Fred S. Breci )  
321 South 70<sup>th</sup> Avenue )  
Omaha, Nebraska 68132 )

) Docket No. CERCLA-07-2012-0041

RESPONDENT )

) Proceeding Under Section 104(e) of the  
) Comprehensive Environmental Response,  
) Compensation and Liability Act,  
) as amended, 42 U.S.C. § 9604(e)

ADMINISTRATIVE ORDER DIRECTING COMPLIANCE  
WITH REQUEST FOR ACCESS

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1. Warranty Deeds
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3. Access Forms

## **I. JURISDICTION**

1. This Administrative Order (“Order”) is issued to Fred S. Breci (hereinafter “Respondent”), pursuant to the authority vested in the President of the United States by Section 104(e)(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9604(e)(5), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.400(d)(4). This authority was delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators of EPA on May 11, 1994 by EPA Delegation No.14-6. The Regional Administrator, EPA Region 7, re delegated this authority to the Superfund Division Director, EPA Region 7, by Regional Delegation No. R7-14-006, dated June 30, 1997, and the authority was further delegated to the Superfund Branch Chiefs by Regional Delegation No. R7-DIV-14-006, dated July 25, 1997.

## **II. STATEMENT OF PURPOSE**

2. This Order requires Respondent to grant EPA and its authorized representatives entry and access to the property described in Paragraph 4 below (“the Property”) located in Omaha, Nebraska for the purposes of determining the need for response actions or otherwise enforcing the provisions of CERCLA by collecting environmental samples at the Omaha Lead Superfund Site (the “Site”). This Order further requires Respondent to refrain from interfering with access to the Property by EPA and its authorized representatives for the purposes set forth herein. The Property is located within the Site. Hazardous substances have been released at the

Site and the EPA is investigating the nature and extent of the release in order to evaluate the need to conduct additional response actions to remove the hazardous substances. The access is necessary at the Property to determine if hazardous substances are present and evaluate if the hazardous substances present a threat to human health or the environment.

3. This Administrative Order establishes that Respondent has denied EPA access to his property, sets forth the relief EPA is seeking, and provides Respondent with an opportunity to confer with EPA regarding access.

### **III. FINDINGS OF FACT**

4. Respondent is the owner(s) of certain property described as:

a. a residential property at 5503 Dodge Street, Omaha, Nebraska.

5. Respondent acquired current interest in the properties described in Paragraph 4a on September 18, 1997. A copy of the Deed for the property is attached as Exhibit 1. The property described in Paragraph 4 is herein referred to as the "Property."

6. The Site is listed on the CERCLA National Priorities List, 40 C.F.R. Part 300, App. B, pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

7. The Site includes contaminated surface soils present at thousands of residential properties, child care facilities, and other residential-type properties in the city of Omaha, Nebraska, that have been contaminated as a result of historic air emissions from lead smelting/refining operations. The total area of the Site is approximately 27 square miles and encompasses the eastern portion of the greater metropolitan area in Omaha, Nebraska. The Site

is centered around downtown Omaha, Nebraska, where two former lead processing facilities operated.

8. American Smelting and Refining Company, Inc., (ASARCO) operated a lead refinery at 500 Douglas Street in Omaha, Nebraska, for over 125 years. The Gould Electronics Inc. (Gould) lead battery recycling plant was located at 555 Farnam Street and operated for approximately 30 years. Both facilities released lead-containing particulates to the atmosphere from their smokestacks as a routine part of their operation. The ASARCO facility was much larger and emitted most of the airborne lead contaminants. Past smelting/refining operations have resulted in the emissions of over a hundred thousand tons of lead into the air at the Site. These lead emissions migrated through airborne pathways and settled onto the ground surface in the areas of the Site, including the residential properties.

9. The Site has an extensive history of investigations and response activities to address threats to human health and the environment presented by lead contaminated soils. The EPA began sampling residential yards in March 1999. The EPA has collected soil samples from over 35,000 residential properties in the Omaha area. The EPA has had the soil samples analyzed and the results from the sampling activities have been verified. The results of this soil sampling show widespread soil lead contamination in the residential yards at the Site.

