

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 11/07/12 12:02

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

In the Matter of: )

OMAHA LEAD SUPERFUND SITE )  
OMAHA, NEBRASKA )

) ADMINISTRATIVE ORDER DIRECTING  
) COMPLIANCE WITH REQUEST FOR  
) ACCESS

)  
) Esther Miodowski )  
) 4615 South 33<sup>th</sup> Street )  
) Omaha, Nebraska 68107 )

) Docket No. CERCLA-07-2012-0004

)  
) 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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**LIST OF EXHIBITS**

- 1. Warranty Deeds
- 2. Access Request Letter
- 3. Access Forms

## **I. JURISDICTION**

1. This Administrative Order (“Order”) is issued to Esther Miodowski (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 her 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 4622 South 32<sup>nd</sup> Street, Omaha, Nebraska; and
- b. a residential property at 4615 South 33<sup>rd</sup> Street, Omaha, Nebraska.

5. Respondent acquired current interest in the property described in Paragraph 4a and 4b on November 8, 2001. A copy of a Warranty Deed for both properties is attached as Exhibit 1a. The properties described in Paragraph 4 are 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 39,000 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
  - i. for the property listed in Paragraph 4a:

- March 10, 2003, April 30, 2004, April 11, 2005, November 28, 2007, 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
- ii. for the property listed in Paragraph 4b:
  - March 10, 2003, April 30, 2004, April 11, 2005, 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:
  - i. for the property listed in Paragraph 4a:
    - March 28, 2008.
  - ii. for the property listed in Paragraph 4b:
    - July 27, 2004, and April 11, 2009.
- c. Most recently the EPA contacted the Respondent by telephone on September 8, 2011 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](mailto: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.**

11/09/2011  
Date of Issuance

Gene Gunn  
Gene Gunn  
Chief  
Special Emphasis Remedial Branch  
Superfund Division

PARC 3179 0000 04

FB 35 STATUS 2 CLASS R

EXEMPT 0 EXEMPT TYPE

TAX DISTRICT 0100 SID F-

PROP HOUSE HALF DIR ----STREET NAME----- TYPE SUFFIX APT AREA ZIP CODE  
ADDRESS 04622 S 032 ST OMA 68107

-----OWNER OR TAXPAYER INFORMATION-----

NAME E\*MIODOWSKI ETAL DATE OF LAST CHANGE 11-20-2001  
+ 4615 S 33 ST BK/PG OR DOC#: 2195/544  
ADDR HOMESTEAD DELETE  
CITY OMAHA ST NE ZIP 68107 NON NUMERIC ZIP CODE

-----CURRENT VALUE-----HOMESTEAD-----

YEAR ---DATE--- ---LAND--- ---IMPR--- --TOTAL-- PAR RSN NUMBER TY CD PCT VALUE  
2008 03-10-2008 11400 72500 83900 RA

ADDITION NO. 81000 LOT 5 HALF BLOCK 356 HALF  
SOUTH OMAHA CITY LOTS SECT TOWN RANGE PLAT 0186

-----LEGAL DESCRIPTION-----

1 50 X 130 2  
3 4  
5 6  
7 8

PF1-ADFB

PF5-PNFB

PF6-PAFB

Bnd  
# 10031

30200129



Superfund

Nebr Doc  
Stamp Tax  
11-8-01  
Date  
\$ 562  
By WFO

RICHARD A. TAKACH  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE  
01 NOV -8 AM 9:18  
RECEIVED

DEED 2001 15197

JOINT TENANCY WARRANTY DEED

Deed  $\frac{1}{3}$  CASH  
FEE 10.2 FB 24-81000  
BNP 2-1 C/O 3 COMB 3  
DEL \_\_\_\_\_ SCAN UR RV \_\_\_\_\_

Esther Miodowski  
\_\_\_\_\_, Grantor,

whether one or more, in consideration of love + affection  
\_\_\_\_\_, receipt of which is hereby acknowledged, conveys to

