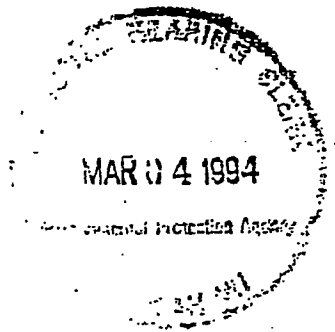


ATTACHMENT #1

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101



IN THE MATTER OF:

Dico Inc.
Des Moines, Iowa,

Respondent

UNILATERAL ADMINISTRATIVE
ORDER FOR REMOVAL ACTION

U.S. EPA Region VII
CERCLA
Docket No. VII-94-F-0017

Proceeding Under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act, as amended, 42 U.S.C.
§ 9606(a).

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order ("Order") is issued by the U. S. Environmental Protection Agency (EPA), Region VII, to Dico Inc., hereinafter "Dico" or "Respondent". This Order requires Dico to conduct removal actions on property owned by Dico located at 200 Southwest Sixteenth Street in Des Moines, Polk County, Iowa.

2. This Order requires the Respondent to conduct the removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Dico Property.

3. This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a). The President delegated this authority to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923. The Administrator further delegated this authority to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B.

4. EPA has notified the Iowa Department of Natural Resources (IDNR) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and Respondent's successors and assigns, and upon all persons, contractors, and consultants acting under or for Respondent. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order prior to the date such work is initiated. Respondent shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

7. Dico Inc., owns property located at 200 Southwest Sixteenth Street, Des Moines, Polk County, Iowa ("Dico Property"). The Dico Property is located in southwest of the downtown Des Moines business district and borders the Raccoon River to the west, the Frank DePuydt woods to the south, and other light industry to the north and east. The location of the Dico Property is shown on Attachment 1 to this Order.

8. The Dico Property falls within the Des Moines TCE Site, which is listed on the National Priorities List, 40 C.F.R. Part 300, Appendix B. Because of the complexity of the Des Moines TCE Site, EPA has divided overall site remedial activities into four operable units. Operable Unit 1 (OU1), referred to as the

"Protection of Ground Water" operable unit, addressed those actions necessary to prevent ground water contamination from entering the Des Moines Water Work's underground gallery system, which serves as a source of public drinking water for Des Moines and several surrounding communities. Operable Unit 2 (OU2), referred to as the "South Area Source Control" operable unit, addresses those actions to mitigate the release of contaminants on the northern portion of the Dico Property. Operable Unit 3 (OU3), referred to as the "North Plume" operable unit, addressed possible sources of ground water contamination north of the Des Moines Water Works and Raccoon River. Operable Unit 4 (OU4), referred to as the "South Pond/Drainage Area Source Control" operable unit, addresses contamination in soils and buildings in the southeast portion of the Des Moines TCE Site, including the southern portion of the Dico Property and some adjacent properties. EPA has already selected remedial actions for OU1 and OU3. OU2 and OU4 are in the remedial investigation stage of the remedy selection process. The Dico Property comprises all of Operable Unit 2 (OU2) and a substantial portion of Operable Unit 4 (OU4). The boundaries of OU2 and OU4 are shown on Attachment 1.

9. In 1989, Dico entered into an Administrative Order on Consent with EPA in which Dico agreed to conduct a remedial investigation (RI) and feasibility study (FS) for OU2, which at that time included all of the Dico Property. The primary purpose of the OU2 RI/FS was to gather the site-specific information

necessary to develop remedial alternatives to mitigate releases of hazardous substances to ground water. The initial phase of the OU2 RI identified pesticide contamination in soils adjacent to several Dico buildings. Additional sampling and other investigatory activities were conducted to determine the nature and extent of contamination in and adjacent to these buildings. EPA ultimately divided the original Operable Unit 2 into two separate operable units, the current OU2 and OU4. OU4 was intended to focus on those portions of the Dico Property and other adjoining properties believed to be primarily contaminated with pesticides.

10. From the 1950's until approximately 1970, six buildings on the Dico Property were used for chemical and herbicide distribution operations and pesticide formulation activities. Five of these buildings are currently referred to by number, i.e., Buildings 1 through 5. The sixth building is referred to as the Maintenance Building. Attached to the Maintenance Building is an annex known as the Aldrin Tank Annex. The locations of these buildings on the Dico property are shown on Attachment 1 to this Order.