10. To address the release of the hazardous substances at the residential properties at the Site, the EPA is conducting certain response actions. These actions included the performance of an emergency removal action to cleanup contaminated soils at priority properties. In addition a Remedial Investigation/Feasibility Study (RI/FS) was performed to identify the locations of contaminated residential soils, evaluate their impact on human health and the environment, and

propose remediation alternatives to address the risks posed by the contaminated residential soils. A final Record of Decision was signed in May 2009 outlining the steps to be taken to address the lead contamination in the residential soils at the Site and additional cleanup work is being implemented. These actions require the sampling of the soil at the Property to determine if these soils are contaminated.

11. To perform the response actions described above, it will be necessary for employees, agents, contractors, and other representatives of EPA to enter the Property. The activities for which entry is required include the collection of soil samples from the Property and, if necessary, the collection of lead paint data through non-intrusive testing of the exterior painted surfaces of the structures at the Property.

12. Soil sampling activities at the Property will require approximately one hour to complete and will consist of the collection of several spoonfuls of soil at each sample location. The EPA will enter Respondent's yard and collect small soil samples for analysis. The samples are taken beneath the top layer of grass and organic matter. This is done by making a small divot in the grass, removing a few spoons full of soil, and replacing the divot. The EPA does not need to enter Respondent's home or any other outside buildings. Approximately, five to six composite samples will be taken from the front, back and side yards. Also, EPA may sample near outside play equipment or in garden areas. Generally, samples are collected away from buildings to avoid interference from any lead-based paint chips that may have fallen off buildings, but at least one sample will be taken in the area close to the foundation of the building. The small volume of soil will be removed from Respondent's Property and placed in a small container or plastic bag

for analytical testing at a laboratory or field analysis at an EPA field office location, and retained for subsequent analytical verification.

13. In addition, if the results of the soil sampling at the Property indicate that the soil at the property is contaminated above levels of concern, the EPA will return to perform a lead-based paint assessment on the exterior painted surfaces of the structures at the property. The purpose of this assessment is to evaluate the severity of any lead-based paint problem that may exist. The paint data collection activities will take a few hours to complete. EPA will collect data on each of the similarly painted exterior surfaces for all structures at the Property, including the exterior of the house, garage, and other structures, if any are present. No painted surfaces will be disturbed by this assessment. The data will be collected using an instrument placed against the painted surface that records the lead content of the painted surface. In addition, EPA will visually inspect the painted surfaces. The EPA will not enter the house or any other structure.

14. The EPA will enter the Property at reasonable times to perform the sampling. EPA will provide the sample results to the Respondent. Respondent may observe EPA sampling procedures but may not interfere with sampling activities.

15. Considerable efforts have been made by EPA to obtain permission to access the Property, but such efforts have been unsuccessful. The following contact attempts have been made:

- a. Access request letters, copies of which are attached as Exhibit 2, were sent on the following dates for the property listed in Paragraph 4a:

- i. August 21, 2008 (this letter is dated August 1, 2008 but was sent on August 21, 2008 along with an August 7, 2008 letter from the Omaha City Council), and October 13, 2010.
- b. Personal or telephone contacts were made (as documented on the Access Forms attached as Exhibit 3) on the following dates for the property listed in Paragraph 4a:
  - i. February 12, 2009.
- c. Most recently representatives of the EPA contacted the Respondent by telephone on April 10, 2012 and again Respondent refused to allow access to the Property.

Respondent has had many opportunities to enter into an access agreement with EPA. However, Respondent has rejected all attempts by EPA to obtain access for sampling the Property.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

16. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17. Respondent is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Lead is a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. The past and/or present disposal and migration of a hazardous substance at or from the Site constitutes an actual “release” or a threat of such a release into the “environment”



within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22), and thus there is a reasonable basis to believe that there may be a release or threat of release of hazardous substances on the Property within the meaning of Section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

20. The Property owned or controlled by Respondent referred to in Paragraph 4 above is a property:

- a. to which a hazardous substance has been or may have been released; and
- b. where entry is needed to determine the need for a response action, within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

21. Entry to property owned or controlled by Respondent by the agents, contractors, or other representatives of the United States is needed for the purposes of determining the need for a response action, within the meaning of Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).

