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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF: )

Former Carter White Lead Facility )  
East 21st and East Locust Street )  
Omaha, Douglas County, Nebraska )

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

NL Industries, Inc. )

MOWECO, Inc. )

Respondents )

Docket No. CERCLA-07-2012-0053

Proceeding Under Sections 104, 106(a), )  
107 and 122 of the Comprehensive )  
Environmental Response, Compensation, )  
and Liability Act, as amended, 42 U.S.C. )  
§§ 9604, 9606(a), 9607 and 9622 )

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), NL Industries, Inc. ("NL"), and MOWECO, Inc. ("Moweco") (collectively, NL and Moweco, "Respondents" or individually a "Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the Former Carter White Lead Site (the "Site") located at North 21st Street and East Locust Street in Omaha, Douglas County, Nebraska.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Nebraska (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings brought by the United States or the State to implement or enforce this Settlement Agreement, the validity of the EPA findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

## **II. PARTIES BOUND**

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondents and their 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 not alter Respondents' responsibilities under this Settlement Agreement.

6. Respondents each shall respectively ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondents each respectively shall be responsible for any noncompliance of their contractors, subcontractors, or representatives with the terms of this Settlement Agreement.

## **III. DEFINITIONS**

7. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement 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 Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on June 5, 2012, by the Regional Administrator, EPA Region 7, or his/her delegate, and all attachments thereto. The "Action Memorandum" is attached 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. In computing any period of time under this Settlement Agreement, 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. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXIII.

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

f. "Interest" shall mean interest at the 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.

g. "Moweco" shall mean MOWECO, Inc.

h. "Moweco Site" shall mean that portion of the Site legally described as set forth in Appendix D and depicted as Parcels B and C on the Site Map at Appendix B.

i. "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.

j. "NDEQ" shall mean the Nebraska Department of Environmental Quality and any successor departments or agencies of the State.

k. "NL" shall mean NL Industries, Inc.

l. "NL Work" shall mean all Work to perform the time critical removal action at the Site except the PRSC Work.

m. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

n. "Parties" shall mean EPA and Respondents.

o. "Post Removal Site Control Work" or "PRSC Work" shall mean that portion of the Work described in Paragraph 36.

p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

q. "Respondents" shall mean NL Industries, Inc. and MOWECO, Inc.

r. "Response Costs" shall mean all costs including, but not limited to, direct and indirect costs, that the United States has incurred or will incur in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, 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 compensation), Paragraph 56 (emergency response), and Paragraph 81 (work takeover). The EPA will maintain its normal records of these costs, including hours worked, and provide them to Respondents upon Respondents' request

s. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

t. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Docket No. CERCLA-07-2012-0053, and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

u. "Site" shall mean the Former Carter White Lead Superfund Site, encompassing approximately 4 acres, located at East 21st Street and East Locust Street in Omaha, Douglas County, Nebraska and adjacent locations at which hazardous substances from the former Carter White Lead facility have come to be located and depicted on the Site Map attached as Appendix B.

v. "State" shall mean the State of Nebraska.

w. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

x. "Work" shall mean all activities required under this Settlement Agreement, including without limitation the NL Work and the PRSC Work.

#### **IV. EPA FINDINGS OF FACT**

8. The Site is located in the City of Omaha, Nebraska, between North 21st Street East and North 22nd Street East, and East Locust. North of the Site is the Omaha Airport Authority. Southwest of the Site, located at the corner of North 21st Street East and Avenue J is the Open Door Mission building which is a residential outreach & shelter facility for men. To

the east of the Site, at the corner of North 22nd Street East and East Locust Street, is an Open Door Mission apartment house and children's playground. South of the Site is the Omaha Box Company, which began production as a wooden box manufacturer in 1890. Presently, Omaha Box Company is an independent corrugated paper manufacturer and distributor.

9. Businesses currently on the Site include the TimberLake Outreach Center building and a FleetPride truck service center. The TimberLake Outreach Center building is located on the north-central portion of the Site along East Locust Avenue between 21st and 22nd Streets, and is owned by Rescue Mission, Inc. (aka Open Door Mission) (Parcel A on Appendix B). The TimberLake Outreach Center building is a thrift store used for distributing clothing and household items. FleetPride is located on the eastern portion of the Moweco Site. FleetPride is an independent distributor of heavy-duty truck parts and leases the property from Moweco, Inc. FleetPride also operates a network of heavy-duty repair and maintenance facilities. The western portion of the Moweco Site is an unmaintained gravel parking lot (parcel C on Appendix B). The Site is currently zoned GI-General Industrial District.

10. The area immediately surrounding the Site is primarily commercial with some light industry and residential. 2000 census data indicate that the population within 4 miles of the Site is approximately 81,373 persons. Of these, 88 residents live within 0.25 mile. Day care and multi-family residential facilities are located adjacent to the Site. Employees of FleetPride and the Open Door Mission organizations are present at the Site, as well as patrons of these entities.

11. The Site property is currently divided into 3 parcels, Parcel A owned by Rescue Mission, Inc. and the Moweco Site, which are Parcels B and C owned by Moweco. See Site Map attached as Appendix B.

12. The Carter White Lead Company manufactured lead-based white paint pigments at the Site property at 21st Street and East Locust Streets in Omaha, Nebraska from approximately 1891 to 1907. In 1907 Carter White Lead ceased operations at the facility. In 1926, Carter White Lead sold the property to the Platte Valley Cement Tile Manufacturing Company.

13. The Platte Valley Cement Tile Manufacturing Company ("Platte Valley") owned all or portions of the Site property from 1926 to 1946. The property was vacant during this time period with no known operations.

14. Platte Valley sold portions of the Site property (lots 6-11) in 1946 to Andrew and Margaret Lawslo. The Lawslo's sold the property to Transport Repair Service, Inc. in 1953. Transport sold the property to Reuben and Ruth Johnson in 1969 who sold the property to the Morgan Wheel & Equipment Company in 1974. Morgan Wheel & Equipment Company later changed its name to Moweco. Moweco currently owns this portion of the Moweco Site. This portion of the Moweco Site has been used by a tenant as a truck and transportation equipment repair facility since 1953 and is identified as Parcel C on the Site Map attached as Appendix B.

15. Platte Valley sold another portion of the Site property (lots 12-17) to Andrew and John Lawslo in 1946. This property was transferred between the Lawslo family until sold to Harold Cooperman in 1970, who sold it to Moweco in 1982. Moweco currently owns this

portion of the Moweco Site. This portion of the Moweco Site property is an unmaintained gravel parking lot and is identified as Parcel B on the Site Map attached as Appendix B.

16. Platte Valley sold a final portion of the Site property (lots 1-5, 18-22, A-1, A-2, and P) to various owners beginning with Lot 1 to the Nebraska Power Company in 1939 who sold Lot 1 to Andrew Lawslo in 1961. Lots 2, 21, and 22 were sold to Andrew and Margaret Lawslo in 1940. Lots A-1 and A-2 were sold to Andy Lawslo in 1947. Lots 3-5 and 18-22 were sold to Andrew and John Lawslo in 1946. All of this property (Lots 1-5, 18-22, A-1, A-2, and P) was sold by the Lawslo family to Harold Cooperman in 1970. Mr. Cooperman sold the property to Robert and Debra McDermott in 1985 who sold it to Rescue Mission, Inc. in 2005. Rescue Mission, Inc. currently owns this portion of the Site property. Rescue Mission, Inc., operates this property and other properties collectively as a not for profit charity known as the Open Door Mission. This portion of the Site property was operated as a grocery store from 1959 through 2004 and has been operated as a thrift store since 2005 and is identified as Parcel A on the Site Map attached as Appendix B.

17. The Rescue Mission, Inc. (aka Open Door Mission), the current property owner for the north portion of the Site, retained Jacobson Helgoth Consultants, Inc., (JHC) to provide professional environmental consulting services regarding one parcel of the Site. From September through December 2004, JHC conducted several subsurface soil investigations. JHC collected a total of 38 soil samples from 0 to 2 feet below ground surface (bgs), under an asphalt parking lot. Lead was detected in all of the soil samples, with concentrations ranging from 65.7 to 9,796 milligrams per kilogram (mg/kg).

18. In October 2005 EPA conducted a Preliminary Assessment (PA) at the Site. One hundred and eleven (111) samples were collected across the site, and lead contamination was discovered in surficial soils throughout the site property. The maximum detected concentration was 17,800 mg/kg and the average concentration of all samples was 1,700 mg/kg.

19. In July 2009 EPA conducted a Removal Site Evaluation (RSE) at the Site. The main objective of the RSE was to delineate the extent of lead-contaminated soil. RSE sampling was conducted on July 13 and 14, 2009. Fifty-one samples were collected from both on-Site and off-Site locations. Surface soil concentrations of lead ranged from 18 mg/kg in an off-Site sample to 5,063 mg/kg in a central location within the Site. Six subsurface soil borings were also sampled from depths ranging from 0 to 8 feet below ground surface (bgs). The highest levels of subsurface lead contamination at the Site were detected between 2 to 4 feet bgs, with maximum concentrations about 12,000 mg/kg.

20. The Site is not part of the Omaha Lead Site (EPA Facility I.D. NESFN 0703481) (the "OLS").

21. On March 28, 2000, the EPA sent a letter to Respondent NL under the authority of Section 104(e) of CERCLA requesting information concerning potential lead contamination in Omaha, Nebraska.

22. NL provided a written response to the information request on June 1, 2000. In its response, NL admitted it was a successor corporation to Carter White Lead Company.

23. Lead has been classified as a hazardous substance under CERCLA. Lead is classified as Group B2 - probable human carcinogen by the ingestion route of exposure. Lead is bluish grey heavy metal and a constituent of D008 hazardous waste. 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. 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.

24. Since being contacted, NL has cooperated in good faith and has promptly and voluntarily engaged in negotiations to address environmental conditions at the Site. Specifically, NL has participated in a number of telephone conferences to discuss the findings of sampling activities at and around the Site and has met with the EPA promptly when such a meeting was requested by EPA. NL also voluntarily and at its own initiative set up a meeting with the Site property owners and EPA to discuss possible responses to Site conditions. Further, NL has at all times responded to the EPA in a timely and productive manner.

25. Respondents neither admit nor deny EPA's Findings of Fact set forth in this Settlement Agreement.

#### **V. EPA CONCLUSIONS OF LAW AND DETERMINATIONS**

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

a. The Former Carter White Lead Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

c. Respondents are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondents are each a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. Respondent NL Industries,

Inc. as a successor to Carter White Lead was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent, MOWECO, Inc., is a current "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraphs 17 through 19 of the EPA Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

g. Respondents neither admit nor deny EPA's Conclusions of Law set forth in this Settlement Agreement.

#### **VI. SETTLEMENT AGREEMENT AND ORDER**

27. Based upon the foregoing EPA Findings of Fact, EPA Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

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

28. NL shall retain one or more contractors to perform the NL Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within fifteen (15) days of the Effective Date. NL shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the NL Work at least fourteen (14) days prior to commencement of the NL Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by NL. If EPA disapproves of a selected contractor, such hiring Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 30 days of EPA's disapproval. The proposed contractor must demonstrate compliance 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), 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/B0-1/002), or equivalent documentation as required by EPA.

29. Within 5 days after the Effective Date, NL shall designate a Project Coordinator who shall be responsible for administration of all actions by NL required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address,

telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during NL Work at the Site. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, NL shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) days following EPA's disapproval. Receipt by the Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by NL.

30. EPA has designated Michael B. Davis of the Emergency Response & Removal South Branch, Region 7, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement first by email followed by first class mailing, hand-delivered or sent by certified mail, return receipt requested, or overnight delivery to the following individual or such other individuals as EPA may designate in writing:

Michael B. Davis, OSC  
U.S. Environmental Protection Agency, Region 7  
Superfund Division  
Emergency Response and Removal South Branch  
901 North 5th Street  
Kansas City, Kansas 66101

31. EPA and NL shall have the right, subject to Paragraph 29, to change their respective designated OSC or Project Coordinator. NL shall notify EPA ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

### **VIII. WORK TO BE PERFORMED**

32. NL shall perform, at a minimum, all actions necessary to implement the Time Critical Removal Action Work Plan dated June 20, 2012, attached hereto as Appendix C ("Work Plan"), except with respect to the PRSC Work, which shall be performed by the applicable owner of the Site, including Moweco for the Moweco Site. The actions to be implemented generally include, but are not limited to, the following:

- a. Excavation of contaminated soils at specified areas of the Site;
- b. Stabilization of soils on-site, if necessary;
- c. Consolidation, containment or capping of soils on-site;
- d. Disposal of excavated contaminated materials; and
- e. PRSC Work.

NL shall be responsible for the design, construction, implementation, and performance monitoring of the NL Work to address soil contamination at the Site above the established Cleanup Goal as identified in the Work Plan, except with respect to the PRSC Work.

Moweco shall perform the PRSC Work, as necessary, only for the Moweco Site, including without limitation the design, construction, implementation and performance monitoring of the PRSC Work to address soil contamination at the Moweco Site above the established Cleanup Goal as identified in the Work Plan. All PRSC Work for that portion of the Site other than the Moweco Site shall not be the responsibility of the Respondents. The remaining PRSC Work not covered by this Settlement Agreement shall be the responsibility of the owner of that property.

33. Work Plan and Implementation.

a. NL shall implement the approved Work Plan attached hereto as Appendix C ("Work Plan") in all respects other than the PRSC Work. Moweco shall implement the PRSC Work for the Moweco Site.

b. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement and will notify EPA at least 3 days prior to implementation of their respective obligations as set forth in this Settlement Agreement.

34. Health and Safety Plan. Within thirty (30) days of the Effective Date or sooner, NL shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site NL Work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910 and included at a minimum the following elements:

- a. Assessment of chemical and physical hazards at all relevant locations;
- b. Identification of Site control measures and required levels of protection and safety equipment;
- c. Field monitoring requirements;
- d. Equipment and personnel decontamination and residual management disposal;
- e. Training and medical monitoring requirements; and
- f. Emergency planning and emergency contacts.

NL shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Removal Action.

35. Quality Assurance and Sampling.

a. Within thirty (30) days of the Effective Date, NL shall submit a project-specific Quality Assurance Project Plan ("QAPP") for sample analysis and data handling which

will apply to all samples collected during the NL Work. The QAPP will be prepared in accordance with "EPA Requirements for quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001) and "Guidance on Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002). The QAPP will define in detail the sampling and data-gathering methods that will be used. It must also include sampling objectives, a detailed description of sampling activities including sample locations, sample analyses, sampling equipment and procedures, station positioning, sample handling (e.g., sample containers and labels, sample preservation, chain-of-custody), and a schedule for sampling and analyses.

b. All sampling and analyses performed pursuant to this Settlement Agreement 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, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that 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.

c. Upon request by EPA, the applicable Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. The applicable Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The term "applicable Respondent" is intended to mean the Respondent that is responsible under this Settlement Agreement for the Work being performed requiring the analysis of samples.

d. Upon request by EPA, the applicable Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. The applicable Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the applicable Respondent to take split or duplicate samples of any samples it takes as part of its oversight of the applicable Respondent's implementation of the Work.

36. Post-Removal Site Control. If soil contaminated with hazardous substances or hazardous materials remains in place following implementation of the NL Work, such that this material represents an unacceptable risk to human or health or the environment under reasonably anticipated future uses of the Site, then (i) with respect to the Moweco Site, Moweco shall submit a proposal for post-removal site controls consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02; and (ii) with respect to the remaining portion of the Site, EPA intends to require such property owner(s) to submit a proposal for post-removal site

controls consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Moweco shall submit an Environmental Covenant to implement such controls on the Moweco Site and shall provide EPA with documentation of all post-removal site control arrangements. EPA intends to obtain from the property owner(s) for the remaining portion of the Site an Environmental Covenant to implement such controls for that portion of the Site. The Environmental Covenant concerning the Moweco Site shall be recorded by Moweco contemporaneously with the execution of this Settlement Agreement or as soon as possible thereafter.

37. Reporting.

a. Each Respondent performing Work shall submit a written progress report to EPA concerning such Work undertaken pursuant to this Settlement Agreement every 7th day after commencement of such Work until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. 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 actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Each Respondent shall submit one copy of all plans, reports or other submissions required by this Settlement Agreement for the Work required to be performed by such Respondent, or any approved work plan for such Work. Upon request by EPA, each Respondent shall submit additional copies of such documents or shall submit such documents in electronic form.

38. Final Report. Within thirty (30) days after completion of all Work required to be performed by NL pursuant to this Settlement Agreement, NL shall submit for EPA review and approval a final report summarizing the actions taken by NL to comply with this Settlement Agreement. The final report shall conform, at a minimum, with "Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, 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(s) 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 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. Off-Site Shipments.

a. The applicable Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. The applicable Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. The applicable Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by the applicable Respondent following the award of the contract for the removal action. The applicable Respondent shall provide the information required by Paragraphs 39(a) and 39(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, the applicable Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. The applicable Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

**IX. EPA REVIEW OF SUBMISSIONS**

40. After review of any plan, report or other deliverable which is required to be submitted for approval pursuant to this Settlement Agreement, including a resubmission, EPA shall, in writing: (A) approve, in whole or in part, the submission; (B) approve the submission upon specified conditions; (C) disapprove, in whole or in part, the submission, directing that the Respondent who submitted such plan, report, or other deliverable (the "submitting Respondent") modify the submission; (D) disapprove, in whole or in part, the submission, notifying the submitting Respondent of the deficiencies and EPA's decision to modify or develop the required deliverable; or (E) any combination of the above.

41. In the event of approval or an undisputed approval upon specified conditions by EPA pursuant to Paragraph 40(A) or (B), the submitting Respondent shall proceed to take any action required by the plan, report or other deliverable as approved by EPA. In the event EPA refuses to approve or approves only upon specified conditions, which the submitting Respondent

disputes, the submitting Respondent may pursue the dispute resolution provision in Section XVII.

42. Notice of Disapproval.

a. Upon receipt of a notice of EPA disapproval pursuant to Paragraph 40(C), the submitting Respondent shall, within thirty (30) days (or such additional time as specified by EPA in such notice) correct the deficiencies and resubmit the plan, report or other deliverable to EPA for approval. Any stipulated penalty applicable to the submission, as provided in Section XIX (Stipulated Penalties) of this Settlement Agreement, shall accrue during the thirty (30) day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or the required deliverable is modified or developed by EPA due to a material defect as provided in Paragraphs 43 and 44.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 40(C) or (D), the submitting Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the submitting Respondent of any liability for stipulated penalties under Section XIX (Stipulated Penalties) of this Settlement Agreement.

43. Resubmissions.

a. In the event a resubmitted plan, report or other deliverable, or portion thereof, is disapproved by EPA, EPA may again require the submitting Respondent to correct the deficiencies, in accordance with this Section. The EPA also retains the right to modify or develop the plan, report or other deliverable. The submitting Respondent shall implement any such plan, report or deliverable as modified or developed by EPA, subject only to the submitting Respondent's right to invoke the procedures set forth in Section XVII (Dispute Resolution) of this Settlement Agreement.

b. If upon resubmission, a plan, report or other deliverable is disapproved, modified or developed by EPA due to a material defect, and the submitting Respondent does not prevail after invoking the dispute resolution procedures in Section XVII (Dispute Resolution) of this Settlement Agreement, the submitting Respondent shall be deemed to have failed to submit such plan, report or deliverable in a timely and adequate manner. In this event, any stipulated penalty applicable to the resubmission shall begin to accrue from the date on which the initial submission was originally required. Any such stipulated penalty shall be payable in accordance with the provisions of Section XIX (Stipulated Penalties) of this Settlement Agreement, unless the submitting Respondent invokes the procedures set forth in Section XVII (Dispute Resolution) of this Settlement Agreement and EPA's action is overturned pursuant to that Section. The provisions of Sections XVII (Dispute Resolution) and XIX (Stipulated Penalties) of this Settlement Agreement shall govern the implementation of the Work and accrual and payment of any stipulated penalties during dispute resolution.

44. Subject to final resolution of any dispute initiated under Section XVII (Dispute Resolution) of this Settlement Agreement, all plans, reports and other deliverables required to be submitted to EPA under this Settlement Agreement shall, upon approval, modification or

development by EPA, be enforceable under this Settlement Agreement. In the event EPA approves, modifies or develops a portion of a plan, report or other deliverable required to be submitted to EPA under this Settlement Agreement, the approved, modified or developed portion shall be enforceable under this Settlement Agreement.

#### **X. SITE ACCESS**

45. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by one or more of the Respondents, the owning or controlling Respondents shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, and other Respondents and their contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

46. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, the Respondent requiring such access to perform such Work shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by the OSC. Such Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Such Respondent shall describe in writing its efforts to obtain access. EPA may then assist such Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Such Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVI (Payment of Response Costs).

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

#### **XI. ACCESS TO INFORMATION**

48. Each Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

49. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality

accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

50. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege in lieu of providing documents, that Respondent shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by the Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

51. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XII. RECORD RETENTION**

52. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXX (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondents' receipt of EPA's notification pursuant to Section XXX (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

53. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondents shall deliver any such records or documents to EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by that Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

54. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

### **XIII. COMPLIANCE WITH OTHER LAWS**

55. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §§ 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement 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.

### **XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

56. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Respondent responsible for such Work (the "responsible Respondent") shall immediately take all appropriate action. The responsible Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, 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. The responsible Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer on the twenty-four (24) hour spill line (913-281-0991) of the incident or Site conditions. In the event that the responsible Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, the responsible Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

57. In addition, in the event of any release of a hazardous substance from the Site, the responsible Respondent shall immediately notify the OSC and the National Response Center at (800) 424-8802. The responsible Respondent 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, and 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. § 11004, *et seq.*

## **XV. AUTHORITY OF ON-SCENE COORDINATOR**

58. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **XVI. PAYMENT OF RESPONSE COSTS**

### **59. Payments for Response Costs.**

a. Respondents shall pay EPA all Response Costs not inconsistent with the NCP only as follows: (i) NL shall be solely responsible for payment of all such costs arising from the NL Work; and (ii) Moweco shall be solely responsible for payment of all such costs arising from the PRSC Work required to be performed by Moweco under this Settlement Agreement, if any. Respondents shall not be required to pay Response Costs relating to activities of EPA prior to April 19, 2011. On a periodic basis, EPA will send the Respondent responsible for payment a bill requiring payment that includes an Itemized Cost Summary ("ICS") Report. The EPA will maintain certain detailed cost information and can provide such information to such Respondent upon request. The Respondent responsible for payment shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 61 of this Settlement Agreement.

b. Each Respondent shall make all payments it is required to make by Section XVI with a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site/Spill ID number A7P4. All check(s) shall be sent to:

U.S. Environmental Protection Agency  
Superfund Payments – CFC  
P.O. Box 979076  
St. Louis, MO 63197-9000

c. At the time of payment, the paying Respondent shall send notice that payment has been made to the OSC and by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

and

Regional Hearing Clerk  
U.S. EPA, Region 7  
901 N. 5th Street  
Kansas City, KS 66101

d. The total amount paid by Respondents pursuant to Paragraph 59(a) shall be deposited by EPA in the Former Carter White Lead Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or transferred by EPA to the EPA Hazardous Substance Superfund.

60. In the event that the payments for Response Costs are not made within thirty (30) days of the Respondent responsible for payment's receipt of a bill, that Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the bill 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 such Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XIX (Stipulated Penalties).

61. Any Respondent may contest payment of any Response Costs billed under Paragraph 59 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. This paragraph shall not apply to any objection by a Respondent that EPA billed a Respondent not expressly responsible for such Response Costs under this Settlement Agreement. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, the objecting Respondent shall within the 30-day period pay all uncontested Response Costs to EPA in the manner described in Paragraph 59. Simultaneously, the objecting Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Nebraska and remit to that escrow account funds equivalent to the amount of the contested Response Costs. The objecting Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the objecting Respondent shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If EPA prevails in the dispute, within five (5) days of the resolution of the dispute, the objecting Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 59. If the objecting Respondent prevail concerning any aspect of the contested costs, the objecting Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 59. The objecting Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Response Costs.

## **XVII. DISPUTE RESOLUTION**

62. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes

arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

63. If any Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, it shall notify EPA in writing of its objection(s) within ten (10) days of such action, unless the objection(s) has/have been resolved informally. EPA and the objecting Respondent shall have thirty (30) days from EPA's receipt of that Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

64. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the EPA, Region 7, Director of the Superfund Division will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the applicable Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

#### **XVIII. FORCE MAJEURE**

65. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

66. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within forty-eight (48) hours of when Respondents first knew that the event might cause a delay. If NL is claiming a *force majeure* event, NL shall also copy Moweco on all notices to EPA with regard to such force majeure event. Within five (5) days thereafter, Respondents shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

67. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

**XIX. STIPULATED PENALTIES**

68. Each Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 69 through 71 for such Respondent’s failure to comply with the requirements of this Settlement Agreement specified below, applicable to such Respondent, unless excused under Section XVIII (*Force Majeure*). “Compliance” by a Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below for which such Respondent was responsible to perform in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

69. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue against the responsible Respondent per violation per day for any noncompliance identified in Paragraph 69(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$2,500	31st day and beyond

b. Compliance Milestones

i. NL shall be the responsible Respondent for NL’s failure to complete any NL Work required in the EPA-approved Work Plan;

ii. Moweco shall be the responsible Respondent for Moweco’s failure to complete any PRSC Work required to be performed by Moweco pursuant to this Settlement Agreement;

iii. The Respondent responsible to perform the underlying Work for which an Additional Response Action is issued shall be the responsible Respondent for such Respondent’s failure to complete any Work required under Section XXVIII (Additional Response Actions) of this Settlement Agreement; and

iv. The Respondent responsible to pay any Response Costs shall be the responsible Respondent for such Respondent's failure to remit a timely payment under Section XVI (Payment of Response Cost) of this Settlement Agreement.

70. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 37 and 38:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,500	31st day and beyond

71. In the event that EPA assumes performance of a portion or all of the NL Work pursuant to Paragraph 81 of Section XXI (Reservation of Rights by EPA), NL shall be liable for a one-time stipulated penalty in the amount of \$55,000.

72. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the responsible Respondent of any deficiency; and 2) with respect to a decision by the EPA, Region 7, Director of the Superfund Division, under Paragraph 64 of Section XVII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the EPA Superfund Division Director issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

73. Following EPA's determination that a Respondent has failed to comply with a requirement of this Settlement Agreement, EPA shall give the responsible Respondent and the other Respondent written notification of the failure and describe the noncompliance. EPA may send the responsible Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

74. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of the responsible Respondent's receipt from EPA of a demand for payment of the penalties, unless the responsible Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties – CFC  
P.O. Box 979077  
St. Louis, MO 63197-9000

Each payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A7P4, the EPA Docket Number CERCLA-07-2012-0053, and the responsible Respondent's name and address. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 59.

75. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work as set forth in this Settlement Agreement.

76. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

77. If the responsible Respondent fails to pay stipulated penalties when due, EPA may institute proceedings against such Respondent to collect the penalties, as well as Interest. The responsible Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the responsible Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXI (Reservations of Rights by EPA), Paragraph 81. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

## **XX. COVENANT NOT TO SUE BY EPA**

78. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the matters addressed in this Settlement Agreement. This covenant not to sue shall take effect upon the Effective Date and, as to each Respondent, is conditioned upon the complete and satisfactory performance by such Respondent of all of such Respondent's obligations under this Settlement Agreement, including, but not limited to,

payment of Response Costs pursuant to Section XVI. This covenant not to sue extends only to Respondents and does not extend to any other person.

## **XXI. RESERVATIONS OF RIGHTS BY EPA**

79. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement 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 in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

80. The covenant not to sue set forth in Section XX (Covenant Not to Sue by EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against each Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by such Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included with the definition of Response Costs;
- c. liability for performance of response action other than the Work by such Respondent;
- d. criminal liability of such Respondent;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments caused by such Respondent;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site by such Respondent; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

81. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Cost incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Response Cost that the applicable

Respondent shall pay pursuant to Section XVI (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXII. COVENANT NOT TO SUE BY RESPONDENTS**

82. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, or Response Costs.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 80 (b), (c), and (e) - (g) or Paragraph 81, but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

83. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **XXIII. OTHER CLAIMS**

84. By issuance of this Settlement Agreement, 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 Respondents or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

85. Except as expressly provided in Section XXII (Covenant Not to Sue by Respondents) and Section XX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or 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.

86. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### **XXIV. CONTRIBUTION**

87. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions, or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement are the Work and Response Costs: provided, however, that if the United States exercises rights against a Settling Defendant under the reservations in Section XXI (Reservations of Rights by EPA), other than in Paragraph 80(a) (claims for failure to meet a requirement of the Settlement Agreement) or 80(d)(criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the matters addressed by this Settlement Agreement.

c. Except as provided in Section XXII (Covenant Not to Sue by Respondents), nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

#### **XXV. INDEMNIFICATION**

88. Each Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of that Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, each Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of that Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of either Respondent in carrying out activities pursuant to

this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

89. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

90. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, each Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between that Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## **XXVI. INSURANCE**

91. At least seven (7) days prior to commencing any on-Site work under this Settlement Agreement, the Respondent responsible under this Settlement Agreement to perform such work shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance with limits of one million dollars (\$1,000,000) each occurrence, and automobile insurance with limits of one million dollars (\$1,000,000), combined single limit, naming EPA as an additional insured. Within the same time period, such Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Such Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date until EPA has approved the Final Report required pursuant to Paragraph 38. In addition, for the duration of the Settlement Agreement, each Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of such Respondent in furtherance of this Settlement Agreement. If a Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then such Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XXVII. FINANCIAL ASSURANCE**

92. Within thirty (30) days of the Effective Date, Respondent NL shall establish and maintain financial security for the benefit of EPA in the amount of \$550,000, and shall provide notice of this financial security to EPA. The financial security shall be in one or more of the following forms, in order to secure the full and final completion of the NL Work:

a. a surety bond unconditionally guaranteeing payment and/or performance of the NL Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the NL Work;

e. a written guarantee to pay for or perform the NL Work provided by one or more parent companies of NL, or by one or more unrelated companies that have a substantial business relationship with NL; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the NL Work made by NL, which shall consist of a demonstration that NL satisfies the requirements of 40 C.F.R. Part 264.143(f).

93. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, NL shall, within thirty (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 92, above. In addition, if at any time EPA notifies NL that the anticipated cost of completing the NL Work has increased, then, within thirty (30) days of such notification, NL shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. NL's inability to demonstrate financial ability to complete the NL Work shall in no way excuse performance of any of NL's activities required under this Settlement Agreement.

94. If NL seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 92(e) or 92(f) of this Settlement Agreement, NL shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$550,000 for the NL Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by NL or guarantors to EPA by means of passing a financial test.

95. If, after the Effective Date, NL can show that the estimated cost to complete the remaining NL Work has diminished below the amount set forth in Paragraph 92 of this Section, NL may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining NL Work to be performed. NL shall submit a proposal for such reduction

to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, NL may seek dispute resolution pursuant to Section XVII (Dispute Resolution). NL may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

96. NL may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, NL may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

### **XXVIII. MODIFICATIONS**

97. The OSC may make modifications to any plan or schedule or Work Plan in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

98. If a Respondent seeks permission to deviate from any approved Work Plan or schedule, such Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Such Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 97.

99. In the event the Respondent's Project Coordinator believes a modification is appropriate, but the OSC will not provide approval, the Respondent may invoke the Dispute Resolution provisions under Section XVII of the Settlement Agreement.

100. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

### **XXIX. ADDITIONAL RESPONSE ACTIONS**

101. If prior to issuance of the Notice of Completion pursuant to Section XXX EPA determines that additional response actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional response actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Section VIII (Work to Be Performed), Respondents shall implement the plan for additional response actions in accordance with the provisions and schedule contained therein; provided that all such additional response actions that are part of the removal action (meaning, not part of the

PRSC Work) shall be solely the responsibility of NL. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVIII (Modifications).

### **XXX. NOTICE OF COMPLETION OF WORK**

102. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including PRSC Work, payment of Response Costs, Section XII (Record Retention) and Section XXI (Reservations of Rights by EPA), EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify the Respondents, provide a list of the deficiencies, and require that the responsible Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan in accordance with the division of responsibility set forth in this Settlement Agreement and shall submit a modified Final Report in accordance with the EPA notice. Failure by a Respondent to implement the approved modified Work Plan in accordance with this Settlement Agreement shall be a violation of this Settlement Agreement.

### **XXXI. INTEGRATION/APPENDICES**

103. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

- Appendix A – Action Memorandum
- Appendix B – Site Map
- Appendix C – Work Plan
- Appendix D – Legal Description of Moweco Site

### **XXXII. SEVERABILITY**

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

### **XXXIII. EFFECTIVE DATE**

105. This Settlement Agreement shall be effective on the date a fully executed copy of the Settlement Agreement is received by Respondents.

The undersigned representative of each Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the Respondents to this document.

It is so ORDERED and Agreed this 1 day of AUG, 2012.

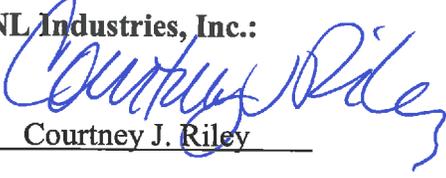
  
Cecilia Tapia  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

  
Steven L. Sanders  
Senior Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7



Signature Page for an Administrative Order on Consent for the Former Carter White Lead Facility

**For NL Industries, Inc.:**

By:  Courtney J. Riley

Title: VP, Environmental Affairs

Date: July 26, 2012



Signature Page for an Administrative Order on Consent for the Former Carter White Lead Facility

**For MOWECO, Inc.:**

By: Margaret Holmes

Title: President

Date: July 26, 2012





APPENDIX A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 05 2012

**ACTION MEMORANDUM**

**SUBJECT:** Approval for a Potentially Responsible Party-Lead, Time-Critical Removal Action at the Former Carter White Lead Site, Omaha, Douglas County, Nebraska

**FROM:** Mike B. Davis, On-Scene Coordinator  
Planning and Preparedness South Section *Mike B. Davis*

**THRU:** Mary Peterson, Chief  
Planning and Preparedness South Section *Mary P. Peterson*

**TO:** Cecilia Tapia, Director  
Superfund Division

Site ID: A7P4

**I. PURPOSE**

The purpose of this Action Memorandum is to request approval to initiate a potentially responsible party (PRP)-lead, time-critical removal action described herein as the Former Carter White Lead site (Site). The Site is a former lead-based white pigment manufacturing facility which occupies a city block in east Omaha, Douglas County, Nebraska.

Investigations conducted by the U.S. Environmental Protection Agency determined that lead contaminated soil is present at the Site, which is the subject of this removal action. As detailed below, the objective of this removal action is to protect public health, or welfare, or the environment by responding to the release of hazardous substances into the environment as presented by soils contaminated with lead. Contaminated soil exceeding the applicable action levels as detailed below will be excavated, treated if necessary, and transported for disposal at a licensed facility.

**II. SITE CONDITIONS AND BACKGROUND**

CERCLIS ID#: NEN000704909  
Removal Category: Time-Critical  
Nationally Significant: No

30245753



Superfund



## **A. Site Description**

### **1. Removal site evaluation**

The Former Carter White Lead Facility manufactured lead-based white paint pigments from 1881 to 1926, when the company ceased operations. In the early twentieth century, the daily output of the facility was about 32,000 pounds of white lead.

An investigation and remedial action are ongoing to address widespread lead contamination in the Omaha, Nebraska, area (referred to as the Omaha Lead Site [OLS]). In November 2004, as part of the OLS project, the EPA screened surface soils at 2706 North 21<sup>st</sup> Street East and 2802 North 21<sup>st</sup> Street East, two properties adjacent to the Site. The lead concentrations in those soils were below the 400 milligrams per kilogram (mg/kg) lead screening level.

There have been several past investigations at the Site. The Open Door Mission, the current property owner for the north portion of the Site, retained Jacobson Helgoth Consultants, Inc. (JHC), to provide professional environmental consulting services regarding one parcel of the Site. From September through December 2004, JHC conducted several soil investigations to determine the extent of lead impact. JHC collected a total of 38 soil samples from 0 to 2 feet below ground surface (bgs) under the asphalt parking lot on the referenced parcel using direct push technology and a truck-mounted drill rig. The soil samples were analyzed for total lead by the EPA Method 6010. Lead was detected in all of the soil samples, with concentrations ranging from 65.7 to 9,796 mg/kg. Sixteen of the samples underwent Toxicity Characteristic Leachate Procedure (TCLP) analysis and contained concentrations of lead in leachate ranging from 0.12 to 91.7 milligrams per liter (mg/L).

In October 2005, the EPA conducted a Preliminary Assessment (PA) at the Site. Field activities included: (1) in situ analysis of surficial soils for metals using a portable X-ray fluorescence (XRF) analyzer, and (2) collection of soil samples for laboratory confirmation analysis. The PA focused on the unpaved areas of the Site. A total of 111 samples collected across the Site identified ubiquitous lead contamination in surficial soil. The maximum detected concentration was 17,800 mg/kg and the average concentration of all samples was 1,700 mg/kg.

In July 2009, the EPA conducted a Removal Site Evaluation (RSE) at the Site. The main objective of the RSE was to delineate the extent of lead-contaminated soil. RSE sampling was conducted on July 13 and 14, 2009. Field activities included in situ XRF readings on-site and off-site, collection of surface and subsurface soil samples for field screening and laboratory analysis for metals, and collection of soil samples for lead speciation. First, in situ samples were analyzed using XRF to demonstrate conformance with data from the October 2005 PA. After data conformance was demonstrated, in situ samples were analyzed using XRF from systematic locations on adjacent properties to delineate the lateral extent of lead contamination in surficial soil. In total, 45 in situ XRF readings were taken. The EPA also collected six surface soil samples (including one background sample) for confirmatory lab analysis to demonstrate statistical correlation with in situ XRF analysis. Surface soil concentrations of lead ranged from 18 mg/kg in an off-site delineation sample to 5,063 mg/kg in a central location within the Site.

Six subsurface soil borings were also sampled from depths ranging from 0 to 8 feet bgs to approximate the vertical extent of lead contamination in soil across the Site. The highest levels of lead contamination at the Site were detected between 2 to 4 feet bgs, with maximum concentrations around

22,000 mg/kg. Lead concentrations decreased significantly at depths below 4 feet bgs. Correspondingly, soil borings indicated a transition from fill material and debris to predominately native silty clays at 4 to 5 feet bgs across the Site.

Sampling from adjacent properties and at background locations indicates that the area of soil contamination does not extend appreciably beyond the footprint of the Former Carter White Lead Facility. Three samples from a drainage swale in the right-of-way on the north and east sides of the Omaha Box Company, south of the Site across Avenue J, identified surficial lead concentrations ranging from 485 mg/kg to 731 mg/kg, which is statistically elevated relative to background, but does not exceed the Regional Screening Level for industrial properties of 800 mg/kg. One surficial sample from the roadside right-of-way along North 21<sup>st</sup> Street immediately west of the Site identified lead at 1,740 mg/kg.

Lead speciation analysis was conducted on three samples to identify and quantify the forms of lead present at the Site. Lead speciation was conducted by the University of Colorado's Laboratory of Environmental and Geological Studies. The most common form of lead in soil (74 to 84 percent by mass) was cerussite, also known as white lead ore, which is a mineral consisting of lead carbonate that was formerly used as an ingredient for the manufacturing of white lead paint.

Findings from the PA and RSE are summarized as follows:

- **Soil contamination:** Surface and subsurface soil sampling identified widespread lead contamination on the parcels comprising the Site. Soil concentrations ranged from around 100 mg/kg to around 22,000 mg/kg total lead. Detected levels of lead in surface soil exceed the risk-based screening levels for recreational and residential receptors. More importantly, the average concentration of lead at the Site, which likely represents typical exposure conditions, exceeds all screening levels except for the one day/week recreational visitor. Contamination extends to a depth of 4 to 5 feet bgs, where soil borings indicate a transition from fill and construction debris to native geologic materials.

- **Potential groundwater contamination:** No groundwater sampling was conducted at this Site. During a Phase 1 Environmental Site Assessment conducted by a contractor for Open Door Mission in 2001, an attempt was made to collect groundwater samples from two shallow (below 15 feet bgs) monitoring wells located on an adjacent property east of 22<sup>nd</sup> Street, but these wells were found to be dry. The vertical extent of soil contamination was readily delineated and did not extend to the water table. Due to the predominately insoluble nature of the primary contaminant, and considering that soil sampling indicates that the extent of contamination does not extend to the water table, a significant release to groundwater is not expected to have occurred.

- **Unrestricted access:** Currently there is no fencing around the Site to inhibit access. The Site is regularly accessed by patrons of immediately surrounding properties operated by the Open Door Mission. Pedestrian traffic is frequent and recurrent. A portion of the Site is used for parking by the surrounding Open Door Mission organizations. Routine vehicle traffic across the Site generates considerable airborne dust, as witnessed during the July 2009 sampling event, further contributing to human exposures.

## 2. Physical location

The Site is located in the city of Omaha, Nebraska, between North 21<sup>st</sup> Street East and North 22<sup>nd</sup> Street East, and East Locust Street and Avenue J, in the southwest one-quarter of Section

12, Township 15 North, Range 13 East (U.S. Geological Survey 1994). The approximate geographic coordinates of the subject property are 41.2841 degrees north latitude and 95.9032 degrees west longitude.

North of the Site is the Omaha Airport Authority. To the east, southwest and west of the Site is Open Door Mission property. Open Door Mission provides support programs for those recovering from life-altering addictions and abuse. Southwest of the Site, located at the corner of North 21<sup>st</sup> Street East and Avenue J, is the Open Door Mission building which is a residential outreach and shelter facility for men. Currently, Open Door Mission is developing a new residential building on the southwest corner of North 21<sup>st</sup> Street East and East Locust Street for disadvantaged women and families. To the east, at the corner of North 22<sup>nd</sup> Street East and East Locust Street, is an Open Door Mission apartment house and children's playground which is currently not in use. South of the Site is the Omaha Box Company, which began production as a wooden box manufacturer in 1890. Presently, Omaha Box Company is an independent, corrugated paper manufacturer and distributor.

The area immediately surrounding the Site is primarily commercial with some light industry and residential. The 2000 Census data indicated that the population within four miles of the Site is approximately 81,373 persons. Of these, 88 residents live within one-quarter of a mile. Daycare and residential facilities are located adjacent to the Site. Employees of FleetPride and the Open Door Mission organizations are present at the Site as well as patrons of these entities.

The Site is located in a primarily commercial and industrial area. The Missouri River is approximately one-half mile south of the Site and Carter Lake is approximately one-half mile north of the Site. With the exception of manmade storm water conveyances, there are no streams or creeks directly influenced by runoff from the site. The Region 7 Omaha Council Bluffs Sub-area Contingency Plan includes a detailed analysis of environmentally sensitive areas and endangered and threatened species. There are no known environmentally sensitive habitats in the immediate vicinity of the Site. The nearest sensitive area is the Boyer Chute National Wildlife Refuge, approximately 10 miles north of the Site.

### **3. Site characteristics**

The former Carter White Lead facility manufactured lead-based white paint pigments from 1881 to 1926, when the company ceased operations. In the early twentieth century, the daily output of the facility was about 32,000 pounds of white lead. No portion of the Site is currently or has ever been owned by any federal agency. No state or local government body has been an owner or operator of any facility or operation which contributed to contamination at the Site. There have been no previous removal actions taken at the Site.

Businesses currently on the Site include the Carter Lake Outreach Center building and a FleetPride truck service center. The Carter Lake Outreach Center building is located on the north-central portion of the Site along East Locust Avenue between 21<sup>st</sup> and 22<sup>nd</sup> Streets and is owned by Open Door Mission. The Carter Lake Outreach Center building is a thrift store used for distributing clothing and household items. FleetPride is located on the southeast portion of the Site. FleetPride leases the property for use as a heavy-duty truck repair and maintenance facility. The southwest portion of the Site is an unmaintained gravel parking lot. The two parcels comprising the south portion of the Site are owned by Morgan Wheel and Engine Company. There is currently a development plan designed by Open Door Mission which includes the purchase and redevelopment of the south portion of this Site into a vocational and educational training center, along with a grassy yard and a paved parking area.

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

Based on the results of sampling, a soil release associated with known activities at the former Carter White Lead facility has been established. The primary contaminant of concern at the Site is lead. Soil contamination is widespread across the footprint of the former facility boundaries and extends to a depth of approximately 4 to 5 feet bgs.

Lead is listed as hazardous substances pursuant to 40 CFR § 302.4. As such, it is a "hazardous substance" as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14).

**5. National Priorities List (NPL) status**

The Site is not currently on nor is it proposed for listing on the NPL.

**6. Maps, pictures, and other graphic representations**

The Administrative Record for this response action contains all the documents which form the basis for this response action, including relevant Site maps, figures and data summaries.

**B. Other Actions to Date**

**1. Previous actions**

- EPA PA, report dated December 21, 2005
- EPA RSE, report dated March 11, 2010

**2. Current actions**

There are no ongoing response actions at this Site to reduce the risks posed by the lead contamination.

**C. State and Local Authorities' Roles**

**1. State and local action to date**

This Site was identified in a 104(e) information request response from NL Industries, Inc. ("NL") as a location where Carter White Lead, a wholly owned subsidiary of NL, formerly operated. The Nebraska Department of Environmental Quality (NDEQ) does not plan any enforcement or cleanup actions related to this Site. The EPA requested that NDEQ identify state ARARS on December 14, 2009, and NDEQ responded on March 25, 2010, by providing a generalized list of state regulations and guidelines.

**2. Potential for continued state/local action:**

The EPA project manager met with the NDEQ Brownfields coordinator regarding reuse and redevelopment opportunities. NDEQ is following up with Open Door Mission regarding a

CERCLA section 128(a) assessment and assistance with redevelopment plans currently designed for the Site. Other than potential redevelopment assistance, the EPA is not aware of any state or local activities planned for the Site.

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

Section 300.415(b) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) provides that the EPA may conduct a removal action when it determines that there is a threat to human health, or welfare, or the environment based on one or more of the eight factors listed in section 300.415(b)(2). The factors that justify a removal action at the Site are outlined as follows:

**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.**

Analytical results from samples collected by the EPA indicate that hazardous substances have been released into the environment. Lead was detected in surface soils up to 17,800 mg/kg. Subsurface lead concentrations were as high as 21,800 mg/kg. The Site is not fenced or otherwise secured. The 2000 Census data indicated that the population within four miles of the Site is 81,373. The nearest known sensitive receptors are residential outreach facilities for men, women and children located adjacent to the Site. The Site is regularly accessed by patrons of immediately surrounding properties operated by the Open Door Mission. Pedestrian traffic is frequent and recurrent. The Site itself is in use by the Carter Lake Outreach Center (thrift store), a FleetPride truck service center and for parking by the surrounding Open Door Mission organizations. Routine vehicle traffic across the Site generates considerable airborne dust, further contributing to human exposures and contaminant migration.

**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 was detected in surface soils at concentrations up to 17,800 mg/kg. Detected levels of lead in surface soil exceed applicable risk-based screening levels for recreational and residential receptors as determined by an EPA Region 7 toxicologist. More importantly, the average concentration of lead at the Site, which likely represents typical exposures conditions, exceeds all screening levels except for the one day/week recreational visitor. For these reasons, levels of lead in surface soils at the Site pose unacceptable human health risks to recreational and residential receptors under current and future use conditions. Lead-contaminated soils may migrate via airborne dusts, surface runoff to nearby storm water and surface water bodies, construction and utility worker activity, children and adults transporting soils/dusts into nearby residential facilities and homes and foot traffic into residences.

**300.415(b)(2)(v) – Weather conditions that may cause hazardous substances, pollutants or contaminants to migrate.**

Lead has been detected in surface soils at concentrations up to 17,800 mg/kg. Both physical observations at the time of the RSE and sampling data indicate that lead-contaminated soils migrate via airborne dusts to residential-use properties located adjacent to the Site. Precipitation may cause the lead contamination to migrate via surface runoff and percolate into groundwater.

**300.415(b)(2)(vii) – The availability of other appropriate federal or state response mechanisms to respond to the release.**

No other state or federal authorities are able to respond to the release of hazardous substances at the Site.

**300.415(b)(2)(viii) – Other situations or factors that may pose threats to public health or welfare of the United States or the environment.**

In addition to the above-listed factors, the EPA considered studies conducted which assess the effects of lead on human health. The EPA also relies on widely accepted toxicological references and on case studies which assess human health effects.

Lead is (1) classified as a Group B2 - probable human carcinogen by the ingestion route of exposure, (2) a bluish grey heavy metal and a constituent of D008 hazardous waste, and (3) toxic and has no known function in the human body. Young children are most susceptible to the toxic effects of lead. Long-term exposure to even low levels of lead can cause irreversible learning difficulties, mental retardation and delayed neurological and physical development. In adults, exposure to lead affects primarily the peripheral nervous system and can cause impairment of hearing, vision and muscle coordination. Lead also damages the blood, kidneys, heart and reproductive system. 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 radial nerve damage 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, 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.

#### **IV. ENDANGERMENT DETERMINATION**

The actual or threatened release of a hazardous substance from this Site presents an imminent and substantial endangerment to the public health, or welfare, or the environment.

#### **V. PROPOSED ACTIONS AND ESTIMATED COST**

##### **A. Proposed Actions**

##### **1. Proposed actions description**

Soil/Waste Excavation, Removal, and Replacement – Lead is the only contaminant of concern detected above applicable action levels at the Site. Lead-contaminated soil will be excavated and transported off-site for disposal. The southwest portion of the Site is currently vacant except for use as a parking lot by nearby facilities and for storage of construction materials and other

items for use by FleetPride and Open Door Mission. Contaminated soils underlying the Carter Lake Outreach Center building, the FleetPride truck service center building and existing structurally sound caps including asphalt and concrete parking areas will not be excavated. The objective of the excavation will be to mitigate lead contamination to levels determined to be protective for current and prospective future uses of the Site. The cleanup will be consistent with the Superfund Lead-Contaminated Residential Sites Handbook, OSWER 9285.7-50, August 2003, and will focus on mitigating impacts to human health and the environment given the site-specific property uses and exposure pathways including reasonably anticipated future uses. The depth of excavation will be a minimum of 12 inches in all accessible areas of the Site, and 24 inches in a pre-designated area which may be utilized as a garden area pending future redevelopment plans for the site.

Based on previous sampling, excavated remediation waste may exhibit a characteristic of hazardous waste for lead toxicity as defined in 40 CFR Subpart C. However, the remediation waste will not be a listed hazardous waste as defined in 40 CFR Subpart D. If contaminated soils need to be stabilized on-site prior to disposal to treat the toxicity characteristics, an Area of Contamination (AOC) will be delineated and soils will be treated in situ within the delineated AOC. If treatment or management of remediation waste occurs within an AOC, remediation waste will be managed in place for no longer than 90 days. Additionally, best management practices will be implemented to prevent cross-media contamination through particulate dispersion and runoff which are substantially equivalent to the performance standards for staging piles outlined in 40 CFR § 264.554(d)(1)(i)-(ii) and CFR § 264.554(d)(2), including fugitive dust suppression, stockpile liner(s) and cover(s), filter berms and silt fencing. Transportation and disposal of the soil will be completed in accordance with all applicable local, state and federal requirements.

After removing the soils from the affected area, confirmation sampling will be conducted using field-based instrumentation and laboratory analysis to ensure that all removal objectives have been achieved and the area will be backfilled, regraded and restored to original conditions or in a manner consistent with future uses as requested by the property owner(s). The backfill source will be evaluated to ensure the material could not reasonably be expected to have been impacted by hazardous substances, pollutants or contaminants.

Post Removal Site Controls – Institutional controls will be required because lead contaminated soil will remain on-site at levels that do not allow unlimited use and unrestricted exposure to soils, namely, contaminated soils underlying the Carter Lake Outreach Center building, the FleetPride truck service center building and existing asphalt and concrete parking areas that will not be excavated. Therefore, the EPA and NDEQ will jointly coordinate with the current property owners to identify and select institutional controls that are necessary to protect human health and the environment after the removal action is complete. The EPA expects that institutional controls will be implemented and maintained by the property owners.

Restrictive environmental covenants will be placed on the properties in which residual contamination remains in place that will, in perpetuity, notify any potential purchaser of the known extent of contamination. Such covenants would specify the location and extent of all residual contamination, require approval from the EPA and NDEQ prior to any construction activities which disturb contaminated soil, and require notification for anyone engaged in subsurface activities such as utility or construction workers to the presence of residual contamination. Such notice would be consistent with the EPA guidance on institutional controls and the Nebraska Uniform Environmental Covenants Acts, LB 298. Additionally, portions of the Site may require listing on the "Nebraska Public Record," which is an inventory of contaminated properties in the state that are not suitable for

unrestricted land use and have institutional controls. Institutional controls would remain in place until contamination at the Site reaches levels considered safe for any-use scenario based upon an evaluation of risk in accordance with appropriate and applicable EPA guidance and directives.

## **2. Contribution to remedial performance**

The enforcement-lead actions proposed in this Action Memorandum should not impede any future remedial plans or other response. The cleanup level for lead will be consistent with other EPA cleanup actions for lead-contaminated soil at residential properties.

## **3. Engineering Evaluation/Cost Analysis (EE/CA)**

Since this is a time-critical removal action, an EE/CA was not developed for this action.

## **4. Applicable or relevant and appropriate requirements (ARARs)**

Section 300.415(j) of the NCP provides that removal actions shall, to the extent practicable considering the exigencies of the situation, attain ARARs under federal environmental or state environmental facility siting laws. The following specific ARARs have been identified for this removal action.

### **Federal**

- Occupational Safety and Health Act Standards at 29 CFR part 1910 will be applicable to all actions.
- Department of Transportation (DOT) regulations at 49 CFR parts 107 and 171 to 177, DOT hazardous material transportation regulations, may be relevant and appropriate for transportation of the contaminated soils.
- The CERCLA off-site rule promulgated pursuant to CERCLA section 121(d)(3), 42 U.S.C. § 9621(d)(3), and formally entitled "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Action: Final Rule," 58 Fed. Reg. 49200 (Sept. 22, 1993), codified at 40 CFR in situ § 300.440, will be applicable for wastes disposed off-site.
- Alternative Treatment Standards for Contaminated Soil, codified at 40 CFR § 268.49, may be applicable if contaminated soil exhibits any characteristic of hazardous waste at the time it is generated.
- The AOC policy, as articulated in the NCP, may be relevant and appropriate if contaminated soils need to be treated on-site. Treatment within an AOC will be conducted in conformance with applicable policy and guidance. See 53 FR 51444 for a detailed discussion in the proposed NCP preamble; and 55 FR 8758-8760, March 8, 1990, for the final NCP preamble discussion. See also, the March 13, 1996, EPA memorandum, "Use of the Area of Contamination Concept During RCRA Cleanups," and most recently the "Hazardous Remediation Waste Management Requirements (HWIR media)" in Federal Register / Vol. 63, No. 229 / Monday, November 30, 1998.

- Section 402 of the Clean Water Act references Best Management Practices (BMPs) for storm water management. Storm water management BMPs will be implemented as appropriate to mitigate runoff of contaminated soil during this removal action.

### State

- On December 14, 2009, the EPA project manager submitted a request to NDEQ to identify site-specific state ARARs. On March 25, 2010, NDEQ submitted to the EPA project manager a generalized compendium of the state of Nebraska's ARARs and relevant guidance, including the Nebraska Uniform Environmental Covenants Act Neb. Rev. Stat. 76-2601 to 76-2613, and remediation goals (RGs) provided in the Nebraska Voluntary Cleanup Program Guidance. State ARARs will be considered to the extent practicable during this removal action.

### **5. Project schedule**

Response activities are anticipated to begin within 30 days of the signing of this Action Memorandum. It is anticipated that the project will require approximately 10 days to complete.

### **B. Estimated Costs**

The PRP will implement and complete the work described in this Action Memorandum. The costs associated with the removal action are discussed in the attached Confidential Enforcement Addendum.

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

Delayed action will result in a continued threat to public health, or welfare, or the environment, and in particular will continue to expose residents and workers to the contaminated soils exceeding federal action levels.

### **VII. OUTSTANDING POLICY ISSUES**

None.

### **VIII. ENFORCEMENT**

See attached Confidential Enforcement Addendum.

### **IX. RECOMMENDATION**

This decision document represents the selected removal action for addressing the hazardous substances, pollutants or contaminants present at the Site. The removal action was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

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

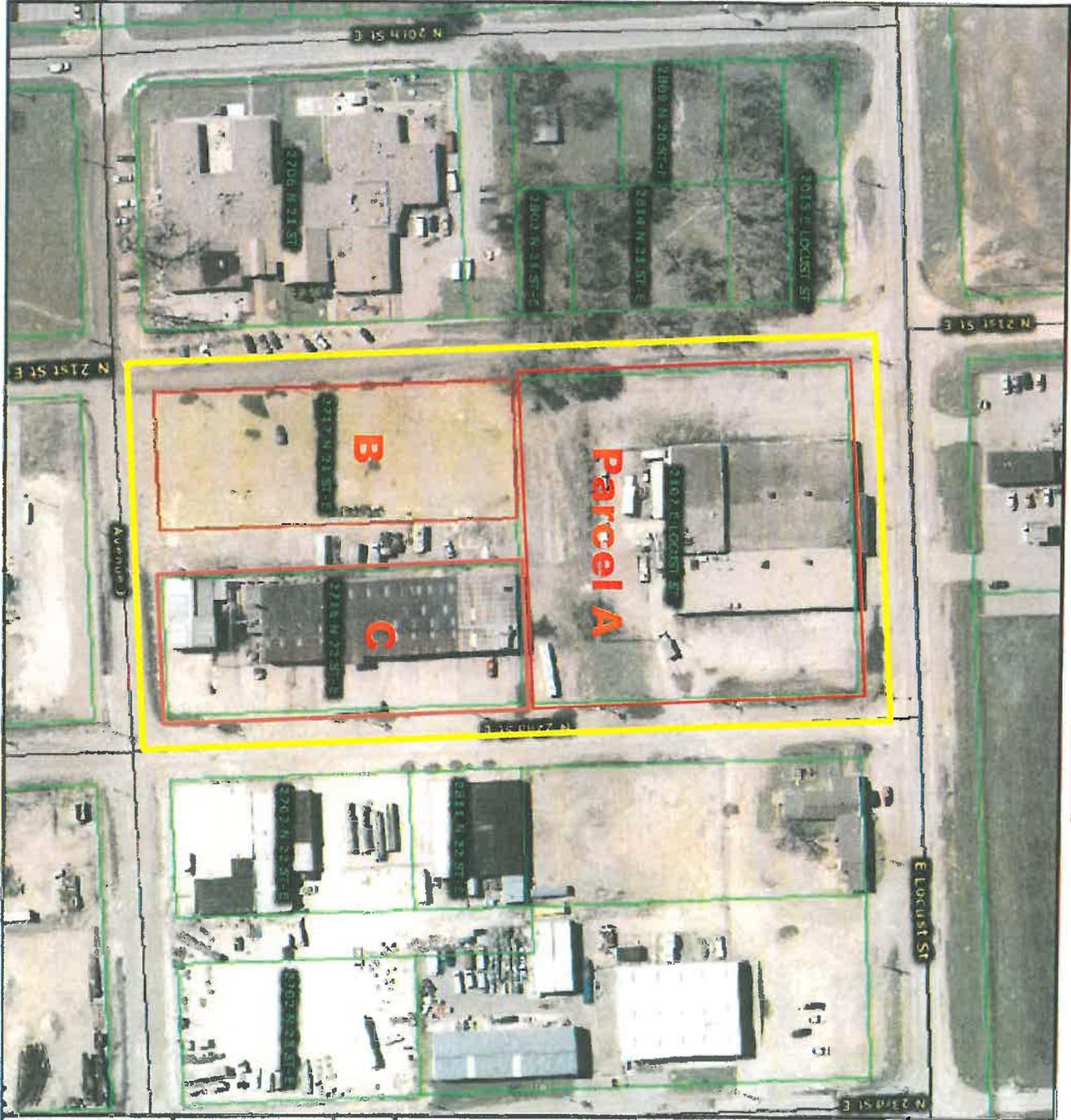
Approved:

  
Cecilia Tapia, Director  
Superfund Division

6/5/12  
Date

Attachment





Douglas County-Omaha,  
NE

Map Scale  
1 inch = 128 feet

Legend

- Interstate
- Major Arterial
- Expressway
- Minor Arterial
- Collector
- Local Street
- Private Street
- Other
- Park Road
- Cemetery Road
- Ramp
- Center Lake Roads
- Frontage Road
- Parcels
- Douglas County Outline

Overview



Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed. This is not a legal document and should not be substituted for a title search, appraisal, survey, or for zoning verification.



APPENDIX C

**TIME CRITICAL REMOVAL ACTION WORKPLAN**

**FOR THE**

**FORMER CARTER WHITE LEAD SITE  
BETWEEN EAST LOCUST STREET AND AVENUE J  
AND NORTH 22<sup>ND</sup> STREET EAST AND NORTH 21<sup>ST</sup> STREET EAST  
OMAHA, NEBRASKA 68110**

**PREPARED FOR:**

**NL INDUSTRIES, INC.  
THREE LINCOLN CENTRE  
5430 LBJ FREEWAY, SUITE 1700  
DALLAS, TEXAS 75240**

**PREPARED BY:**

**ENTACT LLC  
3129 BASS PRO DRIVE  
GRAPEVINE, TEXAS 76051**

**JUNE 20, 2012**

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- Appendix A Nebraska NPDES General Permit for Stormwater Discharges from Construction Sites, NER110000
- Appendix B NDEQ Threatened and Endangered Species Guidance Checklist for NPDES Construction Stormwater General Permit #NER110000
- Appendix C SWPPP Inspection Forms
- Appendix D Area of Contamination (AOC) Designation

## 1.0 INTRODUCTION

This Time Critical Removal Action Workplan (TCRA Workplan) has been prepared on behalf of NL Industries, Inc. (NL) for the Former Carter White Lead Site located in Omaha, Douglas County, Nebraska, which is more particularly depicted on Figure 2 (the Site). This TCRA Workplan establishes requirements for implementation of the removal from and containment of lead-impacted soils at the Site. The performance standards associated with these activities will be addressed in this TCRA Workplan. All documents or deliverables required as part of this TCRA Workplan are being submitted to the U.S. EPA for review and approval.

