

**Appendix A**  
**Referenced Correspondence**

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**Via E-Mail and Hand-Delivery**

January 16, 2009

Daniel J. Shiel  
Assistant Regional Counsel  
United States Environmental Protection Agency Region 7  
901 North 5th Street  
Kansas City, KS 66101

Re: Written Submittal In Response to Order for Removal Response  
Activities, Southern Iowa Mechanical Site, CERCLA Docket  
No. CERCLA-07-2009-0006

Dear Dan:

This letter is written in response to: (1) the Unilateral Administrative Order for Removal Response Activities (“UAO”) issued on December 30, 2008, in the Matter of the Southern Iowa Mechanical Site, CERCLA Docket No. CERCLA-07-2009-0006, pursuant to paragraph 79 of the UAO, (2) the Enforcement Action Memorandum (“Action Memo”), requesting a Time-Critical Removal Action at the Southern Iowa Mechanical Site, approved by Cecilia Tapia on December 30, 2008, and (3) the cover letter from Ms. Tapia, dated December 30, 2008, which accompanied the UAO and the Action Memo (“Cover Letter”). The UAO states that it will become effective on January 23, 2009, unless the date is modified in writing by EPA, and the Cover Letter encourages my clients to enter into a settlement with EPA before the effective date of the UAO. On behalf of my clients, DICO, Inc. (“DICO”) and Titan Tire Corporation (“Titan Tire”), I formally request that you include this letter and each of the attached exhibits in the administrative record for this matter.

In order to make certain that the administrative record for this matter is complete, I reiterate my previous requests, and formally request that you place into the administrative record for this matter each of the following documents:

- All of DICO’s and Titan Tire’s responses to EPA’s section 104 requests with respect to this matter;
- All written correspondence and e-mail exchanged between EPA and Cheri Holley, on behalf of DICO, with respect to this matter, including but not limited to Ms. Holley’s letters dated May 20, 2008, addressed to Glenn Curtis, and July 11, 2008, addressed to Cecilia Tapia, together with all documents and materials enclosed or submitted with each of those letters;

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- All Freedom of Information Act (“FOIA”) requests my firm has made to EPA with respect to this matter, including but not limited to letters dated October 6 and October 17, 2008, and January 9, 2009;
- All written correspondence and e-mail exchanged between EPA and me with respect to this matter, including but not limited to my letters dated October 2, 2008, October 17, 2008, November 10, 2008, and this letter, together with all documents and materials enclosed or submitted with each of these letters.

I respectfully request that EPA consider this letter and each of the documents submitted with this letter, as well as each of the above-referenced documents. I further request that EPA reconsider this matter in light of the information, arguments, and proposals presented in all of these documents, and engage in good faith negotiations to resolve this matter before the effective date of the UAO. We believe that the TSCA-compliant solvent wash process outlined in my November 10 letter is the most appropriate remedy for the alleged contamination at the Southern Iowa Mechanical (“SIM”) Site, and my clients remain willing to negotiate a resolution which would include their undertaking to perform that remedy, without admitting any liability.

For each of these reasons stated in this letter, and in each of our previous letters, we believe that EPA’s administrative actions with regard to this matter, including the proposed UAO and the selected remedy, are arbitrary, capricious and contrary to law. Nonetheless, in order to avoid the punitive financial penalties which may be imposed if my clients fail to comply with EPA’s mandates, my clients will comply with the UAO if EPA refuses to consider the matters discussed in this letter and to negotiate in good faith. My clients reserve all of their rights to challenge EPA’s administrative actions in this matter, including the UAO and the selected remedy, and to seek restitution or reimbursement of all monies paid to comply with EPA’s mandates under the UAO, and any other remedies available to them in equity or at law. This letter will summarize the numerous bases for our contention that the EPA’s administrative actions in this matter are, and have been, arbitrary, capricious, and contrary to law.

As a preliminary matter, I am surprised by Ms. Tapia’s comment on page 2 of the Cover Letter, which states: “You have now had the proposed Settlement Agreement for over two months, and EPA does not believe it would be fruitful to engage in further negotiations.” Since receiving the proposed settlement agreement in late September, I have written three letters to you, dated October 2, October 17, and November 10, 2008, detailing various concerns about the legal basis for asserting liability against my clients, the validity of data relied upon by EPA, and the appropriateness of EPA’s proposed remedy. In each of those letters – without admitting any liability – I have expressed my clients’ willingness to cooperate with EPA in negotiating a resolution to this matter, and in my November 10 letter, I proposed an alternative remedy which complies with the TSCA regulations. During the weeks following my November 10 letter, I called you on two occasions and left

messages offering to discuss this matter with you in further detail. EPA has never responded to any of my letters, and you never returned either of my phone calls.

EPA's unwillingness to respond to the issues and concerns expressed in my October 2, October 17, November 10 letters, to discuss or consider the alternative remedy I proposed, or to return my phone calls, before issuing the UAO, demonstrates a lack of good faith on the part of the EPA.<sup>1</sup> Any argument by EPA that there is no time for good faith negotiations because this is a time-sensitive matter requiring urgent action, is belied by the fact that EPA first visited the SIM Site in April 2008, conducted a site assessment and field sampling in May 2008, waited until September 2008 to send a proposed administrative settlement agreement to my clients, and then waited until December 30, 2008, to prepare the Action Memo and issue the UAO – which is not to become effective until January 23, 2009. EPA's insistence upon issuing the UAO without valid or reliable data and without a legal basis for liability, demonstrates that EPA's actions in this connection with this matter are arbitrary, capricious and contrary to law.

**The UAO Has No Factual or Legal Basis, and Therefore Will Be Arbitrary, Capricious and Contrary to Law If Allowed to Become Effective**

Rather than responding directly to my letters, returning my phone calls, or otherwise engaging in good faith negotiations, EPA appears to have used the Action Memo and the Cover Letter to respond to some of the concerns raised in my October 2, October 17, and November 10 letters with respect to the validity of sampling data relied upon by EPA, the legal basis for asserting liability against my clients, and the appropriateness of the alternative remedy proposed in my November 10 letter. The Cover Letter and the Action Memo also raise new issues which contradict earlier positions taken by EPA with regard to this matter. I will respond to each of these matters in order below.

**1. The Sampling Data Relied Upon By EPA Is Invalid, Unreliable, and Has Been Improperly Manipulated**

The sampling data relied upon by EPA is invalid and unreliable for several reasons. First, as discussed in my October 2 letter, the sample collection process was conducted without any notice to my clients, and without any opportunity to monitor or participate in the sampling process. Second, the secret sampling process failed to comply with EPA protocols and procedures – there was no written sampling plan; no map, sketch or permanent marking was made to identify the location where each

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<sup>1</sup> In fairness, I acknowledge that you, and other EPA representatives, agreed last week to participate in a conference call with me and other representatives of Titan Tire and DICO, in accordance with the provisions of section XXVII. of the UAO. That call took place yesterday afternoon. However, at the outset of the call, you made it clear that, while we were welcome to present any information or arguments we desired, EPA had already made up its mind with respect to the selected remedy, and that issue was foreclosed to any further discussion. With all due respect, we did not consider your position with respect to that critical issue, or your perfunctory approach to the conference call, to comply with the purpose or the spirit of section XXVII. of the UAO:

sample was collected and the precise dimensions of the area from which wipe samples were taken; and no field blanks, replicates, or other quality assurance samples were collected or tested in accordance with 40 C.F.R. § 123, to help verify the reliability of the data. *See* Dr. John H. Smith, PCB Disposal Section, Chemical Regulation Branch, United States Environmental Protection Agency, “Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy,” at 8, 10 (June 23, 1987, revised and clarified on April 18, 1991)(excerpts attached as Ex. A).

Third, in his field notes, sampler Todd Campbell reports that some of the wipe samples were taken from Z channel beams which were too small for a standard 100 square centimeter sampling area, so the samples were taken in “side by side” areas of 5x10 centimeters. *See* Field Notes, attached as Exhibit B. Mr. Campbell does not identify which – or whether all – samples were taken in this manner, or what, if any, instruments he used to accurately measure the 5x10 centimeter areas (since most standard wipe samples use a fixed, unadjustable 10x10 template). Obviously, if he “guessed” at the size of the wipe sample areas – and we cannot determine whether or not he did, since my clients were not afforded any notice or opportunity to attend and participate in the secret sampling, and since he failed to permanently mark the area from which he took the samples – the sampling results would be meaningless when attempting to compare them to the TSCA action levels for samples taken from 100 square centimeter areas.

Additionally, EPA has failed to provide all of the documents we requested in FOIA requests sent on October 6 and October 17, 2008, and January 9, 2009, and thus additional errors, flaws, discrepancies or deviations from standard operating procedures may be discovered when we obtain all of the information requested. We reserve the right to supplement the record with any additional information obtained from EPA in response to our outstanding FOIA requests.

**A. Three-Day Gap In Chain of Custody**

The identity and integrity of the samples purportedly collected at the SIM Site were severely compromised when the samples were apparently left unattended somewhere at or outside the Regional Lab over the weekend of May 16-19, 2008. According to Todd Campbell’s field notes, attached as Exhibit B:

- he called “Nicole” sometime during the day on May 16, “to tell her that we would not be able to make” the 4:00 drop-off deadline for delivering the samples to the Regional Lab;
- Nicole told Todd to call Mary Peterson to “get her OK” to leave the samples in the sample cooler over the weekend; and
- “Mary gave us her blessing”. (Ex. B).

The “EPA Chain of Custody Record” for these samples is attached as Exhibit C. This record indicates that:

- Todd Campbell relinquished custody of the samples to “Adam R” at 1752 (5:52pm) on Friday, May 16, for the purpose of “delivering the samples to the lab”;
- Adam R. relinquished custody of the samples at 2039 (8:39pm) on May 16 (apparently making the 225 mile drive from 3043 Pawnee Drive in Ottumwa, Iowa, to Kansas City, Kansas, in two hours and 47 minutes); and
- Nicole Roblez signed the Chain of Custody Record indicating that she “received” the samples on Monday, May 19. (Ex. C).

Todd Campbell’s field notes indicate that he called and left a voice message for “Nicole” at 1400 (2:00pm) on May 19, “**to make sure samples were found.**” Obviously, he understood that the samples had been left unattended somewhere at or near the Regional Lab since Friday evening, and was concerned that they might not be discovered or located. He received a voicemail reply at 5:00pm, reporting that the samples had been located. (Ex. B) (emphasis added).

The purpose of the chain-of-custody requirement is to ensure that the sample has been in the possession of, or secured by, a responsible person at all times. The field notes show a three-day gap in which no responsible person was in custody of the samples. EPA has provided no documentation indicating exactly where the samples were located during the three-day gap in the Chain of Custody, between Friday evening, May 16, and Monday, May 19. EPA has provided no documentation indicating what efforts were made to protect the samples from tampering, or to preserve the integrity, authenticity, and temperature of the samples. This critical gap in the chain of custody violates the procedures required by the August 2004 *Polychlorinated Biphenyl Inspection Manual*, published by EPA’s Office of Compliance, Office of Enforcement and Compliance Assurance, sections 6.5 (Sample Documentation) and 6.5.2 (Chain-of-Custody), and invalidates the reliability of the analysis of the putative samples.<sup>2</sup> Excerpts of the *Inspection Manual* are attached as Exhibit D.

EPA has also failed to produce any documentation evidencing that these samples were maintained at temperatures below 4° C. at all times throughout the weekend of May 16-19, as required by EPA procedures for PCB samples. See EPA’s *Polychlorinated Biphenyl Inspection Manual*, section 6.4.2 (Sample Preservation) (Ex. D). See also 40 C.F.R. § 136.3, Table II. Since the temperature reached a high of 86° over that weekend (see Weather History, attached as Ex. F), the failure to secure and preserve the samples in accordance with EPA procedures further invalidates the reliability of any lab results.

Finally, there is no evidence that the samples were ever logged in at the laboratory where the integrity of the samples was checked, the chain-of-custody documentation was verified, and the holding times were determined to fall within specified

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<sup>2</sup> The Maine Department of Environmental Protection describes the effect of a failure to follow chain-of-custody procedures as follows: “Your results are worthless for legal purposes.” Tim Loftus, Maine Dept. of Env. Protection, *Chain of Custody Procedure* at <http://www.lagoonsonline.com/laboratory-articles/custody.htm> (2003) (attached has Exhibit E).

requirements. See Loftus, *Chain of Custody Procedure*, attached as Ex. E. In fact, there is no documentation explaining what happened to the putative samples between the time Ms. Roblez signed the Chain of Custody Record indicating that she “received” them on Monday, May 19, and the time they were analyzed by Lorraine Iverson several days later.

