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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N 5TH STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

Maxwell Furnace Site)

Cadet, Washington County)

Missouri)

TJ's Metal Processing, LLC)

and)

Thelma G. Maxwell)

Respondents)

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

UNILATERAL
ADMINISTRATIVE ORDER

Docket No. CERCLA-07-2011-0004

UNILATERAL ADMINISTRATIVE ORDER
FOR REMOVAL RESPONSE ACTIVITIES

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order for Removal Response Activities (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, 42 U.S.C. § 9606(a), as amended (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Superfund Division Director of EPA Region 7 by Regional Delegation No. R07-14-014-A and R07-14-014B.
2. This Order pertains to the Maxwell Furnace Site (Site) on and/or near property located at 10272 Radio Station Road in Cadet, Washington County, Missouri. This Order requires the Respondents to conduct 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 Site.
3. EPA has notified the state of Missouri through its Missouri Department of Natural Resources of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondents and Respondents' heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order.
5. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.
6. Respondents shall ensure that their contractors, subcontractors and representatives receive a copy of this Order and comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the exhibits or appendices attached hereto and incorporated hereunder, the following definitions shall apply:

A. "Action Memorandum" shall mean the EPA Action Memorandum for the Maxwell Furnace Site, and all appendices thereto. The Action Memorandum is enclosed as Appendix A.

B. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

C. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" or "business day" shall mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business of the next working day.

D. "Document" or "record" shall mean any object that records, stores or presents information and includes writings, drawings, graphs, charts, photographs, phone records and other data compilations from which information can be obtained or translated, if necessary, through detection devices into reasonably useable form, and: (i) every copy of each document which is not an exact duplicate of a document which is produced; (ii) every copy which has any writing, figure or notation, annotation or the like on it; (iii) drafts; (iv) attachments to or enclosures with any document; and (v) every document referred to in any other document.

E. "Effective Date" shall mean the date this Order is effective pursuant to Section XXVIII of this Order.

F. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

G. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

H. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

I. "MDNR" shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

J. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

K. "Order" shall mean this Unilateral Administrative Order and all appendices attached hereto. In the event of conflict between this Order and any provision of any other agreement, order, appendix, or writing, the terms and conditions of this Order shall Control.

L. "Paragraph" shall mean a portion of the Order identified by an Arabic numeral.

M. "Party" or "Parties" shall mean EPA or either Respondent or EPA and Respondents.

N. "Respondent(s)" shall mean Thelma G. Maxwell (also known as Thelma Crocker) and TJ's Metal Processing (TMP).

O. "Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise developing, implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 46 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensations) and Paragraph 52 (emergency response).

P. "Section" shall mean a portion of this Order identified by a Roman numeral.

Q. "Site" shall mean the Maxwell Furnace Site, a residential property, approximately one-acre in size, located at 10272 Radio Station Road in a rural residential area in Cadet County, Missouri, and includes all areas where contamination from the Site has migrated, been released to or otherwise come to be located. A Site Location Map is attached as Figure 1.

R. "State" shall mean the state of Missouri, including all of its departments, agencies and instrumentalities.

S. "Waste Material" shall mean any "hazardous substance" under Section 101 (14) of CERCLA, 42 U.S.C. § 9601 (14); any pollutant or contaminant under Section 101 (33) of CERCLA, 42 U.S.C. § 9601 (33); any "solid waste" under Section 104(27) of RCRA, 42 U.S.C. 6903(27) and any "hazardous waste" under State and Federal Law and any solid waste under Section 1004 (27) of RCRA, 42 U.S.C. §6903(27).

T. "Work" shall mean all activities Respondents are required to perform under this Order.

IV. FINDINGS OF FACT

8. The Site is approximately one acre in size located at 10272 Radio Station Road in Cadet County, Missouri. The Site consists of a residence and a business, TJ's Metal Processing (TMP), LLC.
9. Respondent TMP is a limited liability company organized to do business in the state of Missouri. TMP reclaims lead for reuse by melting damaged and off-specification bullets and ammunition received from various ammunition manufacturers.
10. Respondent Thelma G. Maxwell (aka Thelma Crocker) is the owner of the property where the residence and TMP are located and from which TMP operates.
11. Murphy J. Maxwell (aka Joe and/or Butch Maxwell) is the husband of Thelma G. Maxwell.
12. Thelma and Murphy Maxwell (the Maxwells) live in the residence at the Site and are the operators of TMP.
13. On December 19, 2005, EPA sampled soil at a residence located on the Maxwell Furnace Site and near the bullet melting furnace. Levels of lead were detected in soils at average concentrations ranging from 1,093 to 3,136 parts per million (ppm) near the residence at the Site.
14. In June 2008, representatives of EPA returned to the Site to investigate possible contamination from the furnace operation. Samples were collected of ash from the furnace, soil from the property surrounding the furnace, gravel from driveways leading to the furnace, and soil from the on-Site residence. Concentrations of waste material from beneath the furnace exceeded 400,000 ppm lead. Results from samples collected along driveways leading from the furnace ranged in concentrations from 1,829 ppm to 37,888 ppm for lead.
15. As the sample results from the June 2008 investigation indicate decreasing concentrations with distance from the furnace, EPA believes the furnace operation is the cause of the release of lead to the environment.
16. In February 2010, representatives of the Air Pollution Control Program of the Missouri Department of Natural Resources (MDNR) conducted an inspection at the Site. Based upon information obtained from the inspection, MDNR determined the furnace was not being operated in compliance with the State's air program's rules and regulations. On March 8, 2010, MDNR issued a Notice of Violation (NOV) to Murphy J. Maxwell/T.J. Metals. The MDNR NOV cited Mr. Maxwell/T.J. Metals for operating without a construction permit and open burning of trade

wastes, tires for disposal and open burning of wire for potential metal salvage. The NOV also required T.J. Metals to apply for a construction permit and submit a compliance plan detailing how T.J. Metals will properly dispose of waste in the future.