11. Aldrin, dieldrin, heptachlor, chlordane, 2,4-D, and 2,4,5-T have been detected on the interior surfaces of Buildings 1 through 5 and the Maintenance Building. Dust samples collected in the buildings show concentrations up to 520,000 milligrams per kilogram (mg/kg) aldrin, 8800 mg/kg dieldrin, 7.5 mg/kg

heptachlor, 26 mg/kg alpha chlordane, 45 mg/kg gamma chlordane, 21,000 mg/kg 2,4-D, and 6,520 mg/kg 2,4,5-T.

12. Concrete core samples collected from the floors of Buildings 2, 3, 4 and the Maintenance Building contained high levels of many of the pesticides discussed above. Specifically, concrete from Building 2 contained 2,4-D at 201,000 micrograms per kilogram (ug/kg), 2,4,5-T at 85,100 ug/kg, aldrin at 2,480 ug/kg, dieldrin at 308 ug/kg, and 2,3,7,8-TCDD 6.23 ug/kg. The concrete from Building 3 contained 29,300 ug/kg 2,4-D, 688 ug/kg 2,4,5-T, 27,500 ug/kg aldrin, and 440 ug/kg dieldrin. Concrete in the Maintenance Building contained 2,4-D up to 375,000 ug/kg, 2,4,5-T up to 12,700 ug/kg, aldrin up to 7,680 ug/kg, and dieldrin up to 69.6 ug/kg. Building 4 concrete contained 638,000 ug/kg 2,4-D, 2,800 ug/kg 2,4,5-T, 30,500 ug/kg aldrin, and 6,370 ug/kg dieldrin.

13. Aldrin, dieldrin, 2,4-D, and 2,4,5-T have also been found in the surface and subsurface soils outside of these buildings on the Dico Property. Aldrin concentrations up to 97,000 mg/kg were found in soils outside of the Maintenance Building, adjacent the Aldrin Tank Annex. Dieldrin was detected at a concentration of 7,900 ug/kg in the soil just south of the Production Building. Dieldrin concentrations up to 17 mg/kg were detected in the surface soils around the south pond. Soils just west of Building 3 and soils between the Maintenance Building and Building 4 also contained significant levels of dieldrin. 2,4-D

and 2,4,5-T were detected at concentrations up to 7,400 ug/kg and 910 ug/kg respectively outside of Building 1.

14. The 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) isomer has been detected in dust samples collected from interior surfaces of Buildings 1, 2 and 3. The highest concentration of 2,3,7,8-TCDD detected was 114 ug/kg found in dust from Building 2. The surface soil outside of Building 2 also contained 2,3,7,8-TCDD at a concentration of 1.09 ug/kg.

15. Polychlorinated biphenyls (PCBs) have also been found in the buildings. PCB concentrations up to 29,000 mg/kg have been detected in samples of the building insulation. PCB contaminated insulation was found on the walls and ceilings of all the buildings. A wipe sample collected from the floor of Building 4 directly underneath damaged ceiling insulation indicated the presence of PCBs. Numerous tears in the wall insulation in the buildings are visible.

16. The primary routes of exposure to the pesticides include inhalation of airborne dust, dermal contact, and ingestion of contaminated soils. Exposure to the PCBs occurs through holes or tears in the foil-fabric backing on the insulation.

17. Potential routes of migration include personnel traffic and equipment transfer in and out of the buildings, surface water runoff and migration to groundwater through pesticide contaminated soils. Contamination in soil and concrete can be mobilized through various activities, such as industrial

operations, vehicular traffic, at or on an unprotected contaminated media surface.

18. Aldrin and dieldrin are insecticides which are closely related chemically. Aldrin is highly persistent in the environment and is readily converted to dieldrin by sunlight and bacterial action. Potential health effects associated with aldrin and dieldrin include headache, dizziness, irritability, loss of appetite, nausea, muscle twitching, convulsions, and loss of consciousness.

19. Chlordane is a man-made chemical composed of more than fifty compounds, and is very stable in the environment. Alpha and gamma chlordane are two isomers of the chlordane molecule. Chlordane is an insecticide formerly used to treat field crops and to control termites. Adverse health effects associated with exposure to chlordane include damage to the nervous system, digestive system, and liver.

20. Heptachlor is a synthetic chemical used prior to 1988 for the purpose of insect control in buildings and on food crops. Adverse health effects which may be associated with exposure to heptachlor include central nervous system effects and possibly liver damage.