Failure to establish links in the chain of custody results in the inadmissibility of the samples and lab reports. See, e.g., *Thomas v. Martin*, 202 F.Supp. 540, 543-44 (E.D. Va. 1961) (holding that blood test results were inadmissible where “defendant failed to establish every link in the chain of identification between the taking and analysis” of the blood sample); *Todd v. United States*, 384 F.Supp. 1284, 1293 (M.D. Fla. 1974), *aff’d*, 553 F.2d 384 (5th Cir. 1977) (holding that the “chain of custody is so replete with gaps and unexplained circumstances” that the evidence has no probative value); *Amaro v. City of New York*, 351 N.E.2d 665, 671 (N.Y. 1976) (holding that a lab report on a blood sample was inadmissible because no chain of custody could be established); *Durham v. Melly*, 14 A.D.2d 389, 392-93 (N.Y. App. Div. 1961)(holding that a blood test was inadmissible where the chain of possession and the unchanged condition of the sample, from the taking of the sample from the hospital to the performance of the analysis, could not be established). In *Williams v. Halpern*, No. 111138/02, 2006 WL 1371691 at \*3 (N.Y. Sup. Ct. Apr. 12, 2006), the court declared: “Inquiries involving chain of custody of evidence sought to be used in legal proceedings are made in order to insure that a proffered specimen has the same identity and is in the same condition as it was when first produced or seized from an individual. . . In other words, there must be certainty that the evidence used is truly what it is purported to be. Where that is not the case, then the entire integrity of the legal result is in question.”) Therefore, EPA’s samples and lab report are inadmissible, and no basis exists for EPA’s enforcement action against Titan and DICO.

#### **B. Laboratory Irregularities**

EPA procedures require that PCB samples “should be analyzed as soon as possible after collection,” but the maximum time that “samples may be held before analysis and still be considered valid” is 7 days (168 hours). 40 C.F.R. § 136.3, Table II & n.4. See also EPA’s *Polychlorinated Biphenyl Inspection Manual*, section 6.4.2 (Sample Preservation) (Ex. D). While an email from lab technician Lorraine Iverson indicates that the wipe samples were analyzed on May 22, the sixth day after collection, and the soil samples were analyzed approximately 165 hours after extraction (i.e., at the end of the seventh day), the delays in analysis, when coupled with the initial three-day break in the chain-of-custody, the subsequent failure to log the samples into the laboratory, and the failure to document preservation of the temperature of the samples during the week following collection, further compromises the validity of the lab results.

More disconcerting, however, is EPA’s acceptance of results which were fraught with instrument malfunctions, errors and guesswork. For example:

- On May 22, Ms. Iverson reported that some of the wipe samples contained concentrations of either Aroclor 1248 or 1254, but that “it is difficult to see the difference in pattern” at such levels. (Email are attached as Exhibit G).
- On May 23, Ms. Iverson had to guess that Sample 9 (the insulation sample, mislabeled as a soil sample) “contains Aroclor 1254 (?)”. (Ex. G) (emphasis added).
- On May 23, Ms. Iverson reported that Sample 9 “completely blew my instrument.” Consequently, she warned that “[t]hese (especially the soils) may be late, as I have to perform instrument maintenance and rerun them.” (Ex. G).
- On May 23, Ms. Iverson continued: “The maintenance I did on my instrument did not correct my problem with the baseline.” (Ex. G).
- On May 27, Ms. Iverson consoled Mary Peterson that it is “not your fault that my instrument could not handle the sample extracts.” (Ex. G).
- In the May 30 report of the sample analysis results, Sample 9 (the insulation sample) is repeatedly described as a soil sample, and the results for Sample 115 were coded with a “J”, meaning that the reported value failed to meet the established quality control criteria for either precision or accuracy.

In my October 6, 2008, FOIA request, I requested the technician’s raw data and calculations relating to each of the samples, together with all lab notes, records, data, electronically stored information, printouts and documents of any kind reflecting or regarding the EPA lab work in connection with the SIM Site. EPA has produced no documentation as to how Ms. Iverson’s instrument malfunctioned while analyzing the samples purportedly taken from the SIM Site so as to require the referenced maintenance, or whether the instrument was ever fully repaired. Nor has EPA ever produced any documentation certifying that the instrument used to analyze the samples purportedly taken from the SIM Site was properly calibrated. We have received no lab notes, logs, records, data, or any other documents relating to the lab work performed by Ms. Iverson, other than a handful of emails and the final lab report.

On January 9, 2009, I repeated my FOIA request for all documents relating to the lab work and calculations performed on the samples from the SIM Site. We were advised earlier this week by EPA’s FOIA Officer that EPA has produced everything that it has, and that no other documents exist with respect to this matter. During our conference call yesterday afternoon, you confirmed that EPA will not produce any additional documents responsive to our FOIA requests.

Because EPA has not produced any of Ms. Iverson’s lab notes, logs, raw data, calculations, records, applicable software, electronically stored information, printouts or other documents relating to each of the samples, I requested during our conference call yesterday that EPA permit me to interview Ms. Iverson to gain a better understanding of exactly what she did with each of these samples, how she addressed each of the problems or issues reflected in her emails, what if any steps she undertook

to attempt to verify that her machine was properly calibrated and functioning when she analyzed each of the samples, what if any steps she undertook to assess or establish the validity and reliability of each of her results, and exactly what policies or procedures she followed in making the data manipulations reflected in the May 30 lab report. You advised me that EPA would not authorize any such interview.

**C. Mis-Matched Aroclor “Fingerprint”**

The three-day break in the chain-of-custody, and Ms. Iverson’s difficulty in discerning the difference between Aroclor 1248 and 1254, are particularly relevant to the discrepancy in the chemical fingerprint between those PCB’s reportedly found at the SIM Site, and the PCB’s which were reported in the buildings on the DICO property in Des Moines. In the Action Memo, EPA attempts to dismiss the discrepancy in the chemical fingerprint by declaring that Aroclor 1254 was found in the insulation sample purportedly taken from the SIM Site (Sample 9), and Aroclor 1254 was found in insulation samples taken from the DICO property in Des Moines. This comparison over-simplifies the chemical fingerprint of the sample analyses, and disregards the critical flaws, errors, and irregularities associated with EPA’s handling of the SIM Site investigation.

In 1992, Eckenfelder Inc. reported an association between Aroclors 1254 and 1260 in all of the samples containing detectable levels of PCBs at the DICO property.<sup>3</sup> None of the Eckenfelder samples detected the presence of any Aroclor 1248. In other words, Aroclor 1260 is a “marker” which, when found present with Aroclor 1254, uniquely identifies the PCBs reportedly identified at the DICO property. *See* Eckenfelder report attached to Ms. Holley’s May 20, 2008, letter to Glenn Curtis. In the May 30, 2008, report of samples purportedly taken from the SIM Site, all of the detected Aroclors were either 1248 or 1254. Ms. Iverson reported that Sample 9 (the insulation sample mislabeled as a soil sample) “blew her instrument,” and she was not certain whether it was “Aroclor 1254 (?)” or 1248 (“it is difficult to see the difference in the pattern”). None of the samples Ms. Iverson analyzed detected the presence of any Aroclor 1260.

Each Aroclor has its own chemical fingerprint, and the association of unique Aroclors can be used to forensically trace PCB’s to a particular source. The Aroclor 1254/1260 association reported by Eckenfelder does not match – and is distinctly different from – the Aroclor 1248/1254 association reported in EPA’s May 30, 2008, analysis of samples purportedly collected at the SIM Site. The crucial “marker” of

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<sup>3</sup> The 1992 Eckenfelder Inc. report is the only test which ever reported actionable levels of PCBs in any buildings on the DICO property, and the validity of this report has been substantially undermined. As detailed in Ms. Holley’s May 20, 2008, letter to Mr. Curtis, EPA conducted at least 5 separate site investigations of the DICO property between 1993 and 2000, and in each of the tests conducted during those investigations, no actionable levels of PCBs were found. Nonetheless, DICO complied with the removal action mandated by EPA in 1994, and completed the removal action in early 1997 by removing all of the insulation suspected of containing PCBs, and encapsulating all of the beams which were believed to have come in contact with adhesive containing PCBs.

Aroclor 1260 is not present in the samples purportedly taken from the SIM Site. This mismatch in the chemical fingerprint of the PCB's at the two different sites – and the absence of the Aroclor 1260 marker – demonstrate that the PCB's purportedly found at the SIM Site did not come from the DICO property. We cannot discount the possibility that someone tampered with the samples during the three-day break in the chain-of-custody, which would explain the different chemical fingerprint.

EPA's refusal to discuss this mismatch in the chemical fingerprint between the two sites, and its insistence upon using invalid and unreliable data to support its findings, further demonstrates that the EPA's decision in this matter is arbitrary and capricious and contrary to law.

#### **D. EPA's Manipulation of Data**

In both my October 2 and my November 10 letters to you, I discussed at considerable length our concern that each of the lab results for the wipe samples were improperly multiplied by 100, purportedly because each sample was taken from a standard 100 square centimeter sampling area. **But for the improper manipulation of the lab results by a factor of 100, none of the reported results would exceed the action levels mandated by TSCA.**<sup>4</sup> There is no indication in any of the documents produced by EPA that the laboratory instrument or software used to analyze the SIM Site wipe samples divides the quantity of the sampled chemical by 100 in generating the lab result – thus creating the need for a laboratory procedure of multiplying the lab value by 100 to reflect the total amount of the chemical of concern collected from the sampled area.

In other words, suppose a sample collection cloth is wiped over a 100 square centimeter area. The wipe sample is analyzed by extracting all of the chemical of concern from the cloth, and measuring the amount of chemical in the sample. The resulting value – suppose it is 1 microgram – is the total amount of chemical collected from the entire 100 square centimeter area sampled. The sample result is 1 microgram per 100 square centimeters.

Only if, for some inexplicable reason, the laboratory instrument is programmed to divide the total amount of chemical in the sample by 100 – in order to report the quantity in micrograms per square centimeter (in the case of the example, .01 micrograms per square centimeter) – would it be necessary to multiply the reported value by 100 in order to report the quantity in micrograms per 100 square centimeters. On the other hand, if the instrument is programmed to report the result *as if* the entire amount of chemical collected from the 100 square centimeter sample was concentrated in a single square centimeter (in the case of the example, if it was

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<sup>4</sup> We also note, that one of the wipe sample results relied upon by EPA – in addition to being improperly multiplied by a factor of 100 – is reported with a J-code, meaning that the reported value failed to meet the established quality control criteria for either precision or accuracy. There is no explanation in the report as to why the lab could only provide a J-coded value, but it certainly undermines the credibility and reliability of the lab analysis of these samples. Such an estimated, J-coded result should not be the basis upon which EPA takes any administrative action.

incorrectly reported as 1 microgram per square centimeter), then the calculation required to correct the misreported value would be to *divide* the area by 100, so that the reported result is correctly stated for the true area sampled. We have repeatedly requested, pursuant to FOIA, that EPA produce any documents evidencing that the laboratory instrument is programmed to make any such divisions, including the software that might make any such divisions, all procedures or calculations which show any division by 100 of any sampled material, and all policies, procedures or protocols which describe the circumstances under which reported laboratory results are to be multiplied by a factor of 100, and any lab manuals or procedures discussing or describing any such process. EPA has repeatedly responded that no such documents exist.

In the Cover Letter, Ms. Tapia states that the procedure for multiplying lab results by 100, to account for the area from which the sample was collected, is specified in the laboratory's standard operating procedures produced by EPA in response to one of our FOIA requests. However, Ms. Tapia does cite any section or page of the lab's standard operating procedures which describes this procedure.

We have thoroughly reviewed all of the documents produced to us by EPA, including the lab's standard operating procedures, and cannot find any mention or discussion of any circumstance under which lab results are to be multiplied by any factor – to account for the area from which the sample was collected, or for any other reason. On January 9, 2009, I wrote to you and EPA's FOIA officer, requesting that you either identify the page or section of any documents previously produced where that procedure is specified, or produce the document which contains the procedure if it has not been previously produced. We were advised this week that we have received everything that EPA has with respect to this issue.

During our conference call yesterday afternoon, we raised this issue with you again, and asked you to identify the specific pages of the lab's standard operating procedures referenced in Ms. Tapia's Cover Letter. Following our call, you sent me an email, attaching a copy of the RLAB Method No. 3210.1D, previously produced in response to our FOIA request, and citing pages 7 of 9 and Attachment 1 as the support for this argument. Neither of these referenced pages, nor any other provisions of this procedure manual, contain any procedures for reducing the concentration of chemicals extracted from a sample cloth wiped over an area greater than square centimeter to a value reported in micrograms per square centimeter. Nor do either of the reference pages, or any other provisions of this procedure manual, contain any procedures for multiplying the value reported by the gas chromatography instrument by a factor of 100 after analyzing a wipe sample.