17. Lead is classified by EPA as a probable human carcinogen and is a cumulative toxicant. Early effects of lead poisoning are nonspecific and difficult to distinguish from the symptoms of minor seasonal illnesses. Lead poisoning causes decreased physical fitness, fatigue, sleep disturbance, headache, aching bones and muscles, digestive symptoms, abdominal cramping, nausea, vomiting and decreased appetite. Central nervous system effects include severe headaches, convulsions, coma, delirium and possible death. The kidneys can also be damaged after long periods of exposure to lead. Reproductive effects in women include decreased fertility and increased rates of miscarriage and stillbirth. A significant amount of lead that enters the human body can be stored in the bones for many years and can be considered an irreversible health effect.

18. Children are more vulnerable to lead poisoning than adults. For children, lead can damage the central nervous systems, kidneys and reproductive systems. At high levels of exposure, lead poisoning can cause comas, convulsions and death. Low levels of exposure to lead are harmful and are associated with decreased intelligence, impaired neurological development, decreased stature and growth, impaired hearing and possibly high blood pressure.

19. Lead may migrate via airborne dust, surface runoff, percolation into groundwater, construction activity, by children transporting soils/dust into their homes after playing in affected areas, and by foot traffic.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

20. The Maxwell Furnace Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. The contamination found at the Site, as identified in the Findings of Fact above, is a "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

23. Each Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

- A. Respondent Thelma G. Maxwell is the “owner” and/or “operator” of the facility, as defined by Section 101(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. Section 9607 (a)(1).
 - B. Respondent Murphy J. Maxwell is and was the “operator” of the facility at the time of the disposal of any hazardous substance described in this section at the facility, as defined by Section 101(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. Section 9607 (a)(2).
24. 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).
25. The conditions present at the Site constitute a threat to public health, welfare, or the environment based on the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 C.F.R. Part 300 (NCP).
26. The actual or threatened release of hazardous substances from the Site 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).
27. 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.

VI. ORDER

28. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby ORDERS that Respondents comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

VII. NOTICE OF INTENT TO COMPLY

29. Each Respondent shall notify EPA in writing within five (5) days after the effective date of this Order of that Respondent's irrevocable intent to comply with this Order. Failure of any Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

**VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

30. Respondents shall perform the removal action themselves or retain a contractor(s) to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the name(s) and qualification(s) of such contractor(s) within twenty (20) days of the effective date of this Order. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least ten (10) days prior to commencement of any Work by that other contractor or subcontractor. The proposed contractor must demonstrate compliance with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2), (EPA/240/B-01-002), March 2001 or equivalent documentation as determined by EPA. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' choice of themselves to implement the removal action. If EPA disapproves of a selected contractor or of Respondents, Respondents shall retain a different contractor or notify EPA that it will perform the removal action themselves within ten (10) days following receipt of EPA's disapproval and shall notify EPA of that contractor's name or Respondents' name and qualifications within ten (10) days of receipt of EPA's disapproval.

31. Within twenty (20) days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all of the Respondents' actions required by the Order. Respondents 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 be readily available during the conduct of Site Work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within ten (10) days following receipt of EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by each all Respondent.

32. EPA has designated Adam Ruiz as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at EPA R7/SUPR ERNB, 901 N. 5th Street in Kansas City, Kansas 66101 or at 913-551-7926.

IX. WORK TO BE PERFORMED

33. Respondents shall perform, at a minimum, the following removal action which include, but are not limited to, all actions necessary to implement the Action Memorandum (Attachment A) and Statement of Work (Attachment B). Respondent shall also perform all actions necessary to implement institutional controls to restrict future uses and activities on the Site.

34. Work Plan and Implementation

- a. Within forty-five (45) days after the effective date of this Order, the Respondents shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the Work required by this Order. The Work Plan shall include a Quality Assurance Project Plan (QAPP) as required by the Statement of Work, Attachment B. The QAPP shall be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).
- b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondents shall submit a revised draft Work Plan within fifteen (15) days of receipt of EPA's notification of the required revisions. Once approved by EPA, or approved with modifications, the Work Plan, the schedule and any subsequent modifications shall be fully enforceable under this Order. Respondent shall implement the Work Plan in accordance with the schedule approved by EPA. As specified in Section 104 (a)(1) of CERCLA, as amended, EPA will provide oversight of Respondents' activities throughout the removal action. Respondent shall support EPA's initiation and conduct of activities related to the implementation of oversight activities. Respondents shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondents shall not commence or undertake any removal actions at the Site without prior EPA approval.

35. Health and Safety ("H&S") Plan:

- a. Within forty-five (45) days after the effective date of this Order, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (June 1992). In addition, the plan shall comply with all current applicable

Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 CFR Part 1910. Respondents shall incorporate all changes to the H&S Plan recommended by EPA, and implement the H&S Plan during the pendency of the removal action.

36. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; [and the Representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes finalized and available.]
- b. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall only use laboratories that have a documented quality system which complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA, EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the quality system requirements.

37. Reporting.

- a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every thirty (30) days after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and

any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

- b. Any Respondent and Successor in title shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section XII of this Order (Access to Property and Information).

38. Final Removal Report

- a. Within thirty (30) days after completion of all Work required under this Order, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The Removal Final Report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The Final Removal Report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The Final Removal Report shall also include the following certification signed by a 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.