22. EPA's request for access to the Property has not been granted or Respondent's attempts to condition its grant of access amounts to a denial of access within the meaning of Section 104(e)(5)(a) of CERCLA, 42 U.S.C. § 9604(e)(5)(a), and 40 C.F.R. 300.400(d)(4)(i).

#### **V. ORDER**

23. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record, Respondent is hereby ordered to provide EPA and its officers, employees, agents, contractors, and other representatives, full and unrestricted access at all reasonable times to the Property for the purpose of conducting sampling activities

that EPA deems necessary to evaluate the threat to public health, welfare or the environment posed by the release or threatened release of hazardous substances at the Property.

24. Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e) and 40 C.F.R. 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Property pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

25. Nothing herein limits or otherwise affects any right of entry held by the United States pursuant to applicable laws, regulations, or permits.

26. This Order shall apply to and be binding upon Respondent and its successors, heirs and assigns, and each and every agent of Respondent and upon all other persons and entities who are under the direct or indirect control of Respondent, including any and all lessees of Respondent.

27. In the event of any conveyance by Respondent or Respondent's agents, heirs, successors and assigns of an interest in the Property, Respondent or Respondent's agents, heirs, successors and assigns shall convey the interest in a manner which insures continued access to the Property by EPA and its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of the Property so that the use will not interfere with activities undertaken or to be undertaken by EPA and its representatives.

Respondent or Respondent's agents, heirs, successors and assigns shall notify EPA in writing at least thirty (30) days prior to the conveyance of any interest in the Property, and shall, prior to the transfer, notify the other parties involved in the conveyance of the provisions of this Order.

## VI. ENFORCEMENT

28. Compliance with this Order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). A court may impose a civil penalty on Respondent of up to \$37,500 for each day that Respondent unreasonably fails to comply with this Order, as provided in Section 104(e)(5) of CERCLA, 42, U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121, 40 C.F.R. Part 19.4. In addition, any person who is liable for a release or threat of release of a hazardous substance or pollutant or contaminant and who fails to comply with this Order may be liable for punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or other actions it may deem necessary for any purpose, including the prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Property, and recovery of the costs thereof.

29. Nothing in this Order constitutes a waiver, bar, release, or satisfaction of or a defense to any cause of action which EPA has now or may have in the future against Respondent, or against any entity which is not a party to this Order.

30. Nothing in this Order shall affect in any manner the right of EPA to issue any other orders or to take any other administrative or civil action against Respondent or any other parties under CERCLA which relate to this Property or any other site.

31. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

## **VII. ADMINISTRATIVE RECORD**

32. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. The Administrative Record is available for review at three branches of the Omaha Public Library in Omaha, Nebraska and by appointment at the EPA Regional Office in Kansas City, Kansas. The Administrative Record is located at the main branch (W. Dale Clarke Branch) of the Omaha Public Library at 215 South 15<sup>th</sup> Street (402-444-4800), the Washington Branch at 2816 Ames Avenue (402-444-4849), and at the South Omaha Branch at 2202 M Street (402-444-4850). A paper and electronic copy is available at the main branch with only electronic copies available at the Washington Branch and South Omaha Branch. An appointment to review the Administrative Record at the EPA Regional Office can be made by contacting Steven L. Sanders, Senior Counsel, at (913) 551-7578. The record can also be reviewed by contacting the Omaha Public Library at the numbers identified above.

## **VIII. OPPORTUNITY TO CONFER**

33. Within seven (7) calendar days after receipt of this Order by Respondent, Respondent may request a conference with EPA, to be held no later than three (3) business days after Respondent's request, on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions Respondent is ordered to take, or any other relevant and material issues or contentions which Respondent may have regarding this Order. Respondent may appear in person and/or be represented by an attorney or other representative at the conference. Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or at least two business days before the effective date of this

Order if Respondent does not request a conference. EPA will deem Respondent to have waived its right to the conference or to submit written comments if it fails to request the conference or submit comments within the specified time period(s). Any request for a conference or written comments or statement should be submitted to Steven L. Sanders, Senior Counsel, at telephone number (913) 551-7578, by facsimile number (913) 551-9578, by electronic mail at sanders.steven@epa.gov or by regular mail at U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101. The Respondents can also reach EPA toll free at 1-800-223-0425.