21. Health effects associated with exposure to chlorophenoxy compounds, such as 2,4-D and 2,4,5-T, include irritation of the skin, eyes, nose, and throat as well as central nervous system, cardiovascular, and respiratory effects.

Gastrointestinal effects such as nausea, vomiting and diarrhea have also been reported following ingestion.

22. 2,3,7,8-TCDD is one isomer of a class of compounds commonly referred to as dioxins. Potential health effects related to exposure to 2,3,7,8-TCDD include chloracne, a severe skin lesion, liver damage, digestive disorders, immune system effects, reproductive disorders, birth defects, and cancer.

23. PCBs are a group of man-made chemicals containing as many as 209 individual compounds. Potential adverse health effects associated with exposure to PCBs include liver damage, skin irritations, reproductive and developmental effects, and cancer.

24. Aldrin, dieldrin, heptachlor, chlordane, 2,4-D, 2,4,5-T and 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) are listed in 40 CFR 302.4 as hazardous substances.

25. Dico is a corporation organized under the laws of the State of Delaware and is authorized to do business in the State of Iowa.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

26. Based on the Findings of Fact set forth above, the Regional Administrator, EPA Region VII, hereby concludes and determines that:

a. The Dico Property is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contaminants found at the Dico Property, as identified in the Findings of Fact above, include "hazardous

substances" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a liable person under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actual or threatened release of hazardous substances from the Dico Property may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

27. Respondent is hereby ordered to perform the tasks and submit deliverables with respect to the Dico Property in accordance with the schedule and requirements set forth herein. All such work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance. For the purposes of this Order, "day" means business day unless otherwise noted in the Order.

28. Respondent shall notify EPA in writing within 10 days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure to provide such notification within this time period shall be a violation of this Order by such Respondent.

29. Within 15 days after the effective date of this Order, the Respondent shall submit to EPA for approval a detailed work plan, with a schedule, for the following activities ("Removal Action Work Plan"):

a. Removal of the Maintenance Building Aldrin Tank and Annex, and adjacent contaminated soil containing greater than a total of 1.5 mg/kg aldrin and dieldrin combined.

b. Excavation and disposal of contaminated soils adjacent to the Aldrin Tank and Annex containing greater than a total of 1.5 mg/kg aldrin and dieldrin combined. Excavated areas shall be backfilled with clean soil.

c. Repair, seal and protect all building insulation and clean and seal all exposed interior surfaces, including the walls, ceilings and concrete floors of Buildings 1 to 5 and the Maintenance Building. Sealing measures and materials must be provided to ensure a sufficient and durable layer of protection that prevents direct contact exposures and requires minimum maintenance to preserve the seal integrity. These actions must result in a reduction of the indoor air concentrations to below the following levels:

- (1) aldrin 1E-06 mg/m³
- (2) dieldrin 1E-06 mg/m³
- (3) heptachlor 3E-06 mg/m³
- (4) chlordane 1E-05 mg/m³
- (5) 2,4-D 5E-03 mg/m³
- (6) 2,4,5-T 5E-03 mg/m³
- (7) 2,3,7,8-TCDD 1E-10 mg/m³

d. Confirmation sampling to demonstrate compliance with the above-stated cleanup levels. The confirmation sampling activities must be conducted immediately subsequent to the actions required herein, and periodically to ensure long term maintenance of these protective conditions. Periodic monitoring and sampling activities shall be discussed in the Post Site Control Maintenance Plan, described in paragraph 31.

30. The Removal Action Work Plan shall also include:

a. A Quality Assurance/Quality Control (QA/QC) Plan, describing all sampling and analysis procedures to be followed to assure the validity of the data obtained during these removal activities.

b. A Health and Safety Plan, consistent with 40 C.F.R. § 300.150, describing in detail the procedures to be followed to provide for the protection of workers at the response site. The Health and Safety Plan shall be submitted for review and comment purposes only.

31. Within 20 days of approval by EPA of the Removal Action Work Plan, Respondent shall submit to EPA for review and approval

a plan for post-removal site control consistent with section 300.415(k) of the NCP and OSWER Directive 9360.2-02 (Maintenance Plan for Post-Removal Site Control). The plan shall present the actions necessary to ensure the protectiveness and integrity of the removal action, including long term maintenance of all interior surface sealing, encapsulation of all building insulation and appropriate reporting including, at a minimum, submittal of a written report on an annual basis. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

32. Upon approval of the Removal Action Work Plan by EPA, Respondent shall complete all actions in the Removal Action Work Plan in accordance with the requirements and schedule set forth in the approved Removal Action Work Plan.

33. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA-approved Removal Action Work Plan. Respondent shall not commence or undertake any removal action without prior EPA approval.

34. All work performed under this Order shall be performed under the supervision and direction of a qualified hazardous waste professional with expertise and experience in hazardous waste site response actions. This person may be either an employee of Respondent or a contractor retained by Respondent for this work. Within 10 days of the effective date of this Order, Respondent shall notify EPA in writing as to its qualifications,

if Respondent intends to conduct the work itself, or as to the name and qualifications of each contractor and subcontractor retained or to be retained to perform any portion of the work. Respondent shall also notify EPA as to the name and qualifications of any other contractor or subcontractor retained to perform the removal action under this Order at least 10 days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors or subcontractors retained by the Respondent, or of Respondent's choice to perform the removal action itself. If EPA disapproves of a selected contractor or the Respondent, Respondent shall retain a different contractor and shall notify EPA of the replacement's name and qualifications within 5 days of receipt of EPA's written notice of disapproval. If EPA subsequently disapproves of the replacements, EPA reserves the right to terminate this Order, to conduct the removal action, and to seek reimbursement of costs and penalties from Respondent.

VI. MONITORING AND QUALITY ASSURANCE

35. All samples analyzed pursuant to this Order shall be analyzed by a laboratory which participates in a quality assurance/quality control program equivalent to that specified in the documents entitled "USEPA Contract Laboratory Program Statement of Work for Organic Analysis" (OLM01) and "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis" (ILM01) (hereinafter "Contract Lab Statements of Work").

36. All sample collection and analysis shall be performed in compliance with EPA-approved methods, including timing of analysis, documentation of sample collection, handling and analysis, as described in the following documents:

a. "NEIC Manual for Groundwater/Subsurface Investigations at Hazardous Waste Sites", Document No. EPA/330/9-81-002; and

b. Contract Lab Statements of Work.

37. Laboratory deliverables for all analytical work performed pursuant to this Order, as specified in the Contract Lab Statement of Work, shall be submitted to EPA in accordance with the schedules set forth herein. Any deviations from the procedures and methods set forth in these documents must be approved in writing by EPA prior to use.

38. Respondent shall use the quality assurance, quality control, and chain of custody procedures specified in the Quality Assurance Project Plan as approved by EPA for all sample collection and analysis performed pursuant to this Order.

39. All laboratories analyzing samples pursuant to this Order shall perform, at Respondent's expense, analyses of samples provided by EPA to demonstrate the quality of each such laboratory's analytical data.

40. Respondent shall ensure that EPA representatives are allowed access, for auditing purposes, to all laboratories and

personnel utilized by Respondent for sample collection and analysis and other activities conducted pursuant to this Order.

41. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than 5 days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

VII. DOCUMENT REVIEW AND APPROVAL

42. The following procedure will apply to the review and approval of all documents submitted to EPA for review and approval pursuant to the requirements of this Order. EPA will review each such document and notify Respondent, in writing, as to its approval or disapproval thereof with any comments EPA deems appropriate. Within 5 days of receipt of the EPA disapproval, or such other time period agreed to by the Parties, Respondent shall revise the document in accordance with any comments by EPA and submit the revised document to EPA. EPA will make the final determination as to whether the document submitted by Respondent is in compliance with the requirements of this Order.

VIII. PUBLIC NOTICE AND PUBLIC PARTICIPATION

43. In accordance with the requirements of the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300, EPA intends to publish a notice of availability of the administrative record file for review and a description of the

removal action selected for this site. EPA further intends to provide not less than 30 calendar days for submission by the public of oral and written comments on the removal action. EPA reserves the right to direct Respondent either to amend the Work Plan or to cease work under this Order based upon comments received from the public.

IX. PROJECT COORDINATORS

44. Within 5 days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 5 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

45. EPA hereby designates Glenn Curtis of the Superfund Branch as its Project Coordinator. Respondent shall direct all submissions required by this Order to EPA's Project Coordinator as specified in the "Notification" Section of this Order. EPA

may also designate an on-scene-coordinator or other representative to oversee the response actions required by this Order.