39. Submissions to EPA

- a. Respondents shall submit one paper copy of all plans, reports or other submissions required by this Order, the attached SOW, or any approved Work Plan to EPA's On Scene Coordinator, and one paper copy to Robert Hinkson, MDNR Hazardous

Waste Program, P.O. Box 176, Jefferson City, Missouri 65102-0176. Respondents shall also submit electronic version of the Work Plan and Final Removal Report to EPA's On Scene Coordinator at the same time as submission of the paper copy. Electronic format text shall be provided in Microsoft Word software.

40. Post-Removal Site Control

- a. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the National Contingency Plan and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondents shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

X. OFF-SITE SHIPMENTS

41. 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, with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3) and the Amendment to the NCP; and Procedures for Planning and Implementing Off-Site Response Actions: Final Rule, 58 Fed. Reg. 49200 (September 22, 1993), codified at 40 C.F.R. §300.440.

42. Respondents shall, prior to any off-Site shipment, provide written notification of such shipment to the appropriate state environmental official in the receiving facility's state and to the On-Scene-Coordinator. Such notification shall include the following information: 1) the name and location of the receiving facility; 2) the type and quantity of the material being shipped; 3) the expected schedule for the shipment of the material; 4) the method of transportation.

43. The off-Site shipment may not occur until EPA informs the Respondent, in writing, that the proposed receiving is and acceptable facility under 40 C.F.R. §300.440.

XI. EPA REVIEW OF SUBMISSIONS

44. EPA may approve, disapprove, require revisions to, or modify any plan, report or other deliverable which is required to be submitted to EPA for approval pursuant to this Order (submission) and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA will specify in writing any deficiencies in the submission. Respondent shall modify the submission to incorporate EPA's comments, and shall submit the amended submission to EPA in accordance with the schedule provided by EPA.

Upon resubmission, EPA, at its sole discretion, may either approve the document, or if EPA determines that the document does not adequately address the comments provided by EPA, EPA may unilaterally modify the document, and will provide Respondent with a copy of the document, as modified by EPA, to be implemented in accordance with any modifications. If upon resubmission, a document or portion of a document is unilaterally modified by EPA, Respondent will be deemed to have failed to submit said document timely and adequately and, as a result, may be in violation of this Order.

XII. ACCESS TO PROPERTY AND INFORMATION

45. Respondents shall provide and/or obtain access to the Site and off-Site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and state of Missouri representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Upon request, Respondents shall submit to EPA the results of all sampling or tests and all other data generated by Respondents or their contractor(s), or on the Respondents' behalf during implementation of this Order.

46. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their effort(s) to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs and attorneys' fees incurred by the United States in obtaining access for Respondents.

47. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

48. Respondents shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten (10) years following completion of the removal actions required by this Order. At the end of

this ten year period and thirty (30) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this section at any time before expiration of the ten (10) year period at the written request of EPA.

49. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 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 CERCLA Section 104(e)(7)(F) shall not be claimed as confidential by the Respondents. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. 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 Respondents.

50. Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addresses(s), subject, the privilege or grounds claimed (*e.g.* attorney work product, attorney-client privilege), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

XIV. COMPLIANCE WITH OTHER LAWS

51. Respondents 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 C.F.R. Section 300.415(j). In accordance with 40 C.F.R. § 300.415(j), 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 all applicable or relevant and appropriate requirements (ARARs) under Federal environmental, state environmental, or facility siting laws. (see "The Superfund Removal Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991). Respondents shall identify all ARARs in the Work Plan subject to EPA approval.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

52. If the event of any action or occurrence during the performance of the Work conducted pursuant to this Order causes or threatens to cause a release of waste material from the Site that constitutes an emergency situation or may present an immediate threat to the public welfare or the

environment, the Respondents shall immediately take all appropriate action to address the release or threatened release. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the H&S Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer at 913-281-0991 of the incident or Site conditions. If Respondents fails to take action, then EPA may respond to the release or endangerment and reserves the right to pursue cost recovery.

53. In addition, in the event of any release of a hazardous substance, Respondents shall immediately notify EPA's OSC, Adam Ruiz, at 913-551-7926 and the National Response Center at telephone number (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) 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 CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Section 11004 et seq.

XVI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

54. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 C.F.R. Section 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

55. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondents of any such change. Respondents shall notify EPA at least ten (10) days before a change in Project Coordinators is made. Notification may initially be made orally, but shall be followed promptly by written notice.

XVII. ENFORCEMENT

56. Violation, failure or refusal to comply with any provision of this Order may subject Respondents to civil penalties of up to thirty-seven thousand, five hundred dollars (\$37,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents 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 Respondents 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, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XVIII. REIMBURSEMENT OF RESPONSE COSTS

57. Respondent(s) shall pay EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent(s) implementation of the requirements of this Order. On a periodic basis, EPA may submit to Respondent(s) a bill requiring payment that includes a cost summary containing the direct and indirect cost incurred by EPA and its contractors.

58. Respondent(s) shall, within thirty (30) days of receipt of written demand, make all payments required by this Paragraph by a cashiers or certified check made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and the EPA Site number A7N4. Respondent(s) shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, Missouri 63197-9000

59. At the time of payment, Respondent(s) shall send notice that the payment has been made by sending a copy of the check(s) to EPA. This notice shall indicate the "Maxwell Furnace Site" and shall reference the payor's name and address, the EPA site identification number and the docket number of this Order. This notice shall be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

60. In the event that they payments required by this Paragraph are not made within thirty (30) days of Respondent's receipt of written demand, Respondent(s) shall pay Interest on the unpaid balance. The Interest on the unpaid balance shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents failure to make timely payments under this section.

XIX. RESERVATION OF RIGHTS

61. Except as specifically provided in this Order, nothing herein shall 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 Site. 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 Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

XX. OTHER CLAIMS

62. 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 Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

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

64. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

XXI. MODIFICATIONS

65. Modifications to any plan or schedule or the attached EPA Statement of Work may be

made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within thirty (30) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the Director of the Superfund Division.