As mentioned above, during our conference call yesterday, you refused my request for permission to interview Ms. Iverson with regard to this, or any of the other issues and irregularities outlined in this letter. It is incomprehensible that EPA lab technicians would manipulate lab results by a factor of 100 without a detailed and specific written procedure, protocol or guideline expressly authorizing such

manipulation and specifying the circumstances under which such manipulation is to take place – unless they are instructed to do so in order to support a pre-determined outcome. Manipulating data to support a pre-determined outcome, or to justify a personal agenda, is indisputably arbitrary and capricious and contrary to law.<sup>5</sup>

## **2. EPA’s Manipulation of the Applicable Soil Cleanup Standard Further Demonstrates the Arbitrary and Capricious Nature of This Enforcement Action**

In the Action Memo, Ms. Peterson contends – for the first time in any communications relating to the SIM Site – that the lab results for one of the six soil samples exceeds a cleanup standard, which has never before been identified as applying to the SIM Site. At various places in the Action Memo, Ms. Peterson describes this standard as either the “any-use cleanup standard,” or the “unrestricted use” standard, and describes the threshold for this standard as being either “1 part per million,” or “1 mg/kg,” or “1,000 ug/kg.” Setting aside the problems created by the three-day gap in the chain of custody, the lab result reported for the referenced soil sample was 3.1 mg/kg.

However, in the Quality Assurance Project Plan (“QAPP”) for the May 2008 sampling of the SIM Site, attached as Exhibit H, EPA declared: “Soil sampling data will be compared to the cleanup standard of **25 mg/kg** for bulk remediation and porous surfaces for low occupancy areas suggested by the November 2005 guidance [*Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA)*.]” Ex. G (emphasis added). Excerpts from the November 2005 Guidance referred to in the QAPP is attached as Exhibit I.

Pursuant to the November 2005 Guidance, “low occupancy areas” are defined as any area where annual occupancy for any individual not wearing dermal and respiratory protection is less than 840 hours (an average of 16.8 hours per week) for non-porous surfaces and less than 330 hours (an average of 6.7 hours per week) for bulk PCB remediation waste – including in-situ soil or sediment. The Guidance explains: “Examples include ... a location in an industrial facility where a worker spends small amounts of time per week (**such as an unoccupied area outside a building, ... or in the non-office space in a warehouse where occupancy is transitory.**)” Ex. I, at p.4 (emphasis added). By contrast, examples of “high occupancy areas” include bulk PCB remediation waste inside a residence, a school, a day care center, a cafeteria in an industrial facility, a control room, and a work station at an assembly line. *Id.* at pp. 3-4. The staging area at the SIM Site where the steel beams are currently stored is in the middle of a large open field, in the middle of an industrial park, with no

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<sup>5</sup> In the Cover Letter, Ms. Tapia suggests that if we would prefer that the lab results not be arbitrarily multiplied by 100, then EPA’s alternative would be to reduce the cleanup standard by a factor of 100 to 0.10 micrograms. The mere suggestion that EPA can (or will) lower the applicable action levels by a factor of 100 in order to compel one company to shoulder the burden of a site cleanup costing several hundred thousand dollars, while not lowering the regulatory action levels for anyone else or any other site, further demonstrates that EPA’s actions in this matter are completely arbitrary and capricious and contrary to law.

residences within at least a quarter mile. There is no evidence to support any characterization of this area as anything other than a “low occupancy area,” as EPA correctly stated in the QAPP. The QAPP also stated the appropriate and applicable cleanup standard of 25 mg/kg. *See* 40 C.F.R. § 761.61(a)(4)(1)(B).

EPA’s reported lab results for the soil samples purportedly collected at the SIM Site were well below the QAPP cleanup standard. In a number of conversations with representatives of DICO this summer and fall, Ms. Peterson repeatedly stated that the soil sample results were far below the applicable action levels, that EPA had no concern about soil contamination at the SIM Site, and that no further action will be required with respect to the soil. As EPA observed both before and after the QAPP was prepared, the SIM Site is a large open field in a low-density industrial park setting. However, after I expressed our various concerns about the legal basis for asserting liability against my clients, the validity of data relied upon by EPA, and the appropriateness of EPA’s proposed remedy, Ms. Peterson has made an abrupt, 180° change in position. Without citation to any regulations or guidance documents which explain or describe the new cleanup standard she relies upon, or the criteria under which it should be applied – and without any explanation as to why she apparently now believes that the QAPP was wrong, and why she apparently now believes that she was wrong every time she told DICO representatives that the soil sample results were well below the applicable cleanup standards – Ms. Peterson appears to have arbitrarily and capriciously selected a different cleanup standard, simply to punish DICO for questioning her authority and the validity of her data.

**3. EPA Has No Evidence Supporting Its Notion That DICO Sold the Buildings At Issue With the Intent to Dispose of Hazardous Substances**

My clients have submitted sworn affidavits from representatives on both sides of the transactions, detailing the purpose and reasons for selling the various buildings to SIM (and for which SIM paid sums exceeding \$150,000). Neither the president of Titan Tire, acting on behalf of DICO, nor the president of SIM knew that the buildings contained any hazardous substances or intended to dispose of any hazardous substances as part of the transactions. The president of Titan Tire, acting on behalf of DICO, and the president of SIM have both declared, under oath, that they believed that they were selling on behalf of DICO, and buying on behalf of SIM, commercially useful buildings which SIM intended to disassemble, relocate to Ottumwa, Iowa, and reassemble on SIM’s property for use in SIM’s business operations. *See* Affidavits of William Campbell and James Hughes, attached to my October 2, 2008, letter.

In the Cover Letter, Ms. Tapia simply rejects the sworn affidavits and uncontroverted evidence as “not acceptable.” Instead, she declares: “Considering the totality of the circumstances, DICO’s intention was to get rid of the buildings including the contaminated insulation without incurring considerable expense to dispose of the insulation properly. Disposition of the contaminated insulation was an integral part

of the transaction.” Ms. Tapia does not – and cannot – cite a single document, witness, or other piece of evidence to support this baseless and unwarranted belief.<sup>6</sup>

The only evidence that actionable levels of PCBs were ever located in any of the buildings on the DICO property was the 1992 Eckenfelder report. At least five subsequent tests of the buildings on the DICO property conducted by EPA between 1993 and 2000 failed to detect any actionable levels of PCBs. DICO complied with an EPA-mandated removal action between 1994 and 1997, removing and encapsulating all of the material suspected of containing any PCBs. *See* Ms. Holley’s May 20, 2008, letter to Mr. Curtis and enclosures. Additionally, at least 3 tests were conducted between January and April 2008 on insulation removed from the DICO buildings, and each of these tests found no PCB contamination at or above action levels. *Id.*

There is simply no evidence to support Ms. Tapia’s bald conclusion that DICO sold buildings to SIM – for amounts exceeding \$150,000 – not as useful products and materials to be used by SIM as commercial buildings, but with the “intention” of disposing of hazardous substances. All evidence – including the sworn affidavits of the president of Titan Tire, action on behalf of DICO, and the president of SIM – squarely and completely contradict Ms. Tapia’s unsupported belief.

In addition to having no facts or evidence to support its position, EPA has ignored and refused to address any of numerous cases cited and discussed in my October 2 letter establishing that there is no legal basis for asserting “arranger” liability in this matter. These cases have repeatedly held, on very similar facts, that the mere sale of property containing hazardous substances is insufficient to impose arranger liability on the seller, and that the sale of a useful product, even though the product contains a hazardous substance, does not constitute a “disposal” subjecting the seller to CERCLA liability. *See, e.g., Ashland Oil, Inc. v. Sonford Prod.*, 810 F. Supp. 1057, 1061 (D. Minn. 1993); *G.J. Leasing Co., Inc. v. Union Elec. Co.*, 854 F. Supp. 539, 560, *aff’d*, 54 F.3d 379 (7th Cir. 1995); *U.S. v. B&D Elec., Inc.*, 2007 WL 1395468 (E.D. Mo. May 9, 2007); and each of the other cases cited and discussed in my October 2 letter.

It appears from the Action Memo that this administrative action may be motivated by a perceived slight suffered by Ms. Peterson when she discovered that DICO had sold the buildings to SIM without notifying her. *See* Action Memo at 2 (“Neither Dico nor SIM provided any notice to EPA that the buildings with PCB-contaminated insulation

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<sup>6</sup> During our telephone conference yesterday afternoon, I asked you what evidence EPA had to support the belief that Titan Tire or DICO sold the buildings with the intent to dispose of hazardous substances. You could not cite any evidence to support this conclusion, but simply fell back on the argument that DICO demolished buildings which were “known to contain PCBs.” This unsupported argument is flatly contradicted by the affidavits submitted with my October 2 letter. The only evidence in the administrative record establishes that the buildings were sold as useful products, for reassembly and use on the SIM property, and that neither Titan Tire, acting on behalf of DICO, nor SIM knew that the buildings contained any hazardous substances at the time of the sale. These facts are uncontroverted by any evidence in the administrative record, and as far as we know, no contrary evidence exists.

were going to be dismantled.”) This complaint is misplaced for two reasons: (1) as demonstrated by the sworn affidavits discussed above, no one involved in the sale of the buildings knew that the buildings contained PCB-contaminated insulation; and (2) neither DICO nor SIM were required to provide any advance notice to EPA regarding the sale or disassembly of the buildings, or the relocation of the buildings to SIM’s property for re-assembly.

The alleged request for advance notice was contained in a September 3, 2003 letter from Ms. Peterson to DICO’s consultant, Dr. George, in which she stated that EPA “urges Dico to coordinate any plans for demolition of the buildings with EPA.” EPA encouraged, but did not require, DICO to give advance notice to EPA, and only in the event that DICO planned to demolish the buildings. The buildings were not demolished, but sold to a buyer with the intent to relocate and reassemble the buildings on the buyer’s property for use as commercial buildings. In any event, DICO has apologized to Ms. Peterson for any misunderstanding, and submits that retribution for hurt feelings or a personal pique is no basis for subjecting a company to hundreds of thousands of dollars in administrative actions which are unsupported by any valid evidence or law.

**4. EPA’s Decision To Disregard All Facts and Evidence and To Reject the Proposed Alternative Remedy Is Arbitrary and Capricious**

Even though we dispute the factual, scientific and legal basis for requiring my clients to undertake any remedial action with respect to the steel beams on SIM’s property, I outlined an alternative remedy in my November 10 letter which my clients would be willing to undertake. As acknowledged in the Action Memo, this solvent wash remedy is expressly authorized under 40 C.F.R. § 761.79(b)(3), and we believe that it is the most applicable remedy.

Without reference to any facts, evidence or other basis for its belief, EPA summarily rejects this alternative remedy because EPA does not believe that the beams were ever in contact with liquid PCBs. Assuming that there are PCBs above action levels on the beams (a fact which my clients strenuously dispute, and for which EPA has failed to collect any valid or reliable supporting data), the only potential source for the PCBs would have been in the liquid adhesive which would have been brushed or sprayed onto the beams to affix the insulation when it was installed. While some of the beams have been subsequently painted in certain areas, the only areas where PCBs have been detected are on unpainted surfaces. EPA has presented no evidence that any PCBs have been detected above action levels on any painted surfaces.

Because PCBs have only been detected on unpainted, nonporous metal surfaces, which most likely came into contact with liquid PCBs in the form of liquid adhesive (if they came into contact with any form of PCBs at all), there is no factual or evidentiary basis for EPA’s declaration that “EPA does not consider this [the solvent wash process authorized under 40 C.F.R. § 761.79(b)(3)] to be an acceptable option.” In spite of my offer, in the November 10 letter, to discuss this option with EPA in further detail, and in spite of my two unanswered voicemail messages requesting an

opportunity to discuss this option in further detail, EPA has summarily rejected this TSCA-compliant remedy and refused to engage in any good faith negotiations to resolve this matter. EPA's baseless refusal to consider my clients' proposed alternative remedy, and refusal to respond to my requests for an opportunity to discuss this remedy, further demonstrates that EPA's administrative actions in this matter are arbitrary and capricious and contrary to law.

### **Conclusion**

For each of the foregoing reasons, and for all the reasons stated in Ms. Holley's May 20 and July 11, 2008 letters, and my October 2 and November 10, 2008 letters, EPA has no valid or reliable data or other evidence to support its administrative decisions and actions in this matter, including the UAO and the selected remedy, and it has no factual or legal basis for requiring Titan Tire and DICO to perform the remedial actions specified in the UAO. Moreover, EPA chose a selective enforcement action directed only at Titan Tire and DICO without any action against SIM, the company which: purchased the buildings at DICO, selected the manner in which to disassemble and transport the buildings to its property in Ottumwa, selected the manner in which and where to store the disassembled buildings until they were reassembled, owns the property on which the SIM Site is located, owns the purportedly contaminated steel beams, and was a party to these proceedings until the UAO was issued.