**IX. EFFECTIVE DATE: COMPUTATION OF TIME**

34. This Order shall be effective seven (7) business days after its receipt by Respondent or Respondent's designated representative unless a conference is timely requested as provided above. If a conference is timely requested, then at the conclusion of the conference or after the conference, if EPA determines that no modification to the Order is necessary, the Order shall become effective immediately upon notification by EPA of such determination. If modification of the Order is determined by EPA to be necessary, the Order shall become effective upon notification by EPA of such modification. Any EPA notification under this paragraph may, at EPA's discretion, be provided to Respondent by facsimile, electronic mail, or oral communication; provided that if EPA does use such a form of notification, it will also confirm such notification by first class, certified or express mail to Respondent or its legal counsel. Any amendment or modification of this Order by EPA shall be made or confirmed in writing.

35. For purposes of this Order, the term “day” shall mean a calendar day unless expressly stated to be a business day. “Business day” shall mean a day other than a Saturday, Sunday or federal legal holiday. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or federal legal holiday, the period shall run until the next business day.

**X. NOTICE OF INTENT TO COMPLY**

36. On or before the effective date of this Order, Respondent shall notify EPA in writing whether Respondent will comply with the terms of this Order. Respondent’s failure to notify EPA of its unconditional intent to fully comply with this Order by the time the Order becomes effective shall be (1) construed as a denial of EPA’s request for access, and (2) as of the effective date of the Order, treated as a violation of the Order. Such written notice shall be sent to:

Steven L. Sanders  
Senior Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone (913) 551-7578  
Facsimile (913) 551-9578.

**XI. TERMINATION**

37. This Order shall remain in effect for 180 days after the effective date of the Order or until Gene Gunn, Branch Chief or his designee notifies Respondent in writing that access to the Property is no longer needed, whichever comes first.

**SO ORDERED.**

5/2/12  
Date of Issuance

Dave Drake  
for Gene Gunn  
Chief  
Special Emphasis Remedial Branch  
Superfund Division

RECEIVED

Nov 24 3 42 PM '97



RICHARD H. TAKECHI  
 REGISTER OF DEEDS  
 DOUGLAS COUNTY, NE  
 39-11420  
 NEBRASKA DOCUMENTARY  
 STAMP TAX  
 Date 10-24-97  
 FEE 10.00 FB 136.50

\*\*\*\*\*C/O\*\*\*\*\*COMP\*\*\*\*\*  
 DEL SCAN TV  
 WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, THAT  
 Wayne G. Kubik, single and Marvin L. Kubik and Patricia Kubik, husband and  
 wife and Sharon K. Thompson and Duane L. Thompson, wife and husband  
 , HEREIN CALLED  
 THE GRANTOR WHETHER ONE OR MORE, IN CONSIDERATION OF ONE DOLLAR AND OTHER  
 VALUABLE CONSIDERATION RECEIVED FROM GRANTEEES, DOES GRANT, BARGAIN, SELL  
 CONVEY AND CONFIRM UNTO:  
 Fred S. Breci

HEREIN CALLED THE GRANTEE WHETHER ONE OR MORE, THE FOLLOWING DESCRIBED  
 REAL PROPERTY IN Douglas COUNTY, NEBRASKA.

Lot 15, Block 5, Evanstone, an Addition to the City of Omaha, Douglas County,  
 Nebraska.

TO HAVE AND TO HOLD THE ABOVE DESCRIBED PREMISES TOGETHER WITH ALL TENEMENTS,  
 HEREDITAMENTS AND APPURTENANCES THERETO BELONGING UNTO THE GRANTEE AND TO  
 GRANTEE'S HEIRS AND ASSIGNS FOREVER.