66. If Respondents seek permission to deviate from any approved plan or schedule or Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

67. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligation(s) to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XXII. NOTICE OF COMPLETION

68. When EPA determines, after EPA's review of the Removal Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including the retention of records under Section XIII of this Order, EPA will provide a Notice of Completion to the Respondents. If EPA determines that any Work has not been completed in accordance with this Order, EPA will notify the Respondents in writing, provide a list of the deficiencies, and require that Respondents modify the Work Plan as necessary to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and/or correct the deficiencies and shall submit a modified Removal Final Report in accordance with the written EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

XXIII. ACCESS TO ADMINISTRATIVE RECORD

69. The Administrative Record supporting this removal action is available for review at the Washington County Public Library located at 235 East High Street in Potosi, Missouri and at the EPA Region 7 Docket Room located at 901 N. 5th Street in Kansas City, Kansas.

XXIV. OPPORTUNITY TO CONFER

70. Within ten (10) days after issuance of this Order, Respondents may request a conference with EPA. Any such conference shall be held within ten (10) days prior to the effective date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

71. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within five (5) days following the conference, or within twenty (20) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Jennifer Trotter, Assistant Regional Counsel, at 913-551-7180, 901 North 5th Street, Kansas City, Kansas, 66101.

XXV. INSURANCE

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

73. In addition for the duration of the Order, Respondents shall satisfy or shall ensure that their contractors satisfy all applicable laws and regulations regarding the provisions of workers compensation insurance for all persons performing the work on behalf of the Respondent in furtherance of this Order.

XXVI. ADDITIONAL REMOVAL ACTIONS

74. If EPA determines that additional removal actions not included in the Statement of Work are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA, a Work Plan for the additional removal actions. The Work Plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the Work Plan, Respondent shall implement the Work Plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish EPA's Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Section VIII.

XXVII. SEVERABILITY

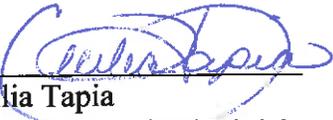
75. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to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

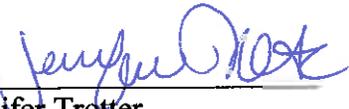
XXVIII. EFFECTIVE DATE

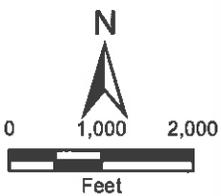
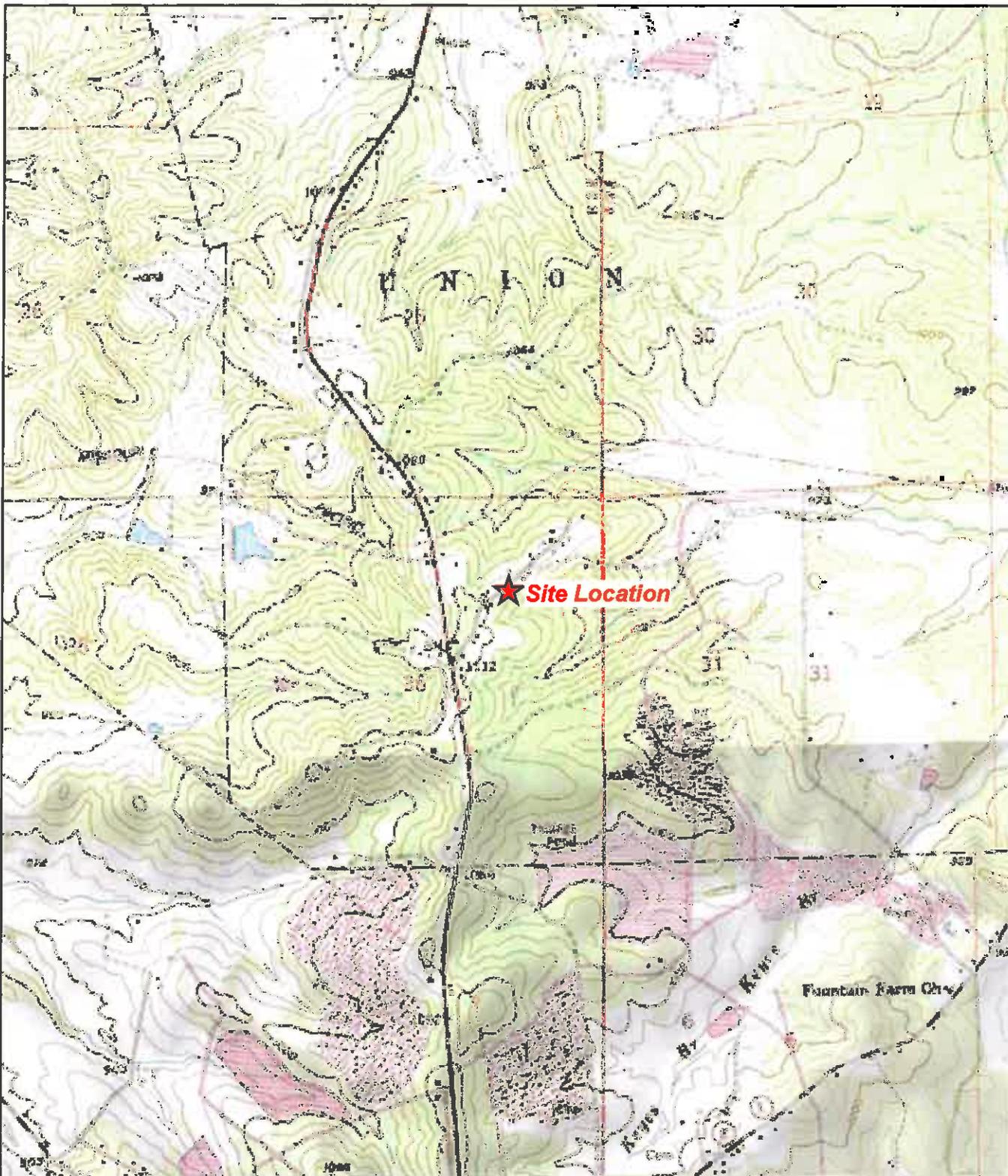
76. This Order shall be effective twenty (25) days after the Order is signed by the Director of Superfund Division, U.S. EPA, Region 7. If a conference is requested, this Order shall be effective on the fifth (5) day following the day of the conference unless modified in writing by EPA.