### 1.1 Site Location and Description

The Site is located in the City of Omaha, Nebraska between North 21<sup>st</sup> Street East and North 22<sup>nd</sup> Street East, and East Locust Street and Avenue J, in the southwest  $\frac{1}{4}$  of Section 12, Township 15 North, Range 13 East. The Site encompasses a total of approximately 4 acres and is composed of 3 separate parcels. The northern parcel is occupied by the Open Door Mission thrift shop, the southeast parcel is leased and occupied by the FleetPride truck service center and the southwest parcel is currently a vacant, gravel-covered lot. The boundaries of the Site are shown on Figure 2.

The Site is bordered to the north by East Locust Street and the Omaha Airport Authority; to the east by North 22<sup>nd</sup> Street East and Open Door Mission property; to the south by Avenue J and the Omaha Box Company, and generally to the west by North 21<sup>st</sup> Street East and Open Door Mission property. General land use within 0.25 miles of the Site is mixed commercial/industrial and limited residential. The closest residence is located within 500 feet of the Site. The site is zoned GI-General Industrial District.

The general location and layout of the Site are presented on Figures 1 and 2.

### 1.2 Site History

Information regarding the Site's history was obtained from documents gathered and created by U.S. EPA or its representatives, as summarized in the following subsection.

#### 1.2.1 U.S. EPA Records

According to U.S. EPA records, the Former Carter White Lead facility at the East Locust Street location manufactured lead-based white paint pigments from 1891 to 1907, when the company ceased operations and closed the plant. The property was sold to a third party in 1926. Various owners and businesses have operated at the Site since that time.

The Open Door Mission, the current property owner for the northern portion of the Site, retained Jacobson Helgoth Consultants, Inc. (JHC) to provide environmental consulting services for one parcel of the Site. JHC conducted several soil investigations in 2004 to determine the extent of lead impact on this parcel. JHC collected 38 soil samples from a depth of 0 to 2 feet below ground surface under the asphalt parking lot. Lead was detected in all of the soil samples with concentration ranging from 65.7 to 9,796 mg/kg. Sixteen of the samples were also analyzed using the toxicity characteristic leaching procedure (TLCP) for lead. Concentrations of lead in the leachate ranged from 0.12 to 91.7 mg/l. In October 2005, U.S. EPA conducted a Preliminary Assessment at the Site focusing predominantly on the unpaved areas. Field activities included in-situ field screening of soils for metals using an x-ray fluorescence (XRF) analyzer and collection of soil

samples for laboratory analysis. The samples collected across the Site identified ubiquitous lead contamination in surficial soil.

In July 2009, U.S. EPA conducted a Removal Site Evaluation at the Site to delineate the extent of lead-contaminated soil. Field activities included in-situ XRF field screening on and off site, collection of surface and subsurface soil samples for field screening and laboratory analysis for metals and collection of soil samples for lead speciation. Surface soil concentrations of lead ranged from 18 mg/kg to 5,063 mg/kg. The highest concentrations of lead were detected between 2 to 4 feet bgs with maximum concentrations around 22,000 mg/kg. Lead concentrations decreased significantly at depths below 4 feet bgs. Soil borings indicated a transition from fill material and debris to predominantly native silty clays at depths of 4 to 5 feet bgs across the Site.

The Site is not part of the Omaha Lead Site (EPA Facility I.D. NESFN 0703481 ) (the "OLS"). U.S. EPA issued a General Notice letter identifying NL as a potentially responsible party (PRP) in October 2010. Since being contacted by EPA, NL has cooperated in good faith and has voluntarily engaged in negotiations to address environmental conditions at the Site. NL has met with EPA as well as the current property owners. This TCRA Workplan resulted from those discussions.

## **2.0 PROJECT ORGANIZATION AND MANAGEMENT**

The TCRA management team will consist of the following components and personnel, as described below. ENTACT's assigned management team identified below may change during the implementation of the required removal action activities. If there is a change in personnel, the modification will be communicated to the U.S. EPA Project Manager and the team will be altered accordingly.

### **2.1 Project Management**

#### **2.1.1 U.S. EPA On-Scene Coordinator**

The U.S. EPA's current On-Scene Coordinator (OSC) is Mr. Michael Davis. NL understands Mr. Davis will have oversight responsibility for all phases of the TCRA.

#### **2.1.2 NL Project Manager**

NL's Project Manager for the Site will be Mr. Kevin Lombardozzi. Mr. Lombardozzi will oversee the implementation of the TCRA by the Removal Action Contractor. He will also ensure that the TCRA is completed in accordance with the applicable requirements, including the TCRA Workplan as approved by U.S. EPA.

#### **2.1.3 Project Coordinator**

The Project Coordinator will be Mr. Greg Dambold. Mr. Dambold will report directly to the U.S. EPA OSC and NL and will ensure that all testing programs, TCRA plans and quality assurance procedures that are proposed for the project are in compliance with applicable federal and state regulations. The responsibilities of the Project Coordinator will also include resolving issues concerning compliance, providing the U.S. EPA with the required notifications, providing status reports of the progress of TCRA activities to the U.S. EPA and the property owners updating the project implementation schedule, resolving regulatory and technical issues with the U.S. EPA, and contract administration. To the extent possible, the Project Coordinator will be present on-site or readily available during the work to discuss issues raised by U.S. EPA and /or property owners, if the issues cannot be resolved through consultation with the Field Project Manager.

#### **2.1.4 Removal Action Contractor**

The Removal Action Contractor will be ENTACT LLC (ENTACT). The Removal Action Contractor will be responsible for the implementation of the TCRA in accordance with the U.S. EPA-approved TCRA Workplan. The following ENTACT personnel will be assigned to perform the key duties described below.

##### **2.1.4.1 Field Project Manager**

ENTACT's Field Project Manager will be determined at a later date. The Field Project Manager will be responsible for directing all Site personnel, equipment, subcontractors, and activities to ensure the successful implementation of the TCRA in accordance with the approved TCRA Workplan and federal, state and local regulations. Specific responsibilities of the Field Project Manager will include, but are not limited to, the following:

- Supervise field activities and ensuring that the construction activities are executed in accordance with the TCRA Workplan and in strict accordance with the Site-specific Health and Safety Plan;

- Ensure that adequate resources are available on-site to complete required tasks and meet the required Performance Standards, including personnel and equipment;
- Ensure ENTACT associates and qualified subcontractors are properly trained in the safe performance of the tasks which they are assigned;
- Ensure that required record-keeping and project record documents and other related documents are maintained on-site;
- Assist others in the planning, coordination of field activities and implementation of the remedial activities;
- In response to modified or unforeseen field conditions, redirecting the sequence of required Site work and specifics of work procedures and protocols to accomplish task objectives in the most efficient and safe manner possible;
- Ensure that required quality assurance/quality control procedures are properly implemented and documented;
- Ensure that the TCRA is completed with the approved schedule;
- Ensure effective communications between the Project Coordinator and U.S. EPA's OSC;
- Ensure that all documents and reports that ENTACT is required to generate meet the requirements of the approved TCRA Workplan;
- Communicate any request for modifications to the approved TCRA Workplan to the Project Coordinator and U.S. EPA;
- Promptly notifying the Project Coordinator and U.S. EPA's OSC in the event of unforeseen field conditions and/or problems are encountered; and
- Communicate with the property owners on an as-needed basis to discuss issues related to the implementation of the activities required in the TCRA Workplan.

#### 2.1.4.2 Corporate Health and Safety Representative

The ENTACT Corporate Health and Safety Representative will be Mr. Don Self. The Corporate Health and Safety Representative will be responsible for writing and reviewing the *Site-specific Health and Safety Plan* and overseeing ENTACT's health and safety program. He will provide direction to the ENTACT Field Project Manager and/or On-site Health and Safety Officer, as necessary, on issues related to health and safety. The Corporate Health and Safety Representative will be responsible for conducting the health and safety orientation meeting prior to the start of construction activities, reviewing weekly health and safety updates and conducting health and safety inspections of the Site.

#### 2.1.4.3 Regulatory/Technical Officer

The ENTACT Regulatory/Technical Officer will be Mrs. Jenny Self. The Regulatory/Technical Officer will provide regulatory and technical support to the Field Project Manager and On-site QA/QC Officer in the areas of air monitoring, solid and hazardous waste management, material sampling, and any other regulatory or

technical requirements for the TCRA. She will also ensure that the TCRA activities are implemented and completed in accordance with the approved TCRA Workplan and federal, state and local regulations. The Regulatory/Technical Officer and the QA/QC Officer will also be responsible for the validation of all data received from the analytical laboratory.

#### 2.1.4.4 On-site Health and Safety Officer

ENTACT's On-site Health and Safety Officer will be determined at a later date. The On-site Health and Safety Officer will be responsible for the coordination of on-site health and safety issues with ENTACT's Corporate Health and Safety Representative, Mr. Don Self. Specific on-site health and safety duties will include, but are not limited to, the following:

- Monitor work at all times or designating a suitably qualified alternate;
- Ensure that Site workers and other authorized personnel have read and understand the *Site-specific Health and Safety Plan*;
- Ensure that Site workers and other authorized personnel possess the required documentation of their safety training and medical monitoring;
- Conduct daily safety meetings and more extensive safety meetings to be held at the start of new and/or potentially dangerous project activities;
- Ensure that required air monitoring is being conducted in accordance with the approved TCRA Workplan and the *Site-specific Health and Safety Plan*;
- Correct or discontinue any potentially unsafe work practices or Site conditions, and, if necessary, stop work if unsafe conditions or practices are encountered and not corrected or discontinued;
- Prepare safety reports and other health and safety documentation; and
- Communicate any concerns or health and safety issues with the Field Project Manager and ENTACT's Corporate Health and Safety Officer.

#### 2.1.3.5 On-site Quality Assurance/Quality Control Officer

ENTACT's On-site Quality Assurance/Quality Control (QA/QC) Officer will be determined at a later date. The On-site QA/QC Officer will be responsible for performing required sampling and quality control testing at the Site and will operate independently of ENTACT's Field Project Manager. The QA/QC Officer will communicate any QA/QC issues related to the Site to the Field Project Manager and Regulatory/Technical Officer. The QA/QC Officer will have the authority to correct and implement additional measures to assure compliance with the approved TCRA Workplan. Specific responsibilities will include, but are not limited to, the following:

- Adhere to the approved TCRA Workplan;
- Ensure required quality assurance/quality control procedures are properly implemented and documented;
- Document any deviations to the plan with a justification for the deviations, and, if necessary, appropriate notification in accordance with the approved TCRA Workplan;

- Secure necessary sampling tools, bottles, packaging/shipping supplies, chain-of custody documents, etc. in accordance with the approved TCRA Workplan;
- Collect or direct the collection and ship samples at the frequencies and for laboratory analysis parameters specified in the TCRA Workplan, if required;
- Document the location, time and date of all samples that are collected and shipped to the laboratory;
- Interface with the Field Project Manager such that the sample collection is coordinated with the general the progression of the work;
- Notify the Field Project Manager, Project Coordinator and the U.S. EPA of any sampling activities associated with the implementation of the approved TCRA Workplan;
- Obtain and evaluate laboratory analytical results and field geotechnical results. Report the data to the Field Project Manager, Regulatory/Technical Officer, Project Coordinator, and U.S. EPA's OSC; and
- Approve or disapprove of materials supplied, and installation procedures.

## 2.2 Management Control Process

The ENTACT Project Coordinator has the overall responsibility for successfully completing the TCRA at the Site. This includes achieving compliance with the TCRA Workplan in a safe manner by fulfilling contractual obligations and meeting the established project schedule and budget. The Project Coordinator will accomplish these objectives by monitoring the progress of work activities, reviewing and planning each project task with experienced technical staff and the Field Project Manager, and ensuring that the appropriate and sufficient resources are available to the Field Project Manager and the On-site QA/QC Officer.

The Field Project Manager will receive daily progress reports from Site personnel apprising him of the status of planned, ongoing and completed work, including QA/QC performance, health and safety and Site-specific issues. In addition, the Field Project Manager will be apprised of any potential problems and recommendations for solutions and/or corrective actions.

## 3.0 REMOVAL ACTION

Even though the Site is zoned General Industrial District rather than Residential, this TCRA Work Plan proposes a removal action consistent with the protections for residential properties by conforming to the EPA's *Superfund Lead-Contaminated Residential Sites Handbook* (OSWER9285.7-50 August 2003). The Work Plan will remove exposed soils to a depth of one foot bgs in all areas that are not capped by intact asphalt or concrete or covered by a current or historic building foundation or pad, and will remove exposed soil to a depth of two feet bgs in an area not to exceed 14,000 square feet. The exact location of this two foot excavation area will be determined in consultation with the property owners and documented in an amended Figure 3 prior to the performance of the work as well as documented after completion of all TCRA Workplan activities in a surveyed as-built figure.

Unless U.S. EPA, NL and the property owners later agree to a single phase approach, the removal action will be implemented in phases in order to accommodate the businesses currently operating at the Site (see Figure 3). Phase 1 will consist of the southern two-thirds of the southwest parcel (Parcel B on Figure 2), the unpaved southern portion of the southeast parcel (Parcel C on Figure 2) and the southern portion along the west side of

the southeast parcel. Phase 2 will consist of the northern one-third of the southwest parcel (Parcel B), the northern portion along the west side of the southeast parcel (Parcel C), and a small section of the southern portion of the north parcel (Parcel A). Phase 3 will consist of the unpaved southern 1/3 of the north parcel (Parcel A). Removal action activities will be completed in each phase prior to the start of the next phase, e.g., setup, excavation, treatment, loadout and restoration activities will be completed in Phase 1 prior to initiating activities in Phase 2.

This TCRA Workplan requires removal of exposed soil from the Site, except for soils beneath intact asphalt, concrete, building pads, or foundations. This TCRA Workplan requires removal of exposed soil from around historical footings and foundations that remain at the Site, but it does not include removal of those historical footings and foundations from the Site. Impacted soils beneath the excavated areas or intact asphalt, concrete, building pads and foundations will be contained through a barrier of clean soil, maintenance of the current asphalt, concrete, pads and foundations and institutional controls.

### **3.1 Pre-construction Meeting**

NL and ENTACT representatives will meet with U.S. EPA and the property owners and tenants for a pre-construction meeting at the Site immediately prior to the implementation of the TCRA. The purpose of the meeting will be to:

- Introduce key personnel and define the authority and responsibility of each party;
- Establish the administrative procedures to be implemented during the TCRA, including unforeseen job conditions, construction surveys and procedures for claims and disputes;
- Review work area security and safety protocols;
- Review methods for distributing and storing documents and reports;
- Review the methods for documenting and reporting inspection data;
- Discuss any appropriate modifications of the TCRA Workplan to ensure that Site-specific considerations are addressed;
- Conduct a Site walk to verify that the design criteria, plans and specifications are understood and to review material and equipment storage locations;
- Discuss coordination of the removal action work with the active operations of the current owners and tenants at the Site; and
- Discuss the procedure for addressing requests from media, local or state officials, property owners, neighbors or facility residents/patrons and referring requests to U.S. EPA.

An ENTACT representative will document the pre-construction meeting and will transmit the minutes to all parties involved.

### **3.2 Mobilization and Site Preparation**

ENTACT will mobilize to the Site and prepare the Site for TCRA activities. Mobilization and site preparation activities will include, but are not limited to, the following:

- Preparing the necessary notifications and submittals;
- Mobilizing personnel, equipment and temporary facilities;
- Implementing the *Site-specific Health and Safety Plan* for removal work;
- Installing erosion, sedimentation and stormwater control measures;
- Constructing work zones, equipment decontamination areas, material staging areas, and Site haul roads;
- Identifying utility lines, including gas, electric, telephone fiber and wire, storm and sanitary sewers, water, and cable;
- Establishing support facilities and air monitoring systems; and
- Generating a photo and/or video log that provides a record of pre-existing Site conditions, including paved surfaces and other pre-existing structures and vegetation.

The following sub-sections further describe the mobilization and site preparation activities.

### **3.2.1 Notifications, Permits and Submittals**

Prior to mobilization and site preparation activities, the necessary notifications will be filed with the appropriate agencies. Efforts will be coordinated with the following entities: City of Omaha Public Works Stormwater Division to inform them of the TCRA activities; utility companies to identify the locations of any existing above or underground utilities; property owners to coordinate TCRA activities with other ongoing construction activities currently being conducted at or near the Site; and other local officials if and when warranted. The substantive requirements of the General NPDES Permit Number NER110000 for Stormwater Discharges from Construction Sites to Waters of the State of Nebraska will be met. A Stormwater Pollution Prevention Plan, as described in the permit, has been prepared and is included in Section 4.0 of this TCRA Workplan. No formal permits will be obtained for the TCRA activities associated with the Site pursuant to the requirements of 40 CFR 300.400(e).

Local haul routes will be identified during mobilization and site preparation when the off-Site disposal facility and off-Site borrow source are identified. Once the routes are determined, flyers will be generated that identify the routes. These flyers will be distributed to all necessary personnel and local officials.

### **3.2.2 Health and Safety**

A *Site-specific Health and Safety Plan* has been developed for the implementation of TCRA activities at the Site and will be provided under separate cover. All personnel involved in TCRA activities will thoroughly understand and acknowledge essential elements of the *Site-specific Health and Safety Plan* prior to the start of on-site activities. In accordance with the Plan, at the initiation of removal activities, an orientation session will be held at the Site for all ENTACT associates and subcontractors working at the Site. In addition, daily health and safety meetings will be held on specific topics, visitor protocols, and ongoing activities throughout the duration of the removal activities.

### 3.2.3 Support Facilities

Project mobilization and site preparation activities will include establishing administrative support facilities, supply storage areas, decontamination areas, and temporary staging areas for excavated materials. The location of the support facilities will be determined prior to mobilization to the Site.

Temporary office facilities will be utilized during the TCRA activities. Utility service will be connected to support administrative operations. The facility will be equipped with computer systems, facsimile capability, and telephone service. Necessary project plans, drawings and supporting documentation will be maintained in the temporary office facility. Portable sanitary facilities will be provided at the support facilities for field personnel.

Equipment and supply storage areas will be established adjacent to the appropriate work areas or support facilities. Personnel and equipment decontamination areas will be constructed and identified in accordance with the *Site-specific Health and Safety Plan* requirements. A parking area will be established at the support facilities for on-site personnel.

### 3.2.4 Work Zones

Work zones will be established and enforced during the TCRA activities. These zones will be visually marked using signs, barricade tape, fencing, and/or other physical barriers. The work zones will include the exclusion zone, contamination reduction zone and support zone. The location of the work zones and the loadout traffic pattern will be determined by the Field Project Manager following a logistical evaluation of the Site.

The Exclusion Zone will consist of the excavation, treatment and load-out portions of the Site, as applicable. Specific locations of the Exclusion Zone may be modified based on the progress of work activities to each portion of the Site.

The Contamination Reduction Zone will consist of personnel and equipment decontamination areas constructed in a central location adjacent to work areas. A boot wash and portable decontamination sink will be located adjacent to the exclusion zone for personnel and visitors to decontaminate prior to exiting the work area. A personnel break trailer will also be provided for personnel to don and doff their personal protective equipment. This break trailer will be equipped with water, clean changing rooms and personal protective equipment storage. Vehicle inspection and decontamination areas will also be constructed at the Site. These areas will be equipped with brooms, hand tools and/or high-pressure washers for the decontamination of vehicle tires and undercarriage members (see Section 3.2.5). The location of the Contamination Reduction Zone may be adjusted during certain phases of work to provide adequate protection of Site personnel and proper decontamination of equipment and vehicles. All decontamination procedures will adhere to methods outlined in the *Site-specific Health and Safety Plan*.

The Support Zone will be recognized as the support/administrative facilities, sanitary facilities and parking areas. These areas will be clearly marked with appropriate signs for identification purposes.

### 3.2.5 Vehicle/Equipment Decontamination Stations

Vehicle/equipment decontamination stations will be established at the Site. The decontamination stations will be constructed of gravel material underlain by a liner of sufficient thickness and will be large enough to accommodate a transport vehicle. A sump will be constructed at one end of the decontamination station to

collect rinse waters generated during decontamination procedures if wet decontamination methods are used. If generated, rinse waters will be pumped from the sump on an as needed basis and transferred to a storage tank for use in dust suppression on impacted areas of the Site. The appropriate decontamination tools will be staged at each decontamination station for the duration of the applicable work. Collected decontamination water that is not used for dust suppression will be sampled and disposed as appropriate following the results of laboratory analysis.

Wet decontamination procedures, consisting of the use of high-pressure washers, will be used for all vehicles/equipment exiting the Exclusion Zone that have come into contact with contaminated materials. Dry decontamination procedures, consisting of the use of brooms and other hand tools, will be used for all vehicles/equipment leaving the Site that do not enter an Exclusion Zone and/or remain on established haul roads. To further reduce the potential for truck contamination, ENTACT does not anticipate working during adverse weather conditions, such as storm events, which may create muddy soil conditions.

### **3.2.6 Site Security**

Site security measures will be established during mobilization and site preparation activities to prevent unauthorized access to the work areas of the Site and to prevent the removal of materials, equipment or other items from the Site that are not authorized. Temporary fencing may be installed around active work areas and equipment/material storage areas. Entrance gates will be secured and locked during non-working hours. Site security may also be provided during non-working hours by a contracted security service. Additional security measures may be provided depending on work activities.

Access to the work areas of the Site will be controlled by ENTACT personnel during normal working hours. All personnel and visitors requiring access will be required to visit the administrative field office prior to entry. Visitors will be required to sign the Visitor Logbook prior to entry to the Site.

### **3.2.7 Utility Identification**

The identification of Site utilities will be conducted by the appropriate utility location services to demarcate the following utilities:

- Sanitary sewer lines;
- Condensate lines;
- Stormwater drains and systems;
- Electric lines;
- Water lines;
- Natural gas lines;
- Fiber optic lines; and
- Overhead utilities.

Each utility will be identified with individual flags, signs or other devices. All identification devices will be visible and noted on a Site utility drawing for reference purposes. ENTACT will coordinate abandonment procedures for utility lines, if required, with the appropriate utility companies and the City of Omaha.

### **3.2.8 Erosion, Sedimentation and Stormwater Control Measures**

Erosion, sedimentation and stormwater control measures will be installed at the Site prior to the start of each phase of TCRA activities. Control measures will consist of silt fencing, stabilized construction entrances, inlet protection measures, and/or earthen berms, if needed. Installation of these mechanisms will be completed in order to reduce sediment-laden stormwater run-off from leaving the Site and prevent stormwater run-on from off-site areas from entering the Site.

Silt fencing will be installed along the downgradient edges of the excavation areas and where necessary in other areas of the Site. The silt fencing will be installed to a depth of 6 inches below ground surface in accordance with good engineering practices. Stormwater inlets, manways or other exposed subsurface inlets will be protected from stormwater flow using silt fencing or earthen berms, as appropriate.

Stabilized construction entrance/exits will be constructed at the entrance/exit associated with each phase of work at the Site to prevent the transfer of soils during traffic flow to and from the Site. The stabilized construction entrance/exit will be constructed of a minimum of 6 inches of compacted road base material, such as gravel, in accordance with accepted practice. Silt fencing and/or earthen berms may be installed near the vehicle entrance/exit area along with compacted road base material.

Earthen berms may be constructed along the up-gradient portion of the Site, as necessary, to prevent stormwater run-on from entering the Site. If installed, the earthen berms will be constructed of clean import fill material and will be 12 to 18 inches in height. Polyethylene sheeting may be used to enclose the earthen berms and prevent the materials from washing away during rain or storm events.

A more detailed discussion of the erosion, sedimentation and stormwater control measures is provided in the *Stormwater Pollution Prevention Plan* included as Section 4.0 to this TCRA Workplan. The substantive requirements of the general authorization for stormwater discharges from construction sites are also included in the *Stormwater Pollution Prevention Plan*.

### **3.2.9 Surveying and Coordinate Grid System**

Prior to the start of TCRA activities, the limits of the Site as shown on Figure 2 will be verified in the field by a licensed professional land surveyor based on the extent of impacted soil identified during previous Site investigations to the nearest intact capped area such as a street, curb, parking lot, asphalt, building foundation or similar condition.

A coordinate grid system will be established at the Site in order to provide a system for tracking excavation activities in the field. The Site will be staked with baselines in order to develop a 50-foot by 50-foot coordinate grid system. The elevation of the center of each grid requiring removal will be determined prior to the start of any soil excavation. A map which indicates the grid line locations and the elevation data will be produced and will serve as the basis for the depth of soil excavation and backfill work.

### **3.2.10 Air Monitoring**

ENTACT will implement three types of air monitoring during the TCRA activities. These include:

- Time-integrated, perimeter air monitoring using high-volume PM<sub>10</sub> and TSP air samplers to monitor particulate matter less than 10 microns in size and total lead concentrations in the air at each of the Site perimeters;
- Real-time, direct reading air monitoring using direct-reading portable data RAMs (random air monitors) to monitor particulate concentrations in the air within the work zone and at the Site perimeters, as necessary; and
- Low-flow personal air monitoring using low-volume, personal air monitoring units and 37 mm cassettes to monitor lead concentrations in the air within the work zone.

### 3.2.10.1 Time-integrated Air Monitoring

Time-integrated air monitoring will be conducted prior to the start of TCRA activities to establish baseline conditions and on a daily basis during excavation, treatment and backfilling activities at the Site. Samples will be collected during the baseline sampling period and each working day during TCRA activities except during brief down time periods due to change out of filters or repositioning of the samplers. Samples will not be collected on rain days and weekends or holidays when no work is being conducted at the Site.

Total suspended particulate (TSP) air monitors which conform to the requirements prescribed in 40 CFR, PART 50, APPENDIX B - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method) and 40 CFR, PART 50, APPENDIX G - Reference Method for the Determination of Lead in Suspended Particulate Matter Collected From Ambient Air and particulate matter (PM<sub>10</sub>) air monitors which conform to the requirements prescribed in 40 CFR PART 50, APPENDIX J - Reference Method for the Determination of Particulate Matter as PM<sub>10</sub> in the Atmosphere will be used at the Site. These monitors will be located at or near each directional perimeter of the Site in order to evaluate the effect, if any, of the TCRA activities on the community surrounding the Site, as well as provide data for the health and safety monitoring for on-site workers. Every attempt will be made to maintain the following siting recommendations regarding the location of the high-volume samplers per 40 CFR Part 58 Appendix E:

- a. The sampler should be at least 60 feet from trees, buildings, or other large obstacles. A general placement rule is that the sampler should be located at least twice as far away from the obstacle as the height of the obstacle.
- b. The sampler inlet should be 6 to 21 feet above the ground surface.
- c. The sampler must have unrestricted air flow.
- d. The sampler inlet should be at least 6 feet from any other high-volume sampler inlet.
- e. The sampler cannot be placed directly upon the ground.
- f. The sampler cannot be placed near exhaust flues or vents.

The final TSP and PM<sub>10</sub> sampler locations will be determined during mobilization based upon Site logistics (electrical source, accessibility, etc.) and prevalent wind directions. One TSP sampling unit and one PM<sub>10</sub> sampling unit will be placed at each location. Weather data required for the time-integrated air monitoring, i.e. wind speed, wind direction, temperature, barometric pressure, relative humidity, and rainfall, will be obtained from a local airport.

Calibration of the high-volume samplers will be conducted prior to the start of TCRA activities, after every motor change-out or once a quarter, if the sampler unit is moved to another location on-site or if flow checks indicate that the sampler is not operating within the appropriate flow rate range. Manometer readings will be checked and documented each day to verify that the samplers are operating within the design parameters, i.e. flow rates between 1.1 and 1.7 m<sup>3</sup>/minute for TSP units and 1.02 to 1.24 m<sup>3</sup>/minute for PM<sub>10</sub> units. Calibration will be performed in accordance with the referenced method and the manufacturer's recommendations using a calibrated orifice. Daily action levels for the time-integrated air monitoring activities will be observed. These action levels are 0.15 ug/m<sup>3</sup> lead on a rolling 3-month average and 150 ug/m<sup>3</sup> PM<sub>10</sub> over a 24-hour period.

#### 3.2.10.2 Real-Time Air Monitoring

Real-time, direct reading air monitoring will be conducted during TCRA activities to assess the effectiveness of engineering controls in reducing visible dust emissions. Real-time air monitoring readings will be collected using portable direct reading air monitors (PDR) from upwind and downwind locations on an hourly basis. The daily average action level for real-time air monitoring of particulate concentrations in the air within the work zone and at the Site perimeter, i.e. 150 ug/m<sup>3</sup>, will be observed. Each instrument will be calibrated on a daily basis prior to use. Additionally, batteries will be completely charged and units will be inspected for malfunction or misuse.

#### 3.2.10.3 Personal Air Monitoring

Low-flow air monitoring will be conducted for the health and safety of on-site workers in accordance with the requirements of the *Site-specific Health and Safety Plan*. Action levels for personal air monitoring of constituent concentrations in the work zone will be observed as described in the *Site-specific Health and Safety Plan*.

#### 3.2.10.4 Corrective Action

Corrective actions will be evaluated and implemented when time-integrated or real-time air monitoring trigger levels are exceeded, or when excessive visible dust emissions are observed by the Field Project Manager. In the case of exceedances indicated by time-integrated air monitoring, corrective actions will be evaluated upon ENTACT's receipt of the air monitoring data, and any measures deemed necessary will be taken for future remedial activities similar to those that may have been responsible for the exceedance. The source will be evaluated to determine the adequacy and effectiveness of work practices and dust control measures. If the evaluation determines that additional measures are required to reduce fugitive dust emissions, then corrective action, i.e. dust control measures, will be implemented as described in Section 3.2.11. If necessary, ENTACT will modify the identified dust control measures to incorporate more aggressive dust control activities. The occurrence of the exceedance and the corrective measure implemented to reduce or eliminate the source of the exceedance will be documented by the ENTACT Field Project Manager or QA/QC Officer.

#### 3.2.11 Dust Suppression

During all phases of the TCRA, airborne dust emissions will be controlled. Dust suppression systems will be installed in areas disturbed during the TCRA to minimize or reduce the generation of visible dust emissions. Engineering controls for dust suppression will consist of the following methods: the use of water misting and spraying devices and water trucks; use of a decontamination station for equipment and vehicles; use of wind

dispersion controls, including covering soils piles being staged for off-site disposal and not being actively managed; and reducing or stopping work during high wind conditions.

Dust suppression via water misting and spraying will use a quantity of water that will be sufficient enough to control dust but not enough to leave residual water accumulations on the ground surface. Water misting and spraying devices will be installed in various portions of the exclusion zone and will assist in reducing visible dust emissions in work areas. A 2,000 to 3,000-gallon capacity water truck will be used to wet haul routes within the exclusion zone to prevent the generation of dust during material transfer operations.

To ensure that dust suppression systems are effective, real-time air monitoring will be utilized during work activities. Work procedures and/or dust controls will be adjusted as needed to ensure that visible dust is reduced or eliminated at the Site boundary and that the real-time particulate daily average action level of 150 ug/m<sup>3</sup> is not exceeded. Corrective actions will be implemented when air monitoring action levels are exceeded for the monitored constituents.

### 3.2.12 Clearing and Grubbing

Minimal clearing of trees, brush and undergrowth will be performed at the Site prior to the initiation of each phase of the TCRA activities. Care will be taken to protect those trees, shrubbery or other landscaping materials present within or near the excavation areas that will not be removed, if and as requested by the property owner. Trees that will be removed will be cut at the base and mulched in place using conventional equipment, where necessary. Trees, shrubbery or other landscaping materials that are removed or damaged during the removal action will be restored to similar or like conditions.