Esther Miodowski Jerome T. Miodowski  
\_\_\_\_\_, Grantees, as joint tenants, the following described real estate

(as defined in Neb. Rev. Stat. Sec. 76-201) in Douglas County, Nebraska:

Lot 5 Block 356 and N $\frac{1}{2}$  Lt 11 + all Lt 12  
Block 356, SOUTH OMAHA CITY LOTS

Grantor covenants (jointly and severally, if more than one) with Grantees that Grantor:

- (1) is lawfully seized of such real estate and that it is free from encumbrances, except:
- \_\_\_\_\_;
- (2) has legal power and authority to convey the same;
- (3) warrants and will defend the title to the real estate against the lawful claims of all persons.

Executed this 8 day of November, 2001

Esther Miodowski  
\_\_\_\_\_

STATE OF NEBRASKA )  
COUNTY OF Douglas )ss.

The foregoing instrument was acknowledged before me this 8 day of  
November, 2001 by Esther A. Miodowski, widow

GENERAL NOTARY-STATE of Nebraska  
DIANE M. WARWICK  
My Comm. Exp. Oct. 14, 2004

Diane M. Warwick  
Notary Public

My commission expires: \_\_\_\_\_  
rd/00

RETURN Esther Miodowski  
4615 SO 33 ST  
Omaha, Ne 68107

Bnd # 10031



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

OFFICE OF  
REGIONAL ADMINISTRATOR

March 10, 2003

Re: Omaha Lead Site  
Soil Testing  
EPA ID No. NESFN0703481

Dear Property Owner:

The U. S. Environmental Protection Agency (EPA) is investigating lead contamination in soil at residences in eastern Omaha, Nebraska. EPA would like to include your property in this investigation because it is located within an area that may have been influenced by historical lead sources located in or near downtown. If you choose to sign the enclosed access agreement and mail it back in the enclosed envelope, consultants hired by EPA will visit your property at a later date to collect samples of soil from your yard.

A total of about two cups of soil will be collected from various locations around your property and tested for contamination by lead and other metals. The results will be mailed to you after a quality control analysis has been performed. In addition, data from your property will be used to develop a map of the Omaha Metropolitan Area showing locations where high lead concentrations have been found. This map will be used as a tool to identify any trends that may lead to parties responsible for the contamination. It will also be used to inform the public about the progress of the investigation.

At a later date, EPA will evaluate the results of all properties it has tested to determine the need for clean-up. If your property needs to be cleaned-up, EPA will perform the work at no cost to the property owner. Properties where a child with an elevated blood lead level lives or those being used to provide licensed child care services will be considered for clean-up before all other properties.

I encourage you to sign and return the access form which will permit EPA to sample your property. Although participation in the soil investigation is voluntary, information gained by testing your soil for metals contamination could be useful as you make future decisions about the use of your property.

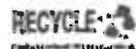
If you have any additional questions about this matter, please call 1-913-551-7703 or call Debbie Kring toll-free at 1-800-223-0425.

Sincerely,

Don Bahnske, Project Manager

Enclosures

Para más información en español, por favor usar este número 1-800-223-0425.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION VII  
601 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101**

**April 30, 2004**

**Dear Property Owner:**

**Re: Omaha Lead Site Required Soil Testing**

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 EPA has previously contacted you in order to sample the soils at your property, but either has not heard from you or has not been granted access to perform the necessary sampling. EPA will require soil testing at all residential properties within our area of investigation.

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. The results of the sampling will be mailed to you.

In order to perform this sampling the EPA would like your permission. 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, the EPA will contact you to perform the sampling. 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 me or call Debbie Krings toll-free at 1-800-223-0425.

Sincerely,

A handwritten signature in cursive script that reads "Don Behnke".