Unilateral Administrative Order for Removal Action
Maxwell Furnace Site
CERCLA-07-2011-0004

IT IS SO ORDERED

BY:  DATE: 9/1/11
Cecilia Tapia
Director, Superfund Division
Region 7
U.S. Environmental Protection Agency

BY:  DATE: 8.31.11
Jennifer Trotter
Assistant Regional Counsel
Region 7
U.S. Environmental Protection Agency



Maxwell Smelter
Cadet, Missouri

Figure 1
Site Location Map



X:\31000\4001\0000\products\max\figure1_082508.mxd

Source: USGS Potosi, MO 7.5 Minute Topo Quad, 1982
USGS Mineral Point, MO 7.5 Minute Topo Quad, 1982

Date: 08/25/08 Drawn E: Ingrid Tober Project No: 1900-LL06.0016.000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for an Approval of a Time Critical Removal Action at the Maxwell Furnace Site in Washington County, Missouri

FROM: Adam Ruiz, On-Scene Coordinator
Planning and Preparedness North Section

THRU: Don Lininger, Chief
Planning and Preparedness North Section

TO: Cecilia Tapia, Director
Superfund Division

Site ID # A7N4

I. PURPOSE

The purpose of this Action Memorandum is to request approval for a potentially responsible party (PRP)-lead removal action at the Maxwell Furnace site. The Site is an unpermitted furnace used to melt process-damaged and off-specification bullets. The primary objective of this action is to eliminate or reduce potential ingestion exposure due to the presence of high levels of lead in the soils. The Administrative Record will be available for review at the Washington County Public Library and the U.S. Environmental Protection Agency (EPA) Region 7 Docket Room.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal site evaluation

The Site consists of high concentrations of lead contamination from the remelting of damaged or off-specification bullets. The primary problem areas at this Site which require action are lead-contaminated soils on and near a residential property.

The EPA's contractors first sampled this Site on December 19, 2005, as part of the Washington County Lead District – Potosi site. High levels of lead were detected in soils near the home on the property. During this sampling, it was noted that a furnace was located on the property which was used to melt bullets.

In June 2008, the EPA's contractors returned to the Site to investigate possible contamination from the furnace operation. Samples of ash from the furnace, soil from the property surrounding the furnace, gravel from driveways leading into the furnace and soil from around the on-site residence were collected. These soils were analyzed using an x-ray fluorescence analyzer. In addition, several samples were sent to a laboratory and analyzed for lead using an inductively coupled plasma spectrometer.

The results of the June 2008 investigation revealed high levels of contamination in the waste generated by the furnace and in the soils and gravel surrounding the furnace. The concentrations of lead are highest near the furnace and decrease with distance from the furnace. This is a good indicator that the furnace is indeed the source of the lead contamination. Sample locations and results of this sampling are shown on Figure 2.

On February 22, 2010, the Air Pollution Control Program of the Missouri Department of Natural Resources (MDNR) visited the Site. Based primarily on information obtained during this visit, MDNR determined the facility was not in compliance with State rules and regulations. On March 8, 2010, MDNR issued a notice of violation to Mr. Murphy J. Maxwell and TJ's Metal Processing.

2. Physical location

The Maxwell Furnace Site is located at 10272 Radio Station Road in Cadet, Missouri, just north of the city of Potosi in Washington County. The Site includes a residence and an adjoining business known as TJ's Metal. The area surrounding the Site can best be described as rural residential.

3. Site characteristics

The property consists of a residence and a business, TJ's Metal. The owner of the facility and residential property is Thelma G. Maxwell, who lives at the residence with her husband, Murphy J. Maxwell. The Maxwells operate TJ's Metal.

4. Release or threatened release into the environment of a hazardous substance, pollutant, or contaminant

The primary contaminant of concern at this Site is lead and lead compounds. The EPA conducted sampling events in December 2005, June 2008, and August 2008. The initial sampling event on December 19, 2005, was part of the Washington County – Potosi Lead Site. The EPA conducted follow up samplings on June 25, 2008, and August 25, 2008, to determine whether the contamination on Site came from the on-site furnace operations. The EPA collected 20 samples over the two sampling events from soils around the area, background samples and process samples from the furnace operations. The EPA has documented total lead concentrations in soil/rock at or near residential properties at levels exceeding 37,000 parts per million.

Lead and lead compounds are hazardous substances as defined by section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, and is listed at 40 CFR § 302.4 and have been detected in the soils and wastes at the Site. From the sampling events the EPA conducted in 2008, it has been determined that lead and lead compounds have been released at concentrations exceeding 37,000 parts per million to areas at the Site as a result of lead reclamation operations on Site.

5. National Priority List (NPL) status

The Site is not currently on or proposed for listing on the NPL.

6. Supporting Documentation

Reports of investigations, reports of sampling and analysis and other relevant documentation regarding the contamination at the Site are contained in the Site's Administrative Record. A map and aerial photo showing the sample results is attached as Figure 2.