Within a reasonable time prior to commencement of the work, ENTACT will notify the property owners to remove all personal property and debris from the Site and will coordinate with the U.S. EPA and the property owners and tenants to ensure that equipment, materials or articles currently stored or placed in the work areas will be moved to allow the removal action work to progress. Any such materials or debris left in the work area of the site will be collected and consolidated on the non-impacted portion of the property.

### 3.2.13 Project Meetings

Weekly meetings will be conducted with representatives of ENTACT, NL, U.S. EPA and property owners who attend at their discretion to discuss the TCRA activities performed during the previous week and any problems or resolutions associated with previous or future work activities. The weekly meetings will be conducted at the administrative field office or via a conference call. ENTACT will document the items discussed in the meetings and will forward a copy of the meeting minutes to each party in attendance after the weekly meeting.

## 3.3 Soil Excavation

The excavation of lead-impacted surface soils will take place within a designated area of contamination (AOC) (see Appendix D of this TCRA Workplan). Unless NL, U.S. EPA and the property owners later agree to a single phase, the work will be phased to accommodate the operations of the businesses that currently occupy the Site. Phase 1 will consist of the southern two-thirds of the southwest parcel, the unpaved southern portion of the southeast parcel and the southern portion along the west side of the southeast parcel. Phase 2 will consist of the northern one-third of the southwest parcel, the northern portion along the west side of the southeast parcel, and a small section of the southern portion of the north parcel. Phase 3 will consist of the

unpaved southern 1/3 of the north parcel. Exposed surface soils will be removed to a depth of one foot bgs in all areas that are not capped by intact asphalt or concrete or covered by a current or historic building foundation or pad, and will be removed to a depth of two feet bgs in an area not to exceed 14,000 square feet. The exact location of this two foot excavation area will be determined in consultation with the property owners and documented in an amended Figure 3 prior to the performance of the work as well as documented after completion of all TCRA Workplan activities in a surveyed as-built figure.

The current conditions of structures or roads in the vicinity of the identified excavation areas will be documented prior to excavation using photographs and/or video. Any property damaged during the removal action will be documented and NL, U.S. EPA and the property owner will be notified. The damaged property attributed to ENACT's activities will be assessed and an appropriate corrective action will be implemented to repair the damage.

Excavation areas will be visibly marked, as described in Section 3.2.4, and secured at the end of each work day, as described in Section 3.2.6.

### **3.3.1 Identification of Removal Extent**

The extent of the removal of impacted soils at the Site will be limited to the boundaries of the Site and will be consistent with the removal areas shown in the phased removal plan, Figure 3, but will not include soils capped or contained under existing building pads or foundations, concrete or asphalt.

### **3.3.2 Excavation to Maximum Depth**

Exposed surface soils in unpaved areas of the Site will be excavated to a maximum depth of 1 foot bgs and will be removed to a maximum depth of two feet bgs in an area not to exceed 14,000 square feet. The configuration of this two foot area will be determined in consultation with the property owners and documented in an amended Figure 3 prior to the performance of the work as well as documented after completion of all TCRA Workplan activities in a surveyed as-built figure. Excavation activities will be conducted using hydraulic excavators and/or other conventional equipment. Dental excavation using shovels will be conducted around sensitive areas, such as pipelines or utilities, located in the work area. Impacted soils around concrete footings and/or foundations present in the vacant lot on the southwestern portion of the Site will be removed to the appropriate depth to the extent possible. The footings or foundations will then be decontaminated in place to remove any surface residuals prior to backfilling. Decontamination rinse waters will be allowed to infiltrate into the surrounding soils or will be collected for use in dust suppression on impacted portions of the Site. Decontamination sediment residuals will be managed with the excavated soils.

Impacted soils will be gathered into stockpiles within the excavation area located within the AOC for treatment, if necessary and as described in the following section, and loadout for off-site disposal. Open excavations will be backfilled as soon as possible based on the field implementation schedule.

Once the impacted soils are removed from the excavation, a post-excavation survey will be completed for each excavated grid to verify the extent and depth of excavation and the presence or absence of fill at the bottom of the excavation. The survey data will include the excavation boundary, the grid location, coordinates of the elevation point, the elevation data, the absence or presence of fill at the base of the excavation, and the date of survey. The boundary of excavation for each phase will be depicted on an as-built drawing.

### 3.4 Treatment

Impacted soils will be gathered into approximate 250 cubic yard stockpiles in each excavation area located within the designated AOC. ENTACT will sample each stockpile to determine if the materials exhibit a hazardous toxicity characteristic for lead. The sample will consist of a 4-part composite with one part collected from each side and end of the stockpile. Each composite characterization sample will be submitted for analysis of lead using the toxicity characteristic leaching procedure (TCLP) and any underlying hazardous constituents reasonably expected to be present in the waste and to exceed the alternative Land Disposal Restriction (LDR) treatment standards for soils when generated.

Prior to beginning full scale treatment activities in the field, ENTACT will conduct a treatability study on the impacted material to determine the appropriate stabilization reagent and dosage rate required to render the material non-hazardous and meet required LDR treatment standards. The list of potential underlying hazardous constituents will be based on the knowledge of the former operations conducted at the site and the levels of other metals reported for the Site in the Removal Assessment Report, Rev. 01, of March, 2010, by the U.S. EPA's contractor. At this time, ENTACT anticipates that only "lead" will be considered as an underlying hazardous waste constituent in the waste to be generated at the Site. Representative samples will be collected from the materials known to exhibit a toxicity characteristic for the treatability study. A bench-scale treatability study will be performed using these samples to demonstrate the effectiveness of various stabilization reagents and dosage rates. The results of the treatability study will be used to determine the most feasible and effective reagent with which to treat the material.

Based on the results of the treatability study, the appropriate ratio of stabilization reagent will be combined with each impacted material stockpile located within the AOC and mechanically mixed using a hydraulic excavator. Pending the completion of stabilization activities for each stockpile, ENTACT will perform post-treatment verification sampling to determine if the treated material exhibits the toxicity characteristic for lead. ENTACT will collect one four point composite sample from each stockpile. ENTACT may also collect one verification grab sample from each stabilized stockpile, if such sampling is required by the disposal facility. ENTACT's analytical confirmation sample will be used to confirm that the material was rendered non-hazardous and meets the applicable Land Disposal Restrictions listed in 40 CFR §268.49 and landfill requirements. (The frequency of the verification grab samples may be revised based on the requirements of the landfill which accepts the waste). The samples will be submitted to an analytical laboratory for TCLP analysis of lead and any underlying hazardous constituents expected to be present in the waste that are likely to exceed the alternative LDR treatment standards for soils. Upon the receipt of ENTACT's analytical data that demonstrate acceptable passing analytical results, the material will be prepared for transport and off-site disposal at an approved Subtitle D disposal facility. Stabilized material that does not meet the appropriate disposal criteria will be subject to re-treatment and re-sampling to verify that the stabilization criteria have been achieved.

U.S. EPA may collect split or independent samples before or after treatment. Results from the U.S. EPA's sampling activities can be compared with ENTACT's results in an effort to evaluate the characterization and post-treatment sampling strategies and/or the effectiveness of treatment. After the evaluation, changes in sampling strategies, in treatment methods and /or in frequency in collecting samples of the treated material may be recommended. Materials still located on site during the evaluation will either be re-sampled or re-treated, based on the evaluation of ENTACT's and the U.S. EPA's sampling results. If the U.S. EPA provides sampling results after the referenced treated and/or untreated fill materials have been sampled by ENTACT,

treated, if needed, received passing sampling results and have left the site, then compliance and disposal will be based on ENTACT's sampling results only. Any discrepancy in the results in this case will be used to evaluate any needs to change sampling strategy and or treatment processes, moving forward.

No materials staged for off-Site disposal will be kept on-Site for longer than 90 days.

### **3.5 Off-site Transportation and Disposal**

Prior to the initiation of fieldwork at the site, ENTACT will provide a written request to the U.S. EPA OSC for approval of the selected disposal facility in accordance with the requirements of the U.S. EPA Off-site Policy detailed in 40 CFR §300.440.

Treated materials that meet the applicable disposal criteria will be loaded into tandem trucks for transport to the Subtitle D disposal facility for disposal. Conventional equipment, such as front-end loaders and hydraulic excavators, will be used to load waste materials into the transport vehicles. Transport vehicles will not be loaded in excess of the approved axle rating and care will be taken to prevent the spread of dust and/or contamination of vehicles during loadout.

Transport vehicles will be inspected by ENTACT personnel upon the completion of loadout activities. Tailgate locks and cover tarps will be inspected to ensure that they are secure and will prevent the release of waste materials during transport. Truck tires and undercarriage members will be inspected for visible accumulations of waste materials.

Transport vehicles that were exposed to visible accumulations of waste materials during loadout will undergo decontamination procedures. Dry decontamination procedures, consisting of the use of brooms and other hand tools, will be used for all vehicles/equipment leaving the Site that do not enter an Exclusion Zone and/or remain on established haul roads. Wet decontamination procedures, consisting of the use of high-pressure washers, will be used for all vehicles/equipment exiting the Exclusion Zone that have come into contact with contaminated materials. Any rinsate generated through the implementation of a wet decontamination process will be collected and used for dust suppression in impacted areas of the Site. Any rinsate that cannot be used for dust suppression will be disposed as appropriate pending the results of laboratory analysis.

The appropriate documentation, i.e. waste manifests and LDR notification forms, will accompany each load of waste material to the Subtitle D disposal facility. The waste manifest will provide space for identifying the nature of the material being transported, the sample identification number which represents the material that has been loaded, the date and time that the material leaves the Site, the truck identification number, and the weight/volume or estimated weight/volume transported will be provided with each loaded truck. The manifest form will be signed by an ENTACT representative, on behalf of NL, before the material leaves the Site; by the truck driver before the truck leaves the Site; and by a representative of the facility when the load is received at the disposal facility. Upon receipt of the material, the disposal facility will be required to send one copy of the manifest, completed with all appropriate signatures, to ENTACT/NL.

Transport vehicles will be required to adhere to the pre-determined haul routes established during mobilization and site preparation.

### 3.6 Site Restoration

At the completion of excavation in each area, a demarcation layer/fabric, e.g., geotextile fabric, will be placed at the base of the excavation to denote the presence of potential contamination at depths greater than that excavated. A brightly colored material that is easily identifiable will be used.

The excavation will then be backfilled, if needed, under dry conditions with non-contaminated common fill material imported from an off-site borrow source. The common fill material will consist of satisfactory soils meeting ASTM D2487 soil classification groups GW, GP, GM, GC, SW, SP, SM, and/or SC and will contain limited organic matter, insignificant amounts of debris, and no sticks, rocks larger than 2 inches in diameter, toxic substances, or other deleterious materials. Any common fill material brought on-site from an off-site source location will be sampled and analyzed for total RCRA 8 metals, total petroleum hydrocarbons, semi-volatile organic compounds, and volatile organic compounds to verify that the off-site fill material is acceptable for use on-site. Acceptability of the common fill will be consistent with U.S. EPA's backfill quality criteria applied at residential clean-up sites within the OLS that contain less than 150 mg/kg average lead, 25 mg/kg average cadmium and 22 mg/kg average arsenic, and contain no other contaminants at concentrations that pose a risk to human health and the environment. Samples of the common fill material will be obtained from every borrow source at a frequency of one sample per borrow source. A change in the borrow source location will require that the parameters listed above are repeated for the new borrow source. The sampling location, methodology and frequency of testing are further described in the Sampling and Analysis Plan included as Section 5.0 to this TCRA Workplan. Prior to transporting and placement of any fill from an off-site borrow source, ENTACT will provide the U.S. EPA the location of the borrow source and the analytical results related to the backfill along with a request for approval or disapproval, within 3 days of receiving analytical results from ENTACT, of the backfill source for use as backfill on the Site. Loess Hills Conservation Area will not be used as a borrow source.

The common fill material will be placed in the excavations in horizontal lifts under dry conditions. Each lift will be graded to properly control stormwater run-off, including positive drainage away from buildings, and prevent ponding. The lifts will then be compacted by three passes of heavy grading equipment prior to the placement of the next lift in order to minimize future settlement. Those areas that were not previously vegetated, i.e. paved and non-paved parking areas, will be covered with non-contaminated gravel, asphalt or concrete similar to pre-existing conditions. Those areas that were previously vegetated, if any, will be covered with non-contaminated topsoil that is of sufficient quality to produce heavy growths of grass. Topsoil will be sampled and analyzed as previously described for common fill material. Vegetation will be restored to similar or like conditions based on pre-existing conditions and may include seeding, sod, trees, and/or plants.

Trucks used to haul contaminated soils for off-site disposal and common fill material or topsoil to the Site will be inspected to ensure that the truck bed is free of contaminated material prior to the loading of common fill material or topsoil. If needed, dry decontamination measures will be employed to minimize the potential for cross-contamination.

Stormwater controls will remain in place to minimize sediment-laden run-off from the Site until permanent stabilization measures have been installed.

### **3.7 Demobilization**

#### **3.7.1 Pre-final Inspection**

Upon the completion of TCRA activities, ENTACT will schedule a pre-final inspection of the Site. The pre-final inspection will be attended by the U.S. EPA OSC, NL, ENTACT, and property owner representatives. The purpose of the pre-final inspection will be to determine whether all aspects of the TCRA have been completed. A punchlist will be developed during the pre-final inspection to document the items to be reviewed or addressed prior to the final inspection. ENTACT will develop procedures to resolve deficient items listed on the punchlist upon completion of the pre-final inspection and will implement the procedures prior to the final inspection.

#### **3.7.2 Final Inspection**

A final inspection of the Site will be conducted upon the completion of punchlist item procedures. The final inspection will be attended by the U.S. EPA OSC, NL, ENTACT, and property owner representatives. The results of the final inspection will be documented in the TCRA Report.

#### **3.7.3 Topographic Survey and Personnel/Equipment Removal**

Upon the completion of the TCRA, a final topographic survey will be performed to produce as-built drawings of the Site. The topographic survey will be conducted on 1-foot intervals and will include the surface area of all portions of the Site affected by grading and removal activities.

Pending the completion of the topographic survey field activities, equipment and personnel will then be demobilized from the Site. All temporary construction facilities will be removed and all utilities will be disconnected. All trash and debris associated with the removal activities will also be removed.

## 4.0 STORMWATER POLLUTION PREVENTION PLAN

### 4.1 Nature of Construction Activity

The construction activities described in this SWPPP will be conducted within an approximate 3-acre portion of the Site. These activities are described in detail in Section 3.0 of this TCRA Workplan. A copy of the general stormwater permit for construction activities is included in Appendix A of this TCRA Workplan.

#### 4.1.1 Sequence of Major Activities

The TCRA activities associated with the Site will address the lead-in-soil contamination present in the vegetated areas, parking areas and material storage areas of the Site. The sequence of major activities is expected to be as follows:

- Perform mobilization and site preparation activities, including mobilizing personnel, equipment and temporary facilities; identifying utility line locations; installing erosion, sedimentation and stormwater control measures; surveying excavation areas; and performing background air monitoring.
- Conduct removal activities beginning on the southern portion of the Site, including excavation of lead-impacted soils in the parking areas and vegetated areas and restoration of the excavated areas;
- Conduct removal activities on the northern portion of the Site, i.e., that occupied by the Open Door Mission, including excavation of lead-impacted soils in the parking areas and vegetated areas and restoration of the excavated areas;
- Demobilize from the Site.

The TCRA activities described above are expected to begin in the summer of 2012 and be completed in the fall of 2012. The exact sequence of events, i.e., the order in which the areas are addressed, may be dependent on several factors including subcontractor scheduling and weather. The proposed schedule of activities is presented as Figure 4.

#### 4.1.2 Site Area

The elevation of the Site is approximately 980 feet above mean sea level. The topography of the Site is generally flat. There are several city drainage improvements along East Locust Street and North 22<sup>nd</sup> Street in the form of storm drain inlets.

#### 4.1.3 Soil Types

According to the USDA NRCS Soil Survey for Douglas County, Nebraska, the following soil types are present at or near the Site: Urban land-Udorthents complex, 0 to 10% slopes, occasionally flooded. The Urban land-Udorthents complex consists of silty clay loam to silty loam generally found on floodplains. This soil type is currently covered at the Site by gravel, concrete, asphalt, and building structures.

#### 4.1.4 Name of Receiving Water

The potential receiving waters located within 0.5 miles of the Site are Carter Lake located to the north of the Site and the Missouri River located to the south of the Site. However, surface water at the facility generally drains to the city storm drain inlets located along East Locust Street and North 22<sup>nd</sup> Street.

#### 4.1.5 Endangered and Threatened Species

According to the *Range Maps for Nebraska's Threatened and Endangered Species* published by the Nebraska Game and Parks Commission, the following threatened and endangered species are present in Douglas County: American ginseng, Interior least tern, Lake sturgeon, Pallid sturgeon, Piping plover, River otter, Small white lady's slipper, Sturgeon chub, and the Western prairie fringed orchid. The ranges of the Piping plover, Interior least tern and River otter are not in the vicinity of the Site. The Lake sturgeon, Pallid sturgeon and Sturgeon chub are fish species and no waterbodies are present at the Site that would support such life. The American ginseng, Small white lady's slipper and Western prairie fringed orchid are plant species. Since the Site is located in an urban setting and is developed, disturbed or used for vehicle parking or the storage of materials related to facility operations, it is highly unlikely that these plant species are present at the Site. To assist in identifying potential locations of threatened and endangered species at the Site, the *Threatened and Endangered Species Guidance Checklist for NPDES Construction Storm Water General Permit # NER110000* developed by the NDEQ was completed. The results of the checklist indicate that potential habitat for these species is not present at the Site. A copy of the completed checklist is included in Appendix B.

### 4.2 Erosion and Sediment Controls

#### 4.2.1 Practices and Measures

Best management practices will be implemented during the TCRA activities to prevent and/or minimize accelerated erosion and sedimentation and to control, minimize and/or prevent the release of impacted soils entrained in stormwater discharges. All erosion and sediment controls will be constructed according to the *Omaha Regional Stormwater Design Manual* published in April 2006 and the *Supplemental BMP Guide* published in June 2009. The following subsections describe the best management practices that will be implemented during the TCRA activities.

##### 4.2.1.1 Good Housekeeping Practices

Good housekeeping practices will be implemented to minimize accidents and ensure a high quality of work. The following good housekeeping practices will be implemented at the Site:

- Erosion and sediment control measures will be adequately positioned, properly constructed and maintained throughout the duration of the project;
- Clearing operations will be confined to the limits of excavation or construction activity. Existing trees, other vegetation and paved surfaces will be protected to the extent possible;
- All materials stored on-site will be stored in a neat, orderly manner in their appropriate containers or stored pursuant to the requirements;
- Erosion and sediment control measures will be effective in retaining sediments on-site;

- Controls will be installed such that sediment transported from the Site onto city roads will be minimized.
- Stabilization practices will be effective in permanently stabilizing disturbed areas;
- Corrective measures will be implemented after a deficiency is noted;
- Good housekeeping practices will be incorporated into discussions during the daily safety meetings;
- Trash and other waste debris will be picked up on a daily basis and placed in the appropriate containers for off-site disposal; and
- Portable toilets provided for Site workers will be serviced by the subcontractor on a periodic basis. Sanitary sewage from the portable toilets will be properly disposed by the subcontractor.

#### 4.2.1.2 Structural Practices

Structural practices, consisting of erosion and sediment control measures, are designed to retain sediment on-site to the extent practicable. Structural practices will be implemented in and around the areas to be disturbed to divert upgradient stormwater flows around disturbed areas, maintain all Site drainage within the excavation area and remove sediment entrained in the stormwater prior to discharge. The following structural practices may be used:

- Inlet Protection - Inlet protection barriers will be installed at the stormwater inlets located near the work areas at North 22<sup>nd</sup> Street and East Locust Street to minimize sediment from entering the stormwater system drains.
- Stabilized Construction Entrances - Stabilized construction entrances will be installed at entrances where concrete or asphalt are not present to facilitate the removal of sediment/soil from construction equipment and transport vehicles prior to exiting the work area.
- Silt Fencing - Silt fencing will be installed on the downgradient sides of the excavations to reduce stormwater velocities to the threshold of erosive velocities. Silt fencing will be installed per manufacturer's specifications to ensure proper operation.

These erosion and sediment control measures will be installed in accordance with manufacturer's specifications, where implemented. The *Omaha Regional Stormwater Design Manual* published in April 2006 and the *Supplemental BMP Guide* published in June 2009 will be used as a guide for the proper installation of the control measures. The construction details for the above-mentioned erosion and sediment control measures described in the *Omaha Regional Stormwater Design Manual* are incorporated by reference.

The location of the erosion and sediment control measures will be as indicated on Figure 5 (This figure will be developed at a later date). Once the initial controls are in place, additional controls may be installed based on visual observations of the surface water migration pathways at each area. In general, silt fencing will be installed on the downgradient edges of each area, as needed. Inlet protection barriers will be placed at all city stormwater inlets near the affected areas. Stabilized construction entrances will be constructed at the entrance/exit of the affected areas where asphalt or concrete is not currently present.

#### 4.2.1.3 Timing of Structural Measures

The erosion and sedimentation control measures will be coordinated with the initiation of the construction phase in the areas where TCRA activities are scheduled and where material will be temporarily staged, if necessary. The erosion and sedimentation control measures may be adjusted as Site conditions permit during the TCRA. When the area is stabilized, if applicable, the erosion and sediment control measures will be removed. All erosion and sediment control devices located at city stormwater inlets will remain in place and will be maintained until final stabilization is established. ENTACT is responsible for implementation of these controls as long as ENTACT maintains day-to-day operational control of the activities necessary to ensure compliance with this Plan.

#### 4.2.1.4 Sediment Management

Accumulations of sediment behind the silt fencing will be removed as necessary. If sediment escapes the affected areas, the sediment accumulations will be removed as necessary to minimize further negative effects. The collected sediments will be consolidated with the excavated soils for off-site disposal or returned to on-site source areas, if clean.

### 4.2.2 Stabilization Practices

Stabilization measures are designed to reduce the erosion potential of the soils by shielding the soil surface from direct erosive impacts, by slowing the rate of water run-off and by physically holding the soil in place using vegetation or gravel/asphalt/concrete covers. Stabilization practices will be implemented in disturbed areas as soon as practicable after the completion of final grading activities. Care will also be taken during the TCRA activities to minimize the areal extent of the disturbed areas and to protect existing vegetation to the extent possible. The following stabilization practices will be implemented:

- **Dust Control** - Dust control will be conducted in disturbed areas to prevent or reduce the movement of wind-borne dust particles. Dust control will be accomplished using a water truck with a 180-degree spray-bar or high-pressure washers.
- **Preservation of Existing Vegetation** - Existing vegetation that will not be disturbed by TCRA activities will be protected to the extent possible. The preservation of existing vegetation will help to control erosion on the Site.
- **Vegetation or Gravel/Asphalt/Concrete Covers** - Re-vegetation or cover of the disturbed areas will provide long-term erosion control and help prevent sediment from leaving the Site.

The location of the stabilization measures will be based on visual observation and the extent of disturbance within the affected areas. The following permanent stabilization practices for this project will be implemented. The schedule for when these practices will be implemented follows the description of the permanent stabilization practice.

Permanent Stabilization Practice	Location	Schedule
Grass seed	Previously vegetated areas of the Site	Upon the completion of removal activities
Concrete, asphalt or gravel	Parking areas and utility corridor	Upon the completion of

Permanent Stabilization Practice	Location	Schedule
	right-of-ways not previously vegetated	removal activities

#### 4.2.2.1 Timing of Stabilization Measures

The stabilization practices will be coordinated with the initiation and completion of the TCRA activities at the affected areas. Temporary or permanent stabilization measures, if applicable, will be initiated as soon as practicable where construction activities have ceased, but in no case more than 14 days after the construction activity has temporarily or permanently ceased, except for the following reasons:

- Where stabilization is precluded by snow cover, measures will be initiated as soon as practicable.
- Where construction activity is temporarily ceased and earth disturbing activities will be resumed within 14 days.

Final stabilization will be considered achieved when a uniform perennial vegetative cover with a minimum density of 70% of the native background vegetative cover has been established on all non-impervious surfaces and areas not covered by permanent structures unless equivalent stabilization measures have been employed.

#### 4.2.3 Other Practices

##### 4.2.3.1 Off-site Vehicle Tracking

Trucks used to transport excavated soils will be required to stay on established haul roads located outside of the exclusion zone. As described in Section 3.5, transport vehicles will be inspected by ENTACT personnel upon the completion of loadout activities. Tailgate locks and cover tarps will be inspected to ensure that they are secure and will prevent the release of waste materials during transport. Truck tires and undercarriage members will be inspected for visible accumulations of waste materials. Transport vehicles that were exposed to visible accumulations of waste materials during loadout will undergo decontamination procedures. Dry decontamination procedures, consisting of the use of brooms and other hand tools, will be used for all vehicles/equipment leaving the Site that do not enter an Exclusion Zone and/or remain on established haul roads. Wet decontamination procedures, consisting of the use of high-pressure washers, will be used for all vehicles/equipment exiting the Exclusion Zone that have come into contact with contaminated materials. An established wet decontamination station for vehicles exiting the Exclusion zone will be constructed, where necessary to collect lead impacted residues and waters from the wet decontamination activities. Any rinsate generated through the implementation of a wet decontamination process will be collected and used for dust suppression in impacted areas of the Site. Any rinsate that cannot be used for dust suppression will be disposed as appropriate pending the results of laboratory analysis.

An inspection of the vehicle will be conducted to ensure that no contaminated material or soils will be tracked off-site. If necessary, wet decontamination procedures will be implemented to further reduce or eliminate off-site tracking of mud or dirt from the Site if dry decontamination is determined to be ineffective. In addition, all vehicles hauling materials on city streets will be tarped and covered to prevent wind dispersion of materials during transport.

Stabilized construction entrances/exits will be constructed to help reduce vehicle tracking of soils. The entrance will be swept as needed to remove any excess mud, dirt or rock tracked from the Site. Any incidental soil tracked from the load-out area will be immediately cleaned up. Street sweepers or similar equipment may be used at the site to address track-out contamination, if needed.

#### 4.2.3.2 *Material Staging and Waste Disposal*

All non-hazardous construction debris and general office trash will be disposed in a dumpster placed on-site. Trash receptacles will also be placed in the storage trailers for the collection of non-hazardous trash and debris. These waste materials will be disposed off-site at a Subtitle D disposal facility. Spent personal protective equipment (PPE) generated during the TCRA activities will be placed in designated Site containers and will be disposed with remediation waste. Portable restroom facilities will be located at the support facilities or decontamination zone for use by Site personnel and will be serviced by a third party on a regular basis. Remediation wastes excavated from the Site will be direct loaded for transport and off-site disposal or temporarily staged in a material staging area.

Hydraulic oils, motor oils and lubricants will be stored in the on-site equipment storage trailer. Quantities of these items should not exceed 20 gallons. If larger quantities of these items are required to be on-hand, ENTACT will review the storage and containment of those items at such time. All appropriate health and safety requirements for storing this material on-site will be followed.

If a staging area is required for excavated soils or imported fill material, silt fencing will be installed around the perimeter of the staging area, as necessary. Polyethylene sheeting may also be used to cover exposed stockpiles of excavated soil, if present, to prevent wind dispersion of the stockpiled materials when not in use.

#### 4.2.3.3 *Spill Prevention and Response*

Pollution prevention measures will include implementation of BMPs. If a reportable quantity of oil or hazardous material release is discovered, ENTACT will notify the National Response Center at (800) 424-8802 immediately. The U.S. EPA will be notified verbally within 24 hours and in writing within 14 days. Complete emergency response and spill cleanup procedures are detailed in the *Site-specific Health and Safety Plan*. The SWPPP will also be modified to include the date of the release, the circumstances leading to the release and the steps taken to prevent reoccurrence of the release. Should greater than 1,320 gallons of oil or oil products, i.e. diesel fuel, be stored on-site during the TCRA activities, a *Spill Prevention, Control and Countermeasures Plan* will be developed to further describe the spill prevention and response procedures for the Site.

#### 4.2.3.4 *Other Pollutant Sources*

No other pollutant sources associated with the TCRA activities are expected at the Site.

#### 4.2.4 **Stormwater Management**

BMPs will be implemented as part of the TCRA activities to control pollutants in stormwater discharges. These controls will generally include those non-structural and structural measures presented in the previous subsections.

In general, stormwater run-off that has contacted impacted materials at the Site will be allowed to infiltrate into the subsurface within the work zones. If the stormwater cannot infiltrate into the subsurface, then the

stormwater will be allowed to evaporate or discharge through the structural control measures prior to leaving the work area or Site.

#### **4.2.5 Non-stormwater Discharges**

Non-stormwater discharges expected during the TCRA activities may include the following:

- Discharges from fire-fighting activities;
- Fire hydrant flushing;
- Water used to wash vehicles where detergents are not used;
- Water used to control dust;
- Potable water including uncontaminated water line flushings;
- Routine external building wash down that does not use detergents;
- Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- Uncontaminated air conditioning or compressor condensate;
- Uncontaminated groundwater or spring water;
- Foundation or footing drains where flows are not contaminated with process materials such as solvents; and
- Landscape irrigation.

These non-stormwaters will be directed through structural control measures to remove the majority of sediments entrained in the water prior to discharge.

#### **4.2.6 Contingencies for Planned and Unplanned Work Stoppages**

If work is temporarily stopped on-site for an extended period of time, then temporary stabilization of the exposed soil surfaces will be completed prior to demobilization. Stockpiles of material, if present, will be covered with polyethylene sheeting and surrounded with silt fencing or other means, as appropriate, to control, minimize and/or prevent the release of soils entrained in stormwater discharges.

### **4.3 Inspection and Maintenance**

Inspection and maintenance of the control measures have been identified as a major part of effective erosion and sediment control programs. Qualified personnel that are knowledgeable in the principles and practice of erosion and sediment controls and who possess the skills to assess conditions at the Site that could impact stormwater quality and the effectiveness of the BMPs selected to control the quality of the stormwater discharges, i.e. the ENTACT Project Manager or his designee, will conduct the Site inspections and ensure that the BMPs are maintained as appropriate during the construction period.

#### **4.3.1 Inspection**

Routine inspections will be conducted at the Site to ensure that the BMPs are functional and the SWPPP is being properly implemented. Inspections will be performed at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. In addition to the formal written inspections, a visual inspection of the Site BMPs will be conducted each work day to ensure that the BMPs are operating, as designed. The inspection frequency will be reduced to once per month if the entire Site is temporarily stabilized or runoff is unlikely due to winter conditions.

The inspections will consist of a walk-through of all areas of the Site disturbed by construction activity and areas used for the storage of materials that are exposed to precipitation. Specifically, observations will be made of those disturbed areas that have not undergone final stabilization, areas used for the storage of materials that are exposed to precipitation that have not undergone final stabilization, and structural control measures for evidence of, or the potential for, pollutants to enter the run-off from the Site. Erosion and sediment control measures will be inspected to ensure they are functioning properly and that they are positioned adequately for the control of run-off and sediment. Locations where vehicles enter or exit the Site will be inspected for evidence of off-site sediment tracking. Discharge locations, where accessible, will be inspected for evidence of, or the potential for, pollutants entering the drainage system and the receiving water(s). Areas where petroleum products are stored, used or handled will be inspected for spills or leaks from vehicles and equipment. The inspections will be documented as described in Section 4.4.

