



THE DEPARTMENT OF DEFENSE
AND
THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



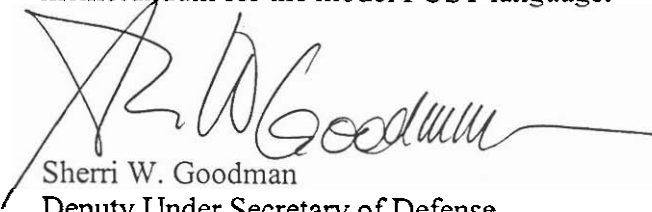
WASHINGTON, DC

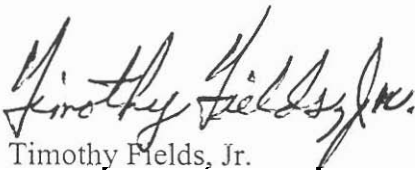
SUBJECT: Management of Lead-Based Paint in Residential and Non-Residential Areas at Base Realignment and Closure (BRAC) Properties

The purpose of this memorandum is to transmit the agreements (attached) EPA and DoD reached on August 14, 1998, and to provide a schedule for completing the actions the agencies agreed to jointly undertake.

Residential Areas: EPA and DoD agreed that Title X (of the Housing and Community Development Act of 1992, 42 U.S.C. 4822) procedures provide an efficient, effective, and legally adequate framework for addressing lead-based paint in residential areas and that, as a matter of policy, CERCLA/RCRA will not be applied except in limited circumstances. DoD actions to address the threat of lead poisoning from lead-based paint in residential areas will be conducted in accordance with Title X/TSCA requirements. To assist EPA and DoD personnel to understand and comply with current HUD, EPA, and OSHA regulations on lead-based paint, EPA and DoD are jointly developing a guidance document entitled, *Lead-Based Paint Guidelines for Disposal of Residential Property: A Field Guide*. The target date for completing the Field Guide is May 28, 1999.

Non-Residential Areas: EPA will conduct and fund a national pilot study, with DoD coordination, to assess lead-based paint hazards in non-residential areas. The target date EPA and DoD have set for finalizing the pilot study is May 14, 1999. EPA and DoD agreed that sampling efforts on non-residential areas would be limited, pending the results of the pilot study to: 1) certain types of metallic structures (water towers, communications towers, and bridges) where soil-lead from lead-based paint is reasonably expected to exist, or 2) specific areas of the parcel or structure where the known future use is as a child occupied facility. After the results of the pilot study, the types of structures to be sampled will be re-assessed. EPA agreed not to require sampling of all non-residential areas for lead-based paint. EPA and DoD also agreed to develop model language on lead-based paint for the Finding of Suitability to Transfer (FOST) document for non-residential property. This model language will generally describe what has been done regarding lead-based paint hazards and DoD and transferee responsibilities. Final agreement on sampling for lead-based paint in non-residential areas will be included in the cover memorandum for the model FOST language.


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SUMMARY OF EPA/DoD AUGUST 14th MEETING

The Environmental Protection Agency (EPA) and the Department of Defense (DoD) want to ensure that lead in soil from lead-based paint is addressed in a manner that: (1) is protective of human health and the environment, (2) is consistent with nationally applicable regulations and standards, and (3) supports the President's Five Point Plan for Base Realignment and Closure (BRAC) Property Reuse.

EPA and DoD discussed alternatives for addressing lead-based paint in both residential and non-residential areas and the application of Title X (the Residential Lead-Based Paint Hazard Reduction Act) including section 403 of the Toxic Substances Control Act (TSCA), and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) for assessing lead-based paint hazards. EPA's key concern was whether actions taken under another statutory authority would be sufficient to provide the covenants required under section 120(h)(3) of CERCLA. DoD's key issue was that DoD not be regulated differently, and in this case more stringently, than any other federal agency or private entity.

Resolved for Residential Areas: EPA has concluded that release of lead-based paint to soil is a release of a hazardous substance under CERCLA, but that generally Title X/TSCA 403 is the appropriate regulatory regime for addressing lead-based paint hazards in residential areas in the majority of situations. It was agreed that Title X procedures, provide an efficient, effective, and legally adequate framework for addressing lead-based paint in residential areas and that, as a matter of policy, CERCLA/Resource Conservation and Recovery Act (RCRA) would not be applied except in limited circumstances. DoD stated that, although they are not legally required by Title X to do so, it is willing prospectively, as part of an overall resolution of the lead-based paint issue, to abate 1960-1978 target housing (as defined in Title X) with lead-based paint hazards where a risk is indicated, or to otherwise ensure that such structures will not be used as target housing until such abatement is performed by either DoD or the grantee. DoD and EPA agreed to jointly develop a field guide summarizing the Department of Housing and Urban Development's (HUD) Title X and EPA's TSCA 403 requirements and that the Field Guide will outline the limited circumstances under which CERCLA/RCRA would be used.

If DoD installations comply with jointly developed guidelines, EPA agreed it will review the Finding of Suitability to Transfer (FOST) without adverse comments regarding lead-based paint.

Resolved for Non-Residential Areas:

EPA will conduct and fund a national pilot program, with DoD coordination, to assess lead-based paint hazards in non-residential areas, provided this pilot also assesses non-DoD sites such as public, private, Superfund, RCRA, and Brownfields sites.

DoD and EPA also agreed to develop model FOST language. This model language will generally describe what has been done regarding lead-based paint hazards and DoD and transferee responsibilities.

Further, EPA and DoD agreed that sampling efforts on non-residential areas would be limited, pending the results of the pilot program, to certain types of structures where high concentrations of lead-based paint are reasonably expected to exist. EPA agreed not to require sampling of all non-residential areas for lead-based paint. DoD agreed to provide EPA with a proposed list of structures for further consideration. Once agreed to, these structures will be assessed under the procedures of CERCLA and DoD's Defense Environmental Restoration Program (DERP). The type of structures DoD has proposed for such sampling are water towers, communication towers, and bridges. EPA believes that sampling or other requirements to be defined in the model FOST or in the Field Guide may be appropriate in the specific area of the parcel or structure where the known future use is as a child occupied facility.

The model FOST language and agreement on specific structures will enable DOD, EPA, and the states to focus resources on areas likely to pose the greatest risk.

Other Agreements Reached:

1. EPA and DoD will work together to communicate strategies on lead-based paint. EPA and DoD jointly developed a press release based on the agreements during the August 14 meeting. The press release was issued on August 21, 1998.
2. EPA will not issue a separate OSWER policy on lead-based paint for CERCLA section 120(h) properties as long as progress is being made, and such a policy will only be issued in consultation with DoD.