B. Other Actions to Date

There have been no known EPA response actions at this Site to reduce the risks posed by lead contamination in the soils and waste. On March 8, 2010, the state of Missouri issued a notice of violation to Mr. Murphy J. Maxwell and TJ's Metal for open burning of trade waste and operating a refuse burning incinerator without a construction permit.

C. State and Local Authorities' Roles

The EPA is closely coordinating with the MDNR, the Missouri Department of Health and Senior Services and the Washington County Health Department. MDNR is attempting to obtain environmental compliance from the company to avoid recontamination of the property after cleanup. The EPA will continue to coordinate with MDNR as the removal action progresses.

Local health officials alerted the EPA to the presence of a child with an elevated blood lead level. The child was known to frequent this residence.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT AND STATUTORY AND REGULATORY AUTHORITIES

At any release, regardless of whether the Site is included on the NPL, where the lead agency makes the determination, based on factors in 40 CFR part 300.415 (b)(2) that there is a threat to public health or welfare of the United States or the environment, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate or eliminate the release or threat of release. The factors in 40 CFR part 300.415 (b)(2) which apply to this Site are:

300.415(b)(2)(i) – Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants, or contaminants

Elevated concentrations of greater than 400 parts per million of lead have been found throughout the Site with the highest levels exceeding 37,000 parts per million. Children playing in and around the contaminated areas have the highest potential to be exposed. At least one child known to frequent the Site was diagnosed with elevated blood lead levels greater than ten micrograms per deciliter.

Lead is a metal and has been listed as a hazardous waste (D008) in the regulations for the Resource Conservation and Recovery Act. Lead is classified by the EPA as a probable human carcinogen and is a cumulative toxicant. The early effects of lead poisoning are nonspecific and difficult to distinguish from the symptoms of minor seasonal illnesses. Lead poisoning causes decreased physical fitness, fatigue, sleep disturbance, headache, aching bones and muscles, digestive symptoms (particularly constipation), abdominal cramping, nausea, vomiting and decreased appetite. With increased exposure, symptoms include anemia, pallor, a "lead line" on the gums and decreased handgrip strength. Consumption of alcohol and physical exertion may precipitate these symptoms. The radial nerve is affected most severely causing weakness in the hands and wrists. Central nervous system effects include severe headaches, convulsions, coma, delirium, and possibly death. The kidneys can also be damaged after long periods of exposure to lead, with loss of kidney function and progressive azotemia. Reproductive effects in women include decreased fertility, increased rates of miscarriage and stillbirth, decreased birth weight, premature rupture of membrane and/or pre-term delivery. Reproductive effects in men include erectile dysfunction, decreased sperm count, abnormal sperm shape and size and reduced semen volume. Lead exposure is associated with increases in blood pressure and left ventricular hypertrophy. A significant amount of lead that enters the body is stored in the bone for many years and can be considered an irreversible health effect.

Children are more vulnerable to lead poisoning than adults. For children, lead can damage the central nervous system, kidneys and reproductive system. At higher levels, it can cause coma, convulsions and death. Even low levels of lead are harmful and are associated with decreased intelligence, impaired neurobehavioral development, decreased stature and growth, impaired hearing acuity and possibly high blood pressure.

300.415(b)(2)(iv) – High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate

Lead has been detected in surface soils above the EPA's screening level of 400 parts per million. Lead contaminated soils may migrate via airborne dusts, surface runoff, percolation into groundwater, construction activity, children transporting soils/dusts into their homes after playing in the affected areas and tracked in by foot traffic.

IV. ENDANGERMENT DETERMINATION

The actual release of a hazardous substance at this Site, if not addressed by implementing the response action selected in this Action Memorandum, presents an imminent and substantial endangerment to the health of the public that comes in contact with the Site and to public welfare and the environment.

V. PROPOSED ACTIONS AND ESTIMATED COST

A. Proposed Actions

1. Proposed action description

SOIL/WASTE EXCAVATION, REMOVAL AND REPLACEMENT

All soils and/or wastes from the Site where a composite sample exceeds a concentration of 400 parts per million lead will be excavated and removed.

Areas of the Site with soil concentrations of lead exceeding 400 parts per million will be excavated in predetermined lifts until levels are below 400 parts per million or until 12 inches of soil have been excavated. At 12 inches, if levels are not below 1,200 parts per million excavation will continue until levels are below 1,200 parts per million or 24 inches have been reached. At 24 inches if levels are still above 1,200 parts per million the EPA will evaluate the necessity of further excavation or implementation of a post removal site control.

After removing the soils from the affected area or areas, the excavated soils will be replaced with clean soils. Clean soils are soils that have been analyzed for lead and other heavy metals and results indicate that the lead concentration is below 240 parts per million and all other hazardous substances, pollutants, or contaminants are below residential soil screening levels determined by the EPA or by referring to the Region 3 Preliminary Remediation Goal tables found at http://www.EPA.gov/reg3hwmd/risk/human/rb-concentration_table/index.htm.

SOIL TREATMENT AND DISPOSAL

Excavated soil will be sampled by conducting the Toxicity Characteristic Leaching Procedure according to the requirements of SW-846-Chapter 9 (representative sampling for waste piles). Soils that exceed the Toxicity Characteristic Leaching Procedure limits for lead must be properly treated with an appropriate lead stabilization chemical and resampled until the levels are below the Toxicity Characteristic Leaching Procedure limits for lead.

Transportation, treatment, storage and disposal of the excavated material shall be in accordance with all applicable local, state or federal requirements.

POST REMOVAL SITE CONTROL

It is anticipated that all lead contamination that exceeds health-based levels of concern will be excavated; therefore, no Post Removal Site Control needs are anticipated. If a Post Removal Site Control were necessary, an agreement would be negotiated with the potentially responsible party and the state of Missouri.