Weather observations, including the total amount of rainfall per 24-hour period, will also be measured and recorded on a daily basis by the qualified personnel. This person will also be responsible for identifying when stormwater runoff occurs on-site. The following sources may be used to obtain weather forecasts and observations for the Omaha, Nebraska area:

- The National Weather Service at [www.wrh.noaa.gov](http://www.wrh.noaa.gov)
- The Weather Channel at [www.weather.com](http://www.weather.com)

#### **4.3.2 Maintenance**

Based on the results of the inspections and/or daily observations indicating repair of BMP(s) is needed, the BMPs will be maintained, repaired or replaced. If the Site inspections or observations reveal that the BMPs are not operating effectively, or if the effective capacity has been reduced by 50%, then maintenance will be performed as quickly as practicable, but not later than 7 days after the inspection or observation. If weather conditions make it impossible to the correct problem within 7 days, a detailed report, including pictures, will be filed with the regular inspection reports and the BMPs will be corrected as soon as weather conditions allow. The actions taken to correct the noted deficiencies will be documented as described in Section 4.4.

### **4.4 Reporting and Record-Keeping Requirements**

#### **4.4.1 Inspections and Maintenance**

Inspection results will be documented on an inspection report form and will include the following information, at a minimum:

- Name, title and qualification of the person conducting the inspection;

- Date and time the inspection was conducted;
- Weather information for the period since the last inspection and at the time of the inspection;
- Findings of the inspection;
- Corrective actions taken to correct deficiencies; and
- Date the corrective action was implemented.

The inspection forms will be retained as part of the SWPPP for a period of at least three years from the date that permit coverage expires or is terminated. Example inspection forms are included in Appendix C to the TCRA Workplan.

#### **4.4.2 Construction Activities Log**

Records associated with the construction activities that will be maintained with the SWPPP include the following:

- Dates when major grading activities occur;
- Dates when construction activities temporarily or permanently cease on a portion of the Site; and
- Dates when stabilization measures are initiated.

This information will be recorded on the inspection forms included in Appendix C to the TCRA Workplan.

#### **4.4.3 Changes to the SWPPP**

This SWPPP has been prepared and will be maintained and updated to be consistent with all federal, state and local guidelines for all applicable stormwater, sediment and erosion Site plans or permits. Any updates or revisions required to the SWPPP will be made and fully implemented within 7 calendar days of the date a deficiency is identified during a Site inspection. Updates or revisions to the SWPPP will also be required whenever:

- The design, construction, operation, or maintenance of BMPs is changed;
- The design of the construction project is changed that could significantly affect the quality of the stormwater discharges;
- The inspections indicate deficiencies in the SWPPP or any BMP; and
- The SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation.

The updates or revisions to the SWPPP will be documented on the SWPPP update form included in Appendix C to the TCRA Workplan. These forms will be maintained with the SWPPP for the duration of the construction activities.

## **5.0 SAMPLING AND ANALYSIS PLAN**

### **5.1 Statement of Objectives**

This section presents the Sampling and Analysis Plan (SAP) which describes the procedures to be used for the collection of the following types of samples:

- Characterization samples;
- Post-treatment verification samples;
- Backfill samples; and
- Air samples.

### **5.2 Sampling Identification System**

A sample identification system will be implemented in order to properly track sampling activities. The sampling activities and suggested identification coding system associated with each type are listed below.

- Stockpile Characterization Sample: SCS-Stockpile No.
- Post-Treatment Verification Samples: V-Stockpile No.-C (composite) and/or G (grab)-000
- Backfill Samples: BF-000
- Field Duplicate Samples: "X" added to end of sample ID
- Field Equipment Rinsate Blank: RB-000
- Perimeter Air Samples: PM or TSP-Unit No.-000
- Personal Air Samples: PAM-000

All numbering sequences shown above with "000" will begin with the number "001" and will continue upward by one unit (i.e., RB-001, RB-002, RB-003, etc.) until the final samples are collected. It should be noted that sampling nomenclature may be modified in the field if a more informative identification system becomes evident.

### **5.3 Sampling Procedures**

Samples will be collected during the TCRA as described in the following sections. Sample test methods, preservatives, volume requirements, and sample container requirements are listed on Table 1.

#### **5.3.1 Characterization Samples**

Characterization samples will be collected from the excavated material stockpiles to determine if the excavated material exhibits the hazardous toxicity characteristic for lead and/or meets the appropriate criteria for off-site disposal in a permitted Subtitle D landfill, as appropriate. A 4-point composite sample will be collected from each stockpile and will be submitted for laboratory analysis of TCLP lead. The characterization sampling procedures are described below.

- a. The sampling team will adhere to the health and safety protocols defined in the *Site-specific Health and Safety Plan*.
- b. The stockpile will be selected for sampling.
- c. Staging areas for sample collection will be established. Polyethylene sheeting or clean, plastic holding containers or tubs will be placed adjacent to the areas to be sampled during sample collection. The following tools and supplies will be prepared for use:
  - Field Logbook;
  - Stainless steel or plastic disposable trowels;
  - Ziplock plastic bags;
  - Plastic or glass laboratory-supplied sample containers;
  - Distilled water, low-phosphate detergent and brushes;
  - Disposable gloves;
  - Trash bags; and
  - 5-gallon buckets or tubs to carry equipment and for decontamination liquids.
- d. A sufficient amount of soil will be collected with a sample trowel from 4 locations on the stockpile, i.e. from the 2 sides and 2 ends of the stockpile. The soil will be placed in a new, clean sample bag or stainless steel or plastic container for homogenization.
- e. The homogenized sample will be placed into the appropriate laboratory-supplied sample container. Sample containers will be labeled in accordance with the predetermined sample identification system.
- f. Field notes will be completed and will include the sample identification number, color and general soil description.
- g. Chain-of-custody documents will be prepared.
- h. The sample containers will be sealed in a plastic bag and placed in a sample ice chest for shipment to the laboratory for analysis.
- i. All reusable sampling equipment will be decontaminated utilizing a detergent wash and potable water rinse, followed by a distilled water rinse. Decontaminated equipment will be wrapped in aluminum foil if not immediately reused to prevent contamination during storage or transportation. All disposable sampling media will be placed into designated Site containers.

### 5.3.2 Post-Treatment Verification Samples

- a. Post-treatment verification samples will be collected from the treated material stockpiles to ensure that the treated material meets the appropriate criteria for off-site disposal in a permitted Subtitle D landfill, as appropriate. One representative 4-part composite sample will be collected from each stockpile of treated material and analyzed for TCLP lead and any underlying hazardous constituents. ENTACT may also collect one verification grab sample from each stabilized stockpile, if such sampling is required by the disposal facility. The post-treatment verification sampling procedures are described below. The sampling team will adhere to the health and safety protocols defined in the *Site-specific Health and Safety Plan*.

- b. The stockpile will be selected for sampling.
- c. Staging areas for sample collection will be established. Polyethylene sheeting or clean, plastic holding containers or tubs will be placed adjacent to the areas to be sampled during sample collection. The following tools and supplies will be prepared for use:
  - Field Logbook;
  - Stainless steel or plastic disposable trowels;
  - Ziplock plastic bags;
  - Plastic or glass laboratory-supplied sample containers;
  - Distilled water, low-phosphate detergent and brushes;
  - Disposable gloves;
  - Trash bags; and
- 5-gallon buckets or tubs to carry equipment and for decontamination liquids.
- d. A representative 4-part composite sample will be taken from the stockpile. A sufficient amount of soil will be collected with a sample trowel from 4 locations on the stockpile, with one aloquat from centrally within the stockpile and 3 from the surface of the stockpile. The soil will be placed in a new, clean sample bag or stainless steel or plastic container for homogenization. The homogenized sample will be placed into the appropriate laboratory-supplied sample container. Sample containers will be labeled in accordance with the predetermined sample identification system.
- e. A representative grab sample of at least 100 grams will be collected from the stockpile with a sample trowel and placed in the appropriate laboratory supplied sample jar. Sample containers will be labeled in accordance with the predetermined sample identification system.
- f. Field notes will be completed and will include the identification of the stockpile being sampled, sample identification number, date, and other pertinent information.
- g. Chain-of-custody documents will be prepared.
- h. The sample containers will be sealed in a plastic bag and placed in a sample ice chest for shipment to the laboratory for analysis.
- i. All reusable sampling equipment will be decontaminated utilizing a detergent wash and potable water rinse, followed by a distilled water rinse and drying with disposable towels between each sampling event. Decontaminated equipment will be wrapped in aluminum foil if not immediately reused to prevent contamination during storage or transportation. All disposable sampling media will be placed into designated Site containers.

### 5.3.3 Backfill Sampling

The backfill source selected for use will be sampled and approved before the date of anticipated use of the material. The frequency of sampling will be a minimum of one sample per source with the collection of additional samples when there is a significant change in the color or appearance of the source material. A representative composite sample consisting of at least 4 parts obtained directly from the source area, stockpiled material from the source area, or from a clean container of at least 10 pounds of material will be collected for each source. The sample will be submitted to an analytical laboratory for analysis of the RCRA 8 metals by

U.S. EPA Method 6020 and 7471A, VOCs by EPA Method 8260B, SVOCs by U.S. EPA Method 8270C, and TPH by U.S. EPA Method 8015. The source location of the backfill material will be documented by source location and address. The backfill samples will be collected as follows:

- a. The sampling team will adhere to the health and safety protocols defined in the *Site-specific Health and Safety Plan*.
- b. Staging areas for sample collection will be established. Polyethylene sheeting or clean, plastic containers or tubs will be placed adjacent to the areas to be sampled during sample collection. The following tools and supplies will be prepared for use:
  - Field logbook;
  - Digital or film camera;
  - Disposable gloves;
  - Stainless steel or plastic disposable trowels;
  - Zip-lock plastic bags;
  - Plastic or glass laboratory-supplied sample containers;
  - Alconox detergent or similar;
  - Brushes;
  - Distilled water;
  - Trash bags; and
  - 5-gallon buckets or tubs to carry equipment and for Decontamination liquids.
- c. A sufficient amount of material will be retrieved from 4 locations using a clean or decontaminated sample trowel. The material will be placed in a new, clean sample bag for homogenization.
- d. The homogenized sample will be placed into the appropriate laboratory-supplied sample container. Sample containers will be labeled in accordance with the predetermined sample identification system.
- e. Field notes will be completed and will include the identification and storage location of the source being sampled, sample number, date, and any other pertinent information.
- f. Chain-of-custody documents will be prepared.
- g. The sample containers will be sealed in a plastic bag and placed on ice in a sample ice chest for shipment to the laboratory for analysis.
- h. All reusable, non-disposable sampling equipment will be decontaminated utilizing an Alconox detergent wash, a potable water rinse and a distilled water rinse. The equipment will be allowed to air dry or will be dried with clean, new disposable towels and will be wrapped to prevent exposure to potential contamination between sampling events. All disposable sampling media will be placed in designated Site containers.

### 5.3.4 Air Samples

#### 5.3.4.1 TSP and PM<sub>10</sub> Air Samples

The methodology for sampling and analysis of total lead by the high-volume TSP sampler will be conducted in accordance with the methods described in 40 CFR, PART 50, APPENDIX B - Reference Method for the

Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method) and 40 CFR, PART 50, APPENDIX G - Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air. The methodology for sampling and analysis of PM<sub>10</sub> will be conducted in accordance with 40 CFR, PART 50, APPENDIX J - Reference Method for the Determination of Particulate Matter as PM<sub>10</sub> in the Atmosphere.

Proper sample containers and filter media will be used to minimize the alteration of sample chemistry between the field and the laboratory. Conditioned, pre-tared and numbered high-volume air filter media will be provided by the laboratory in individual 10x13 inch envelopes. The filter media will remain in the envelope until its required use. The filter media will be handled by the edges during placement and collection procedures. Used filters will be folded vertically and placed back into the envelope to reduce the loss of particulate matter from the filter. Each envelope will be labeled, sealed and signed to prevent tampering and maintain custody control.

#### 5.3.4.2 PAM and PDR Samples

PAM samples will be collected with low volume-sampling pumps and 37 mm sample cassettes. The sampling pump will be positioned upon personnel in such a way as to obtain a sample from the breathing zone of the associate. Personal samples will be collected from personnel representative of a full shift including at least one sample for each job classification in each work area either for each shift or for the shift with the highest exposure level. Full shift personal samples shall be representative of the monitored associate's regular daily exposure to lead in accordance with 29 CFR 926.62 (d)(1)(iii) and (iv).

A PDR real-time monitoring unit is a direct read field-portable instrument that displays the airborne dust concentrations immediately and continuously on a digital LCD screen in units of mg/m<sup>3</sup>.

#### 5.3.5 Quality Control Samples

##### 5.3.5.1 Rinsate Blanks

Rinsate blanks are water samples obtained by rinsing decontaminated, non-disposable sampling equipment with contaminant-free distilled water, and capturing that water in sample containers for laboratory analysis. These blanks verify the effectiveness of equipment cleaning procedures and are integral to the QA/QC program. Rinsate blanks will be collected at a frequency of 1 rinsate blank per day of sampling using non-dedicated, non-disposable equipment. The rinsate blanks will be analyzed for total lead by U.S. EPA Method SW-846 6020. The rinsate blank sampling procedures are described below:

- a. The sampling team will adhere to the health and safety protocols defined in the *Site-specific Health and Safety Plan*.
- b. Staging areas for sample collection will be established. Polyethylene sheeting or clean, plastic containers or tubs will be placed adjacent to the area for obtaining the blank. This area should preferably be away from known contaminated areas to avoid cross-contamination of the sampling tools. The following tools and supplies will be prepared for use:
  - Field logbook;
  - Digital or film camera;
  - Disposable gloves;
  - Accumulation of sampling tools and devices used;

- Plastic or glass laboratory-supplied sample containers;
  - Sample beakers;
  - Alconox detergent or similar;
  - Brushes;
  - Distilled water;
  - Trash bags; and
  - 5-gallon buckets or tubs to carry equipment and for decontamination liquids.
- c. Decontaminated sampling devices will be gathered. Distilled water will be poured over the just decontaminated sampling device and the run-off water will be collected directly in the sample container. The sample container will be labeled in accordance with the predetermined sample identification system.
- d. Field notes will be completed and will include the sample identification number, description, date and time of sample collection, and any other pertinent information.
- e. Chain of custody documents will be prepared.
- f. The samples will be sealed in a plastic bag and placed on ice in a sample ice chest for shipment to the laboratory for analysis.
- g. All reusable, non-disposable sampling equipment will be decontaminated utilizing an Alconox detergent wash, a distilled water rinse and a final distilled water rinse. The equipment will be allowed to air dry or will be dried with clean, new disposable towels and will be wrapped to prevent exposure to potential contamination between sampling events. All disposable sampling media will be placed into designated Site containers.

#### **5.3.5.2 Duplicates**

Duplicate samples are collected as 2 sets of sample bottles filled from a single sample location. The sample is split in the field in a manner to ensure that the chemistry is as close to identical as possible. One sample, the "parent" sample, is labeled as usual. The duplicate sample is labeled with an "X", in addition to the usual sample identification. The purpose of the duplicate is to test the ability to generate reproducible samples. One duplicate will be collected for every 10 samples generated during the project, sample-type specific, excluding TCLP samples. The duplicate sample will be analyzed for the same parameter suite as the parent sample. The field procedure simply involves filling a second set of containers and placing a notation in the field log about the duplicate sample.

#### **5.3.5.3 Matrix Spike/Matrix Spike Duplicates**

Matrix spikes provide information about the effect of the sample matrix on the digestion and measurement methodology. All matrix spikes are performed in duplicate and are referred to as MS/MSD samples. One MS/MSD sample will be analyzed for every 20 or fewer samples per sample matrix.

#### **5.3.6 Analytical Parameters and Testing Laboratory**

The post-treatment verification soil samples will be submitted for analysis of TCLP lead and any underlying hazardous constituents by U.S. EPA Method 1311/6020. The backfill samples will be submitted for analysis of RCRA 8 metals by U.S. EPA Method SW-846 6020/7471A, VOCs by U.S. EPA Method SW-846 8260B,

SVOCs by U.S. EPA Method SW-846 8270C, and TPH by U.S. EPA Method 8015. The excavated soil characterization samples will be submitted for analysis of TCLP lead by U.S. EPA Method SW-846 1311/6020B. Personal air samples will be submitted for analysis of total lead by NIOSH Method 7300. Perimeter air samples will be submitted for analysis of PM<sub>10</sub> by 40 CFR Appendix G or total lead by U.S. EPA SW-846 6020. All written laboratory turnaround times will be no more than 72 hours (three business days). Verbal turnaround times on soil samples should not be more than 48 hours (two business days). It is expected that samples collected on Fridays, Saturdays or before holidays may take one to two additional days.

The analytical laboratories that may be used for this project include:

TestAmerica Laboratories  
1733 N. Padre Island Drive  
Corpus Christi, Texas 78408  
(361) 289-2673  
Contact: Julie Darrow

Pace Analytical Services  
9608 Loiret Boulevard  
Lenexa, Kansas 66219  
(913) 599-5665  
Contact: Mary Jane Walls

Midwest Laboratories  
13611 B Street  
Omaha, Nebraska 68144  
(402) 334-7770  
Contact: Heather Ramig

Pace Analytical  
7726 Moller Road  
Indianapolis, Indiana 46268  
(317) 875-5894  
Contact: Mark Davis

These laboratories are accredited under the National Environmental Laboratory Accreditation Program (NELAP) and participate in a quality assurance/quality control (QA/QC) program that complies with the appropriate U.S. EPA guidance.

### **5.3.7 Sample Documentation**

Sample identification documents will be carefully prepared to maintain identification and control sample disposition. Components of the field documentation procedures will include the use of field logbooks, sample labels, custody seals, chain-of-custody (COC) forms, and photo-documentation.

### 5.3.7.1 Sample Labels and Custody Seals

Sample labels are necessary to prevent misidentification of samples. A self-adhesive sample label will be affixed to each sample container before collection. A permanent, waterproof pen will be used to record the following information on the sample label:

- Name of Site and project number;
- Sample identification number;
- Date and time of sample collection;
- Sample depth;
- Analysis to be performed;
- Preservatives used; and
- Sample collection type.

After the samples are placed in the shipping container, a custody seal will be placed on the container. The custody seal will be signed and dated by the field sampler.

### 5.3.7.2 Chain-of-Custody Forms

A COC form will be completed by the field sampler to record the custody of every sample collected. A COC form will accompany every shipment of samples to the analytical laboratory in order to establish the documentation necessary to trace sample possession from the time of sample collection through sample analysis. Information recorded on the COC form will include, but is not limited to, the following:

- Project name, number and location;
- Name of Project Manager, Sampler and Recorder;
- Sample identification number;
- Sampling information (sampling area description, depth, media type, type of sample, date and time of sample collection, etc.);
- Analysis to be performed;
- Preservatives used, if any; and
- Signatures of persons involved in COC possession, including dates and times.

When a COC form is filled out, 1 page of the 3-part form is retained and placed in a file. The other 2 parts of the form accompany the sample to the laboratory. One of those pages is retained by the laboratory and the other is returned with the laboratory analytical report. When the analytical report is received, it is cross-checked with the COC file record.

### **5.3.7.3 Field Logbook Records**

A field log of daily activities will be used to record sampling activities performed by field personnel on a daily basis. These books will be bound and will have consecutively numbered pages. Each logbook page will be dated and signed by all personnel making entries on that page. Entries in the field logbook will be made in waterproof ink and will contain accurate and complete descriptions of sampling activities, which include only facts and observations. Under no circumstances will pages be removed from the logbook. Information that will be documented in the field logbook will include, but is not limited to, the following:

- Name of author and sampling technician;
- Date and time of entry;
- Daily weather conditions;
- Objectives of sampling activities;
- Sample identification numbers;
- Sample location and description;
- Sample collection or measurement methods and/or procedures;
- Number of samples collected;
- Sampling depth increments;
- Field observations and comments;
- Field measurements;
- Locations of photographs; and
- Signatures of individuals making entries.

All field logbooks will be maintained by the field sampler. Any edits made to the field logbook will include one line strike through the area to be corrected and the line or area to be modified will be initialed and dated by the editor. All strike-outs will remain clearly legible. Upon project completion, all logbooks will become part of the file records.

### **5.3.7.4 Photo Documentation**

Photographs will be taken to document Site conditions and sampling activities. All photographs will be taken using a film camera or digital camera capable of recording the date on the image. Each photograph will be recorded in the field logbook with the location of the photographer, the direction the photograph was taken and the subject of the photograph. The photograph location and direction will also be shown on a Site sketch.

### **5.3.8 Sample Shipping**

For shipping, all samples will be packaged in such a manner as to prevent damage or breakage during shipment or transport. Although most samples collected during the removal action will be for metals, and thus will not require cooling, backfill samples to be analyzed for organics will be required to be packed in ice. Samples will

be placed into suitable containers, labeled and sealed in such a manner that tampering with the seal would be obvious. All sample holding times will be tracked and a copy of the COC form will accompany the samples in a sealed plastic bag. Samples will be shipped through an overnight parcel service by sampling personnel.

### **5.3.9 Quality Assurance/Quality Control**

#### **5.3.9.1 Quality Assurance**

Duplicate samples will be collected periodically to verify the validity of the analytical data. The use of QA samples should provide sufficient evidence to conclude that media samples are representative of the in-situ state of the media, and that constituents found within them are not overtly affected by chemicals from outside sources or cross-contamination.

Duplicate samples are collected as 2 sets of sample bottles filled from a single sample location. The sample is split in the field in a manner to ensure that the chemistry of the samples is as close to identical as possible. The sample identification number for the duplicate sample will be designated with an "X" at the end of the number. One duplicate sample will be collected for every 10 samples generated, except air samples, and will be analyzed for the same parameters as the parent sample.

Rinsate blanks (if non-disposal sampling equipment is used) will be collected at a 10 percent frequency interval for field quality assurance (QA) and quality control (QC). The laboratory QA/QC will include one matrix and one matrix spike duplicate (MS/MSD) for every 20 samples.

Filter blanks for time-integrated air samples will be submitted at a 20% frequency interval or 1 per week. The blank results will be reported as described in each specific method.

The QA targets for reporting limits, precision, accuracy, and completeness of the laboratory testing programs for each measurement parameter are presented in Table 2.

#### **5.3.9.2 Detection Limit Requirements**

The level of concern for each parameter directly affects the data quality requirements. Therefore, the sampling and analysis methods must be accurate at the level of concern. Furthermore, it is necessary that the analytical technique chosen has a detection limit well below the level of concern. Analytical methods that can accurately quantify constituents below their levels of concern will be used for the sample analyses. The detection limits will generally be an order of magnitude less than the levels of concern. It is necessary that data quality objectives be consistent with clean-up levels or other levels. The reporting limits for the parameters to be analyzed for this work are listed in Table 2.

#### **5.3.9.3 Data Reduction and Interpretation**

All data will be reviewed when the analytical report is received from the laboratory. The evaluation will consist of a review of the stated detection limits versus the target detection limits. The report will also be reviewed for any narratives or comments indicating data flags or qualifiers. Any suspect data will be presented to the laboratory for review and reconciliation. All available materials will be reviewed by the sampler to assess the overall quality of the data. The data will then be deemed validated as appropriate.

## **6.0 WORK PRODUCTS**

### **6.1 Daily, Weekly and Monthly Reports**

ENTACT will prepare and maintain daily fieldwork reports and other records to summarize all Site activities performed during the completion of the TCRA. At a minimum, the daily work reports will include a listing of personnel on-site, equipment utilized, work performed, problems encountered, if any, and resolutions and related information.

ENTACT will prepare status reports on a weekly basis to summarize activities performed at the Site during the previous week.

ENTACT will prepare progress reports for use by NL to update U.S. EPA which include the following:

- Describe actions which have taken place during the month and include photographs of the progress of work;
- Summarize all sample analytical results and all other data received or generated during the month;
- Identify and describe any property damage caused by ENTACT's performance of the TCRA Workplan and subsequent corrective action that occurred during the progress of work;
- Identify all documents completed and submitted during the month;
- Describe all actions which are scheduled for the next six weeks and information regarding the progress of construction activities; and
- Summarize any TCRA Workplan modifications proposed or approved.

### **6.2 Photographic Documentation**

Photographs will be taken during the project to document pre-existing conditions and to serve as a pictorial record of work progress, problems encountered and mitigation activities. ENTACT's file at the Site will contain color prints, labeled with the date and subject of the photograph. Negatives will also be stored in a separate file in chronological order. Digital photographs will be saved to the computer file and labeled as appropriate. Photographic reporting data sheets, where used, will be cross-referenced with observation and testing data sheets and/or construction problem and solution data sheets. Photographic documentation will also be included in the TCRA Report.

### **6.3 TCRA Report**

Within 45 days following the last inspection, ENTACT will prepare a written report for use by NL to provide to the U.S. EPA, which documents and certifies the completion of the TCRA activities. The TCRA Report will include, at a minimum, the following:

- An introduction and a brief discussion of the Site location, description and history;
- A summary of the remediation objectives and goals;

- A summary of the TCRA activities conducted at the Site, including mobilization and site preparation activities, excavation, treatment, off-site disposal, and demobilization;
- A summary of the analytical results for air, water, soil, and/or waste generated during the TCRA using Site maps and tables, including copies of laboratory analytical reports;
- A summary of the waste shipments, including copies of manifests or bills of lading for off-site shipments of waste or recyclable materials;
- If necessary, a summary of the approved modifications to the TCRA Workplan;
- Summary and proof of the institutional controls implemented for the Site, if necessary; and
- References.

#### **6.4 Conceptual Project Schedule**

The TCRA activities described in Section 3.0 will require approximately three months to complete. The work schedule will be based on a 5-6 day, 50-60 hour workweek. The expected sequencing of work activities will be as follows:

- Conduct mobilization and site preparation activities;
- Conduct removal action activities, i.e. excavation, treatment, off-site disposal, backfilling, and restoration, in Phase 1;
- Conduct removal action activities, i.e. excavation, treatment, off-site disposal, backfilling, and restoration, in Phase 2;
- Conduct removal action activities, i.e. excavation, treatment, off-site disposal, backfilling, and restoration, in Phase 3; and
- Demobilize personnel and equipment.

The sequencing of work activities may be modified in the field depending on Site conditions, work procedures, health and safety protocols, weather, and similar factors. The proposed project schedule is included as Figure 4 to this TCRA Workplan.

#### **6.5 Environmental Covenant**

Restrictive environmental covenants will be placed on the properties of the Site where residual contamination remains in place to notify current and future property owners or tenants of the known extent of contamination. The covenants will specify the location and extent of all residual contamination with concentrations above unrestricted use levels. These areas will require U.S. EPA approval prior to the start of any construction activities that disturb contaminated soil and will require notification for anyone engaged in subsurface activities, such as utility or construction workers, to the presence of residual contamination. The notifications will be consistent with U.S. EPA guidance and the Nebraska Uniform Environmental Covenants Act and will be recorded with the consent of the current property owners.

## **7.0 REFERENCES**

Environmental Data Resources, 2011. The EDR City Directory Abstract, Former Carter White Lead Site.

Environmental Data Resources, 2011. Certified Sanborn Map Report, Former Carter White Lead Site.

Environmental Data Resources, 2011. EDR Historical Topographic Map Report, Former Carter White Lead Site.

Environmental Data Resources, 2011. The EDR Chain of Title Report, Former Carter White Lead Site.

Tetra Tech EM Inc., 2010. Removal Assessment Report, Rev. 01, Former Carter White Lead Site, Omaha Nebraska. Prepared for U.S. EPA under Contract No. EP-S7-06-01 Task Order No. 0137.

## **FIGURES**

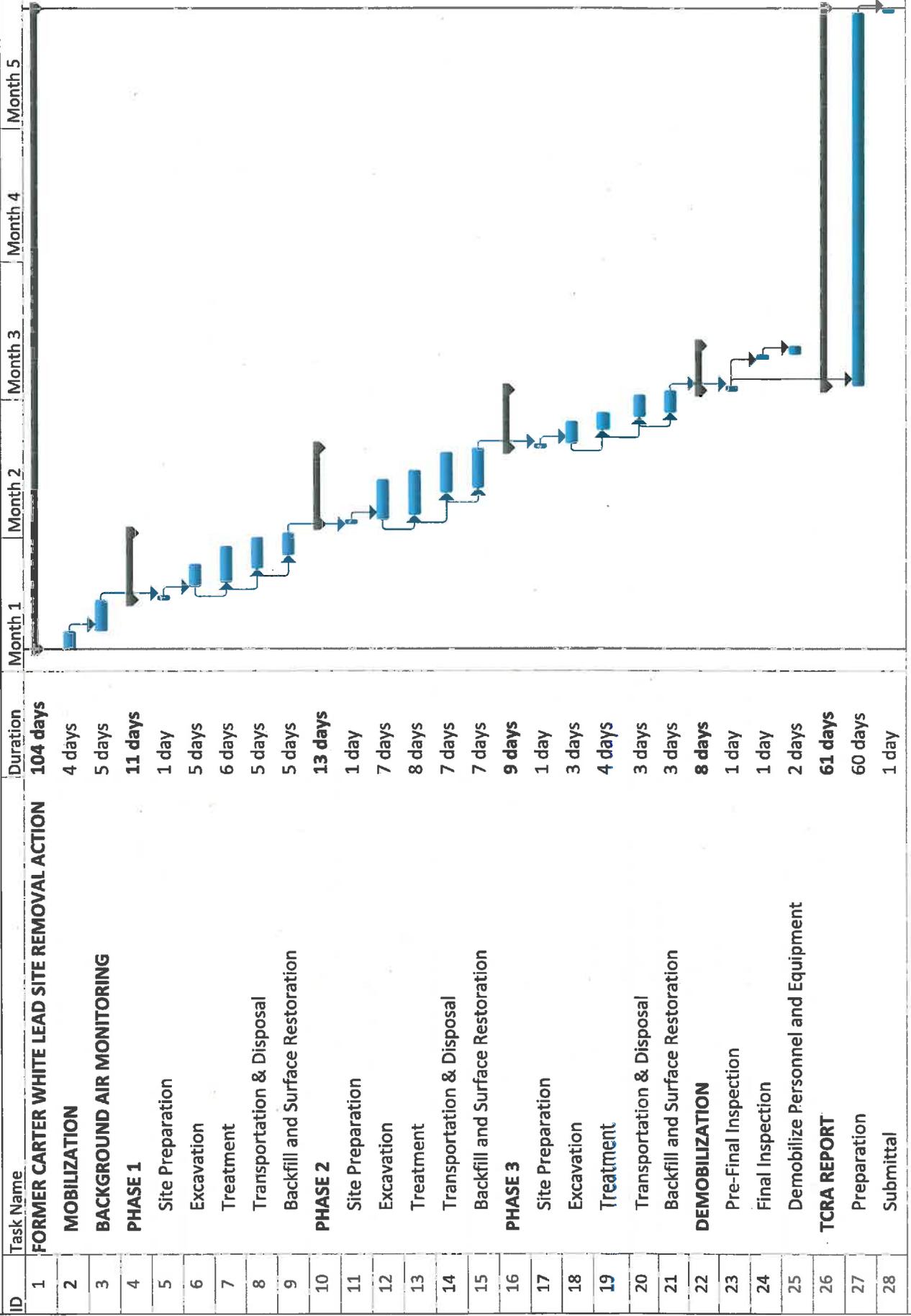






**FORMER CARTER WHITE LEAD SITE  
OMAHA, NE**

**FIGURE 4 - PROJECT SCHEDULE**



**APPENDIX A**

**NEBRASKA NPDES GENERAL PERMIT FOR  
STORMWATER DISCHARGES FROM CONSTRUCTION  
SITES #NER110000**

**Authorization to Discharge Under the  
National Pollutant Discharge Elimination System (NPDES)  
General NPDES Permit Number NER110000  
for Storm Water Discharges from  
Construction Sites to Waters of the State of Nebraska**

This NPDES general permit is issued in compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. Secs. 1251 *et. seq.* as amended to date), the Nebraska Environmental Protection Act (Neb. Rev. Stat. Secs. 81-1501 *et. seq.* as amended to date), and the Rules and Regulations promulgated pursuant to these Acts. Application may be made under this general permit for authorization to discharge Storm Water from construction sites. Owners or Operators issued a discharge authorization under this general permit are required to comply with the limits, requirements, prohibitions, and conditions set forth herein. The issuance of a discharge authorization under this general permit does not relieve Permittees of other duties and responsibilities under the Nebraska Environmental Protection Act, as amended, or established by regulations promulgated pursuant thereto.