**Donald Behnke,  
Project Manager**

**Enclosure**

**Para más información en español, por favor usen este número 1-800-223-0425.**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION VI  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 65101**

**April 11, 2005**

**Dear Property Owner:**

**Re: Omaha Lead Site  
Soil Testing  
EPA ID No. NESFN0703481**

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 would like to include your property in this investigation because it is located within an area that may have been influenced by historical lead sources located in or near downtown. The EPA is performing this investigation in order to help reduce childhood lead poisoning in the Omaha area.

The EPA would like to sample the soil on your property at 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. The results of the sampling will be mailed to you.

In order to perform this sampling the EPA would like your permission. An access agreement is enclosed to provide this permission. Please sign this agreement and return it to EPA so that your property can be sampled at no cost to you. Once the access agreement is returned the EPA will contact you to perform the sampling.

If you have any additional questions about this matter, please call me at 1-913-551-7003 or call Debbie Kring toll-free at 1-800-223-0425.

Sincerely,

A handwritten signature in cursive script that reads "Don Bahnke".

**Donald Bahnke,  
Project Manager**

**Enclosure**

**Para más información en español, por favor usen este número 1-800-223-0425.**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

November 28, 2007

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. The results of the sampling 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, the EPA will contact you to perform the sampling. 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



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,

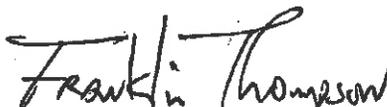
  
Dan Welch  
President

  
Garry Germandt  
Vice President

  
Frank Brown  
Councilmember

  
Chuck Sigerson  
Councilmember

  
Jim Suttle  
Councilmember

  
Franklin Thompson  
Councilmember

  
Jim Vokal  
Councilmember

/Enclosure



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**



U.S. Environmental Protection Agency

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

Omaha Lead Site  
Omaha, NE

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 al Centro De Información Publica 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: 4622 S 32 ST OMAHA NE 68107  
*(CITY) (STATE) (ZIP)*

Property Owner's Name: MIODOWSKI E

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

Owner's Mailing Address: 4615 S 33 ST, OMAHA, NE 68107

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."



REF.

**ACCESS INFORMATION TRACKING SHEET**

BVID: 10031      PROPERTY ADDRESS: 4622 S. 32 St.

Property Owned By: E. Miodowski  
(if new property owner)

Owner Contact No: Home:      Work:  
Cell:      Fax:

Access Contractor: FDA

DATE	TIME	Accessor	CONTACT DETAIL
082608	3:02pm	S.H.	left door hanger try break 4:6
082708	11:35am	S.H.	No answer try break FBI from 46 miak
0828-08	5:47pm	S.H.	Refused.

Comments: OWNER NOT INTERESTED AT THIS TIME

Please write legibly!

GB / Sherry Hodges



U.S. Environmental Protection Agency Region VII

Omaha Lead Site  
Omaha, NE

Residential Yard Soils  
Remedial Investigation/  
Feasibility Study

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

Para recibir esta forma en español, por favor llame Debbie Kring al 1-800-223-0425.

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 analysis in support of this study. For further information contact Don Bahnke, EPA Project Manager, 1-913-551-7003 or Debbie Kring at the Office of External Programs, 1-800-223-0425.

Property Access Granted By \_\_\_\_\_

(Please Print Name)

(property Owner Signature)

(date)

NOTE: Granting permission DOES NOT necessarily imply your property will be sampled at this time.