AND GRANTOR DOES HEREBY COVENANT WITH THE GRANTEE AND WITH GRANTEE'S HEIRS  
 AND ASSIGNS THAT GRANTOR IS LAWFULLY SEISED OF SAID PREMISES; THAT THEY  
 ARE FREE FROM ENCUMBRANCE:  
 except those easements, restrictions and covenants of record.  
 THAT GRANTOR HAS GOOD RIGHT AND LAWFUL AUTHORITY TO CONVEY THE SAME; AND THAT  
 GRANTOR WARRANTS AND WILL DEFEND THE TITLE TO SAID PREMISES AGAINST THE LAWFUL  
 CLAIMS OF ALL PERSONS WHOMSOEVER.

EXECUTED: September 18, 1997.  
Marvin L. Kubik Patricia Kubik  
Wayne G. Kubik Sharon K. Thompson  
 STATE OF Nebraska )  
 COUNTY OF Sarpy ) SS Duane L. Thompson

ON THIS 18 DAY OF September, 1997, BEFORE  
 ME, THE UNDERSIGNED A NOTARY PUBLIC, FULLY COMMISSIONED AND QUALIFIED FOR IN  
 SAID COUNTY, PERSONALLY CAME Marvin L. Kubik and Patricia Kubik, husband  
and wife and Wayne G. Kubik, a single person  
 TO ME KNOWN TO BE THE IDENTICAL PERSON OR PERSONS WHOSE NAME IS OR NAMES ARE  
 AFFIXED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE EXECUTION THEREOF TO  
 BE HIS, HER OR THEIR VOLUNTARY ACT AND DEED.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

Mary R. Dunham  
 NOTARY PUBLIC

MY COMMISSION EXPIRES THE 2 DAY OF October, 1998.



STATE OF Nebraska )  
 ) SS  
COUNTY OF Dodge )

ON THIS 22 DAY OF September, 1997, BEFORE ME, THE UNDERSIGNED A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED FOR IN SAID COUNTY, PERSONALLY CAME Sharon K. Thompson and Duane L. Thompson, wife and husband

TO ME KNOWN TO BE THE IDENTICAL PERSON OR PERSONS WHOSE NAME IS OR NAMES ARE AFFIXED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS, HER OR THEIR VOLUNTARY ACT AND DEED.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.



Patricia L. Pacula  
NOTARY PUBLIC

MY COMMISSION EXPIRES THE 11<sup>th</sup> DAY OF November, 1998.  
\*\*\*\*\*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

August 1, 2008

Re: Omaha Lead Site Required Soil Testing

Dear Property Owner:

The U.S. Environmental Protection Agency (EPA) has discovered high levels of lead in soils across eastern Omaha, Nebraska, and is continuing to investigate the areas where this contamination may be found. The EPA is performing this investigation in order to help reduce childhood lead poisoning in the Omaha area. The EPA will need to sample all of the residential properties located within our area of investigation in eastern Omaha, which includes your property.

The sampling that EPA needs to perform at your property would be no cost to you. A total of about two cups of soil would be collected from various locations around your property and tested for contamination by lead and other metals. If the soil sampling indicates that the soil contains lead levels sufficiently high for the property to be eligible for cleanup, EPA will also need to perform a lead based paint assessment on the exterior walls of structures located on the property to determine if chipping and peeling paint on homes or other structures has the potential to fall to the ground and re-contaminate the soil. The results of the sampling and the lead based paint assessment, if required, will be mailed to you. If EPA determines that any lead cleanup work is necessary, that work will also be performed at no cost to you.

EPA is requesting your permission to perform this sampling. An access agreement is enclosed to provide this permission. Please sign this agreement and return it to EPA in the enclosed postage paid envelope so that your property can be sampled at no cost to you. Once the access agreement is returned, EPA will perform the soil sampling and will also perform the lead based paint assessment, if necessary. If the EPA does not hear from you, we may be contacting you directly.

If you have any additional questions about this matter, please call the local EPA Public Information Center at 1-402-731-3045.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Feild".