**NPDES Permit Number: NER110000**

This permit shall become effective on **January 1, 2008**.

This permit and the authorization to discharge shall expire at midnight, **December 31, 2012**

Pursuant to a Delegation Memorandum dated January 12, 1999 and signed by the Director, the undersigned hereby executes this document on behalf of the Director.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

---

Patrick W. Rice  
Assistant Director

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## ATTACHMENTS

**Attachment # 1 Construction Storm Water Notice of Intent Form (CSW-NOI)**

**Attachment # 2 Construction Storm Water Transfer Form (CSW-TRANSFER)**

**Attachment # 3 Construction Storm Water Notice of Termination Form (CSW-NOT)**

*Terms written in **BOLDFACE** in this permit are defined in the Definitions section of Part VII.*

## PART I. COVERAGE UNDER THIS PERMIT

### A. Introduction

This permit is required and shall apply to **storm water** discharges associated with **construction activity** that causes land disturbance of equal to or greater than one acre and less than one acre if part of a larger **common plan of development or sale**. All references in this permit to **construction activity** shall be read to include both **large construction activity** and **small construction activity**. This permit authorizes the discharge of storm water from **construction activity** entering **waters of the state**, a **municipal separate storm sewer system (MS4)** or a **combined sewer** within the State of Nebraska. Discharges are subject to the specific terms and conditions in this permit.

This permit also authorizes **storm water** discharges from any other **construction activity**, as designated by the **Director**, where the designation is made based on the potential for an excursion of a water quality standard or for significant contribution of pollutants to **waters of the state**. The goal of this permit is to reduce or eliminate **storm water** pollution from **construction activity** by requiring implementation of appropriate pollution control practices to protect water quality.

### B. Permit Area

This permit provides **coverage** for **construction** and **support activity** throughout the State of Nebraska excluding tribal land within the State of Nebraska and as per limitations in Part I.C.3 of this permit.

### C. Eligibility

Permit eligibility is limited to discharges from **construction activity** as defined in Part VII or as otherwise designated by the Director. This general permit contains eligibility restrictions, as well as permit conditions and requirements. In such cases, you must continue to satisfy those eligibility provisions to maintain permit authorization. If you do not meet the requirements that are a pre-condition to eligibility, then resulting discharges constitute unpermitted discharges. By contrast, if you do not comply with the requirements of the general permit, you may be in violation of the general permit for your otherwise eligible discharges.

#### 1. Allowable Storm Water Discharges

Subject to compliance with the terms and conditions of this permit, you are authorized to discharge pollutants in:

- a. **Storm water** associated with **large and small construction activity** as defined in Part VII;
- b. **Storm water** discharges designated by the Director requiring a **storm water** permit under NDEQ Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System (NPDES) Chapter 2 002*;
- c. Discharges composed of allowable discharges listed in Part I.C.1.a and Part I.C.1.b commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization; and
- d. **Storm water** discharges from **support activities** (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

- 1) The **support activity** is directly related to the construction site required to have NPDES permit coverage for discharges of **storm water** associated with **construction activity**;
- 2) The **support activity** is not a commercial operation serving multiple unrelated construction projects by different **operators**, and does not operate beyond the completion of the **construction activity** at the last construction project it supports; and
- 3) Appropriate controls and measures are identified in a **Storm Water Pollution Prevention Plan (SWPPP)** covering the discharges from the **support activity** areas;

## 2. Allowable Non-Storm Water Discharges

You are authorized for the following non-storm water discharges, *provided the non-storm water component of the discharge is in compliance with Part III.D:*

- a. Discharges from fire-fighting activities;
- b. Fire hydrant flushings;
- c. Waters used to wash vehicles where detergents are not used;
- d. Water used to control dust;
- e. Potable water including uncontaminated water line flushings;
- f. Routine external building wash down that does not use detergents;
- g. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- h. Uncontaminated air conditioning or compressor condensate;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials such as solvents; and
- k. Landscape irrigation.

## 3. Limitations on Coverage

This permit does not authorize the following **storm water** runoff conditions and may be the basis for denial or termination of authorization under this general permit. The **Department** shall be consulted prior to your submission of the **CSW-NOI** if any of the following conditions apply:

- a. This permit does not authorize post-construction discharges that originate from the site after construction activities have been completed and the site has achieved **final stabilization**, including any temporary **support activity**. Post-construction **storm water** discharges from industrial sites may need to be covered by a separate NPDES permit.
- b. This permit does not authorize discharges mixed with non-storm water. This exclusion does not apply to discharges identified in Part I.C.2 provided the discharges are in compliance with Part III.D.
- c. This permit does not authorize **storm water** discharges associated with **construction activity** that have been covered under an individual NPDES permit or required to obtain **coverage** under an alternative general permit in accordance with Part IV.A.
- d. This permit does not authorize discharges that the Director, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality or groundwater quality standards. Where such a determination is made prior to authorization, NDEQ may notify you that an individual permit application is necessary in accordance with Part IV.A. However, NDEQ may authorize your **coverage** under this permit after you have included appropriate controls and implementation procedures in your **SWPPP** designed to bring your discharge into compliance with water quality standards.
- e. Storm water runoff from construction activity within the limits of any tribal lands under the jurisdiction of the United States Government, dependent tribal communities within the borders of the United States, or other tribal allotments;
- f. Non-point source agricultural and silvicultural discharges;

- g. Those storm water discharges for which storm water effluent guideline limitations apply;
- h. Those from an operating landfill;
- i. Storm water runoff from field activities or operations, including construction, associated with oil and gas exploration, production, processing or treatment operations or transmission facilities as dictated by NDEQ Title 119, Chapter 10.
- j. Storm water runoff that may adversely impact critical habitat of aquatic related, threatened or endangered species as designated by Nebraska Game and Parks Commission ([www.ngpc.state.ne.us](http://www.ngpc.state.ne.us)) or the U.S. Fish and Wildlife Service ([www.fws.gov](http://www.fws.gov)).
- k. Storm water runoff that may adversely affect properties listed or eligible for listing in the National Register of Historic Places ([www.nebraskahistory.org](http://www.nebraskahistory.org)) or affecting known or discovered archeological sites; or
- l. Those that the Director determines would be more effectively regulated with a site specific, area specific, or a basin specific permit.

#### 4. Period of Coverage

- a. This permit is effective as of the issued date and is effective for five years.
- b. Coverage shall commence at the time discharge authorization is granted and shall continue for a period lasting at least 180 days after final stabilization and **Notice of Termination** is received for the site.
- c. The Director can extend coverage under the permit beyond the time period specified in this section if excessive erosion problems remain at the site.

## PART II. AUTHORIZATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITY

To obtain **coverage** under this general permit, you must prepare and submit a complete and accurate construction **storm water Notice of Intent (CSW-NOI)**, as described in this Part. Discharges are not authorized if your **CSW-NOI** is incomplete or inaccurate or if you were never eligible for permit **coverage**.

### A. Authorization to discharge date

- 1. If you submit a **CSW-NOI** after the issuance date of this permit you are authorized to discharge **storm water** from construction activities under the terms and conditions of this permit seven (7) calendar days after submittal to NDEQ of a complete and accurate **CSW-NOI** (i.e., 7 days from date of postmark), except as noted in Part II.A.2. The Department will notify you of the permit authorization in writing.
- 2. The **Director** may delay your authorization based on eligibility considerations of Part I.C. In these instances, you are not authorized for **coverage** under this permit until you receive notice from NDEQ of your eligibility.

### B. CSW Notice of Intent Contents

You must use the **CSW-NOI** form provided in *Attachment 1* (or a photocopy thereof or electronic **CSW-NOI** form that may become available during the term of this permit provided by NDEQ), You must provide the following information on the **CSW-NOI** form:

- 1. Project/Site name, address, county or similar governmental subdivision, and latitude/longitude of your construction project or site;
- 2. The **certifying official's** legal name, address and phone number;
- 3. The **SWPPP** designer name, company, address and phone number;
- 4. The location where the applicable **SWPPP** may be viewed;
- 5. A site map as described in Part III.B.1.d of this permit;
- 6. Name of the **water(s) of the state** into which your site discharges;

7. Estimated dates of commencement of **construction activity** and **final stabilization** (i.e., project start and completion dates);
8. Total acreage (to the nearest quarter acre) to be disturbed for which you are requesting permit **coverage**;
9. Any state or federally-listed threatened or endangered species, or state or federally-designated critical habitat are in your project area to be covered by this permit.
10. A certification statement, signed and dated by an **certifying official** as defined in Part VI.D.

### C. Submission Deadlines

1. **New Projects:** To obtain **coverage** under this permit, you must submit a complete and accurate **CSW-NOI** and be authorized consistent with Part II.A.1 prior to commencement of construction activities.
2. **Permitted Ongoing Projects (only applicable for first 90 days after this permit is issued):** If you previously received authorization to discharge for your project under the 1997 Construction Storm Water General Permit (CSW-1997) and you wish to continue **coverage** under this permit:
  - a. Submit an **CSW-NOI** within 90 days of the issuance date of this permit, and
  - b. Until you are authorized under this permit consistent with Part II.A, comply with the terms and conditions of the CSW-1997 general permit under which you were previously authorized.
  - c. If you meet the termination of **coverage** requirements in accordance with Part V.A within 90 days of the issuance date of this permit (e.g., construction will be finished and **final stabilization** achieved) you must:
    - 1) Submit an **CSW-NOT** using the form provided in Attachment #3, and
    - 2) Until coverage is no longer required, comply with the terms and conditions of the CSW-1997 general permit under which you were previously authorized.

### 3. Late Notifications:

You are not prohibited from submitting a **CSW-NOI** after initiating clearing, grading, excavation activities, or other construction activities. When a late **CSW-NOI** is submitted, authorization for discharges occurs consistent with Part II.A. The **Department** reserves the right to take enforcement action for any unpermitted discharges that occur between the commencement of construction and discharge authorization.

### D. Where to Submit

Original applications and forms (no photocopies or faxes) for NPDES General Permit NER110000 shall be submitted to the following address:

**Water Quality Division**  
**Storm Water**  
Suite 400, The Atrium  
1200 'N' Street  
PO Box 98922  
Lincoln Nebraska 68509-8922

### E. Additional Requirements

1. The Department may request additional information from the source:
  - a. To facilitate the review of the **CSW-NOI**;
  - b. To finalize a determination related to the granting of a discharge authorization; or
  - c. To determine whether a site specific, area specific, or basin specific permit application may be required.
2. When **storm water** is discharged through **municipal separate storm sewer systems**, applicants shall concurrently submit a copy of NPDES form **CSW-NOI** to the **operator** of the **municipal separate storm sewer system** through which they discharge. Appendix B has a listing of those municipalities that are permitted under the **Municipal Separate Storm Sewer program**.

3. Other government agencies (e.g. US Army Corps of Engineers, Local City/County Government, or the local Natural Resource District) may have additional notification requirements. Submittal of the NPDES form CSW-NOI does not relieve the applicant of responsibility to comply with the requirements of other government agencies.

### **PART III. STORM WATER POLLUTION PREVENTION PLANS (SWPPP)**

#### **A. Storm Water Pollution Prevention Plan Framework**

1. A SWPPP must be prepared prior to submission of a CSW-NOI as required in Part II.B. The SWPPP must be prepared by a qualified individual such as a Professional Engineer, Certified Landscape Architect, and /or Certified Professional in Erosion and Sediment Control.
2. The SWPPP must:
  - a. Identify all potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site;
  - b. Minimize erosion on disturbed areas and minimize the discharge of sediment and other pollutants in storm water runoff;
  - c. Describe practices to be used to reduce pollutants in storm water discharges from the construction site; and
  - d. Assure compliance with the terms and conditions of this permit.
3. Once a definable area has achieved **final stabilization**, you may mark this on your SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally **stabilized**, one mile of a roadway or pipeline project is done and finally **stabilized**, etc).
4. You must implement the SWPPP as written from commencement of **construction activity** until **final stabilization** is complete.

#### **B. Pollution Prevention Plan Contents: Site and Activity Description**

1. The SWPPP must describe the nature of the **Construction Activity**, including:
  - a. The function of the project (e.g., low density residential, shopping mall, highway, etc.);
  - b. The intended sequence and timing of activities that disturb soils at the site;
  - c. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including dedicated off-site borrow and fill areas; and
  - d. A general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with enough detail to identify the location of the construction site and waters of the state within one mile of the site.
2. The SWPPP must contain legible site map(s) showing the entire site during grading, construction, and post-construction phases, identifying:
  - a. Direction(s) of storm water flow and approximate slopes anticipated after major grading activities;
  - b. Areas of soil disturbance and areas that will not be disturbed;
  - c. Locations of major structural and nonstructural **Best Management Practices (BMPs)** identified in the SWPPP;
  - d. Locations where stabilization practices are expected to occur;
  - e. Locations of off-site material, waste, borrow or equipment storage areas;
  - f. Locations of all **Waters of the State** (including wetlands);
  - g. Locations where storm water discharges to a surface water; and
  - h. Areas where **final stabilization** has been accomplished and no further construction-phase permit requirements apply.

3. The **SWPPP** must describe and identify the location and description of any **storm water** discharge associated with industrial activity other than construction at the site. This includes **storm water** discharges from dedicated asphalt plants and dedicated concrete plants, which are covered by this permit.

### **C. Pollution Prevention Plan Contents: Controls to Reduce Pollutants**

1. The **SWPPP** must include a description of all pollution control measures (i.e., **BMPs**) that will be implemented as part of the **Construction Activity** to control pollutants in **storm water** discharges. For each major activity identified in the project description the **SWPPP** must clearly describe appropriate control measures and the general sequence during the construction process in which the measures will be implemented.
2. The **SWPPP** must include a description of interim and permanent stabilization practices for the site including a schedule of when the practices will be implemented.
3. The following records must be maintained as part of the **SWPPP**:
  - a. Dates when major grading activities occur;
  - b. Dates when construction activities temporarily or permanently cease on a portion of the site; and
  - c. Dates when stabilization measures are initiated.
4. The **SWPPP** must include a description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site.
5. The **SWPPP** must include a description of all post-construction **storm water** management measures that will be installed during the construction process to control pollutants in **storm water** discharges after construction operations have been completed. Such measures must be designed and installed in compliance with applicable federal, state, and local requirements. Maintenance plans of permanent management measures must be included in the **SWPPP**.
6. The **SWPPP** must describe measures to prevent the discharge of solid materials, including building materials and cement truck washout to **waters of the state**, except as authorized by a permit issued under section 404 of the CWA.
7. The **SWPPP** must describe measures to minimize, to the extent practicable, off-site vehicle tracking of sediments onto paved surfaces and the generation of dust.
8. The **SWPPP** must include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The **SWPPP** must also include a description of controls, including storage practices, to minimize exposure of the materials to **storm water**, and **spill prevention control and countermeasure** practices.
9. The **SWPPP** must include a description of pollutant sources from areas other than construction (including **storm water** discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.

### **D. Non-Storm Water Discharge Management**

The **SWPPP** must identify all allowable sources of non-**storm water** discharges listed in Part I.C.2 of this permit, except for flows from fire fighting activities that are combined with **storm water** discharges associated with **Construction Activity** at the site. Non-**storm water** discharges should be eliminated or reduced to the extent feasible. The **SWPPP** must identify and ensure the implementation of appropriate pollution prevention measures for the non-**storm water** component(s) of the discharge.

### **E. Maintenance of Controls**

1. All erosion and **sediment control** measures and other protective measures identified in the **SWPPP** must be maintained in effective operating condition. If site inspections required by Part III.I identify **BMPs** that are not operating effectively, maintenance must be performed within seven days and before the next storm event whenever practicable to maintain the continued effectiveness of **storm water** controls.

2. If existing **BMPs** need to be modified or if additional **BMPs** are necessary for any reason, implementation must be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation must be documented in the **SWPPP** and alternative **BMPs** must be implemented as soon as possible.
3. Sediment from sediment traps or sedimentation ponds must be removed when design capacity has been reduced by 50 percent.

#### **F. Permit Eligibility Related to Endangered Species**

The **SWPPP** must include documentation supporting a determination of permit eligibility with regard to Endangered Species, including:

1. Information on whether state or federally-listed endangered or threatened species, or designated critical habitat may be in the project area;
2. Whether such species or critical habitat may be adversely affected by **storm water** discharges or **storm water** discharge-related activities from the project;
3. Any correspondence for any stage of project planning between the U.S. Fish and Wildlife Service (FWS), Nebraska Game and Parks Commission (NGPC), EPA, NDEQ or others and you regarding listed species and critical habitat, including any notification that delays your authorization to discharge under this permit;
4. A description of measures necessary to protect state- and federally-listed endangered or threatened species, or state and federally-designated critical habitat. The **permittee** must describe and implement such measures to maintain eligibility for **coverage** under this permit.

#### **G. Copy of Permit Requirements**

Copies of this permit and of the signed and certified **CSW-NOI** form that was submitted to NDEQ must be included in the **SWPPP**. Also, upon receipt, a copy of the letter from the NDEQ notifying you of their receipt of your administratively complete **CSW-NOI** must also be included as a component of the **SWPPP**.

#### **H. Applicable State, or Local Requirements**

The **SWPPP** must be consistent with all applicable federal, state, or local requirements for soil and erosion control and **storm water** management, including updates to the **SWPPP** as necessary to reflect any revisions to applicable federal, state, or local requirements for soil and erosion control.

#### **I. Inspections**

1. Inspections must be conducted at least once every fourteen (14) calendar days, and within 24 hours of the end of a storm event of 0.5 inches or greater. Any delay in the replacement or maintenance of non-functional **BMPs** beyond seven (7) calendar days shall be documented in the **SWPPP** with sufficient detail as to explain the reason for the delay.
2. Inspection frequency may be reduced to at least once every month if:
  - a. The entire site is temporarily **stabilized**;
  - b. Runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or the ground is frozen);
  - c. Reduced inspection frequency does not relieve the permittee of the maintenance responsibilities during interim periods.
3. Inspections must be conducted by qualified personnel (provided by the **operator** or cooperatively by multiple **operators**). "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and **sediment controls** who possesses the skills to assess conditions at the construction site that could impact **storm water** quality and to assess the effectiveness of any erosion and **sediment control** measures selected to control the quality of **storm water** discharges from the **construction activity**.

4. Inspections must include all areas of the site disturbed by **construction activity** and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the **storm water** conveyance system. Erosion and **sediment control** measures identified in the **SWPPP** must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether control measures are effective in preventing significant impacts to **waters of the state**, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking.
5. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described above. Inspection of these areas could require that vehicles compromise temporarily or even permanently **stabilized** areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile inspected segment, or to the end of the project, whichever occurs first.
6. For each inspection required above, you must complete an inspection report. At a minimum, the inspection report must include:
  - a. The inspection time and date;
  - b. Names, titles, and qualifications of personnel making the inspection;
  - c. Weather information for the period since the last inspection (or since commencement of **construction activity** if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;
  - d. Weather information and a description of any discharges occurring at the time of the inspection;
  - e. Location(s) of discharges of sediment or other pollutants from the site;
  - f. Location(s) of **BMPs** that need to be maintained;
  - g. Location(s) of **BMPs** that failed to operate as designed or proved inadequate for a particular location;
  - h. Monitoring results if requested;
  - i. Records of the last grading activity;
  - j. Location(s) where additional **BMPs** are needed that did not exist at the time of inspection; and
  - k. Corrective action required including any changes to the **SWPPP** necessary and implementation dates.

A record of each inspection and of any actions taken must be retained as part of the **SWPPP** for at least three years from the date that permit **coverage** expires or is terminated. The inspection reports must identify any incidents of non-compliance with the permit conditions. Where a report does not identify any incidents of non-compliance, the report must contain a certification that the construction project or site is in compliance with the **SWPPP** and this permit. The report must be signed in accordance with Part VI.D.6 of this permit.

#### **J. Maintaining an Updated Plan**

1. The **SWPPP**, including the site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants to **waters of the state** that has not been previously addressed in the **SWPPP**.
2. The **SWPPP** must be amended if during inspections or investigations by site staff, or by local, state, or federal officials, it is determined that the **SWPPP** is ineffective in eliminating or significantly minimizing pollutants in **storm water** discharges from the construction site.

3. Based on the results of an inspection, the **SWPPP** must be modified as necessary to include additional or modified **BMPs** designed to correct problems identified. Revisions to the **SWPPP** must be completed within seven (7) calendar days following the inspection. Implementation of these additional or modified **BMPs** must be accomplished as described in Part III.E.

#### **K. Signature, Plan Review and Making Plans Available**

1. A copy of the **SWPPP** (including a copy of the permit), **CSW-NOI**, and the letter from **NDEQ** notifying you of the receipt of the complete and accurate **CSW-NOI** must be retained at the construction site or other location easily accessible during normal business hours. The **SWPPP** must be made available upon request to Federal, State, and local agencies, from the date of commencement of construction activities to the date of **final stabilization**.
2. A sign or other notice must be posted conspicuously near the main entrance of the construction site. If displaying near the main entrance is infeasible, the notice can be posted in a local public building such as the town hall or public library. The sign or other notice must contain the following information:
  - a. A copy of the completed **CSW-NOI** as submitted to the **NDEQ**; and
  - b. If the location of the **SWPPP** or the name and telephone number of the contact person for scheduling **SWPPP** viewing times has changed (i.e., is different than that submitted to **NDEQ** in the **CSW-NOI**), the current location of the **SWPPP** and name and telephone number of a contact person for scheduling viewing times. For linear projects, the sign or other notice must be posted at a publicly accessible location near the active part of the construction project (e.g., where a pipeline project crosses a public road).

#### **L. Management Practices**

1. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the **operator** must replace or modify the control for site situations as soon as practicable.
2. If sediment escapes the construction site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts. Sediment escaping the construction site indicates there may be insufficient **BMPs** to control runoff.
3. Litter, construction debris, and construction chemicals that could be exposed to **storm water** must be prevented from becoming a pollutant source in **storm water** discharges.
4. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the **construction activity** in that portion of the site has temporarily or permanently ceased.
  - a. Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.
  - b. Where **construction activity** on a portion of the site is temporarily ceased, and earth disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the site.
  - c. In semiarid and drought-stricken areas where initiating perennial vegetative stabilization measures is not possible within 14 days after **construction activity** has temporarily or permanently ceased, final vegetative stabilization measures must be initiated as soon as practicable.
5. Velocity dissipation devices must be placed at discharge locations and along the length of any **outfall** channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

## M. Final Stabilization

The Permittee shall be responsible for ensuring that **final stabilization** is accomplished on all **non-impervious surfaces** of the authorized construction site prior to submitting form CSW-NOT.

1. Coverage under this permit is normally terminated 180 calendar days after:
  - a. All soil disturbing **construction activity** has been completed;
  - b. A uniform perennial vegetative cover with a minimum density of 70 percent of the native background vegetative cover, has been established on all **non-impervious surfaces** and areas not covered by permanent structures unless equivalent permanent stabilization (such as riprap, gabions, and geotextiles) measures have been employed;
  - c. All permanent drainages, constructed to drain water from the site, has been **stabilized** to prevent erosion;
  - d. All **temporary erosion protection** and **sediment control BMPs** have been removed without compromising the permanent erosion protection and **sediment control BMPs**;
  - e. All sediment build-up has been removed from conveyances and basins that are to be used as permanent water quality management **BMPs**. The cleanout of permanent basins used as temporary **BMPs** during construction shall be sufficient to return the basin to design capacity.
  - f. Responsibility for long-term maintenance of permanent BMPs must be assigned.
  - g. **Construction activity** conducted on or through agricultural or silvicultural land shall be considered finally **stabilized** upon return to the preexisting agriculture or silviculture use;
  - h. **Construction activity** conducted at new industrial facilities that will operate the site in an exposed manner (such as limestone mining and solid waste landfills) shall be considered finally **stabilized** upon commencement of industrial activity consistent with the industrial use and **coverage** under the appropriate NPDES permit for industrial **storm water**.

## PART IV. SPECIAL CONDITIONS, MANAGEMENT PRACTICES, OTHER NON-NUMERIC LIMITATIONS

### A. Requiring an Individual Permit or an Alternative General Permit

1. NDEQ may require you to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition NDEQ to take action under this paragraph. If NDEQ requires you to apply for an individual NPDES permit, NDEQ will notify you in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and an application form. In addition, if you are an existing **permittee** covered under this permit, the notice will set a deadline to file the application, and will include a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to you, **coverage** under this general permit will automatically terminate. Applications must be submitted to NDEQ. NDEQ may grant additional time to submit the application upon your request. If you are covered under this permit and you fail to submit in a timely manner an individual NPDES permit application as required by NDEQ, then the applicability of this permit to you is automatically terminated at the end of the day specified by NDEQ as the deadline for application submittal.
2. You may request to be excluded from the **coverage** of this general permit by applying for an individual permit. In such a case, you must submit an individual application in accordance with the requirements of NDEQ Title 119, with reasons supporting the request to NDEQ. The request may be granted by issuance of an individual permit or an alternative general permit if your reasons are adequate to support the request.
3. When an individual NPDES permit is issued to you, who are otherwise subject to this permit, or you are authorized to discharge under an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the effective date of the individual permit or the date of authorization of **coverage** under the alternative general permit, whichever the case may be. If you, who are otherwise subject to this permit, are denied an individual NPDES permit or an alternative NPDES general permit,

the applicability of this permit to you is automatically terminated on the date of such denial, unless otherwise specified by NDEQ.

## **B. Oil and Hazardous Substances/Spill Notification**

The discharge of hazardous substances or oil in **storm water** discharges from the construction site must be prevented or minimized in accordance with the **SWPPP**. This permit does **not** authorize the discharge of hazardous substances or oil resulting from an on-site spill. The **Permittee** shall conform to the provisions set forth in NDEQ Title 126, *Rules and Regulations Pertaining to the Management of Wastes* and federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oil or hazardous substances.

If the **permittee** knows, or has reason to believe, that a release containing a **hazardous substance** or oil in an amount equal to or in excess of a reportable quantity established under NDEQ Title 126, 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302, occurs during a 24-hour period:

1. **Permittee** shall immediately notify the **Department** of a release of oil or hazardous substances. During office hours (i.e., 8:00 a.m. to 5:00 p.m., Monday through Friday, except holidays), notification shall be made to the **Department** at telephone numbers (402) 471-2186 or (877) 253-2603 (toll free).
2. When NDEQ cannot be contacted, the **Permittee** shall report to the Nebraska State Patrol for referral to the NDEQ Emergency Response Team at telephone number (402) 471-4545. It shall be the **Permittee's** responsibility to maintain current telephone numbers necessary to carry out the notification requirements set forth in this paragraph.
3. **Permittee** must modify the **SWPPP** as required under Part III.J within **7** calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. Plans must identify measures to prevent the reoccurrence of such releases and to respond to such releases.

## **C. Attainment of Water Quality Standards After Authorization**

1. You must select, install, implement and maintain **BMPs** at your construction site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. In general, except in situations explained in this section, your **SWPPP** developed, implemented, and updated consistent with Part III is considered as stringent as necessary to ensure that your discharges do **not** cause or contribute to an excursion above any applicable water quality standard.
2. At any time after authorization NDEQ may determine that your **storm water** discharges may cause, have reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. If such a determination is made, NDEQ will require you to:
  - a. Develop a supplemental BMP action plan describing **SWPPP** modifications in accordance with Part III to address adequately the identified water quality concerns;
  - b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
  - c. Cease discharges of pollutants from **Construction Activity** and submit an individual permit application according to Part IV.A.

All written responses required under this part must include a signed certification from the **certifying official**.

## **D. Discharges Affecting Endangered or Threatened Species**

This permit does not replace or satisfy any review requirements for Endangered or Threatened species from new or expanded discharges that adversely impact or contribute to adverse impacts on a listed endangered or threatened species or adversely modify a designated critical habitat. The **owner** must conduct any required review and coordinate with appropriate agencies for any project with the potential of affecting threatened or endangered species, or their critical habitat.

#### **E. Discharges Affecting Historical Places or Archeological Sites**

This permit does not replace or satisfy any review requirements for Historic Places or Archeological Sites, from new or expanded discharges which adversely affect properties listed or eligible for listing in the National Register of Historic Places or affecting known or discovered Archeological Sites. The **owner** must be in compliance with National Historic Preservation Act and conduct all required review and coordination related to historic preservation, including significant anthropological sites and any burial sites, with the Nebraska Historic Preservation Officer. You must comply with all applicable state, and local laws concerning the protection of historic properties and places, your discharge authorization under this permit is contingent upon this compliance.

#### **F. Activities/Discharges subject to other Applicable Regulations**

This permit does not replace or satisfy any other applicable regulatory requirements that the applicant/permittee is subject to. The initiator of any controlled/regulated activity is the sole responsible party for obtaining authorization or permit **coverage** and for maintaining compliance with any applicable laws, regulations or rules that may apply to their activities.

#### **G. Continuation of the Expired General Permit**

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act and remain in force and effect. If you were granted permit coverage prior to the expiration date, you will automatically remain covered by the continued permit until reissuance or replacement of this permit, at which time you must comply with the conditions of Part II C.2; or

1. Submit of a Notice of Termination form; or
2. Apply for coverage under an individual permit for the project's discharges; or
3. If NDEQ determines a general permit will not be reissued, you must seek coverage under an alternative general permit or an individual permit.

### **PART V. TERMINATION, TRANSFER OR REASSIGNMENT OF PERMIT COVERAGE**

#### **A. Notice of Termination Requirements**

You may only submit a **Notice of Termination (NOT)** after one or more of the following conditions have been met:

1. **Final stabilization** has been achieved on all portions of the site for which you are responsible;
2. Another **operator** has assumed control according to Part VI.D.6 over all areas of the site that have not been finally **stabilized**;
3. **Coverage** under an individual or alternative general NPDES permit has been obtained; or
4. For residential construction only, **temporary erosion protection** has been completed and the residence has been reassigned to the homeowner.

The CSW-NOT must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight of the day the CSW-NOT is signed.

#### **B. Submitting a Notice of Termination**

It is your responsibility to submit a complete and accurate **Notice of Termination (CSW-NOT)** form *Attachment #3*. If NDEQ notifies dischargers (either directly, by public notice, or by making information available on the Internet) of other CSW-NOT form options (e.g., electronic submission), you may take advantage of those options to satisfy the requirements of Part V.