EPA's conduct throughout this matter has demonstrated a personal bias and vendetta against my clients and a motivation to use CERCLA as a vehicle to punish my clients for perceived slights or to pursue a personal agenda, rather than to effectuate appropriate remediation of actionable contamination based upon valid data and reliable evidence. To borrow Ms. Tapia's phrase, "the totality of circumstances" in this matter leads to the inescapable conclusion that EPA's decisions and actions have been arbitrary and capricious and contrary to law.

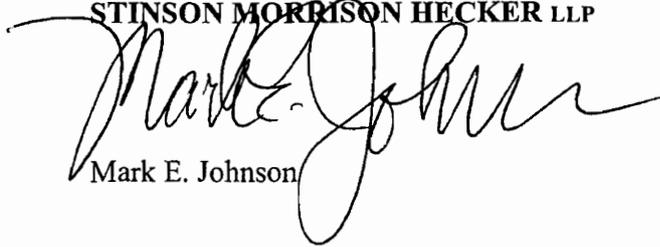
Nonetheless, as stated at the outset of this letter, Titan Tire and DICO will comply with the UAO, under protest, if EPA refuses to engage in good faith negotiations to resolve this matter. They reserve all of their rights to challenge EPA's administrative decisions and actions in this matter, including the UAO and the selected remedy, and to seek restitution or reimbursement of all monies paid to comply with EPA's mandates under the UAO, and any other remedies available to them in equity or at law.

Please contact me if EPA decides to reconsider its position in this matter, or if you have any questions.

Daniel J. Shiel  
January 16, 2009  
Page 16

Sincerely,

**STINSON MORRISON HECKER LLP**

A handwritten signature in black ink, appearing to read "Mark E. Johnson". The signature is fluid and cursive, with a large initial "M" and "J".

Mark E. Johnson

cc: Cecilia Tapia  
Mary Peterson



ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS

**IN THE MATTER OF:**

Southern Iowa Mechanical Site  
Ottumwa, Iowa

Titan Tire Corporation, and  
Dico, Inc.

Respondents

**ORDER FOR REMOVAL RESPONSE  
ACTIVITIES**

U.S. EPA Region 7  
CERCLA Docket No. CERCLA-07-2009-0006

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

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS .....	1
II.	PARTIES BOUND .....	1
III.	DEFINITIONS .....	2
IV.	FINDINGS OF FACT .....	3
V.	CONCLUSIONS OF LAW AND DETERMINATIONS .....	5
VI.	ORDER .....	5
VII.	NOTICE OF INTENT TO COMPLY .....	6
IX.	WORK TO BE PERFORMED .....	7
X.	WORK PLAN AND IMPLEMENTATION .....	7
XI.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS .....	8
XII.	QUALITY ASSURANCE AND SAMPLING .....	10
XIII.	REPORTING .....	10
XIV.	ACCESS TO PROPERTY AND INFORMATION .....	11
XV.	RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION .....	12
XVI.	COMPLIANCE WITH OTHER LAWS .....	13
XVII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES .....	13
XVIII.	AUTHORITY OF THE RPM .....	14
XIX.	ENFORCEMENT AND WORK TAKEOVER .....	14
XX.	PERFORMANCE GUARANTEE .....	14
XXI.	REIMBURSEMENT OF OVERSIGHT COSTS .....	16
XXII.	RESERVATION OF RIGHTS .....	17
XXIII.	OTHER CLAIMS .....	17
XXIV.	MODIFICATIONS .....	17
XXV.	NOTICE OF COMPLETION .....	18
XXVI.	ACCESS TO ADMINISTRATIVE RECORD .....	18
XXVII.	OPPORTUNITY TO CONFER .....	18
XXVIII.	INSURANCE .....	19
XXIX.	ADDITIONAL REMOVAL ACTIONS .....	19
XXX.	SEVERABILITY .....	19
XXXI.	EFFECTIVE DATE .....	20

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Order is issued to Dico, Inc. ("Dico") and Titan Tire Corporation ("Titan Tire"), referred to jointly as "Respondents," pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Fed. Reg. 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B. The Regional Administrator, EPA Region 7, re delegated these authorities to the Director, Superfund Division by EPA Delegation Nos. R7-14-014-A and R7-14-014B, dated April 24, 2002 and April 19, 1999, respectively.
2. This Order pertains to property located at 3043 Pawnee Drive in Ottumwa, Wapello County, Iowa, the "Southern Iowa Mechanical Site" or the "Site". This Order requires Respondents to conduct the removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.
3. EPA has notified the State of Iowa ("State") of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

**II. PARTIES BOUND**

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

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

**III. DEFINITIONS**

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in attachments to or documents incorporated by reference into this Order, the following definitions shall apply:

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

b. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Order as provided in Section XXXI.

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

e. "IDNR" shall mean the Iowa Department of Natural Resources and any successor departments or agencies of the State.

f. "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.

g. "Order" shall mean this Order for Removal Response Activities, all appendices attached hereto and all documents incorporated by reference into this document, including all EPA-approved submissions except for progress reports submitted pursuant to Paragraph 43. Submissions pursuant to this Order (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix or other incorporated document, this Order shall control.

h. "Parties" shall mean EPA and Respondents.

i. "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).

j. "Respondents" shall mean Dico, Inc. ("Dico"), and Titan Tire Corporation ("Titan Tire").

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

k. "Site" shall mean the Southern Iowa Mechanical Site located at 3043 Pawnee Drive in Ottumwa, Wapello County, Iowa, and depicted generally on the map attached as Appendix A.

l. "State" shall mean the State of Iowa.

m. "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).

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

**IV. FINDINGS OF FACT**

8. As part of the Des Moines TCE Site Operable Unit 2 Remedial Investigation (OU2 RI), in January 1992, Dico's consultant Eckenfelder, Inc. ("Eckenfelder") sampled insulation in buildings designated Buildings 1 through 5 and the Maintenance Building on Dico's property at 200 Southwest 16th Street, Des Moines, Iowa (the "Dico Property"). Eckenfelder collected samples at various depths within the insulation, ranging from the foil backing layer to insulation material adjacent to the roof. In general, higher concentrations of Polychlorinated Biphenyls ("PCBs") were found near the foil fabric lining than in the intermediate layer or the layer adjacent to the roof. The highest concentration of PCBs found was 29,000 mg/kg in Building 5. Other hazardous substances, including aldrin, dieldrin, chlordane, heptachlor, 2,4-D, 2,4,5-T, were found in the buildings.

9. In March 1994 EPA issued a Unilateral Administrative Order for Removal Action to Dico requiring it to prepare and, upon EPA approval, implement a work plan to, *inter alia*, repair, seal and protect the building insulation (In the matter of Dico Inc., US EPA Docket No. VII-94-F-0017). In its March 1994 work plan Dico described the planned activities associated with the repair and encapsulation of PCB-contaminated insulation in the building walls and ceilings. Damaged ceiling insulation was to be repaired or replaced as necessary, and any insulation beyond repair would be removed and replaced with new insulation. Salvageable insulation would be covered with new foil backing and all joints would be taped with duct tape or approved material. Following the repair of the insulation, all exposed interior surfaces of the buildings would be encapsulated with epoxy paint. Metal panels were to be installed along walls with exposed insulation to protect the insulation from further damage by machinery operating in the buildings.

10. As described in the work plan Dico installed metal panels along walls with exposed insulation to protect the insulation from further damage. Damaged ceiling insulation was repaired or replaced. Salvageable insulation was re-taped and covered with new foil backing. Exposed interior surfaces of the buildings were encapsulated with epoxy paint.

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

11. The primary O&M activities with regard to the PCB contaminated insulation were to maintain metal wall panels installed to protect insulation on the walls from damage by machinery, to conduct routine inspections and reporting, to make repairs as necessary, and to perform periodic wipe sampling of the walls, floors and ceilings for PCB analysis. Although EPA agreed to some changes in the O&M Plan as use of the buildings changed, EPA never agreed to eliminate the requirement that the PCB contaminated insulation be encapsulated in place.
12. By agreement signed on or about July 26, 2007, Titan Tire, on behalf of Dico, arranged with Southern Iowa Mechanical to dismantle certain buildings, including the Maintenance Building and Buildings 4 and 5 on the Dico Property. The Maintenance Building and Buildings 4 and 5 contained insulation in walls and ceilings contaminated with Polychlorinated Biphenyls ("PCBs") at levels up to 29,000 mg/kg.
13. Metal siding was reportedly sent to a recycling facility and insulation, lighting fixtures, doors and miscellaneous materials were reportedly disposed of at a landfill. Southern Iowa Mechanical transported the steel structural members ("beams") to its facility in Ottumwa, Iowa. The beams are currently stacked in an open area covering approximately 1 acre.
14. On May 16, 2008, EPA collected wipe samples from the beams, soil samples from the area beneath the beams, and a bulk insulation sample. The wipe samples contained PCBs at concentrations up to 330 micrograms per 100 centimeters squared ("ug/cm<sup>2</sup>"). Soil samples contained PCBs at concentrations up to 3100 micrograms per kilogram ("ug/kg"). The insulation sample contained PCBs at 6,300,000 ug/kg.
15. PCBs are listed as a hazardous substance listed in 40 C.F.R. § 302.4.
16. Actual or potential exposures may be occurring for SIM workers, site visitors, or trespassers who come into contact with the beams. The primary routes of exposure include dermal exposure by direct contact with contaminated areas and ingestion, which may occur if food is handled and consumed following contact with the beams or if exposed areas of skin are brought into contact with the mouth. Potential receptors include those who live at the home for troubled teens, located in very close proximity to the area where the beams are stored.
17. Potential adverse health effects associated with exposure to PCBs include liver damage, skin irritations, reproductive and developmental effects, and cancer.
18. Actual or threatened releases of hazardous substances from this site may present an imminent and substantial endangerment to public health, welfare, or the environment.
19. Dico is a Delaware corporation authorized to do business in the State of Iowa.
20. Titan Tire is an Illinois corporation authorized to do business in the State of Iowa.

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

**V. CONCLUSIONS OF LAW AND DETERMINATIONS**

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

- a. The Southern Iowa Mechanical Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contaminants found at the Site, as identified in the Findings of Fact above, include a “hazardous substance” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. The conditions described in the Findings of Fact, above, constitute an actual or threatened “release” of a hazardous substance from the Site as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- d. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- e. Each Respondent arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the Southern Iowa Mechanical facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- f. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.
- g. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

**VI. ORDER**

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

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

**VII. NOTICE OF INTENT TO COMPLY**

23. Each Respondent shall notify EPA in writing within 5 days after the Effective Date of this Order of Respondents' irrevocable intent to comply with this Order. This notice shall be directed to the EPA RPM identified in paragraph 27 of this Order. Failure of either Respondent to provide such notification within this time period shall be a violation of this Order by such Respondent.

**VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR AND EPA  
REMEDIAL PROJECT MANAGER**

24. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 10 days of the Effective Date. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval.

25. 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.

26. Within 5 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Order 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 Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 5 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

27. EPA has designated Mary Peterson as its Remedial Project Manager ("RPM"). Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to Ms Peterson at US Environmental Protection Agency Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

28. EPA and Respondents shall have the right, subject to Paragraph 26, to change their designated RPM or Project Coordinator, respectively. Respondents shall notify EPA 5 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

**IX. WORK TO BE PERFORMED**

29. Respondents shall perform, at a minimum, the following removal action:

a. Contaminated Beams-- All residual insulation shall be removed from the beams and shall be containerized and transported offsite for disposal in accordance with 40 C.F.R. § 761.62. All beams or portions of beams contaminated with PCBs at concentrations greater than 10 ug/100 cm<sup>2</sup> PCBs, as determined using a standard wipe test in accordance with 40 C.F.R. § 761.123, shall be decontaminated using scarification to comply with 40 C.F.R. § 761.79(b)(3)(i)(B). Beams or portions of beams determined by visual inspection not to contain insulation or adhesive residues, and which do not undergo scarification, shall be tested by standard wipe testing to verify that those surfaces do not contain PCBs over a level of 10 ug/100 cm<sup>2</sup>. All materials removed from the beams by the scarification process and spent scarifying agent shall be containerized and transported offsite for disposal in accordance with 40 C.F.R. § 761.62. Storage requirements set forth at 40 C.F.R. § 761.65 and marking requirements set forth at 40 C.F.R. §761.40(a)(1) and § 761.40(a)(10) may be applicable for the spent scarifying agent.

b. Soils-- Soils at the Site underlying the areas where the beams have been stored shall be characterized and all soils contaminated with PCBs above 1 ppm shall be excavated and transported in containers meeting the requirements of the DOT Hazardous Materials Regulations at 49 C.F.R. parts 171 through 180 for disposal in accordance with 40 C.F.R. §761.61. Soils with PCB concentrations less than 1 ppm can be left in place.

c. All offsite waste shipments shall comply with manifesting requirements set forth at 40 C.F.R. §761.207, §761.208, §761.209, and §761.218.