2. Contribution to remedial performance

The actions proposed in this Action Memorandum should not impede any future remedial plans or other response. This removal action is consistent with any long-term remedy in that it fully addresses the direct contact threat posed by lead contamination at this Site.

3. Action/Cleanup Level

Soils contaminated with lead exceeding the concentrations described above will be excavated, treated if Toxicity Characteristic Leaching Procedure analysis fails and disposed of at a Resource Conservation and Recovery Act subtitle D landfill.

All site-sampling activities for comparison to the action levels will be conducted in accordance with an approved Quality Assurance Project Plan.

4. Applicable relevant and appropriate requirements (ARARs)

Section 300.415(j) of the National Contingency Plan provides that fund-financed removal actions under Section 104 of and removal actions pursuant to CERCLA Section 106 shall, to the extent practicable considering the exigencies of the situation, attain Applicable Relevant and Appropriate Requirements under federal environmental or state environmental facility siting laws. The following specific ARARs have been identified for this action:

- Subtitle D of the Resource Conservation and Recovery Act, section 1008, section 4001, et seq., 42 U.S.C. §6941, et seq., State or Regional Solid Waste Plans and implementing federal and state regulations.
- Subtitle C of Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq., 40 CFR part 260, et seq. and implementing federal and state regulations for contaminated soils that exhibit the characteristic of toxicity and are considered Resource Conservation and Recovery Act hazardous waste.
- 40 CFR part 122, section 122.26, National Pollution Discharge Elimination System storm water discharge regulations may be relevant and appropriate for management of storm water runoff from the repository.
- 49 CFR parts 107, 171-177, DOT hazardous material transportation regulations may be relevant and appropriate for transportation of the contaminated soils to the repository.

In a letter dated February 11, 2009, the EPA requested potential state ARARs from MDNR. In a letter dated February 19, 2009, MDNR identified several potential ARARs for the EPA's evaluation. ARARs will be evaluated per the EPA guidance on consideration of ARARs during removal actions.

Any lead-bearing wastes exceeding the Toxicity Characteristic Leaching Procedure's regulatory threshold will undergo treatment in accordance with the requirements of the Resource Conservation and Recovery Act.

5. Project schedule and Cost

The total estimated cost for the implementation of the selected removal action is \$105,770. The action is estimated to take two weeks following the completion of the Removal Action Work Plan, and is dependent on workforce and equipment dedicated to the project.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will continue to potentially expose residents, particularly children, to the contaminated soils exceeding the federal action levels.

VII. OUTSTANDING POLICY ISSUES

None

VIII. ENFORCEMENT (See Attached Confidential Enforcement Addendum)

The EPA anticipates Thelma G. Maxwell and TJ's Metal will implement the recommended removal action described in this Action Memorandum.

IX. RECOMMENDATION

This decision document represents the selected removal action for the contaminated soils and wastes at the Site. The removal action was developed in accordance with CERCLA, as amended, and is not inconsistent with the National Contingency Plan. This decision is based on the Administrative Record for the Site.

Conditions at the Site meet National Contingency Plan Section 300.415(b) criteria for a PRP-lead removal action and I recommend your approval of the proposed removal action.

Approved:

Cecilia Tapia, Director
Superfund Division

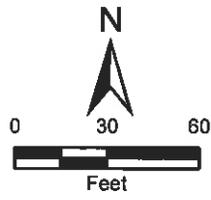
Date

Attachments



Legend

- Sample location
- Cells
- 599 Lead concentration in parts per million
- 1,093 Lead concentration in parts per million
- Avg** Average



Maxwell Smelter Cadet, Missouri
Figure 2 Sampling Location Map
TETRA TECH EM INC.
Date: 09/25/06 Drawn By: Ingrid Tober Project No: 19004.L07.0018.000

X:\010000\001\19004\pnp\env\mxd\Figure_2_012508.mxd

Source: MSDIS 2 Foot Resolution Aerial Photography, 2008

Statement of Work

Removal Action Maxwell Furnace Site Washington County, Missouri

1.0 REMOVAL GOALS AND OBJECTIVES

Respondent must provide appropriate plans with an aggressive work schedule and documentation to perform the tasks listed in this Statement of Work. The goal of this removal action is to remove lead-contaminated soils from residential properties which were contaminated from past or present lead recycling operations and to prevent recontamination of these properties.

The objectives to achieve this goal are as follows:

1. Soil/waste/gravel sampling to determine the extent of contamination;
2. Soil/waste/gravel removal and replacement;
3. Proper handling, treatment, and disposal of contaminated materials; and
4. Provide proper documentation and quality controls.

2.0 SOIL/WASTE/GRAVEL SAMPLING

Respondent shall use the U.S. Environmental Protection Agency-generated sample data (SOW Attachment 1) to develop a sampling plan to clearly define the extent of surface contamination at the Site. Sampling shall be conducted in discrete exposure units, with adequate subsamples to determine the mean concentration throughout the exposure unit. Sampling shall continue until Respondent has defined a clear boundary of exposure units where the average concentration is less than 400 parts per million.

3.0 SOIL/WASTE/GRAVEL EXCAVATION, REMOVAL, AND REPLACEMENT

Respondent shall excavate and remove all soils, waste, and/or gravel in the individual exposure unit where a composite sample exceeded a concentration of 400 mg/kg lead as determined by sampling in accordance with Section 2.0 of this SOW.

Units with soil concentrations exceeding 400 parts per million at the surface will be excavated until the concentration is below 400 parts per million or a depth of 12 inches is reached. The excavation will be conducted with excavators, backhoes, and/or hand tools. Respondent may choose to excavate in 6-inch lifts, but if the soil concentrations still exceed 400 parts per million after excavating the first 6-inch lift, a second 6-inch lift will be removed. If soils at a depth of 12

inches are greater than 1,200 parts per million, Respondent must continue to excavate until soils are less than 1,200 parts per million.