1. After one or more of the **Notice of Termination Requirements** in Part V.A has been met, submit the following information to the NDEQ:
  - a. The NPDES permit authorization number for the **storm water** discharge;

- b. The basis for submission of the **CSW-NOT**, including: **final stabilization** has been achieved on all portions of the site for which the **permittee** is responsible; another **operator/permittee** has assumed control over all areas of the site that have not been finally **stabilized**; **coverage** under an alternative **NPDES** permit has been obtained; or, for residential construction **only**, **temporary erosion protection** has been completed and the residence has been transferred to the homeowner;
- c. The **Certifying Official's** legal name, address and phone number;
- d. The name of the project, address (or a description of location if no street address is available), and county of the construction site for which the notification is submitted; and
- e. A certification statement signed and dated by a **certifying official**.

**C. Transfer of Permit**

When responsibility for **storm water** discharges at a construction site changes from one entity to another, the **permittee** shall submit a completed Notice of Transfer, *Attachment #2*, that is signed in accordance with Part VI.D.6 of this permit.

- 1. The Notice of Transfer (CSW-Transfer), *Attachment # 2*, includes:
  - a. Permit certification number;
  - b. Name, location, and county for the construction site for which the CSW-Transfer is being submitted;
  - c. Identifying information for the new **permittee**;
  - d. Identifying information for the current **permittee**; and
  - e. Effective date of transfer;
- 2. Other Requirements of a Permit Transfer:
  - a. If the **storm water** discharge, associated with **construction activity**, is covered by this permit then the new **owner(s)** shall comply with all terms and conditions of this permit.
  - b. A copy of the CSW-Transfer shall be included in the **SWPPP**.
  - c. A **CSW-NOI** shall be submitted to NDEQ by the new owner(s).
  - d. For **construction activity** which is part of a larger **common plan of development**, if the **permittee** transfers ownership of all or any part of property subject to this permit, both the **permittee** and transferee shall be responsible for compliance with this permit for that portion of the project which has been transferred including when the transferred property is less than one acre in area.
  - e. If the new **owner(s)** agree in writing to be solely responsible for compliance with this permit for the property that has been transferred, then the existing **permittee(s)** authorization shall be terminated.

**D. Where to Submit**

All paperwork must be submitted to the following address:

**Water Quality Division**  
**Storm Water**  
 Suite 400, The Atrium  
 1200 'N' Street  
 PO Box 98922  
 Lincoln, Nebraska 68509-8922

**PART VI. STANDARD CONDITIONS AND REQUIREMENTS**

These general conditions shall not preempt any more stringent requirements found elsewhere in this permit.

**A. Other Conditions**

- 1. Narrative Limits
  - Discharges authorized under this permit;
    - a. Shall not be toxic to aquatic life in surface **waters of the state**;

- b. Shall not contain pollutants at concentrations or levels that produce objectionable films, colors, turbidity, deposits, or noxious odors in the receiving stream or waterway; and
- c. Shall not contain pollutants at concentrations or levels that cause the occurrence of undesirable or nuisance aquatic life in the receiving stream.

2. Inspection and Entry

The **permittee** shall allow the **Director** or his appointed representative, upon the presentation of his identification and at a reasonable time:

- a. To enter upon the **permittee's** premises where a regulated **construction activity** is located or conducted, or records are required to be kept under the terms and conditions of this permit;
- b. To have access to and copy any records required to be kept under the terms and conditions of this permit;
- c. To inspect any facilities, equipment (including monitoring and control), practices or operations regulated or required in this permit; and
- d. To sample or monitor any substances or parameters at any location.

3. Changes in Discharge

Any revision in the size of **construction activity** (such as the addition of disturbed acres not previously identified under the original CSW-NOI form), which will result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants must be reported by the **permittee** seven (7) calendar days prior to the expansion, increases or modifications by submitting a modification of the original form CSW-NOI or by submitting a new form CSW-NOI. Permit authorization may be modified or revoked and reissued as a result of this notification to maintain compliance with applicable state or federal regulations.

**B. Procedures for Modification or Revocation**

Permit modification or revocation will be conducted according to Title 119, Chapter 24.

If there is evidence indicating that the **storm water** discharges authorized by this permit cause, have the reasonable potential to cause or contribute to an excursion above any applicable water quality standard, you may be required to obtain an individual permit in accordance with Part IV.A of this permit, or the permit may be modified to include different limitations and/or requirements.

**C. Timing of Permit Modification**

- 1. NDEQ may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines, that may be promulgated in the course of the current permit cycle.

**D. Management Requirements**

1. Duty to Comply

All authorized discharges shall be consistent with the terms and conditions of this permit. The **Permittee** shall comply with all conditions of this permit. Failure to comply with these conditions may be grounds for administrative action or enforcement proceedings including injunctive relief and civil or criminal penalties. The filing of a request by the **Permittee** for a permit modification, revocation and re-issuance, termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

2. Duty to Mitigate

The **Permittee** shall take all reasonable steps to minimize, prevent or correct any adverse impact to the environment resulting from noncompliance with this permit, including such accelerated or additional monitoring as required by the NDEQ to determine the nature and impact of the noncompliant discharge.

3. Duty to Provide Information

The **Permittee** shall furnish to the **Department** within seven (7) calendar days, any information which the **Department** may request to determine whether cause exists for modifying, revoking and reissuing, or terminating permit **Coverage**; or to determine compliance with this permit. The **Permittee** shall also furnish to the **Department** upon request, copies of records retained as a requirement of this permit.

4. Reporting Requirements

The **Permittee** shall be responsible for reporting any instance of non-compliance with the terms and conditions of this permit in accordance with NDEQ Title 119, Chapter 14. In most instances, initial notification shall be made as soon as the **Permittee** becomes aware of the non-compliance. A written follow-up shall be submitted within five (5) days of reporting the non-compliance. The submittal of a written noncompliance report does not relieve the **Permittee** of any liability from enforcement proceedings that may result from the violation of permit or regulatory requirements. The written notice shall include, at a minimum:

- a. A description of the discharge and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times, or if not corrected, the anticipated time the noncompliance is expected to continue; and
- c. The steps taken to reduce, eliminate, and prevent the reoccurrence of the noncompliance.

5. Proper Operation and Maintenance

The **Permittee** shall, at all times, maintain in good working order and operate as efficiently as possible, any facilities or systems of control installed by the **Permittee** in order to achieve compliance with the terms and conditions of this permit. This would include, but not be limited to, effective performance based on designed facility removals, effective management, adequate **Operator** staffing and training, adequate laboratory and process controls, and adequate funding that reflects proper user fee schedules.

6. Signatory Requirements

All reports and applications required by this permit or submitted to maintain compliance with this permit shall be signed and certified as set forth in this section.

- a. Permit applications shall be signed by a **certifying official** who meets the following criteria:
  - 1) For a corporation: a **responsible corporate officer**;
  - 2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
  - 3) For a municipality, state, federal or other public facility: by either a principal executive officer or ranking elected official, chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
- b. The discharge monitoring reports and other information may be signed by the **certifying official**.
- c. The **certifying official** designates an **authorized representative**. The **authorized representative** is responsible for the overall implementation of the SWPPP (i.e., the general contractor).
- d. Any change in the signatories shall be submitted to the **Department**, in writing, within seven (7) days after the change, but no later than with the submission of information required by the **Department** to be submitted while the new signatory has taken responsibility.
- e. All applications, reports and information submitted as a requirement of this permit, shall contain the following certification statement:

*"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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."*

## **E. Monitoring and Records Requirements**

1. Routine periodic monitoring of storm water discharges is not required unless requested by the Department. Monitoring may be required by the Department for any of the following reasons:
  - a. The identification of potential ground and / or surface water quality impacts to which the permittee may be contributing;
  - b. The failure by the permittee to implement pollution prevention or pollution control procedures set forth in the SWPPP;
  - c. The recognition of potential pollutant sources during site inspections or investigations; and/or
  - d. To obtain information for watershed basin or industry group studies.

### **2. Retention of Records**

The **Permittee** shall retain records of all monitoring activities for a period of at least three years as set forth in NDEQ Titles 119, Chapter 14 001.02. The types of records that must be retained include, but are not limited to:

- a. Calibration and maintenance records;
- b. Original strip chart recordings;
- c. Copies of all reports required by this permit;
- d. Monitoring records and information; and
- e. Electronically readable data.

### **3. Record Contents**

As set forth in NDEQ Title 119, Chapter 14, records of sampling or monitoring information shall include:

- a. The date(s), exact place, time and methods of sampling or measurements;
- b. The name(s) of the individual(s) who performed the sampling or measurements;
- c. The date(s) the analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used;
- f. The results of such analyses; and
- g. Laboratory data, bench sheets and other required information.

## **F. General Requirements**

### **1. Permit Attachments**

The attachments to this permit (e.g., forms and guidance) may be modified without a formal modification of the permit.

### **2. Information Available**

All permit applications, fact sheets, permits, discharge data, monitoring reports, and any public comments concerning such shall be available to the public for inspection and copying, unless such information about methods or processes is entitled to protection as trade secrets of the **Owner** or **Operator** under Neb. Rev. Stat. §81-1527, (Cum. Supp. 1992) and NDEQ Title 115, Chapter 4.

### **3. Permit Actions**

This permit may be modified, suspended, revoked or reissued, in part or in whole, in accordance with the regulations set forth in NDEQ Titles 119, Chapter 24. In addition, this permit may be modified, revoked and reissued to incorporate standards or limitations issued pursuant to Sections 301(b)(b)(c), 301(b)(b)(d), 304(b)(b), 307(a)(b), or 405(d) of the Clean Water Act and Public Law 100-4.

4. Property Rights

Coverage under this permit does not convey any property rights of any sort or any exclusive privileges nor does it authorize any damage to private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations.

5. Severability

If any provision of this permit is held invalid, the remainder of this permit shall not be affected.

6. Other Rules and Regulations Liability

The issuance of this permit in no way relieves the obligation of the **Permittee** to comply with other rules and regulations of the **Department**.

7. Penalties

Nothing in this permit shall preclude the initiation of any legal action or relieve the **Permittee** from any responsibilities, liabilities or penalties under Section 311 of the Clean Water Act. Violations of the terms and conditions of this permit may result in the initiation of criminal and/or civil actions. Civil penalties can result in fines of up to \$10,000.00 per day (Neb. Rev. Stat. §81-1508, as amended to date). Criminal penalties for willful or negligent violations of this permit may result in penalties of \$10,000.00 per day or by imprisonment. Violations may also result in federal prosecution.

## PART VII. DEFINITIONS

**Authorized Representative:** Individual or position designated the authorization to submit reports, notifications, or other information requested by the **Director** on behalf of the **Owner** under the circumstances that the authorization is made in writing by the **Owner**, the authorization specifies the individual or position who is duly authorized, and the authorization is submitted to the **Director**.

**Best Management Practices (BMPs):** Erosion and Sediment Control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing degradation of surface water, including avoidance of impacts, construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.

**Certifying Official**

- For a corporation. By a **Responsible Corporate Officer**, which means:
  - A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
  - The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- For a partnership or sole proprietorship: By a general partner or proprietor, respectively.
- For a municipality, State, Federal, or other public agency.
  - By either a principal executive officer of the agency, or
  - A senior executive officer having responsibility for the operations of a principal geographic unit of the agency.

- Combined Sewer System (CSO):** Is defined as a collection system that collects both **Storm Water** and sanitary wastewater with **outfalls** discharging directly into the **Waters of the State**.
- Common Plan of Development or Sale:** A contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. One plan is broadly defined to include design, permit application, advertisement or physical demarcation indicating that land-disturbing activities may occur.
- Construction Activity:** Includes **Large Construction Activity** and **Small Construction Activity**. This includes a disturbance to the land that results in a change in the topography, existing soil cover (both vegetative and non-vegetative), or the existing soil topography that may result in accelerated **Storm Water** runoff, leading to soil erosion and movement of sediment into **Waters of the State** or urban drainage systems. **Construction Activity** includes the disturbance of less than one acre of total land area that is a part of a larger **Common Plan of Development or Sale** if the larger common plan will ultimately disturb one (1) acre or more and includes all areas of **Support Activity**.
- Coverage:** A **Permittee** status of compliant operation under the terms and conditions of this general permit once a **Discharge Authorization Number** has been obtained until that authorization is terminated.
- Department:** Nebraska Department of Environmental Quality.
- Director:** The **Director** of the Nebraska Department of Environmental Quality.
- Discharge Authorization Number:** A specific authorization number (NER 1xx xxx) issued to a specific **Permittee** that meets the application requirements for **Coverage** under this general permit.
- Erosion Prevention:** Measures employed to prevent sediment from moving from its existing location including but not limited to: soil stabilization practices, limited grading, mulch, temporary or permanent cover, and construction phasing.
- Final Stabilization:** Condition where all soil disturbing activities at the site have been completed and a uniform perennial vegetative cover with a minimum density of 70 percent of the native background vegetative cover has been established on all non-**Impervious Surfaces** and areas not covered by permanent structures unless equivalent permanent stabilization (such as riprap, gabions, or geotextiles) measures have been employed.
- Impervious Surface:** A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to flow off the surface in greater quantities and at an increased rate of flow than prior to development (such as streets, sidewalks, parking lots, roofs, and in some cases highly compacted soil).
- Large Construction Activity:** Is the clearing, grading and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a Larger **Common Plan of Development or Sale** that will ultimately disturb equal to or greater than five acres. Large Construction Activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site.
- Municipal Separate Storm Sewer System (MS4)** is a separate **storm water** sewer system in urbanized cities and counties as having populations of 10,000 or greater as determined by the Bureau of Censes 1990 Decennial Censes.
- National Pollutant Discharge Elimination System (NPDES):** Program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits under the Clean Water Act (Sections 301, 318, 402, and 405) and C.F.R. Title 33, Sections 1317, 1328, 1342, and 1345.
- Notice of Termination (CSW-NOT):** Notice to terminate **Coverage** under this permit after construction is completed, the site has undergone **Final Stabilization**, and maintenance agreements for all permanent facilities have been established, in accordance with all applicable conditions of this permit.
- Operator:** Person (often the general contractor) designated by the **Owner**, who has day-to-day operational control and/or the ability to modify project plans and specifications related to the **SWPPP**. The person shall be knowledgeable in those areas of the permit for which the **Operator** is responsible.
- Outfall:** A discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants from **Construction Activity** are or may be discharged into **Waters of the State**.

**Owner:** Person or party possessing the title of the land on which the construction activities will occur; or if the **Construction Activity** is for a lease holder, the party or individual identified as the lease holder; or the contracting government agency responsible for the **Construction Activity**.

**Permittee:** Person(s), firm, or governmental agency or other institution that signs the application submitted to the **Department** and is responsible for compliance with the terms and conditions of this permit.

**Receiving Waters:** A general term used to describe all **Waters of the State**. **Responsible Corporate Officer:** means the **Owner** or **Operator** meeting either of the following conditions: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental law as and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

**Sediment Control:** Methods employed to prevent sediment from leaving the construction site after it has eroded from its existing location. **Sediment Control** practices include silt fences, sediment traps, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, storm drain inlet protection, and temporary or permanent sedimentation basins.

**Silvicultural Discharges:** "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into **Waters of the State**. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is natural runoff during precipitation events.

**Small Construction Activity:** Is the clearing, grading, and excavation that result in land disturbance of equal to or greater than one acre and less than five acres including disturbance of less than one acre of total land area that is part of a larger **Common Plan of Development or Sale** if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. **Small Construction Activity** does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

**Spill Prevention Control and Countermeasure (SPCC):** Federal regulation set forth in 40 CFR 112 requiring a **SPCC Plan** to be developed for facilities that store fuels and hazardous substances that meet the following criteria:

- Above ground fuel storage with the capacity for at least 660 gallons.
- Two or more above ground fuel storage tanks with the capacity for at least 1,320 gallons.
- Below ground fuel storage tanks with the capacity for at least 42,000 gallons.

**Stabilized:** Exposed ground surface has been covered by appropriate materials such as mulch, staked sod, riprap, wood fiber blanket, established grass bed, or other material that prevents erosion from occurring.

**Storm Water:** **Storm water** runoff, snow melt runoff, and surface runoff and drainage.

**Storm Water Pollution Prevention Plan (SWPPP):** A plan for **Storm Water** discharge that includes **Erosion Prevention** measures and **Sediment Controls** that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site, non-point source pollution.

**Support Activity:** Associated **Construction Activity** that is directly related to the construction site (such as concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) required to have **NPDES permit Coverage** for discharges of **Storm Water** that may be located on site or in a remote location, but is not a commercial operation serving multiple unrelated construction projects by different operators nor operates beyond the completion of the **Construction Activity** at the last construction project it supports.

**Temporary Erosion Protection:** Methods employed to temporarily prevent erosion during the construction sequence or while **Final Stabilization** is being established. Examples of **Temporary Erosion Protection** include; straw, mulch, wood chips, and erosion netting.

**Total Maximum Daily Load (TMDL):** The sum of the individual wasteload allocations (WLAs) for point sources and load (Load Allocations) for nonpoint sources and natural background levels for a specific pollutant. The **Department** establishes **TMDLs** that are expressed in terms of either mass per unit of time, relative level of toxicity, or other appropriate measure.

**Toxic Pollutant:** Pollutants or combination of pollutants, including disease causing agents, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains will, on the basis of information available to the **Department**, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunction (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

**Waters of the State:** All waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

## Appendix A: Abbreviations

**BMP:** Best Management Practice(s)

**CFR:** Code of Federal Regulations

**CSO:** Combined Sewer Overflow

**CSW:** Construction Storm Water

**CSW-NOI:** Notice of Intent

**CSW-NOT:** Notice of Termination

**NDEQ:** Nebraska Department of Environmental Quality

**NDEQ Title 115:** *Rules of Practice and Procedure*

**NDEQ Title 117:** *Nebraska Surface Water Quality Standards*

**NDEQ Title 118:** *Ground Water Quality Standards and Use Classification*

**NDEQ Title 119:** *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*

**NDEQ Title 126:** *Rules and Regulations Pertaining to the Management of Wastes*

**NDEQ Title 132:** *Integrated Solid Waste Management Regulations*

**NPDES:** National Pollutant Discharge Elimination System

**SPCC:** Spill Prevention, Control, and Countermeasures

**SWPPP:** Storm Water Pollution Prevention Plan

**TMDL:** Total Maximum Daily Load

## Appendix B: Listing of the Nebraska Municipal Separate Storm Sewer System NPDES Permits

### Cities

Beatrice  
Bellevue  
Boys Town  
Columbus  
Dakota City  
Fremont  
Grand Island  
Hastings  
Kearney  
La Vista  
Lexington  
Norfolk  
North Platte  
Omaha  
Papillion  
Ralston  
Scottsbluff  
South Sioux City

### Counties

Douglas  
Dakota  
Sarpy

### Federal Facility

Offutt Air Force Base

### State of Nebraska Facilities

Nebraska Department of Roads  
University of Nebraska – Lincoln



Nebraska Department  
of Environmental Quality

**Construction Storm Water Notice of Intent (CSW-NOI)**

**Readiness to Apply** (*Circle "yes" or "no" as it applies to this project*)

Does a reasonable potential exist for permit authorization to be limited? [Part I.C.3] YES NO

*If the answer to this question is Yes, contact NDEQ at 402-471-4220 before proceeding with this CSW-NOI.*

**Storm water Pollution Prevention Plan (SWPPP) Part III**

- a. Has a **Storm Water** Pollution Prevention Plan been developed for this project? YES NO
- b. Has a qualified individual [Part III A] prepared the **SWPPP**? YES NO

*Has the following been incorporated into the SWPPP?*

- c. Site and activity descriptions as per Part III.B; YES NO
- d. Sediment and pollution control measures and record keeping as per Part III.C; YES NO
- e. **Erosion prevention** measures and record keeping as per Part III.C; YES NO
- f. Inspections, maintenance of **BMPs** and associated record keeping as per Part III.E, I-J; YES NO
- g. **Final stabilization** addressed as per Part III.M; YES NO
- h. Does the SWPPP include documentation supporting a determination of permit eligibility with regards to endangered and threatened species and critical habitat? YES NO  
(Guidance is available on the NDEQ website: [www.deq.state.ne.us](http://www.deq.state.ne.us))

*If any questions in Storm Water Pollution Prevention Plan (SWPPP), "a – h" above, have been answered No, complete those requirements before proceeding with this CSW-NOI.*

**A. Construction Site Description**

- a. **Project Name:** \_\_\_\_\_
- b. **Physical Address and County** (Indicate general location description if no address is available):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- c. **Project Type:** Residential \_\_\_ Commercial/Industrial \_\_\_ Linear \_\_\_ Other \_\_\_\_\_
- d. **Project Size:** Total Area (acres): \_\_\_\_\_ Area to be disturbed (acres): \_\_\_\_\_
- e. **Identify surface waters within ½ mile of project boundary that will received storm water or discharge from permanent storm water management system.**  
\_\_\_\_\_  
\_\_\_\_\_
- f. **Name of Receiving Waters** (Add attachments if more than two (2) bodies of water and/or Outfalls): \_\_\_\_\_  
**Waterbody Type** \_\_\_\_\_ (ditch, pond, stream, river etc.).

g. **Legal Description <sup>(1)</sup>:** \_\_\_\_\_ Quarter of the \_\_\_\_\_ Quarter,  
 \_\_\_\_\_ Section \_\_\_\_\_, Township \_\_\_\_\_ N, Range \_\_\_\_\_ (E or W)

(1) Applicants may enter a legal description in terms other than those requested. For example: N1/2, Section 8, Township 8 N, Range 6 W.

h. Include a general location map with enough detail to identify the location of the construction site and waters of the state within one mile of the site. Has the map been included? **YES** **NO**  
 (e.g., USGS 7.5 minute quad map, a portion of a city or county map, or equivalent map)

i. **SWPPP Designer, company, address and phone number:**

_____	_____
First and Last Name	Company Name
_____	_____
Mailing Address	City, State, Zip Code
_____	_____
Phone Number	Email

j. **SWPPP Location:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

k. **Project start date (approximate):** \_\_\_\_\_

l. **Project end date (estimated):** \_\_\_\_\_

m. List any state or federally-listed threatened or endangered species, or state or federally-designated critical habitat that is in your project area to be covered by this permit.

\_\_\_\_\_

\_\_\_\_\_

n. For sites previously authorized under a Construction Storm Water (CSW) permit and undergoing a transfer of owner and / or certifying official. List the previous NPDES CSW Permit Number:  
 NER 1 \_\_\_\_\_.

**B. Certification**

The appropriate individuals must sign information submitted on this CSW-NOI form as required in NPDES General Permit NER110000 Part VI.D.6, and below or the application will not be authorized. If more than one certifying official, submit multiple copies of the following information.

All permit applications shall be signed as per Title 119, Chapter 13 *Applications; Signatories* as follows:

002.01 For a corporation. By a **Responsible Corporate Officer**, which means:

- A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
- The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

002.02 For a partnership or sole proprietorship: By a general partner or proprietor, respectively.

002.03 For a municipality, State, Federal, or other public agency.

- By either a principal executive officer of the agency, or
- A senior executive officer having responsibility for the operations of a principal geographic unit of the agency.

Certifying Official:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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."

Certifying Official / Date: \_\_\_\_\_ / \_\_\_\_\_

**Certifying Official, company name, address, and phone number:**

\_\_\_\_\_  
First and Last Name

\_\_\_\_\_  
Company Name/Applicant

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

Certifying Official #2 (optional)/ Date: \_\_\_\_\_ / \_\_\_\_\_

**Certifying Official #2, company name, address, and phone number:**

\_\_\_\_\_  
First and Last Name

\_\_\_\_\_  
Company Name/Applicant

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

**Authorized Representative, company name, address, and phone number:**

\_\_\_\_\_  
First and Last Name

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Title

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

Submit this form to:

**Water Quality Division**  
**Storm Water**  
Suite 400, The Atrium  
1200 'N' Street  
PO Box 98922  
Lincoln NE 68509-8922



# Nebraska Department of Environmental Quality

## Construction Storm Water Notice of Transfer (CSW-Transfer)

*These prerequisite requirements must be completed prior to completing the CSW-TRANSFER form.*

### 1. Transfer Prerequisites:

- a. Has the current **owner** and/or **permittee** of the **Construction Activity** provided the new **owner** and/or **permittee** with a copy of the NPDES General Permit Number NER110000? YES NO
- b. Has the new **owner** and/or **permittee** been made aware that they must submit a Notice of Intent (CSW-NOI) to the **Department** and a copy of the CSW-NOI to the **Municipality** within whose jurisdiction they are located? (See Appendix B for a list of municipalities to whom this is relevant) YES NO
- c. Has the new owner and/or permittee been made aware of their responsibility to fulfill all requirements of the permit? YES NO
- d. Have all violations (if any) of this permit authorization been disclosed to the new **owner** and/or **permittee**? YES NO

*If "NO" has been answered to any of the above, fulfill these requirements before submitting the completed CSW-TRANSFER.*

### 2. Permit & Property Description for Transfer

- a. **Construction Storm water General Permit Authorization Number** site is currently operating under: NER1 \_\_\_\_\_ .
- b. **Current Project Name** (as submitted on the CSW-NOI):  
\_\_\_\_\_  
\_\_\_\_\_
- c. **Transfer Portion Information** - Identification of the transferred portion of the property (such as a single lot, lot size, lot number, utility right of way, easement, etc.):  
\_\_\_\_\_  
\_\_\_\_\_
- d. **Property Transfer Size:** Total Acres \_\_\_\_\_; Acres remaining after transfer: \_\_\_\_\_
- e. **Current Applicant Name:** \_\_\_\_\_  
**Certifying Official Name:** \_\_\_\_\_  
*(These must be the same as on the original CSW-NOI listed in 2.a, b above)*
- f. **Mailing Address:** \_\_\_\_\_  
\_\_\_\_\_
- Telephone Number:** (\_\_\_\_\_) \_\_\_\_\_ **(optional) E-Mail:** \_\_\_\_\_
- g. **Effective Date of Property Transfer:** \_\_\_\_\_

**3. New Information for Portion of Site Transferred**

The Certifying Official shall provide the Department and the Municipality within which they operate copies of this form with the following Project Information:

a. **New Project Name:** \_\_\_\_\_

b. **New Owner and/or Permittee Information:**

1) **Company Name:** \_\_\_\_\_

2) **Certifying Official Name** \_\_\_\_\_

3) **Certifying Official's Title** \_\_\_\_\_

4) **Mailing Address** \_\_\_\_\_  
\_\_\_\_\_

5) **Telephone Number:** (\_\_\_\_) \_\_\_\_\_, **E-Mail** \_\_\_\_\_ (optional)

c. **Signatures:**

For an permittee transferring authorization of any portion of the **Construction Activity** to a new permittee:

1) **Current Certifying Official / Date:** \_\_\_\_\_ / \_\_\_\_\_

2) **New Certifying Official / Date:** \_\_\_\_\_ / \_\_\_\_\_

*I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.*

Submit this form to:

**Water Quality Division**  
**Storm Water**  
Suite 400, The Atrium  
1200 'N' Street  
PO Box 98922  
Lincoln NE 68509-8922

Both parties must keep copies of this form. The party from whom the authorization is transferred must submit the original **CSW-TRANSFER** to the **Department** and the Municipality within which the construction project is located (see *Appendix B* for a list of municipalities). Also give the new holder of the authorization a copy of the **CSW-TRANSFER**.



# Nebraska Department of Environmental Quality

## Construction Storm Water Notice of Termination (CSW-NOT)

### 1. Termination Prerequisites

- a. Have the **final stabilization** requirements been met on the entire site? [See Part III.M];      **YES**      **NO**
- b. Has the entire **Construction Activity** been transferred to another **operator/permittee** who has received authorization under the conditions of a **NPDES** permit for **Storm Water** runoff? [See Part V] **OR** has coverage under an alternative NPDES permit been obtained by the same **operator/permittee**?      **YES**      **NO**

What is the alternative NPDES Permit Number? NER \_\_\_\_\_

*If any of the termination prerequisite questions are answered Yes, complete the remaining NOT form.*

### Construction Storm Water – Notice of Termination (CSW - NOT)

#### 2. Project Information

NPDES General Permit Number: **NER110000** Permit Authorization Number: NER \_\_\_\_\_

Project Name (from original CSW-NOD): \_\_\_\_\_

#### 3. Signature

*The appropriate individuals must sign information submitted on this CSW-NOT form as required in NPDES General Permit NER110000 Part VI.D.6 or the authorization will not be terminated.*

\_\_\_\_\_  
Certifying Official Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Certifying Official Signature

Submit this form to:

**Water Quality Division  
Storm Water**  
Suite 400, The Atrium  
1200 'N' Street  
PO Box 98922  
Lincoln NE 68509-8922  
Telephone. 402/471-4220  
Fax: 402/471-2909

**APPENDIX B**

**NDEQ THREATENED AND ENDANGERED SPECIES  
GUIDANCE CHECKLIST FOR STORMWATER  
GENERAL PERMIT #NER110000**



Reserved for NDEQ use  
only

## THREATENED & ENDANGERED SPECIES Guidance Checklist for NPDES Construction Storm Water General Permit #NER110000

**\*\*\* Disclaimer:** This checklist was developed for guidance purposes only in an effort to assist Construction Storm Water permit applicants to identify potential locations of threatened and endangered species. Completion of this checklist is not a requirement for permit authorization and is not intended to be used as a substitute for a professional environmental review. The use of this form does not relieve the permittee from further review or enforcement action by the Department of Environmental Quality (NDEQ) or Nebraska Game and Parks Commission (NG&PC).