**X. WORK PLAN AND IMPLEMENTATION**

30. Within 21 days after the Effective Date, Respondents shall submit to EPA for approval a Work Plan for performing the removal actions described in Section IX, above. The Work Plan shall:

a. Describe the protocol Respondents plan to use to determine which beams are contaminated with PCBs at concentrations greater than 10 ug/100 cm<sup>2</sup>, including identifying the laboratory Respondents plan to use for chemical analysis.

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

b. Describe in detail Respondents' plans to decontaminate the beams, including the disposal facility Respondents plan to use for residual insulation and materials resulting from the scarification process.

c. Describe the sampling protocol Respondents plan to use to characterize soils so as to identify soils contaminated with PCBs above 1 ppm, including identifying the laboratory Respondents plan to use for chemical analysis.

d. Describe how Respondents plan to excavate any soils found to be contaminated with PCBs above 1 ppm, including the disposal facility Respondents plan to use for disposal of excavated soils.

e. A schedule for, the actions required by this Order.

f. A Quality Assurance Project Plan ("QAPP") meeting the requirements of Section XII of this Order.

g. A Health and Safety Plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (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. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

31. EPA may approve, disapprove, require revisions to, or modify the Work Plan in whole or in part as provided in Section XI. Respondents shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

32. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 31.

**XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

33. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Order, in a notice to Respondents EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

an opportunity to cure within 10 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

34. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 33(a), (b), (c) or (e), Respondents shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 33(c) and the submission had a material defect, EPA retains the right to seek penalties, as provided in Section XIX (Enforcement and Work Takeover).

35. Resubmission.

a. Upon receipt of a notice of disapproval, Respondents shall, within 10 days or such time period as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Respondents may be subject to penalties in accordance with Section XIX (Enforcement and Work Takeover) if the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 36 and 37.

b. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portions of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for penalties under Section XIX (Enforcement and Work Takeover).

c. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition or modification of the Work Plan. While awaiting EPA approval, approval on condition or modification of these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Order.

36. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Respondents shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA.

37. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondents shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately.

38. All plans, reports, and other deliverables submitted to EPA under this Order shall, upon approval or modification by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

under this Order, the approved or modified portion shall be incorporated into and enforceable under this Order.

39. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondents' deliverables, Respondents are responsible for preparing deliverables acceptable to EPA.

**XII. QUALITY ASSURANCE AND SAMPLING**

40. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, 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, reissued May, 2006)," 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.

41. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondents shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

42. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify EPA not less than 14 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 Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

**XIII. REPORTING**

43. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 14th day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the EPA. 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

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

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.

44. Respondents shall submit 4 copies of all plans, reports or other submissions required by this Order, or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form.

45. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately preceding sentence and Section XIV (Access to Property and Information).

46. Final Report. Within 60 days after completion of all Work required by this Order, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(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."

**XIV. ACCESS TO PROPERTY AND INFORMATION**

47. Respondents shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Iowa representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondents shall submit to EPA, upon receipt, the results of all sampling or tests and all other

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

48. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 15 days after the effective date of this Order, or as otherwise specified in writing by the RPM. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondents for all costs and attorney's fees incurred by the United States in obtaining access for Respondents.

**XV. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION**

49. Each Respondent shall preserve all records and documents (including records and 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, hazardous substances found on or released from the Site or the liability of any person under CERCLA with respect to the Site, for ten years following completion of the Work, regardless of any corporate retention policy to the contrary. 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.

50. At the end of this ten year period and 90 days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such records and documents to EPA. In addition, Respondents shall provide records and documents retained under this Section at any time before expiration of the ten year period at the written request of EPA.

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

52. Respondents shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondents shall keep the "privilege log" on file and available for inspection. EPA

**ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE**

may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

53. Off-Site Shipments-- Respondents 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 RPM. 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.

a. Respondents 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. Respondents 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.

b. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraphs 53.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents 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. Respondents 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.

**XVI. COMPLIANCE WITH OTHER LAWS**

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

**XVII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

55. 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, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the RPM or, in the event of his/her unavailability, the Region 7 24-hour emergency spill line at 913-281-0991 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, then EPA may respond to the release or endangerment and EPA reserves the right to pursue cost recovery if it so responds.

56. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the Region 7 24-hour emergency spill line at 913-281-0991, and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 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.*

**XVIII. AUTHORITY OF THE RPM**

57. The RPM shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

**XIX. ENFORCEMENT AND WORK TAKEOVER**

58. Violation of any provision of this Order may subject Respondents to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent(s) violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606. In the event EPA takes over performance of the Work pursuant to this provision, EPA shall have the right to immediately access any and all performance guarantee instruments provided pursuant to Section XX (Performance Guarantee) of this Order.

**XX. PERFORMANCE GUARANTEE**

59. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security for the benefit of EPA in the amount of \$300,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondents:

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

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

60. Any and all performance guarantee 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 performance guarantee provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of performance guarantee listed in paragraph 59, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of performance guarantee (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

61. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in paragraph 59 of this Section, Respondents 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 Work to be performed. Respondents 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.

62. In the event that EPA determines at any time that a Performance Guarantee provided by any Respondent pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Respondent becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Respondent becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

59 of this Order that satisfies all requirements set forth in this Section XX. In seeking approval for a revised or alternative form of Performance Guarantee, Respondents shall follow the procedures set forth in Paragraph 64 of this Order. Respondents' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Order, including, without limitation, the obligation of Respondents to complete the Work in strict accordance with the terms hereof.

63. The commencement of any Work Takeover pursuant to Paragraph 58 of this Order shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 59a., b., c., or d., and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, Respondents shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

64. Respondents may change the form of performance guarantee 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.

**XXI. REIMBURSEMENT OF OVERSIGHT COSTS**

65. Respondents shall reimburse EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order.

66. Respondents shall, within 30 days of receipt of the bill, remit a cashiers or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," referencing the name and address of the parties making payment and EPA Site/Spill ID number A7K9. Respondents shall send the checks to:

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

67. Respondents shall simultaneously transmit a copy of the check to EPA RPM identified in paragraph 27. Payments shall reference the payor's name and address, EPA site identification number A7K9, and the docket number of this Order.

68. Interest at the rate established under section 107(a) of CERCLA shall begin to accrue on the unpaid balance from the day of the original demand notwithstanding any dispute or objection to any portion of the costs.

**XXII. RESERVATION OF RIGHTS**

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

**XXIII. OTHER CLAIMS**

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

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

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

**XXIV. MODIFICATIONS**

73. Modifications to any plan or schedule may be made in writing by the RPM or at the RPM's oral direction. If the RPM makes an oral modification, it will be memorialized in writing within

ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

10 days; provided, however, that the effective date of the modification shall be the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by signature of the Director, Superfund Division, EPA Region 7 or her designee.

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

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

**XXV. NOTICE OF COMPLETION**

76. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including retention of records pursuant to Section XV and payment of oversight costs pursuant to Section XXI of this Order, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

**XXVI. ACCESS TO ADMINISTRATIVE RECORD**

77. EPA has established an Administrative Record which contains the documents that form the basis for the issuance of this Order. It is available for review by appointment on weekdays between the hours of 9:00 AM and 4:00 PM at the EPA Region 7 office at 901 North 5<sup>th</sup> Street, Kansas City, Kansas. To review the Administrative Record, please contact Mary Peterson at 913-551-7882 to make an appointment.

**XXVII. OPPORTUNITY TO CONFER**

78. Respondents may request a conference with EPA. A request for a conference must be received by EPA no later than January 9, 2009 and the conference shall be held no later than January 14, 2009, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative. The conference may be held by telephone rather than in person.

**ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE**

79. If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments in writing to EPA within 5 days following the conference, or no later than January 16, 2009, if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Daniel J. Shiel, Assistant Regional Counsel, at 901 N. 5<sup>th</sup> Street, Kansas City, KS 66101, telephone 913-551-7278.

**XXVIII. INSURANCE**

80. At least seven (7) days prior to commencing any on-site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of 2.0 million dollars, combined single limit. Within the same time period, the Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

**XXIX. ADDITIONAL REMOVAL ACTIONS**

81. If EPA determines that additional removal 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 removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section X of this Order. Upon EPA's approval of the plan, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XVIII.

**XXX. SEVERABILITY**

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

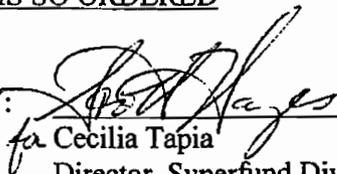
ORDER FOR REMOVAL RESPONSE ACTIVITIES  
SOUTHERN IOWA MECHANICAL SITE

**XXXI. EFFECTIVE DATE**

83. This Order shall be effective on January 23, 2009, unless this date is modified in writing by EPA.

**IT IS SO ORDERED**

BY:



for Cecilia Tapia

Director, Superfund Division

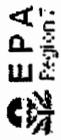
U.S. Environmental Protection Agency

Region 7

DATE:

12/30/08

EFFECTIVE DATE: January 23, 2009



# Southern Iowa Mechanical

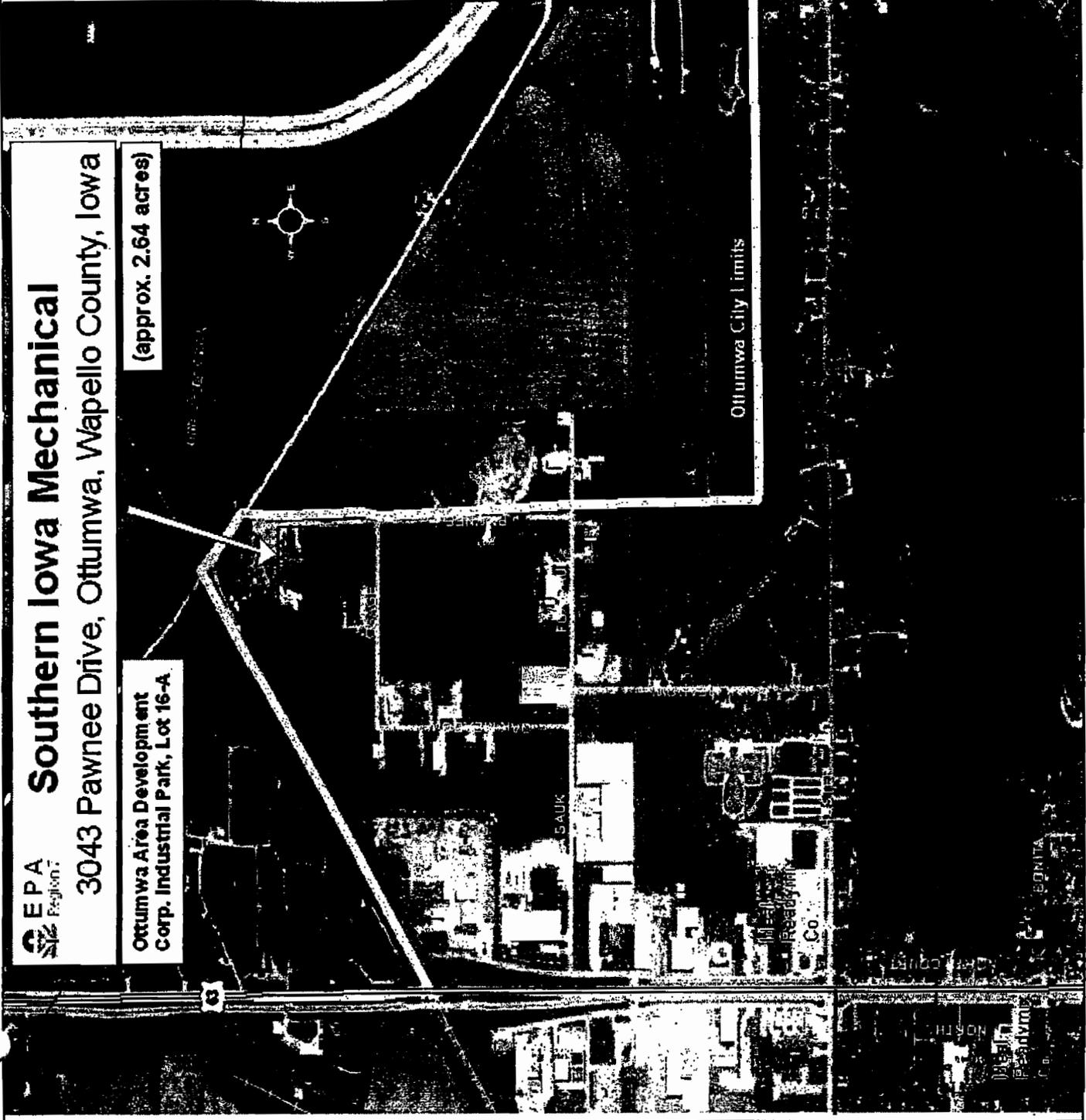
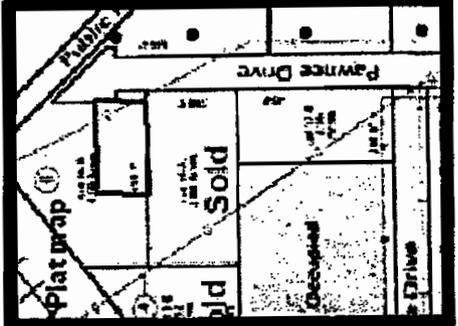
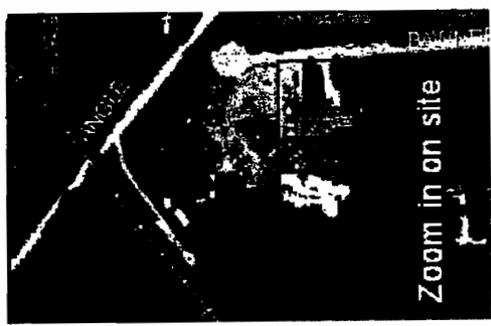
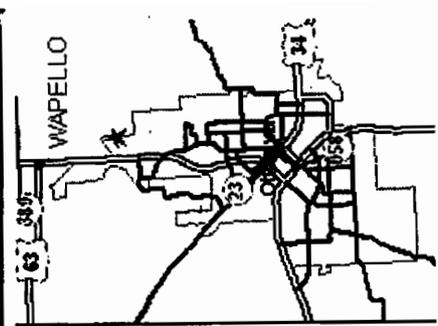
3043 Pawnee Drive, Ottumwa, Wapello County, Iowa