Bob Feild,  
Project Manager

Enclosure

**Para mas información en español, por favor usen este numero 1-402-731-3045.**

**EXHIBIT 2**



**OMAHA CITY COUNCIL**  
OMAHA/DOUGLAS CIVIC CENTER  
OMAHA, NEBRASKA 68183  
Telephone (402) 444-5520  
Telefax (402) 444-5263

DAN WELCH  
PRESIDENT  
GARRY GERMANDT  
VICE PRESIDENT  
FRANK BROWN  
CHUCK SIGERSON  
JIM SUTTLE  
FRANKLIN THOMPSON  
JIM VOKAL

August 7, 2008

Dear Property Owner:

We are writing to encourage you to cooperate with the U.S. Environmental Protection Agency (EPA) in their ongoing investigation of lead-contaminated soils in eastern Omaha. Lead-contaminated soil poses a serious risk to children of our community.

At the request of the City Council, the EPA began investigating lead-contaminated soil in Omaha in 1999. To date, EPA has conducted soil sampling at more than 80% of the 40,000+ residential properties within the impacted area. You have been identified as an owner of a property where EPA has been unable to obtain voluntary access to perform soil sampling. The EPA intends to sample all residential properties within the impacted area. In cases where voluntary access is not provided, EPA has indicated that it intends to perform this sampling using statutory authority granted by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, or the Superfund statute).

It is in the best interest of all property owners within the impacted area to cooperate with EPA and allow access for soil sampling. If voluntary access is granted, EPA will work with property owners to arrange a convenient time to perform the soil sampling and take into consideration other owner concerns, to the extent possible. All cleanup work that is determined to be necessary for protection of public health would be performed by EPA at no cost to the property owner if voluntary access is provided.

Enclosed is an access agreement that can be completed to grant voluntary access to EPA to conduct this important soil sampling. We urge you to complete this form for all properties owned within the impacted area, and return it to EPA in the enclosed postage-paid envelope at your earliest convenience. The EPA public information centers can be contacted for more information about the EPA lead cleanup in Omaha at (402) 731-3045, or you may contact EPA directly by calling the project manager, Robert Feild, at (913) 551-7697, or the site attorney, Steven Sanders, at (913) 551-7578. Thank you for your cooperation.

Sincerely,

  
Dan Welch  
President

  
Garry Germandt  
Vice President

  
Frank Brown  
Councilmember

  
Chuck Sigerson  
Councilmember

  
Jim Suttle  
Councilmember

  
Franklin Thompson  
Councilmember

  
Jim Vokal  
Councilmember

/Enclosure

**EXHIBIT 2**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

October 13, 2010

Re: Omaha Lead Site Required Soil Testing

Dear Property Owner:

The U.S. Environmental Protection Agency (EPA) has discovered high levels of lead in soils across eastern Omaha, Nebraska, and is continuing to investigate the areas where this contamination may be found. The EPA is performing this investigation in order to help reduce childhood lead poisoning in the Omaha area. The EPA will need to sample all of the residential properties located within our area of investigation in eastern Omaha, which includes your property.

The sampling that EPA needs to perform at your property would be no cost to you. A total of about two cups of soil would be collected from various locations around your property and tested for contamination by lead and other metals. If the soil sampling indicates that the soil contains lead levels sufficiently high for the property to be eligible for cleanup, EPA will also need to perform a lead based paint assessment on the exterior walls of structures located on the property to determine if chipping and peeling paint on homes or other structures has the potential to fall to the ground and re-contaminate the soil. The results of the sampling and the lead based paint assessment, if required, will be mailed to you. If EPA determines that any lead cleanup work is necessary, that work will also be performed at no cost to you.

EPA is requesting your permission to perform this sampling. An access agreement is enclosed to provide this permission. Please sign this agreement and return it to EPA in the enclosed postage paid envelope so that your property can be sampled at no cost to you. Once the access agreement is returned, EPA will perform the soil sampling and will also perform the lead based paint assessment, if necessary. If the EPA does not hear from you, we may be contacting you directly.

If you have any additional questions about this matter, please call the local EPA Public Information Center at 1-402-731-3045.

Sincerely,

A handwritten signature in cursive script that reads "Pauletta R. France-Isetts".

