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MEMORANDUM

SUBJECT: Proposed TSCA §403 Soil Lead Hazard and OSWER's Lead-in-Soils Policy

FROM: Lynn R. Goldman, M.D., Assistant Administrator
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TO: Regional Administrators, Regions I-X

The purpose of this memorandum is to address some concerns that have been brought to our attention following the June 3, 1998, publication of the proposed Toxic Substances Control Act (TSCA) §403 Rule. In particular, questions have arisen about the relationship between the proposed TSCA §403 rule and the Office of Solid Waste and Emergency Response's (OSWER's) Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Facilities (OSWER Directive # 9200.4-27P, August 27, 1998). This memo draws upon existing information in the TSCA §403 proposal, the 1994 TSCA §403 guidance, and the OSWER soil lead directive to address this issue.

Proposed TSCA §403 Rule

The June 3, 1998, proposal would identify lead-based paint hazards, which include hazardous lead paint as well as residential dusts and soils that have levels of lead considered to be hazards (regardless of whether they were contaminated with paint or other lead sources). In addition, TSCA §403 requires the Agency to identify lead-containing residential dusts and soils, some of which present public health concerns but may be lower than the levels identified by the hazard standards. These dusts and soils are referred in the statute as lead-contaminated dust and lead-contaminated soil. In the preamble to the proposal and in accompanying draft guidance, EPA identified 400 parts per million (ppm) of lead in soil as a level of public health concern. When environmental levels exceed the contamination level, EPA's baseline expectation is that children may be at risk of having elevated blood lead levels. The occurrence and the magnitude of this risk will depend on the specific circumstances.

EPA has proposed a 2,000 ppm hazard standard for lead in soil at which children's exposures will be associated with a greater certainty of harm. When soil lead levels exceed the hazard level, the Agency has a strong expectation, even in the absence of further data on local circumstances, that children will be at appreciable risk of elevated blood lead levels. The hazard standard was intended as a “worst first” level that will aid in setting priorities to address the greatest lead risks promptly. The proposed §403 regulations and the accompanying guidance are to be used by Federal, State, and Tribal lead paint programs, as well as by the industry performing inspections and risk assessments.

Already several weeks into the public comment period, EPA has received some comments that indicate a lower standard may be a more appropriate standard for protecting children. At the same time, others that have provided comments indicate that the proposed level of 2,000 ppm may tend to refocus efforts away from addressing other lead hazards in housing. EPA has extended the public comment period and is holding workshops with Federal agencies and affected groups to bring forward as much information as possible to inform the final decision.

OSWER’s Soil Lead Directive

The OSWER soil lead directive that provides guidance for the cleanup of lead-contaminated sites under the CERCLA and RCRA laws is unaffected by this proposal. CERCLA and RCRA soil lead cleanups should follow the approach in the 1998 directive. In contrast with minimum national standards that are designed to be used at millions of widely varying sites across the nation under TSCA §403, the studies that take place at CERCLA or RCRA sites allow levels to be developed that consider site-specific information. The TSCA §403 proposed 2,000 ppm hazard level should not be treated as an Applicable or Relevant and Appropriate Requirement (ARAR), “to be considered” or TBC, or media cleanup standard (MCS). As recognized in the TSCA §403 rule, lead contamination at levels below 2,000 ppm may pose a serious health risk based upon a site-specific evaluation and may warrant timely response actions. Thus, the 2,000 ppm proposed hazard standard under TSCA §403 should not be used to modify approaches to addressing Brownfields, RCRA sites, National Priorities List (NPL) sites, State Superfund sites, Federal CERCLA removal actions, and CERCLA non-NPL facilities.

Program Similarities

At lead-contaminated residential sites, both OPPTS and OSWER seek to protect the health of the most susceptible population (children under seven years of age) and to promote a program that assesses and addresses risk. The approaches taken by the two programs share many important aspects, but also differ in some respects because of the purposes of each program.

The OSWER soil lead directive and the TSCA §403 proposed rule both rely upon the Integrated Exposure Uptake Biokinetic Model (IEUBK) for lead in children. The OSWER soil lead guidance recommends that the IEUBK Model be applied to utilize site-specific information that can be very important in evaluating the risks at hazardous waste sites with residential exposure scenarios. Similarly, the TSCA

§403 proposal employs analyses that have relied upon the IEUBK Model to assess risks to children.

In the absence of site-specific information, EPA believes that soil lead levels above 400 ppm may pose a health risk to children through elevated blood lead levels. The 400 ppm screening level identified in the OSWER soil lead guidance is consistent with the “level of concern” identified in the preamble to the proposed TSCA §403 rule. Site-specific information would provide a basis to identify a different soil lead level that would be protective of health. Although lead contamination at levels below 2,000 ppm may not meet the TSCA §403 proposed hazard level, it may pose serious health risks and may warrant timely response actions including abatement.

Conclusion

In closing, we want to emphasize that the proposed 2,000 ppm hazard level for lead in soils is not a final level and may change in response to public comments. The proposed level should not be used to modify or select responses at RCRA, CERCLA, Brownfields, or State Superfund sites.

We hope that the clarifications provided in this memorandum are helpful. If you have any questions, please feel free to call Lynn Goldman at 202-260-2902 or Tim Fields at 202-260-4610. Regional program managers should contact Larry Reed, Deputy Director of the Office of Emergency and Remedial Response (OERR) in OSWER at 703-603-8960 or John Melone, Director of the National Program Chemical Division (NPCD) in OPPTS at 202-260-1866.

cc: RCRA/CERCLA National Program Managers, Regions I-X
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