**PROPERTY INFORMATION**

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

Resident Name: \_\_\_\_\_

~~OWNER~~ TENANTS

owner  renter

Residence Address: 4622 S 32 ST

OMAHA  
(CITY)

NE  
(STATE)

68107  
(ZIP)

Property owned by E MIODOWSKI

Owner's mailing address: 4615 S 33 ST, OMAHA, NE 68107

Owner's telephone number - Home: <sup>402</sup> - 932-5065

Work: \_\_\_\_\_

Age of home? 90 years

How long have you lived here? \_\_\_\_\_ years

Has the exterior been painted or covered with siding since 1978?  Yes  No

Has the interior been painted or covered since 1978?  Yes  No

Total number of occupants: \_\_\_\_\_

List Ages: \_\_\_\_\_

List ages of occupants under 6 years old who play in the yard for 5 or more hours per week: \_\_\_\_\_

Comments: ~~PROPERTY OWNER SIGNATURE~~

**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 for in Section 104(e) of CERCLA, 42 U.S.C. 9604(e), which 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 Attempts: Letter sent:

First: 11/22/04 11:18

Second: 12/16/04 12:40

Third: 12/20/04 10:35

call 3:00pm

Omaha Lead Site



Black & Veatch Special Projects Corp.

MES

46130.0103



10060



U.S. Environmental Protection Agency

Omaha Lead Site  
Omaha, NERegion VII  
901 North 5th Street  
Kansas City, Kansas 66101Access 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 al Centro De Información Pública 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: 4615 S 33 ST OMAHA NE 68107  
(CITY) (STATE) (ZIP)

Property Owner's Name: MIODOWSKI E

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

Owner's Mailing Address: 4615 S 33 ST, OMAHA, NE 68107

Owner's Telephone Number - Home: 402-932-5065 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."





10060



U.S. Environmental Protection Agency Region VII

Omaha Lead Site  
Omaha, NE

Residential Yard Soils  
Remedial Investigation/  
Feasibility Study

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

Para recibir esta forma en español, por favor llame Debbie Kring al 1-800-223-0425.

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 analysis in support of this study. For further information contact Don Bahnke, EPA Project Manager, 1-913-551-7003 or Debbie Kring at the Office of External Programs, 1-800-223-0425.

**Property Access Granted By** \_\_\_\_\_

*(Please Print Name)*

*(property Owner Signature)*

*(date)*

**NOTE:** Granting permission DOES NOT necessarily imply your property will sampled at this time.

**PROPERTY INFORMATION**

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

Resident Name: \_\_\_\_\_

owner  renter

Residence Address: 4615 S 33 ST

OMAHA  
*(CITY)*

NE  
*(STATE)*

68107  
*(ZIP)*

Property owned by E MIODOWSKI

Owner's mailing address: 4615 S 33 ST, OMAHA, NE 68107

Owner's telephone number - Home: 932-5065

Work: \_\_\_\_\_

Age of home? 114 years

How long have you lived here? \_\_\_\_\_ years

Has the exterior been painted or covered with siding since 1978?  Yes  No

Has the interior been painted or covered since 1978?  Yes  No

Total number of occupants: \_\_\_\_\_ List Ages: \_\_\_\_\_

List ages of occupants under 6 years old who play in the yard for 5 or more hours per week: \_\_\_\_\_

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 for in Section 104(e) of CERCLA, 42 U.S.C. 9604(e), which 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 Attempts: Letter sent:

First: 7-27-04 3:18 Second: \_\_\_\_\_

Third: \_\_\_\_\_

Denied



Black & Veatch Special Projects Corp.

EXHIBIT 3b

## ACCESS INFORMATION TRACKING SHEET

BVID: 10060      PROPERTY ADDRESS: 4615 S 33<sup>rd</sup> ST

Property Owned By: Jerome  
(if new property owner)

Owner Contact No: Home: 932 5065      Work: \_\_\_\_\_  
 Cell: \_\_\_\_\_      Fax: \_\_\_\_\_

Access Contractor: Prodant

DATE	TIME	Accessor	CONTACT DETAIL
3/4/08		Jason	Left Door Hanger
3/5/08		JASON	Left M. on M. Phone call
3/12/08		Jason	House visit - no answer
3/13/08		Jason	" " " / Lmom
			unreachable
2-19-09	5:45pm	R.P.	left contact data on door

4/11/09 5:45 *PM* Home owner said no way and  
 Comments: to please get off of property  
Refused