46. Both EPA and Respondent shall have the right, subject to paragraph 44, to change its designated Project Coordinator by providing notice of the change to the other party. Respondent shall notify EPA five (5) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

47. EPA's Project Coordinator, and, if an On-Scene-Coordinator is designated, shall each have the authority vested in an on-scene coordinator by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Dico Property. Absence of either the EPA Project Coordinator or the On-Scene-Coordinator, if one is designated, from the Dico Property shall not be cause for stoppage of work unless specifically directed by the Project Coordinator.

X. REPORTING

48. Throughout the course of these activities, Respondent shall submit to EPA monthly progress reports. These reports shall include, at a minimum, the following:

- a. A description of the actions completed during the reporting period towards compliance with this Order;
- b. A description of all actions scheduled for completion during the reporting period which were not completed

along with a statement indicating why such actions were not completed and an anticipated completion date;

c. Copies of all data and sampling and test results and all other laboratory deliverables received by Respondent during the reporting period; and

d. A description of the actions which are scheduled for completion during the following reporting period.

These reports shall be due on or before the fifteenth day of the month following the month for which the report is submitted.

49. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Dico Property, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Any conveyance by Respondent shall provide for its successors compliance with the immediately preceding sentence and the requirements pertaining to access to property and information in paragraph 51.

50. Within 30 days after completion of all removal actions required under this Order, excluding actions conducted pursuant to the Plan for Post-Removal Site Control, the Respondent shall submit to EPA for review and approval a final report summarizing the actions taken to comply with this Order ("Removal Action Final Report"). The Removal Action Final Report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled "OSC Reports". It shall include a good faith

estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, including sampling performed to verify compliance with performance standards established by this Order, and accompanying appendices containing all relevant documentation generated during the removal action, e.g., manifests, invoices, bills, contracts, and permits. The Removal Action Final Report shall also include the following certification signed by the person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XI. ACCESS TO PROPERTY AND INFORMATION

51. Except as provided in paragraph 53, with respect to property not owned or controlled by Respondent, Respondent shall provide access to EPA to all property upon which any activities are being conducted or have been conducted pursuant to this Order such that EPA and its authorized representatives are able to enter and move freely about such property at all reasonable times for the following purposes:

a. Inspecting and copying records, files, photographs, operating logs, contracts and other documents relating to this response action;

b. Reviewing the status of activities being conducted pursuant to this Order;

c. Collecting such samples or conducting such tests to monitor compliance with the terms of this Order or to protect the public health, welfare, or the environment;

d. Using sound, optical or other types of recording equipment to record activities which have been or are being conducted pursuant to this Order; and

e. Verifying data and other information submitted by Respondent pursuant to this Order.

52. Under this Order, providing access to EPA means providing access to employees of EPA and other duly authorized representatives of the EPA.

53. To the extent that work required by this Order must be conducted on property not owned or controlled by Respondent, Respondent shall use its best efforts to obtain site access agreements from the present owners of such property within twenty (20) days of EPA's approval of the Removal Action Work Plan. As used in this paragraph, best efforts shall include, at a minimum, the following:

a. Sending a certified letter from Respondent to the present owners of the property, if such can be located, requesting access agreements to permit Respondent and EPA,

including its authorized representatives, access to the property to conduct the activities required under this Order;

b. Agreeing, upon request, to provide splits or duplicates of all samples collected on the property;

c. Agreeing, upon request, to provide results of all analyses of samples collected on the property; and

d. Agreeing, upon request, to provide compensation, such as insurance, an indemnification agreement, or in some other form, for all damages to people or property resulting from Respondent's action on the property under this Order.

Any such access agreements shall be incorporated by reference into this Order. In the event any such access agreement is not obtained within this time period, Respondent shall notify EPA in writing of its lack of access, the efforts it made to obtain access, and an explanation of the basis therefore, e.g., inability to locate the current owner of the property, lack of response to request for access, or denial of access. In the event EPA obtains access, Respondent shall undertake work on such property in accordance with the Removal Action Work Plan.