### Section I

1. For projects not located in Lancaster County: Is the project located outside of designated city limits?  No  Yes
2. For projects located in Lancaster County: Does the project discharge storm water to Salt Creek, Little Salt Creek or Rock Creek?  No  Yes  
*If project is not in Lancaster County check No.*
3. For all projects: Is this project located in mature oak woodlands within 5 miles of the Missouri River in the area stretching from the Kansas border to Ponca?  No  Yes
4. For all projects: Is this project within 0.25 miles of a *stream of concern* or does it discharge to an stream of concern? (See *Attached Stream Map*)  No  Yes
5. For projects located within the distribution of the American Burying Beetle (See *Attached Map*): Is the project located on potential habitat\*?  No  Yes  
*If it is not within the American Burying Beetle distribution, check No.*

*\* Potential habitat constitutes land which has not been previously disturbed, typically by crop agriculture, and land not located within city limits.*

- ◆ *If you answered No to all questions in Section I, a NDEQ and NG&PC review may not be needed (see disclaimer above). Include this form with your SWPPP documentation.*
- ◆ *If you answered YES to only question 1, complete Section II.*
- ◆ *If you answered YES to any of questions 2 thru 5 in Section I, consultation with NDEQ & NG&PC is necessary (Section III).*

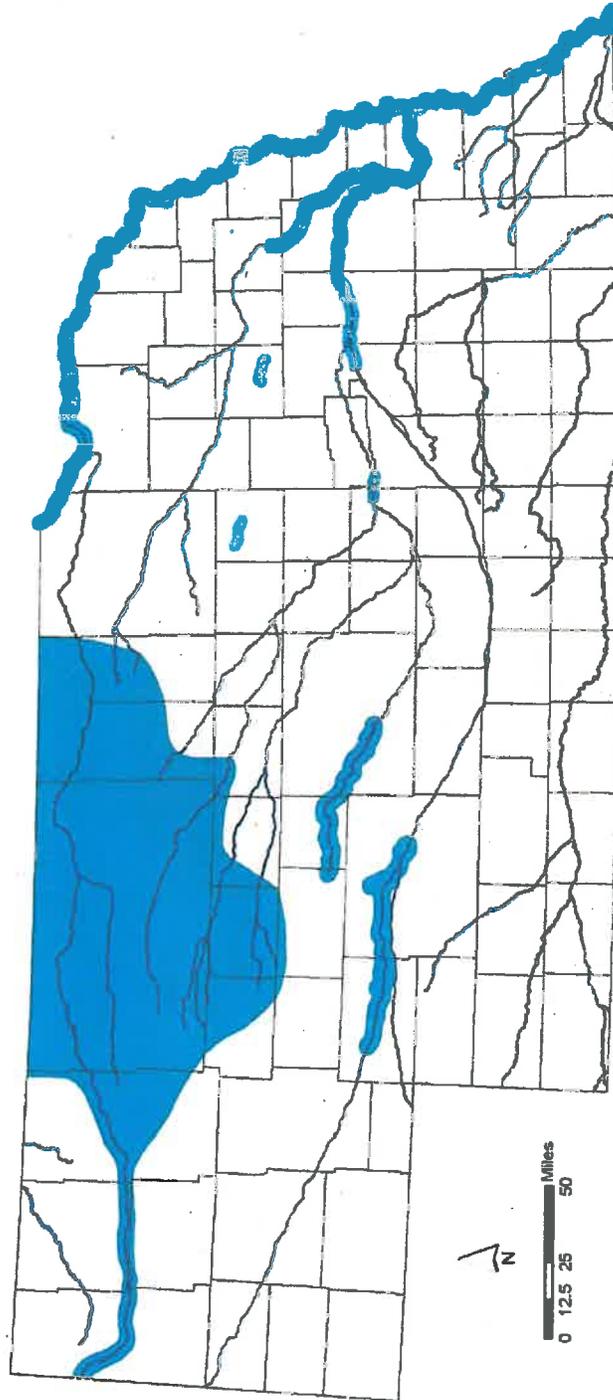
**Section II**

1. Will project construction take place between April 1 and May 10 or October 1 and November 15 in the following locations?  No  Yes
- In non-urban areas within 3 miles of the Platte, Loup, Middle Loup, North Loup or Niobrara Rivers; or
  - In non-urban areas within 1 mile of a wetland within the Primary Whooping Crane Use area.
2. Will project construction take place between April 1 and June 15 in the following locations?  No  Yes
- A wheat field or heavily grazed prairie in
    - Kimball County; or
    - Banner County (south of Harrisburg); or
    - Cheyenne County (west of Sidney).
3. Will project construction take place between April 15 and September 15 within 0.25 miles of rivers at the following locations?  No  Yes
- The Lower Platte River from Columbus to Plattsmouth; or
  - The Missouri River from where it joins the Nebraska/South Dakota state border to Ponca; or
  - The Loup River between St. Paul and Columbus; or
  - The Niobrara River between Springview and where the Missouri and Niobrara Rivers converge.
4. Will project construction take place between April 15 and September 15 in the following locations?  No  Yes
- An active or recently active sand and gravel operation with bare sand substrate located within 5 miles of the Platte, Loup, South Loup, Middle Loup, North Loup, Niobrara, Elkhorn, or Missouri Rivers.
5. Is the project construction on a non-crop, non-urban site in Pawnee County (west of Pawnee City), Johnson County or Gage County (south of Beatrice)?  No  Yes
6. Is the project construction within 1 mile of the North Platte, Platte, Little Nemaha, Cedar, Loup, South Loup, North Loup, Calamus, Niobrara, Elkhorn Rivers, or Lodgepole Creek from Kimball to the Wyoming State line?  No  Yes
7. Is the project construction on a non-crop, non-urban site in the Swift Fox distribution area? (See *Attached Distribution Map*)  No  Yes
8. Will the project construction impact open active sandy blowouts in Cherry County, the south east quarter of Sheridan County, or the north half of Thomas, Hooker or Grant Counties?  No  Yes
9. Is the project construction within 0.5 miles of the Niobrara River from Highway 29 to the Wyoming state line?  No  Yes
10. Will the project construction impact wet meadows in the Orchid distribution area? (See *Attached Distribution Map*)  No  Yes

◆ If you answered **No** to all questions in Section II, a NDEQ and NG&PC review may not be needed (see disclaimer above). Include this form with your SWPPP documentation.



# Stream and River Reaches of Concern for Nebraska Fish Species



**Legend**

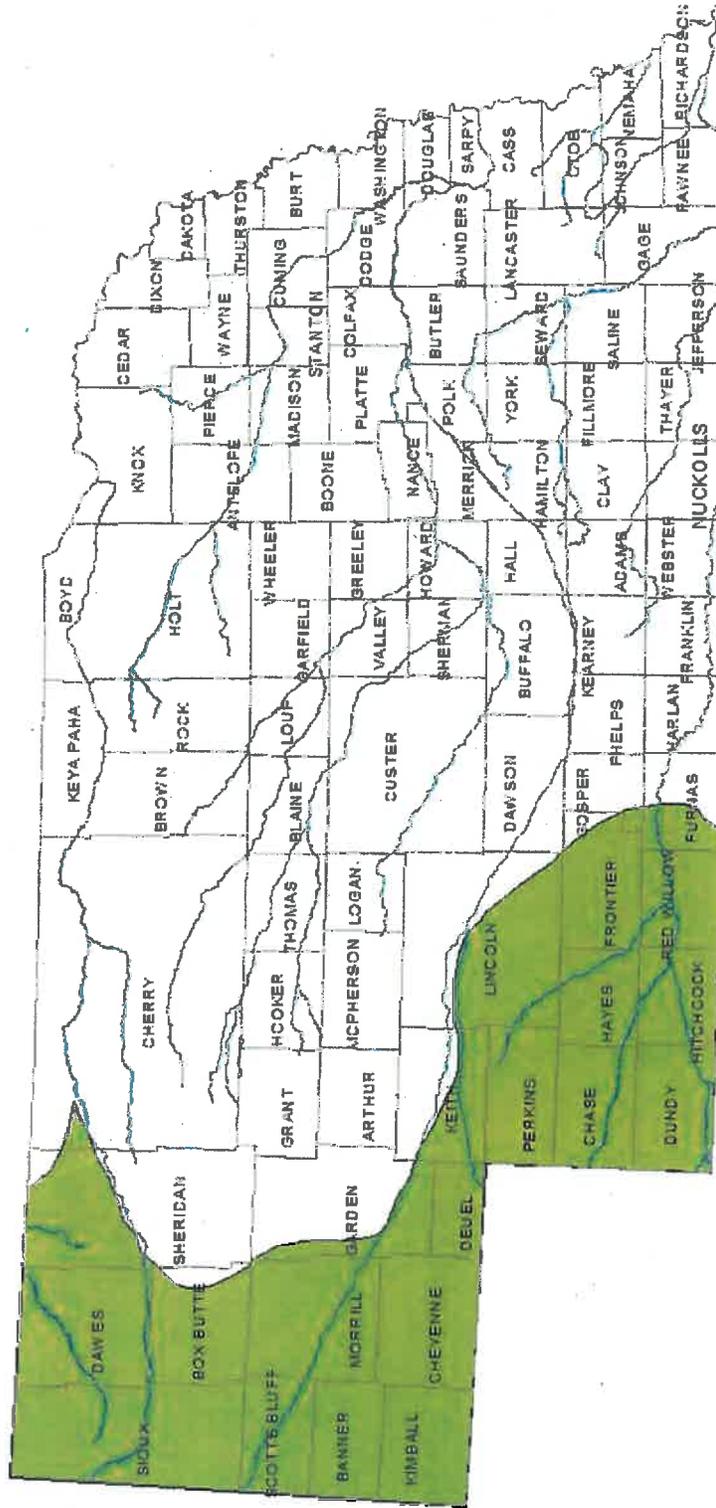
- Major\_Rivers
- Counties
- Areas of Concern

Map produced by the Nebraska Game and Parks Commission  
February 19, 2008

Streams and rivers within shaded areas are of concern for at-risk fish species.



# Swift Fox Distribution



Nebraska Game and Parks Commission 2008



**APPENDIX C**  
**SWPPP INSPECTION FORMS**

**BEST MANAGEMENT PRACTICE  
INSPECTION AND MAINTENANCE REPORT FORM**

**SILT FENCE**

Name/Title of Inspector: \_\_\_\_\_ Date and Time of Inspection: \_\_\_\_\_  
 Days Since Last Rainfall: \_\_\_\_\_ Weather Conditions at Time of Inspection: \_\_\_\_\_  
 Amount of Last Rainfall: \_\_\_\_\_ inches

Location of Silt Fence	Is the Bottom of the Fabric Still Buried?	Is the Fabric Torn or Sagging?	Are the Posts Tipping Over?	How Deep is the Sediment?	Any Discharge of Sediments?	Is the Silt Fence Placed in Adequate Location?	Is Silt Fence Functioning as Designed?

**MAINTENANCE OR CORRECTIVE ACTION REQUIRED FOR SILT FENCE:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**TO BE PERFORMED BY:** \_\_\_\_\_ **ON OR BEFORE:** \_\_\_\_\_



**BEST MANAGEMENT PRACTICE  
INSPECTION AND MAINTENANCE REPORT FORM**

**INLET PROTECTION BARRIERS**

Name/Title of Inspector: \_\_\_\_\_ Date and Time of Inspection: \_\_\_\_\_  
 Days Since Last Rainfall: \_\_\_\_\_ Weather Conditions at Time of Inspection: \_\_\_\_\_  
 Amount of Last Rainfall: \_\_\_\_\_ inches

Location of Inlet Protection Barrier	In Place?	Depth of Sediment?	Condition of Inlet?	Any Discharge of Sediments?	Is Barrier Placed in Adequate Location?	Is Barrier Functioning as Designed?

**MAINTENANCE REQUIRED FOR INLET PROTECTION BARRIERS:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**TO BE PERFORMED BY:** \_\_\_\_\_ **ON OR BEFORE:** \_\_\_\_\_







**BEST MANAGEMENT PRACTICE  
INSPECTION AND MAINTENANCE REPORT FORM**

**SWPPP UPDATE FORM**

**CHANGES REQUIRED TO THE SWPPP:**

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**REASONS FOR CHANGE:**

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**TO BE PERFORMED BY:** \_\_\_\_\_

**ON OR BEFORE:** \_\_\_\_\_



**APPENDIX D**  
**AREA OF CONTAMINATION (AOC) DESIGNATION**



**Dave Heineman**  
Governor

**JUN 15 2012**

## STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
**Michael J. Linder**  
Director  
Suite 400, The Atrium  
1200 'N Street  
P O Box 98922  
Lincoln, Nebraska 68509-8922  
Phone (402) 471-2186  
FAX (402) 471-2909  
website [www.deq.state.ne.us](http://www.deq.state.ne.us)

Kevin Lombardozzi  
Director, Environmental Management  
NL Industries, Inc.  
5430 LBJ Freeway  
Suite 1700  
Dallas, Texas 75240-2697

Re: Request for Area of Contamination (AOC) Designation  
Former Carter White Lead Site CERCLA Removal Action  
NDEQ ID # - 86674  
Program ID: SF NEN000704909

Dear Mr. Lombardozzi:

The Nebraska Department of Environmental Quality Waste Management Compliance Unit (NDEQ) has reviewed your May 31, 2012 Area of Contamination (AOC) request for NL Industries, Inc. (former Carter White Lead Site), located at the junction of East 21<sup>st</sup> and East Locust Street, Omaha, Nebraska. In your request you proposed an AOC boundary delineated on Figure No. 1, 2 and 3 of the submittal.

The AOC as requested is approved and includes an area bounded by East Locust Street on the North; North 22<sup>nd</sup> Street on the East; Avenue J on the South; and abutting property on the West. The designated AOC does not fall outside these boundaries and should additional information be identified that indicates the AOC must be changed or revised it must be done so at the earliest in consultation with the Department's (NDEQ) Waste Management Section.

Please call if you have any questions.

Sincerely,

Jeffery L. Edwards  
Compliance Unit Supervisor  
Waste Management Section  
Waste Management Division

CC: Michael B. Davis, U.S. EPA -- Region VII  
Thad Slaughter, ENACT LLC



**NL INDUSTRIES, INC.**  
**THREE LINCOLN CENTRE**  
**5430 LBJ FREEWAY**  
**SUITE 1700**  
**DALLAS, TEXAS 75240-2697**

TELEPHONE: 972.233.1700

TELEPHONE FACSIMILE: 972..934.5358

Kevin Lombardozi  
Director, Environmental Management  
(972) 448-1480  
[kevinl@valhi.net](mailto:kevinl@valhi.net)

May 31, 2012

Jeff Edwards  
Waste Management Section  
Compliance Unit Supervisor  
Nebraska Department of Environmental Quality  
Suite 400, The Atrium, 1200 N Street  
P.O. Box 98922  
Lincoln, NE 68509-8922

Mike Felix, Section Supervisor  
Waste Management Division, Remediation Section  
Nebraska Department of Environmental Quality  
Suite 400, The Atrium, 1200 N Street  
P.O. Box 98922  
Lincoln, NE 68509-8922

Re: Request for Area of Contamination (AOC) Designation  
Former Carter White Lead Site CERCLA Removal Action

Dear Mr. Edwards:

As you requested in our recent call with EPA, NL Industries Inc. hereby submits a request that an Area of Contamination (AOC) be designated for the implementation of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) removal action proposed for the former Carter White Lead Site located at the intersection of E. 21st Street and E. Locust Street in Omaha, Nebraska (Site). The proposed AOC boundary is presented in the attached Figure 1- Site Layout Plan and is identical to the "Site Boundary" approved by the United States Environmental Protection Agency (EPA). The "Site Boundary" outline is defined in ENTACT, LLC's (ENTACT) draft "Time Critical Removal Action Workplan - Former Carter White Lead Site Revision 0" dated January 27, 2012 (Workplan). A copy of the Workplan is enclosed.

The extent of lead impact to soil has been delineated and the Site Boundary determined based on the EPA's 2009 investigation of the Site. Field activities included in-situ XRF field screening on and off site, collection of surface and subsurface soil samples for field screening and/or laboratory analysis for metals and collection of soil samples for lead speciation. The results of the investigation are reported in the document entitled "Removal Assessment Report, Rev. 01, Former Carter White Lead Site, Omaha Nebraska" written by Tetra Tech EM Inc., submitted to the EPA in 2010. A copy of this report is enclosed.

Jeff Edwards, Nebraska DEQ  
Mike Felix, Nebraska DEQ  
May 31, 2012  
Page 2

As more particularly described in the Workplan, the major remedial activities proposed for the Site are excavation, consolidation, treatment and staging of lead-impacted material prior to off-site disposal and the installation of various soil or other covers. All of the proposed activities will be conducted within the AOC.

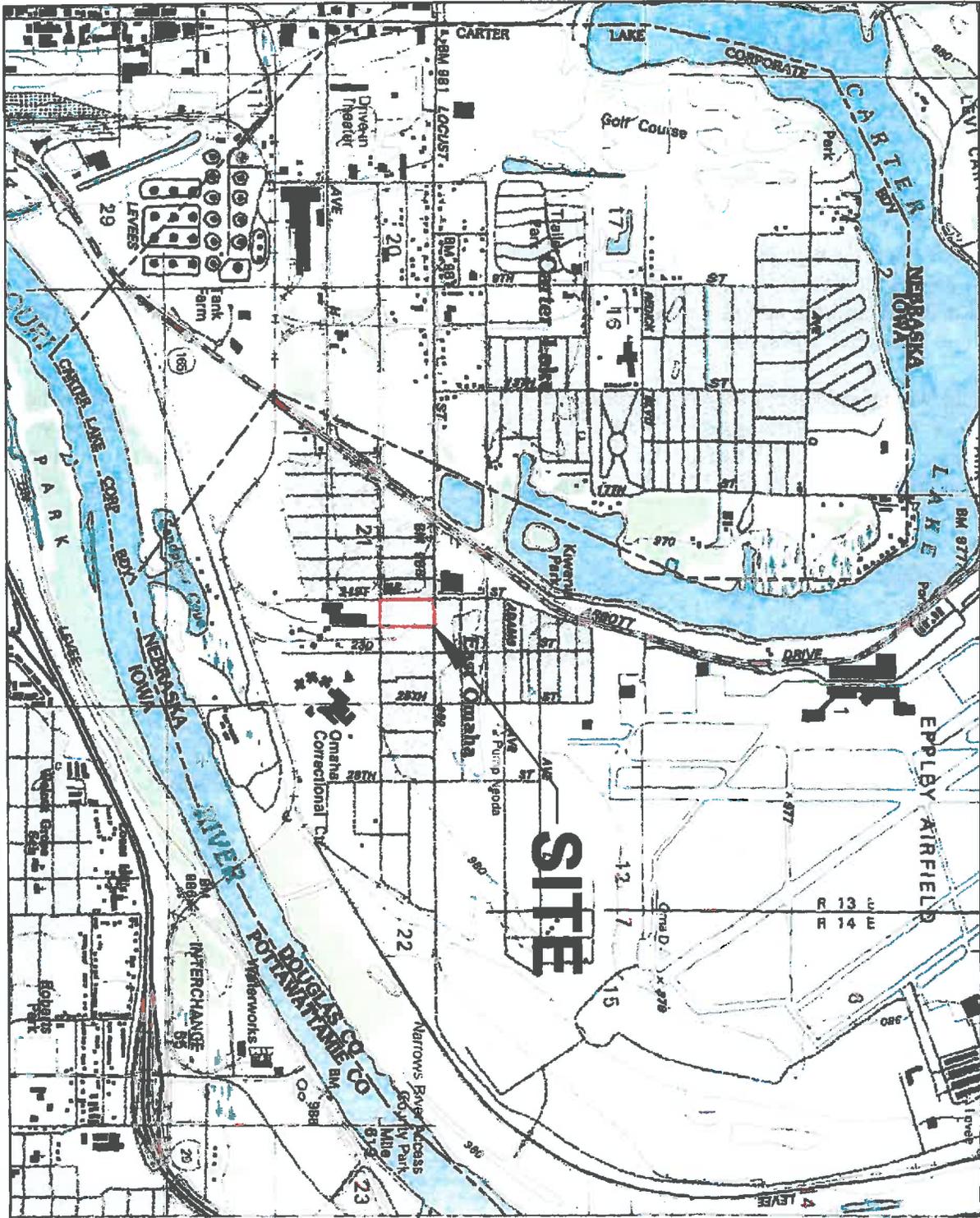
While we agreed to submit this request, NL would like to note for the record that we do not believe that an AOC designation is required for this project. Nevertheless, we want to thank you for your assistance in facilitating the proposed removal action for the Site. If you have questions concerning our request for the AOC designation for the Site, please contact me at (972) 448-1480.

Respectfully,

  
Kevin Lombardozzi  
NL Industries, Inc.

Enclosures

cc: Michael B Davis, U.S. EPA-Region 7 (no enclosure)  
Thad Slaughter, ENTACT LLC (no enclosure)



**SITE**



LEGEND  
SITE BOUNDARY



SOURCE: USGS 7.5  
MINUTE TOPOGRAPHIC  
QUADRANGLE, OMAHA  
NORTH, 1984  
CONTOUR INTERVAL  
10 FEET

**SITE LOCATION MAP**

FORMER CARTER WHITE  
LEAD SITE  
OMAHA, NEBRASKA

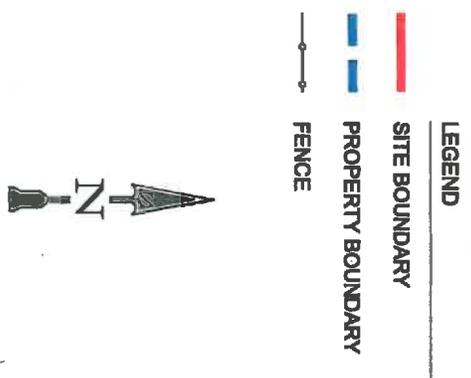
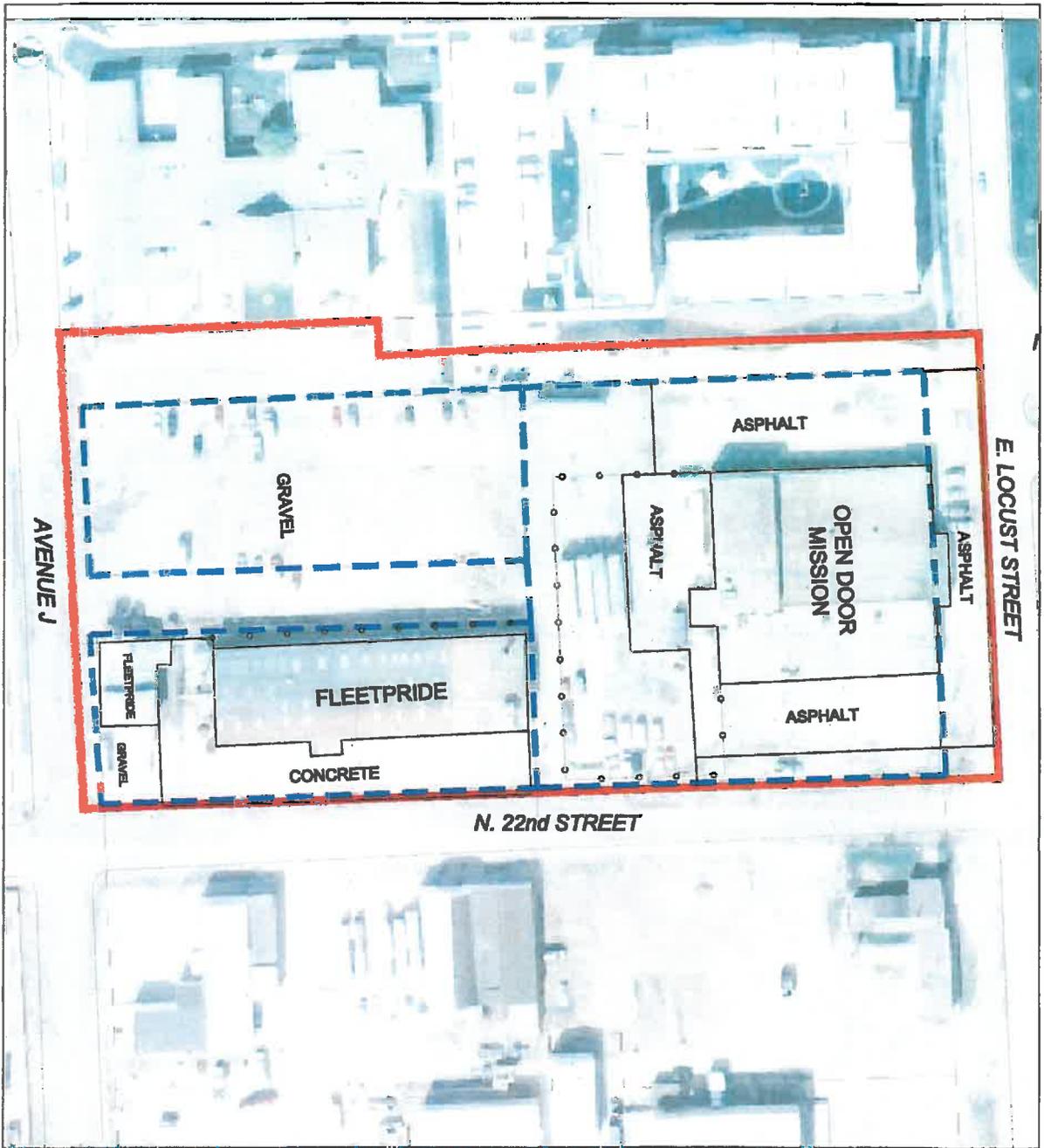
FIGURE 1

NO.	DATE	REVISION	APP.



2010 Stone Post Drive • Springfield, IL 62761  
800-555-1888 • Fax 618-255-7404

Scale: 1/8" = 100' Drawn By: JAA Checked By: JLS Date: 12/17/10



**SITE LAYOUT MAP**

FORMER CARTER WHITE  
LEAD SITE  
OMAHA, NEBRASKA

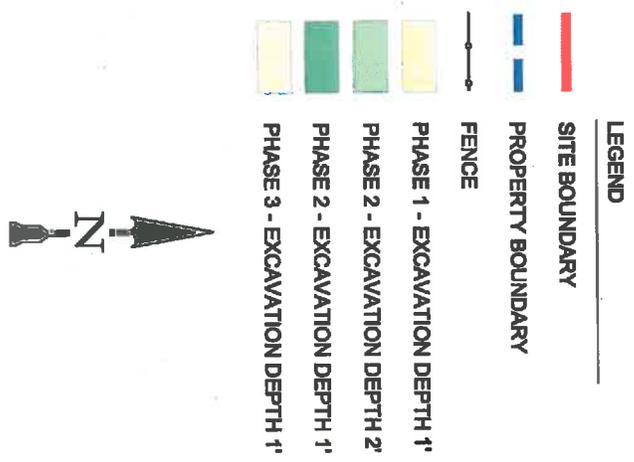
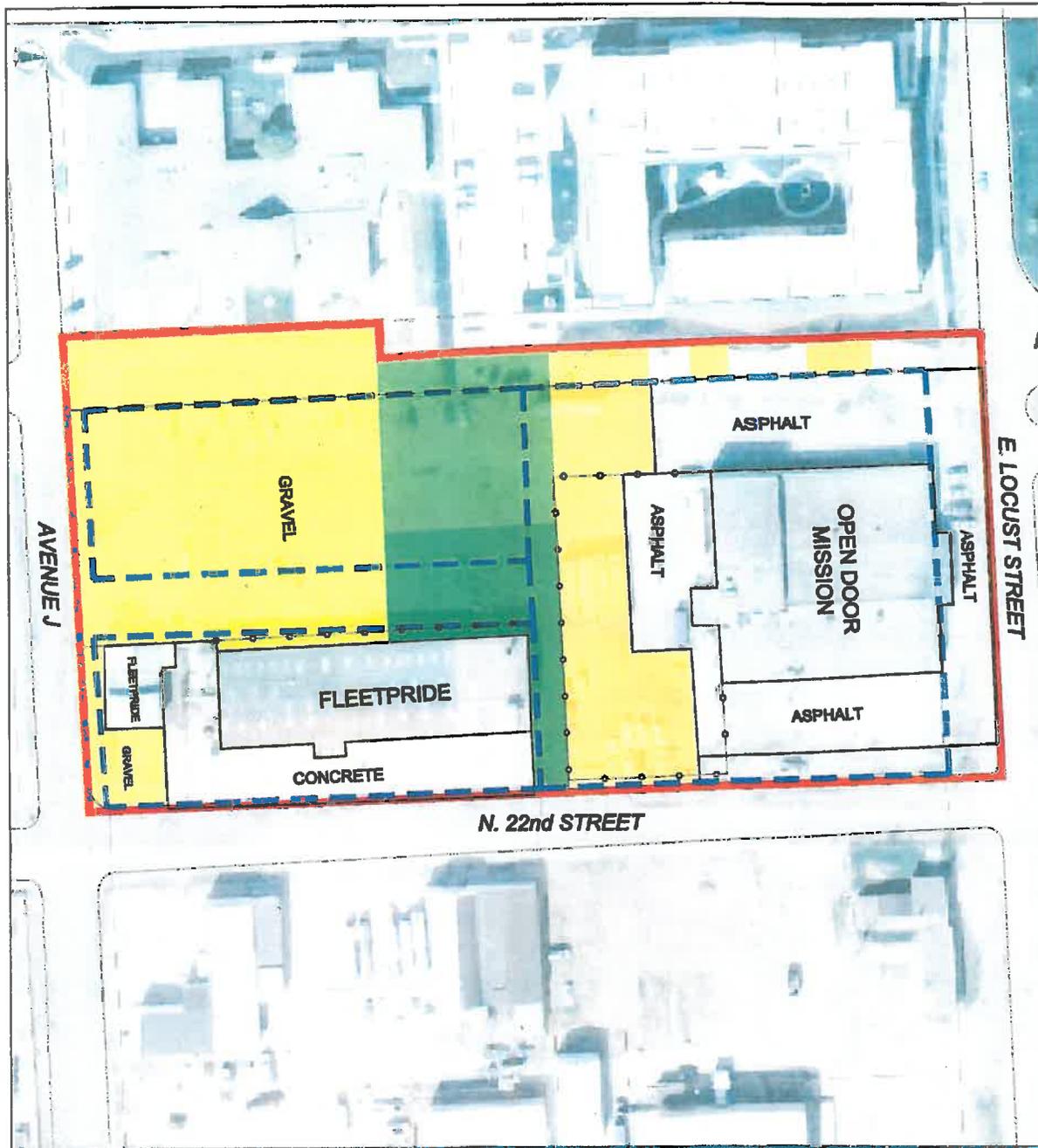
FIGURE 2

NO.	DATE	REVISION	APP.

ENTACT  
Environmental Services

2020 Ross Park Drive • Houston, TX 77058  
 (281) 920-1262 • Fax (281) 920-1265

Scale: 1/8"=1'-0" Drawn By: MA Checked By: JS Date: 1/2012



**REMOVAL ACTION PHASE MAP**

FORMER CARTER WHITE  
LEAD SITE  
OMAHA, NEBRASKA

FIGURE 3

NO.	DATE	REVISION	APP.

ENTACI  
PROFESSIONAL SERVICES

3428 West 15th Street • Omaha, NE 68104  
402.886.0200 • Fax (402) 886-0101

Drawn By: MFS, Checked By: JLS, Date: 1/2012

## APPENDIX D

### Moweco Site

The following described real property, situated in Omaha, Douglas County, Nebraska, together with all buildings and improvements located thereon:

Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10) and Eleven (11) in Block Five (5), in East Omaha Land Company's Subdivision, in the City of Omaha, Douglas County, Nebraska, being a subdivision of the South Half ( $\frac{1}{2}$ ) of Lot Six (6) and the North Half ( $\frac{1}{2}$ ) of Lot Fifteen (15), East Omaha Land Company's Land and described as being within the Northeast Quarter of the Southwest Quarter (NE  $\frac{1}{4}$  of SW  $\frac{1}{4}$ ) of Section Twelve (Sec 12), Township Fifteen North (T 15 N), Range Thirteen East (R 13 E), Sixth (6th) Principal Meridian in Douglas County, Nebraska, formerly described as a part of the Southeast Quarter of the Northeast Quarter (SE  $\frac{1}{4}$  of NE  $\frac{1}{4}$ ) of Section Twenty One (Sec 21), Township Seventy Five North (T 75 N), Range Forty Four West (R 44 W), Fifth (5th) Principal Meridian, Pottawattamie County, Iowa.

Lots Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16) and Seventeen (17), all in Block Five (5), East Omaha Land Company's Subdivision of Lots Six (6) and Fifteen (15), East Omaha Land Company's Land, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Lot 3, Open Door Mission Addition, as surveyed, platted and recorded in Douglas County, Nebraska.



IN THE MATTER OF Former Carter White Lead Facility; NL Industries, Inc.; and MOWECO, Inc.,  
Respondents  
Docket No. CERCLA-07-2012-0053

CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:

Steven Sanders  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Christopher R. Gibson  
Archer & Greiner P.C.  
One Centennial Square  
Haddonfield, New Jersey 08033

and

Mr. Mark A. Williams  
Parsonage Vandennack Williams LLC  
5332 South 138<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68137

Dated: 8/3/12

  
Kathy Robinson  
Hearing Clerk, Region 7