Ottumwa Area Development Corp. Industrial Park, Lot 16-A

(approx. 2.64 acres)



Ottumwa City Limits



IN THE MATTER OF Southern Iowa Mechanical Site; Titan Tire Corporation,  
and Dico, Inc., Respondents  
Docket No. CERCLA-07-2009-0006

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order for Removal Response  
Activities was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Daniel J. Shiel  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Mark E. Johnson  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, Missouri 64106-1208

Dated: 2/30/08



Kathy Robinson  
Hearing Clerk, Region 7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**ENFORCEMENT ACTION MEMORANDUM**

**SUBJECT:** Request for Time-Critical Removal Action at the Southern Iowa Mechanical Site  
Ottumwa, Wapello County, Iowa

**FROM:** Mary Peterson, Remedial Project Manager *Mary P. Peterson*  
Iowa/Nebraska Remedial Branch

**THRU:** Pradip Dalal, Chief *Pradip Dalal*  
Iowa/Nebraska Remedial Branch

*for* Kenneth S. Buchholz, Chief *Kenneth S. Buchholz*  
Emergency Response and Removal North Branch

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

SITE ID#: A7K9  
CERCLIS ID#: IAN000705908  
NATIONALLY SIGNIFICANT: No  
CATEGORY OF REMOVAL: Time Critical

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval of the proposed potentially responsible party (PRP) removal action for the Southern Iowa Mechanical (SIM) site located at 3043 Pawnee Drive in Ottumwa, Wapello County, Iowa. The general objectives of the proposed actions are to reduce the threat of exposure to polychlorinated biphenyls (PCB) and PCB-contaminated insulation on steel beams stored in open areas on the SIM site and to reduce or eliminate the threat of migration of the PCBs into surrounding soils on the property. The Environmental Protection Agency (EPA) anticipates that the PRPs will conduct this removal action.

**II. SITE CONDITIONS AND BACKGROUND**

**A. Site Description**

1. Removal site evaluation

Between approximately August and November 2007, SIM dismantled several buildings on property owned by Dico, Inc. (Dico), located at 200 SW 16<sup>th</sup> Street, Des Moines, Iowa (the Dico property). The Dico property is part of the Des Moines TCE site which is listed on the National Priority List (NPL). Some of the buildings on the Dico property dismantled by SIM contained PCB-contaminated insulation in the walls and the ceilings. In 1994, EPA issued Dico a Unilateral Administrative Order (UAO) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 106 requiring Dico, among other things, to repair any damaged insulation and encapsulate and maintain the encapsulated PCB-contaminated insulation. Limited portions of the insulation were too damaged to be repaired and were replaced with new insulation. Most of the insulation was encapsulated in place in the buildings.

Neither Dico nor SIM provided any notice to EPA that the buildings with PCB-contaminated insulation were going to be dismantled. EPA learned that the buildings were being dismantled on September 19, 2007, when EPA conducted a site inspection related to completion of the five-year review for the Des Moines TCE site. At the time of the site inspection, a building known as the Maintenance Building had already been completely dismantled; two other buildings known as Buildings 4 and 5—the two largest buildings—were partially dismantled. No SIM workers were observed working on the buildings during the site inspection. Dico's representatives indicated that the buildings had been "sold" and would be reerected at another location.

Various parts of the buildings were taken to different locations for disposition. The steel structural members—which are the subject of this Action Memorandum—were taken to SIM's Ottumwa, Iowa, facility. On May 16, 2008, EPA conducted a site assessment at the SIM site. The site assessment included an inspection of the SIM property and sampling for the purpose of determining whether PCB contamination was present on the beams or in the soil. EPA collected surface wipe samples from the steel beams, soil samples from areas which may receive runoff from the beams, and one bulk insulation sample. Prior to the inspection, EPA prepared and approved a Quality Assurance Project Plan (QAPP) supporting the collection and analysis of surface wipe samples and soil samples. The QAPP was based on EPA's understanding that all the insulation had been removed from the buildings as part of the dismantling process so there would not be any insulation left on the beams to sample. EPA therefore did not anticipate collecting samples of bulk insulation. However, when the EPA inspector arrived at the SIM site, he observed that some insulation remained adhered to the beams. EPA decided to use one of the sampling containers (glass jar) pre-labeled as a soil sample to collect a bulk insulation sample. The sampling container was appropriate for the collection of a bulk insulation sample. The same field preservation and handling requirements applied for the bulk insulation sample as for a soil sample.

The steel beams are stored in a large open area on the SIM property and are spread out over an area about 1 acre in size. In some areas, the beams are stacked on top of wooden supports; but in many areas, the beams are in contact with the ground.

Insulation residue is stuck to some of the beams, and what appears to be an adhesive residue is visible on many of the beams. The majority of the surfaces of the beams are

coated with a white paint. Beneath the layer of white paint, the beams appear to be coated with a layer of red paint. Photographs taken during the May 16 site assessment are attached to this Action Memorandum.

Surface wipe samples from the beams contained PCBs ranging in concentration from nondetect to 370 micrograms per 100 square centimeters ( $\text{ug}/100 \text{ cm}^2$ ). Wipe sampling results were reported in units of  $\text{ug}/\text{cm}^2$  in accordance with EPA Region 7 Standard Operating Procedure 3210.1D, "Extraction of Wipe Samples for PCB Analysis." In order to compare with regulatory levels, the units needed to be converted to  $\text{ug}/100 \text{ cm}^2$ . This conversion was performed by multiplying the lab results ( $\text{ug}/\text{cm}^2$ ) by a factor of 100. Soil samples from areas beneath the beams contained PCBs ranging from nondetect to 3,100 micrograms per kilogram ( $\text{ug}/\text{kg}$ ). The insulation sample contained PCBs (Aroclor 1254) at a concentration of 6,300,000  $\text{ug}/\text{kg}$ . This result is consistent with historical results of insulation samples collected from the buildings on the Dico property in Des Moines which contained PCBs (Aroclor 1254) up to 29,000,000  $\text{ug}/\text{kg}$ .

The key problems to be addressed by this removal action are the PCB residues remaining on the surfaces of the beams. Results of the limited soil sampling conducted during the site assessment indicate that only one sample exceeded the any-use cleanup standard of 1 part per million (ppm) for soil. Additional soil sampling would be conducted as part of this removal action to determine whether soil removal is necessary.

## 2. Physical location

The SIM site is located at 3043 Pawnee Drive in Ottumwa, Iowa. A site location map is included as Attachment 1. SIM operates an industrial maintenance contracting business on the property. The SIM property is situated in an industrial park area where the surrounding land use is predominantly industrial. However, a home for troubled teens is located in close proximity to the SIM property. In June 2008 at EPA's request, the owner of SIM installed a temporary fence to restrict access from the beams.

## 3. Site characteristics

The SIM site occupies approximately 2.6 acres. SIM's business operations consist of industrial maintenance contracting including mechanical equipment repair and installation. The information currently available indicates that the PCB contamination was present on the beams when they were transported to the SIM property.

Other than the temporary fencing installed by SIM in June, the proposed removal action is the first action to be taken at the SIM site.

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

Steel beams at the SIM site contain PCB residues. PCBs are listed as a hazardous substance in section 101(14) of CERCLA, 42 U.S.C. § 9601 (14).

The site assessment revealed that there are hundreds of steel beams stored on the SIM site that resulted from the dismantling of buildings at the Dico property in Des Moines, Iowa. Sampling conducted during the site assessment indicated that the surfaces of the beams contain PCBs up to 370 ug/100 cm<sup>2</sup>. A total of 13 wipe samples was collected from the beams. Of those, only two samples were nondetect, four were below 10 ug/100 cm<sup>2</sup>, and seven were above 10 ug/100 cm<sup>2</sup>. Sampling results are compared with the level of 10 ug/100 cm<sup>2</sup> as prescribed by the Toxic Substances Control Act (TSCA) § 761.61(a)(4) as the cleanup standard for nonporous surfaces for high occupancy areas. The table below summarizes the wipe sampling results.

<b>Wipe Sampling Data Summary</b>	
<b>Sample Number</b>	<b>PCB Concentration (ug/100 cm<sup>2</sup>)</b>
109	330
110	150
111	8.4
112	370
113	68
114	38
115	210 (J)
116	9.4
117	7.4
118	ND
119	ND
120	190
121	4.7

Notes:

1. (J) indicates that the analyte was identified, but the reported value is an estimate.
2. ND indicates the compound was not detected above the reporting limit.

A total of six soil samples was collected during the site assessment. Of those, two contained nondetectable levels of PCBs and four samples contained PCBs ranging from 46 to 3,100 ug/kg as indicated in the table below. TSCA prescribes a cleanup level of less than 1,000 ug/kg (or 1 mg/kg) for areas which will allow for unrestricted use.

<b>Soil Sampling Data Summary</b>	
<b>Sample Number</b>	<b>PCB Concentration (ug/kg)</b>
1	250
2	ND
3	46
4	3100
5	ND
6	170

Note:

1. ND indicates that the analyte was not detected above the reporting limit.

The bulk insulation sample—sample number 9—contained 6,300,000 ug/kg PCBs. Pieces of insulation are adhered to some of the beams. An estimate of the amount of bulk insulation present at the SIM site is between one to two drums.

The presence of PCBs on the surfaces of the beams presents a threat of release to the surrounding soils. Soil sampling results indicate that such a release has already occurred. The beams are stored in an open area where rain, wind, and other natural elements can cause the migration of contaminants from the beams into the surrounding soils. The beams present a threat of direct contact exposures to SIM workers, site visitors, and trespassers. A home for troubled teens is located in close proximity to the SIM site.

5. NPL status

The SIM site is not an NPL site and has not been proposed for inclusion on the NPL. The SIM site is not expected to receive a Hazard Ranking System scoring due to the limited nature of the threats.

6. Maps, pictures, and other graphic representations

A site location map is included as Attachment 1, and photographs collected during the site assessment are included as Attachment 2.

B. **Other Actions to Date**

1. Previous actions

The only previous action taken at the SIM site with respect to the beams is the installation of a temporary fence to restrict access to the beams. The fence was installed by the property owner at EPA's request in July 2008.

2. Current actions

There are no other response actions currently taking place at the SIM site.

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

1. State and local actions to date

The state has been notified of the proposed removal action and has provided a list of state applicable or relevant and appropriate requirements (ARARs). Local authorities have not been involved in this action.

2. Potential for continued state/local response

The state may continue to be involved regarding the approval of disposal facilities in the state. The local authorities may also be involved in the same manner if local disposal facilities are permitted to receive wastes from the removal action.