After removing the soils, the excavated soils will be replaced with clean soils and the areas will be restored to as near the original condition as possible. Clean soils are soils that have been analyzed for constituents identified in Table 1 below and results indicate that the constituent concentrations for hazardous substances, pollutants, or contaminants are below 240 mg/kg for lead and residential soil screening levels as determined by the EPA or by referring to the Region 9 Regional Screening Levels at <http://www.epa.gov/region9/superfund/prg/>.

The areas will be backfilled and the clean soils compacted to achieve their original grades. The backfilled areas shall be properly vegetated. The Respondent shall be responsible for any property damage caused during the cleanup such as replacing or repairing damage to structures, sidewalks and driveways, and utilities.

Prior to backfilling any excavated area, the Respondent shall notify the EPA and allow the EPA and/or its contractors or representatives an opportunity to sample the soils in the excavated area. Respondent shall not backfill any excavated area without prior approval from the EPA and/or its contractors or representatives. Until vegetation is established, Respondent is responsible for the placement of silt fence, straw bales or other items or structures used to prevent and/or control soil runoff from backfilled or excavated areas.

Table 1
Backfill Analytical Matrices and Methods

Chemical Parameter	Analytical Method
Volatile Organic Compounds	SW-846 Method 8260B
Semivolatile Organic Compounds	SW-846 Method 8270C
Pesticides and PCBs	SW-846 Method 8081A & 8082
Target Analyte List Metals - total	SW-846 Method 3050/6000/7000 Series
Extractable Petroleum Hydrocarbons	Missouri Dept. of Natural Resources Method TPH-OA2

4.0 SOIL TREATMENT AND DISPOSAL

Respondent shall sample soil for conducting the Toxicity Characteristic Leaching Procedure according to the requirements of SW-846-Chapter 9 (representative sampling for waste piles). Soils that exceed the TCLP limits for lead must be properly treated with an appropriate lead stabilization chemical and re-sampled until the levels are below the TCLP limits for lead of five mg/L.

Transportation, treatment, storage, and disposal of soils shall be in accordance with all applicable local, state, or federal requirements. All disposal facilities shall be in compliance with the CERCLA off-site rule (40 CFR §300.440).

5.0 DOCUMENTATION, DELIVERABLES AND REPORTING REQUIREMENTS

Workplan:

The Respondents shall prepare a Work Plan within 45 days of the effective date of the Order. The Work Plan shall include a Field Sampling Plan, a Removal Action Work Plan, a Quality Assurance Project Plan, and a Health and Safety Plan in accordance with the terms of the Order.

Removal Action Report:

This report shall be provided to EPA 30 days after the removal actions are completed and will describe all removal activities which took place and, at a minimum, provide the following:

- Analytical results of all samples collected during the removal action.
- Drawings, to approximate scale, of excavated areas documenting the extent and location of the excavation and backfill placement and the location of any barrier material placed in the excavated areas. Pre- and post-sampling results shall be included on the drawing.
- A summary of and location of the remediated areas.
- The volume of contaminated soil excavated and disposed of and a description of the disposal location.
- All laboratory quality assurance data.
- All TCLP sample data collected for soil disposal.

**LEAD CONCENTRATIONS IN MLRF SAMPLES
MAXWELL LEAD RECLAMATION FURNACE SITE – CADET, MISSOURI**

Sample ID	Location	Approximate Distance from Furnace (ft)	Lead by XRF (ppm) ¹	Lead by ICP (ppm) ²
A-3	Ash from beneath furnace	0	>10%	437,280 (>40%)
G-1	West driveway	10	28,377	NA
G-2	West driveway	60	37,888	NA
G-3	West driveway	110	7,866	17,921
G-4	North driveway	10	19,374	NA
G-5	North driveway	60	2,835	7,314
G-6	North driveway	110	1,829	NA
G-7	Entrance to neighbor's driveway	185	599	NA
G-8	Inside former junkyard area	150	4,627	6,519
G-9	Front yard – west	90	4,664	4,867
G-10	Front yard – east	150	1,037	NA
G-11	Back yard – west	30	5,412	NA
G-12	Back yard – east	105	2,209	1,659
G-13	Next to outbuilding	90	2,003	NA
G-14	East driveway	170	2,169	NA
G-15	East driveway	70	16,890	NA
BG-rock	Radio Station Road	2,700	59	106
BG-soil	Next to Radio Station Road	2,700	233	282

Notes:

- ¹ Samples passed through 2 mm sieve
- ² Samples passed through 250 µm sieve

ft Feet
 ICP Inductively coupled plasma
 ID Identification
 mm Millimeters
 NA Not analyzed
 ppm Parts per million
 XRF X-ray fluorescence
 > Greater than
 µm Micrometers
 % Percent

Data From: "LEAD SOURCE INVESTIGATION REPORT
 WASHINGTON COUNTY LEAD DISTRICT – POTOSI AREA SITE
 MAXWELL LEAD RECLAMATION FURNACE SUBSITE, CADET, MISSOURI"
 Superfund Technical Assessment and Response Team (START) 3
 Contract No. EP-S7-06-01, Task Order No. 0019.011, February 26, 2009.

IN THE MATTER OF Maxwell Furnace Site; TJ's Metal Processing, LLC and Thelma G.
Maxwell, Respondents
Docket No. CERCLA-07-2011-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Unilateral Administrative Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jennifer L. Trotter
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Thelma G. Maxwell and
TJ's Metal Processing, LLC
10272 Radio Station Road
Cadet, Missouri 63630

Dated: 9/14/11



Kathy Robinson
Hearing Clerk, Region 7