54. Nothing herein is intended to limit in any way EPA's right of access under CERCLA or any other legal authority.

XII. RECORD RETENTION

55. Respondent shall preserve all documents and information relating to response actions performed under this Order, or relating to any hazardous substances found on or released from the Dico Property, for ten years following completion of all

actions required by this Order, including the requirements of the Maintenance Plan for Post-Removal Site Controls. At the end of this ten year period and at least 90 days prior to any document or information is scheduled for destruction, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or authenticated copies of such documents and information to EPA. In addition, Respondent shall provide documents, either originals or authenticated copies as specified by EPA, and information retained under this section at any time before expiration of the ten year period at the request of EPA.

XIII. CONFIDENTIAL BUSINESS INFORMATION

56. Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

XIV. OFF-SITE SHIPMENTS

57. All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, 42 U.S.C.

§ 9621(d)(3), and the following rule: "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule" 58 Fed. Reg. 49,200 (September 22, 1993), codified at 40 C.F.R. § 300.440. Respondent may consult EPA's Project Coordinator regarding the acceptability of a facility under section 121(d)(3) of CERCLA and the above rule.

XV. COMPLIANCE WITH OTHER LAWS

58. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

XVI. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

59. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the

Dico Property or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify EPA's designated Project Coordinator or, in the event of his/her unavailability, shall notify the Emergency Planning and Response Branch, EPA Region VII, at (913) 236-3778 of the incident or site conditions. If Respondent fails to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

60. In addition, in the event of any release of a hazardous substance from the Dico Property, Respondent shall immediately notify EPA's designated Project Coordinator and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within 5 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

XVII. NOTIFICATION

61. All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted to EPA pursuant to this Order shall be directed to:

Glenn Curtis
Waste Management Division
Superfund Branch
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone number (913) 551-7726
Fax =: (913) 551-7063

XVIII. PENALTIES FOR NONCOMPLIANCE

62. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606, or both.

XIX. RESERVATION OF RIGHTS

63. Nothing in this Order is intended to limit the power and authority of EPA or the United States to take, direct, or

order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Dico Property. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Dico Property and not reimbursed by Respondent.

XX. OTHER CLAIMS

64. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

65. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XXII. ASSURANCE OF ABILITY TO COMPLETE RESPONSE ACTION

70. Within 5 days of entry of the effective date of this Order, Respondent shall establish and maintain financial security in the amount of \$1.5 million in one of the following forms:

- (a) A surety bond guaranteeing performance of the actions required by this Order;
- (b) One or more irrevocable letters of credit equalling the total estimated cost of the actions required by this Order;
- (c) A trust fund;
- (d) A guarantee to perform the actions required by this Order by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or
- (e) A demonstration that Respondent satisfies the requirements of 40 C.F.R. § 264.143(f).

71. If Respondent seeks to demonstrate the ability to complete the actions required by this Order through a guarantee by a third party pursuant to paragraph 70(d) of this Order, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Respondent seeks to demonstrate its ability to complete the actions required by this Order by means of the financial test or the corporate guarantee pursuant to paragraph 70(d) or (e), it shall resubmit sworn

statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Order. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in paragraph 70 of this Order. Respondent's inability to demonstrate financial ability to complete the actions required by this Order shall not excuse performance of any activities required under this Order.

XXIII. NOTICE OF COMPLETION

72. When EPA determines, after review of the Final Report, that all actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including post-removal site controls and record retention, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and direct Respondent to correct such deficiencies. The Respondent shall take all actions necessary to correct such deficiencies and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXIV. ACCESS TO ADMINISTRATIVE RECORD

73. The Administrative Record supporting these removal actions is available for review at the EPA Region VII offices, 726 Minnesota Avenue, Kansas City, Kansas and Des Moines Public Library, 100 Locust Street, Des Moines, Iowa.

XXV. OPPORTUNITY TO CONFER

74. Within 3 days after receipt of this Order, Respondent may request a conference with EPA. Any such conference shall be held within 5 days after receipt of this Order by Respondent, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

75. If a conference is held, Respondent may present any information, questions or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, questions or comments in writing to EPA within 7 days following receipt of this Order by Respondent. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to:

Daniel J. Shiel
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone number (913) 551-7278
FAX number (913) 551-7925.