Pauletta R. France-Isetts  
Project Coordinator  
Superfund Division  
Environmental Protection Agency

Enclosure

**Para mas información en español, por favor usen este numero 1-402-731-3045.**

**EXHIBIT 2**



67708



U.S. Environmental Protection Agency

Omaha Lead Site  
Omaha, NE

Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

Access Agreement to Perform  
Soil Sampling and Lead-Based  
Paint Assessments

**PROPERTY ACCESS** *(To be completed by property owner)*

Para recibir esta forma en español, por favor llame el Centro De Información Público al (402) 731-3045

Black & Veatch Special Projects Corp. (BVSPC) is under contract with the U.S. Environmental Protection Agency (EPA) to assist in the determination of levels of lead and other metals in surface soils within the Omaha, Nebraska, area. Your cooperation is requested in giving BVSPC/EPA permission to access your property for the purpose of surface soil sampling and analysis in support of this study. If soil sampling indicates that the soil contains lead levels sufficiently high for the property to be eligible for cleanup, property owner grants BVSPC/EPA permission to perform a lead based paint (LBP) assessment on the exterior walls of structures located on the property. Permission to perform sampling and/or LBP assessment must be obtained from the property owner. Contact the local EPA Public Information Center at (402) 731-3045 for further information.

**Printed Name of Property Owner Granting Access:** \_\_\_\_\_  
*(Property Owner's Printed Name)*

\_\_\_\_\_  
*(Property Owner's Signature)* \_\_\_\_\_  
*(Date)*

*NOTE: Sampling may not be scheduled or conducted immediately upon granting access.*

**PROPERTY INFORMATION**

*(To be completed by resident and/or property owner - Please Print)*

Property Address: 5503 DODGE ST OMAHA NE 68132  
(CITY) (STATE) (ZIP)

Property Owner's Name: FRED S BRECI TR

Resident's Name (If not Owner): \_\_\_\_\_

Owner's Mailing Address: 321 S 70 AVE, OMAHA, NE 68132

Owner's Telephone Number - Home: \_\_\_\_\_ Alternate: \_\_\_\_\_

Are there children under 7 years old living at this property?  Yes  No  N/A  Unknown

If yes, what is the date of birth of the youngest child? \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AUTHORITY FOR ENVIRONMENTAL RESPONSE ACTIONS**

The activities to be implemented by EPA under this agreement are pursuant to Section 104 of CERCLA, 42 U.S.C. 9604. EPA's right of access to the property in Section 104(e) of CERCLA, 42 U.S.C. 9604(e) provides entry for "determining the need for response, or choosing or taking any response action under this title, or otherwise enforcing the provisions of this title."



## ACCESS INFORMATION TRACKING SHEET

BVID: 67708      PROPERTY ADDRESS: 5503 Dodge

Property Owned By: Breci, Fred S. (TR)  
(If new property owner)  
321 South 70<sup>th</sup> Ave  
Omaha, NE. 68132

Owners Phone No's: Home: (402) 556-8357 Work: \_\_\_\_\_

Cell: \_\_\_\_\_ Fax: \_\_\_\_\_

Access Contractor: ASW    FDA    MES    PE    Other: Prudent  
(Circle One)

DATE	TIME	Accessor	CONTACT DETAIL
Sat 1/24/09	11:10 AM	J.M.H.	Visited prop owner's mailing address No 1 hum, ← hngr
Tue 1/27/09	9:45A	J.M.H.	2 <sup>ND</sup> visit, hngr gone ← Left 2 <sup>ND</sup> plus card.
Fri 1/30/09	5:50P	J.M.H.	No 1 @ home hanger still there
wed 2/4/09	5:35P	J.M.H.	4 <sup>th</sup> visit hngr gone - NO 1 answered door
Thur 2/12/09	9:35A	J.M.H.	Called - Spoke w/ Fred Brec - Refused

Comments: Searched white pages.com - yielded home # - called  
Mr. Breci - he refused stating "I don't want to take  
a chance that this will cost me money later." Assured him  
it was all at no cost. He responded "Nope, not gonna do it."  
1<sup>st</sup> Attemp - Refused

Please write legibly!