XXVI. INSURANCE

76. At least 7 days prior to commencing any on-site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of 5.0 million dollars, combined single limit. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. SEVERABILITY

77. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XXVIII. EFFECTIVE DATE

78. This Order shall be effective upon receipt by Respondent.

IT IS SO ORDERED

BY: Daniel J. Spiel
Daniel J. Spiel
Assistant Regional Counsel
Region VII
U. S. Environmental Protection Agency

Date 3/3/94

BY: Dennis Grams
Dennis Grams, P.E.
Regional Administrator
Region VII
U.S. Environmental Protection Agency

DATE: 3-3-94

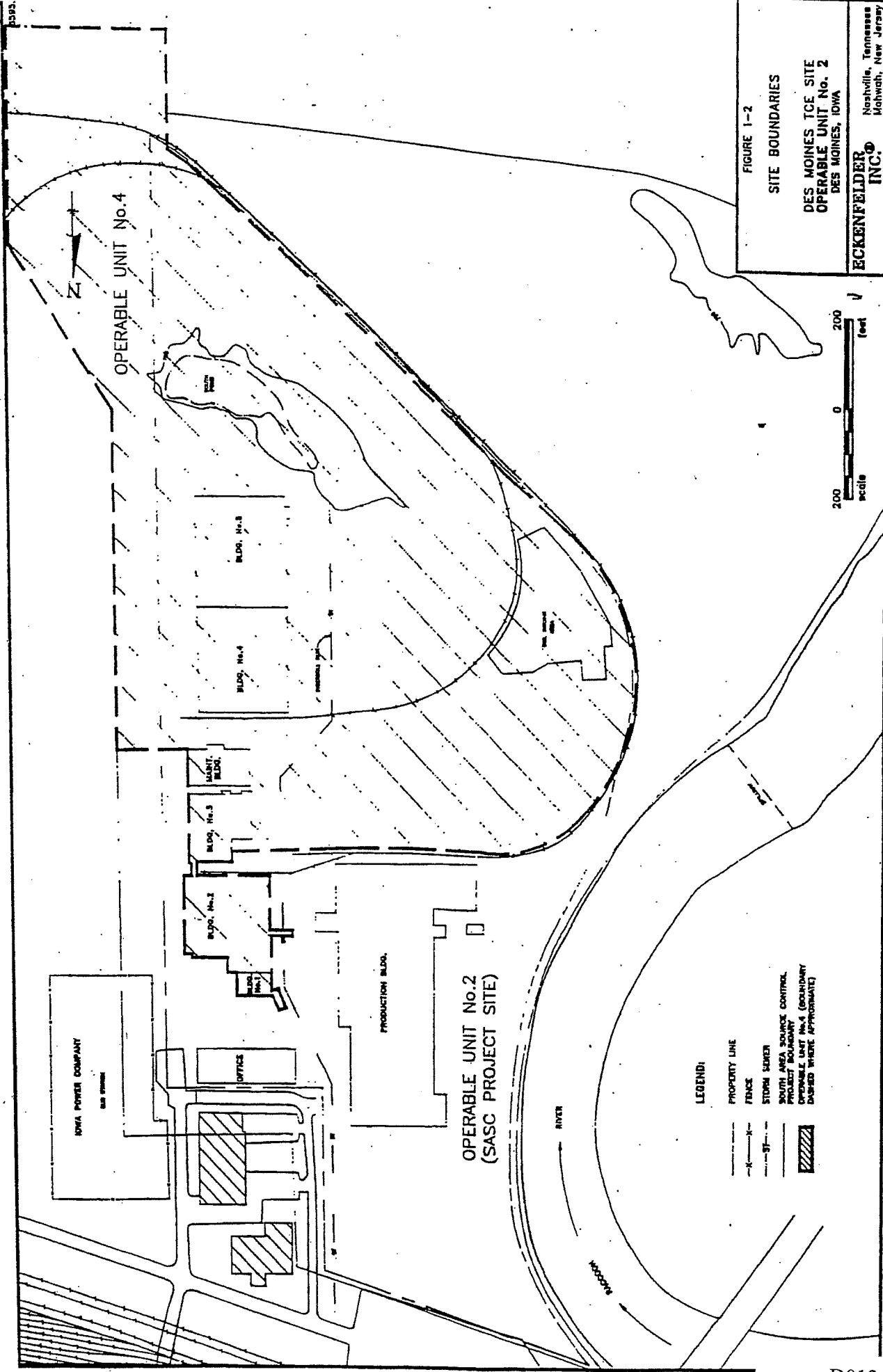


FIGURE 1-2

SITE BOUNDARIES

DES MOINES ICE SITE
OPERABLE UNIT No. 2
DES MOINES, IOWA

ECKENFELDER INC.
Nashville, Tennessee
Mohwah, New Jersey