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

#### **A. Threats to Public Health or Welfare**

The SIM site's conditions pose a threat to public health and welfare which meet the criteria for response action under 40 CFR § 300.415(b)(2) of the National Contingency Plan (NCP) which are described below:

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants [40 CFR § 300.415(b)(2)(i)]

High concentrations of PCBs are present on the surfaces of steel beams located in a large field on the SIM property. Based on the results of the bulk insulation sample, the remnants of insulation remaining on the beams are expected to contain concentrations of PCBs in excess of 1,000 ppm. Actual or potential exposures may be occurring for SIM workers, site visitors, or trespassers who come into contact with the beams. The primary routes of exposure would include direct contact for dermal exposures and ingestion which could occur if food is handled and consumed following contact with the beams or if exposed areas of skin are brought into contact with the mouth. Potential receptors include those who live at the home for troubled teens, located in very close proximity to the area where the beams are stored. The property owner has installed a temporary fence to discourage access to the beams. However, the fence can be easily breached. Exposure to the beams remains a concern until such time as the beams are cleaned or removed. The level of PCBs on the surfaces of the beams exceeds the cleanup standard of 10 ug/100 cm<sup>2</sup> for high occupancy areas as set forth in § 761.61(a)(4) of TSCA. Direct contact exposures to high levels of PCBs can result in skin rashes. Studies of exposed workers have shown changes in blood and urine that may indicate liver damage.

An ecological assessment has not been performed at the SIM site. However, the location and setting of the SIM site are amenable to various animal species. The temporary fence would not prevent animals from coming into contact with the beams. Impacts from the SIM site to animals or the food chain are uncertain, but site conditions at a minimum represent potential exposures.

2. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released [40 CFR §300.415(b)(2)(v)]

The PCB-contaminated beams are stored in an open area exposed to rain, wind, and other natural elements. PCBs have been detected in the soils beneath the beams indicating that some degree of migration has already occurred. Until the beams are addressed, migration

will continue to occur to the extent that soil cleanup may also become necessary. Migration to soils presents a much broader area over which receptors may be exposed since soils are prone to distribution via runoff, wind, and vehicular and pedestrian traffic (i.e., on wheels and shoes).

**B. Threats to the Environment**

1. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released [40 CFR § 300.415(b)(2)(v)]

Rainfall events present a threat of migration of PCBs from the surfaces of the beams to the surrounding soil. Surface water runoff could be carried from the beam storage area to other areas on the SIM site or beyond.

**IV. ENDANGERMENT DETERMINATION**

Actual or threatened release of hazardous substances from the SIM site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

**V. PROPOSED ACTIONS AND ESTIMATED COSTS**

**A. Proposed Actions**

1. Proposed action description

The proposed action consists of decontamination of the beams by removing the PCB residues by scarification. The beams would be decontaminated to meet the Visual Standard No. 2, Near-White Blast Cleaned Surface Finish, of the National Association of Corrosion Engineers (NACE), as called for by 40 CFR 761.79(b)(3)(B). This standard applies to "non-porous surfaces in contact with non-liquid PCBs (including non-porous surfaces covered with a porous surface, such as paint or coating on metal)." The beams are a nonporous surface in contact with nonliquid PCBs (insulation and adhesive residue) and the beams are coated with paint. Following scarification, the cleaned beams would then be available for reuse. Decontamination waste including the scarifying agent would be containerized and transported off-site for disposal in accordance with applicable TSCA regulations.

Soil beneath the area where the beams have been stored would be sampled using a statistical sampling scheme to verify that appropriate cleanup levels are achieved. Any areas exceeding cleanup levels would be excavated and transported off-site for disposal in accordance with 40 CFR 761.61.

2. Contribution to remedial performance

The proposed removal action is expected to address all threats at the SIM site, and no long-term cleanup plans for the SIM site are anticipated. These actions would be consistent with any anticipated action if a remedial action was subsequently found to be necessary.

### 3. Description of alternative technologies

For the decontamination option, an alternative technology could include decontamination by solvent washing rather than scarification. Solvent washing is provided for under 40 CFR 761.79(b)(3)(i)(A) for nonporous surfaces in contact with liquid PCBs. EPA does not consider this to be an acceptable option for the SIM site. The beams at the SIM site were not in contact with liquid PCBs. Although solvent washing may be effective at removing the PCB residues from unpainted metal surfaces, because this action addresses beams that have been painted, the solvent washing is not expected to remove PCBs from the painted surface or PCB-contaminated paint from the beams.

TSCA provides for disposal options for PCB-remediation waste. The disposal options that could be employed at the SIM site include incineration and disposal at a chemical waste landfill. Each of these alternatives would be equally effective at addressing the threat posed by the contaminated beams by removing them from the SIM site and mitigating the exposures. Disposal by incineration presents implementability concerns due to the size of the beams. Prior to incineration, the beams would need to be cut or shredded. Disposal in a landfill would not have any such implementability concerns. Disposal costs are expected to be similar for incineration versus disposal in a landfill.

The proposed action offers a few advantages over the alternative technologies. Scarification will address the paint on the beams where solvent washing would not. Scarification will also allow for reuse of the beams unlike either of the disposal options. The proposed action will also result in the least amount of waste to be sent to a landfill.

### 4. Engineering evaluation/cost analysis

The proposed action is time critical due to the actual or potential exposures and the limited restrictions on access. Since the action is time critical, an Engineering Evaluation/Cost Analysis was not prepared.

### 5. ARARs

The NCP provides that removal actions shall, to the extent practicable considering the exigencies of the situation, attain ARARs under federal environmental, state environmental, or facility citing laws.

#### Federal ARARs:

- PCB-contaminated Steel Beams and Residual Insulation

For unrestricted reuse of the beams, 40 CFR 761.79(b)(3)(i)(B) requires cleaning to Visual Standard No. 2, Near-White Blast Cleaned Surface Finish, of NACE. A person shall verify compliance with standard No. 2 by visually inspecting all cleaned areas.

- Residue from the Surface Cleaning

On-site storage prior to disposal: 40 CFR 761.65 is applicable to the storage of PCB wastes containing greater than 50 ppm. Requirements contained in this section may or may not be applicable depending on the PCB concentration of materials stored on-site during the removal action. Requirements include limits on the length of time PCB wastes can be stored and requirements for the storage containers and associated facilities; 40 CFR 761.40 is applicable to the marking of PCB containers and storage areas used to store PCB items for disposal.

Disposal: As provided in 40 CFR 761.62(a), residue from the surface cleaning must be disposed of in a chemical waste landfill approved under § 761.75, in a hazardous waste landfill permitted by EPA under section 3004 of the Resource Conservation and Recovery Act (RCRA), by a state authorized under section 3006 of RCRA, or in accordance with a disposal plan meeting the substantive requirements of 40 CFR 761.77.

Other requirements such as the notification requirements found in 40 CFR 761.205, manifesting requirements found in 40 CFR 761.207, certificate of disposal requirements found in 40 CFR 761.218, the CERCLA Off-site Rule found at 42 U.S.C. 9621(d)(3), and site worker safety requirements found at 29 CFR 1910.120 will be complied with as appropriate depending upon whether the PRPs or EPA conduct the removal action.

#### State ARARs:

A letter was sent to the state on July 25, 2008, requesting the state to identify any ARARs it believes may be appropriate for this action. In a letter dated July 31, 2008, the state identified the following as ARARs for the proposed action:

- Chapter 567 Iowa Administrative Code (IAC) 109 contains regulations for the disposal of special wastes in Subtitle D landfills. Regarding the disposal of wastes containing PCBs, paragraph 567 IAC 109.5(2)c states that wastes containing PCBs with concentrations greater than 50 ppm shall not be authorized for disposal at a landfill. Because we do not anticipate on-site disposal of any materials, this requirement would not be an ARAR. However, this requirement will be considered when evaluating appropriate off-site disposal facilities.
- Subrule 567 IAC 137.5(5) specifies standards for establishing state-wide standards for contaminants in soil in the Iowa Land Recycling Program. The standard specified there for unrestricted exposure is 2.2 mg/kg. This standard is less stringent than EPA's standard of 1 mg/kg for

unrestricted exposure. Therefore, EPA anticipates complying with the more stringent federal ARAR for this action.

- Subrule 567 IAC 137.6(6) of the Land Recycling Program specifies a process for establishing site-specific soil standards. Under this rule, the soil standard for PCBs based on a nonresidential land use is 165 mg/kg for soils less than two feet deep and 1,900 mg/kg for soils greater than two feet deep. This standard is less stringent than EPA's standard of 1 mg/kg for unrestricted exposure. Therefore, EPA anticipates complying with the more stringent federal ARAR for this action.

6. Project schedule

On-site activities are expected to take two to ten weeks to complete depending on weather conditions.

**B. Estimated Costs**

The estimated cost of beam decontamination is \$300,000. However, there are significant uncertainties in this estimate including the cost of blasting equipment rental, the number of beams requiring decontamination, and off-site disposal costs.

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

If the proposed actions are not taken, PCBs will likely continue to migrate from the surfaces of the beams to surrounding soil and will continue to present a threat to human health and the environment. In addition, the cost of cleanup will increase if the soil at the SIM site becomes more contaminated from runoff from the beams.

**VII. OUTSTANDING POLICY ISSUES**

There are no known outstanding policy issues associated with the proposed action.

**VIII. ENFORCEMENT**

PRPs have been identified, and EPA anticipates issuing administrative orders for the performance of the proposed actions. Additional information is included in the Enforcement Addendum provided as Attachment 3.

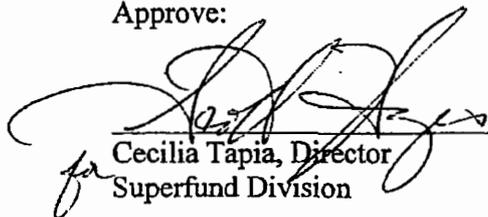
**IX. RECOMMENDATION**

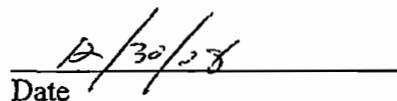
This decision document represents the selected removal action for the SIM site in Ottumwa, Iowa, developed in accordance with CERCLA, as amended, and not inconsistent with

the NCP. This decision is based on the administrative record for the SIM site. Conditions at the SIM site meet the criteria set forth at 40 CFR § 300.415(b)(2) for a removal action, and I recommend your approval of the proposed action.

Attachments

Approve:

  
for Cecilia Tapia, Director  
Superfund Division

  
Date



## Attachment 2

Photographs from May 16, 2008 Site Assessment

Southern Iowa Mechanical Site

Ottumwa, Iowa



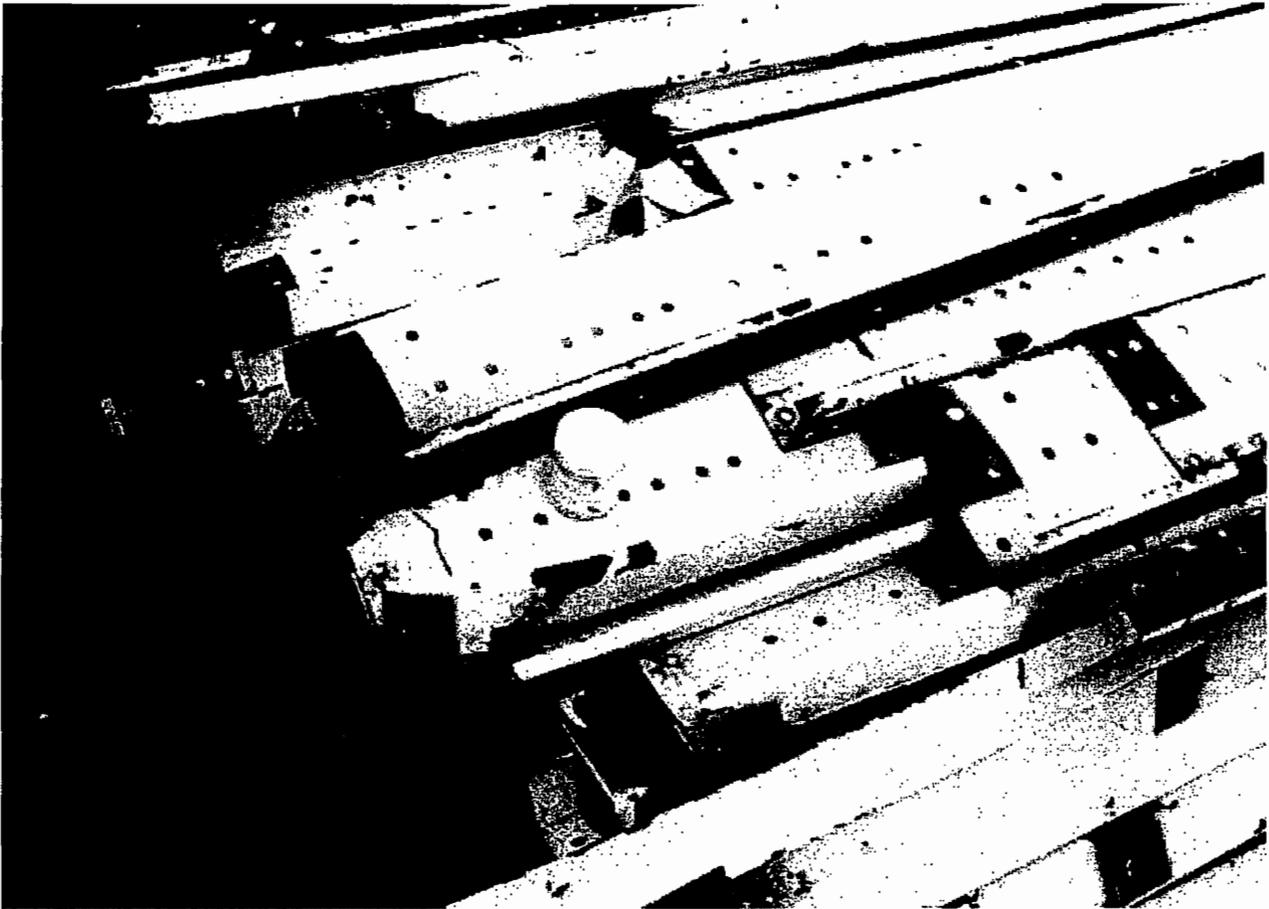
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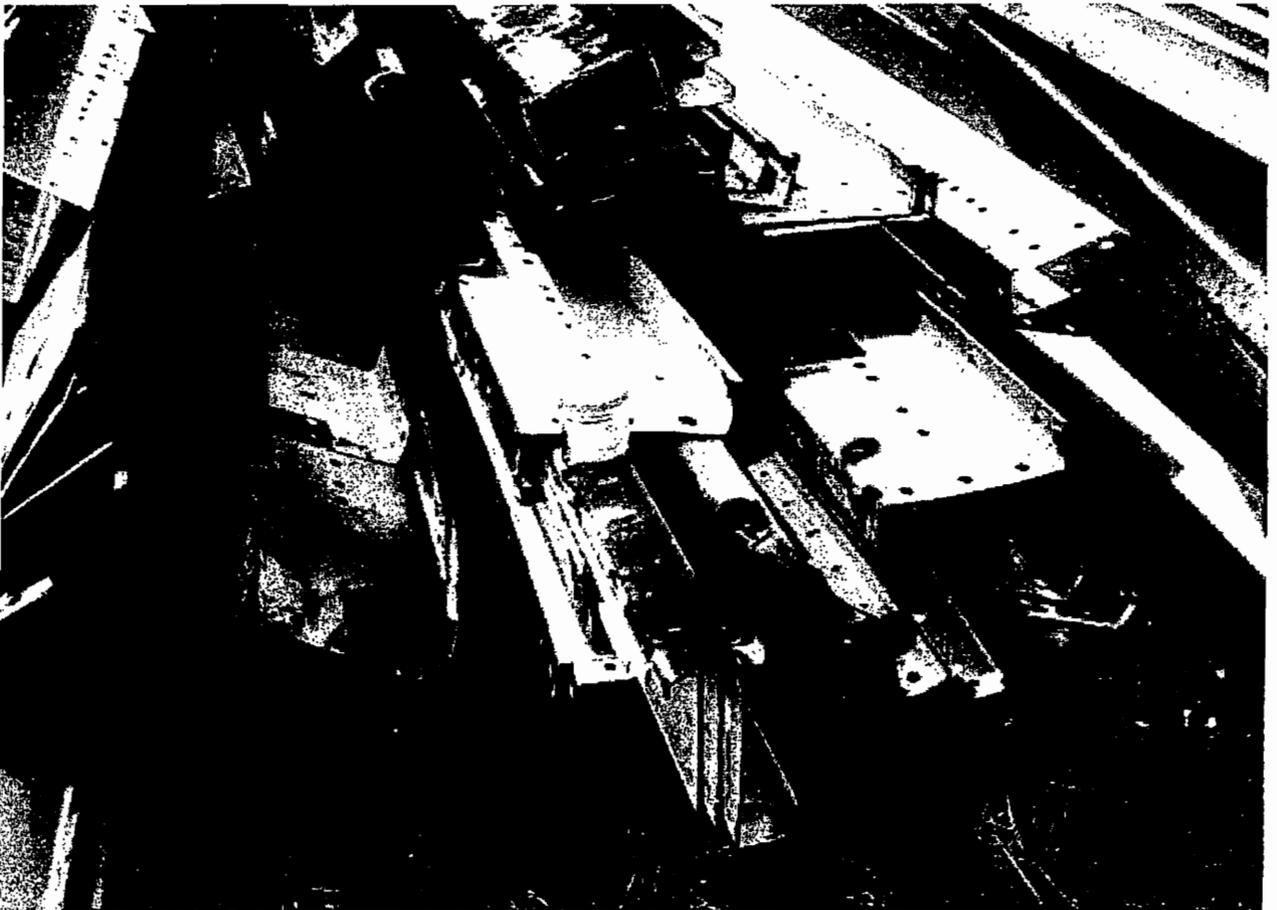


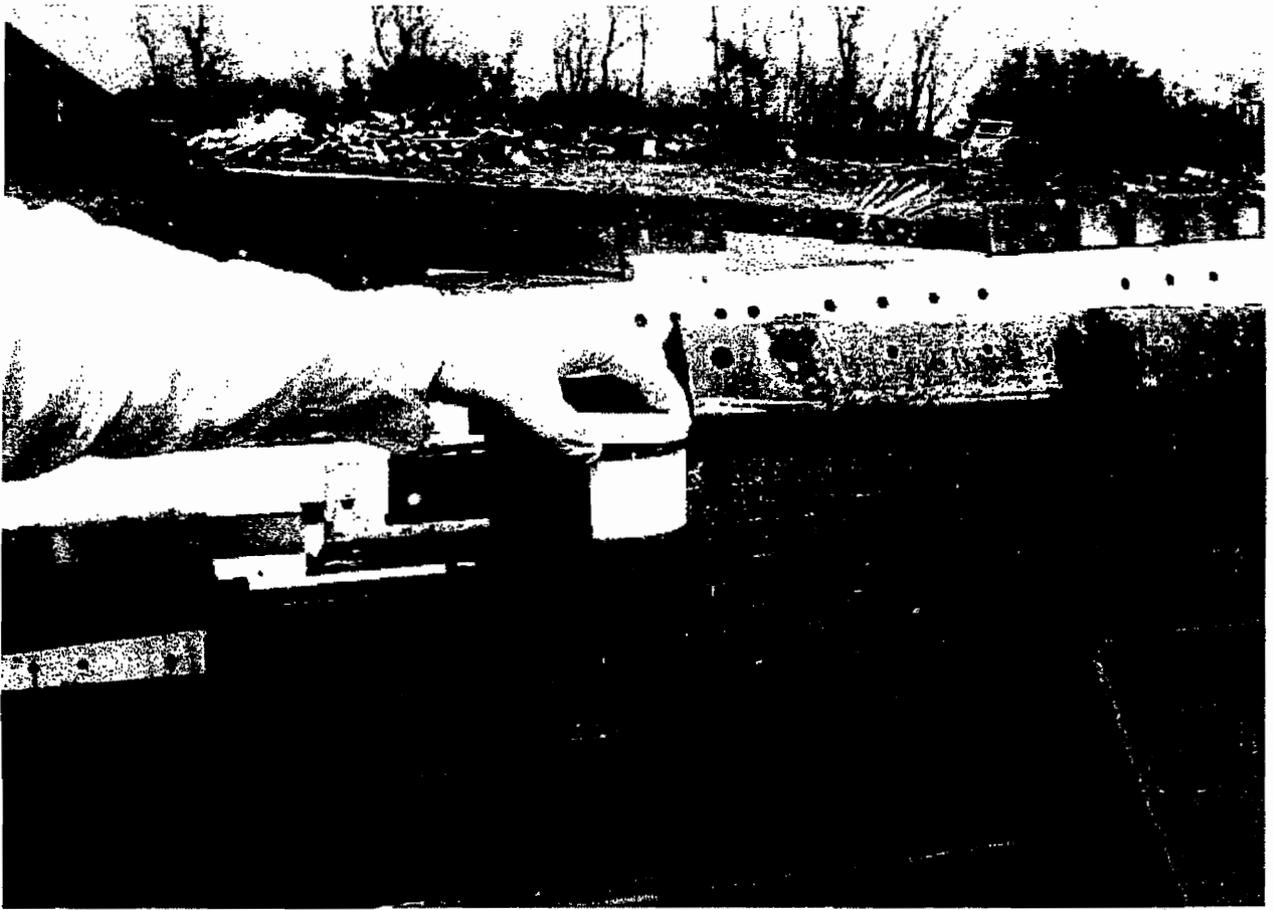
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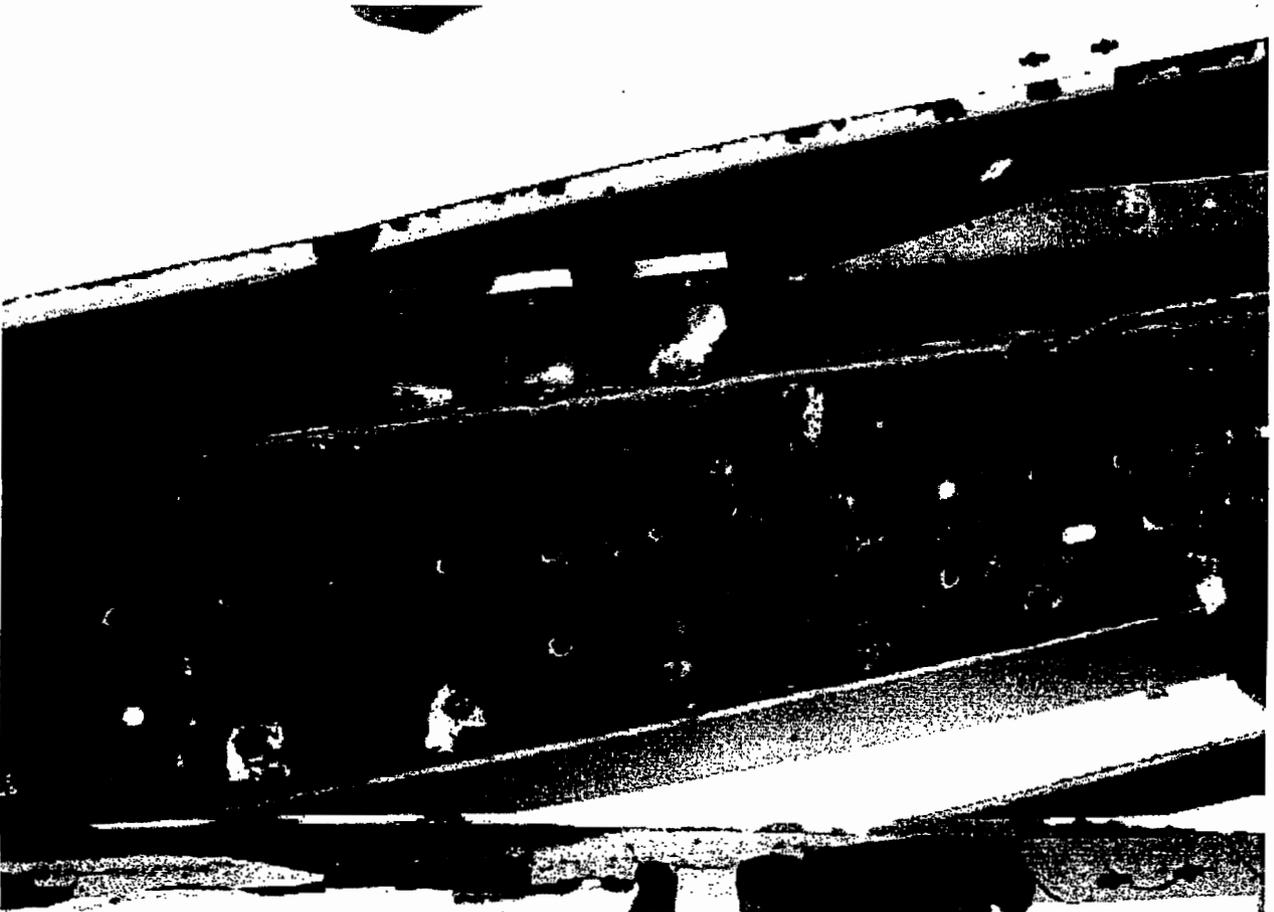
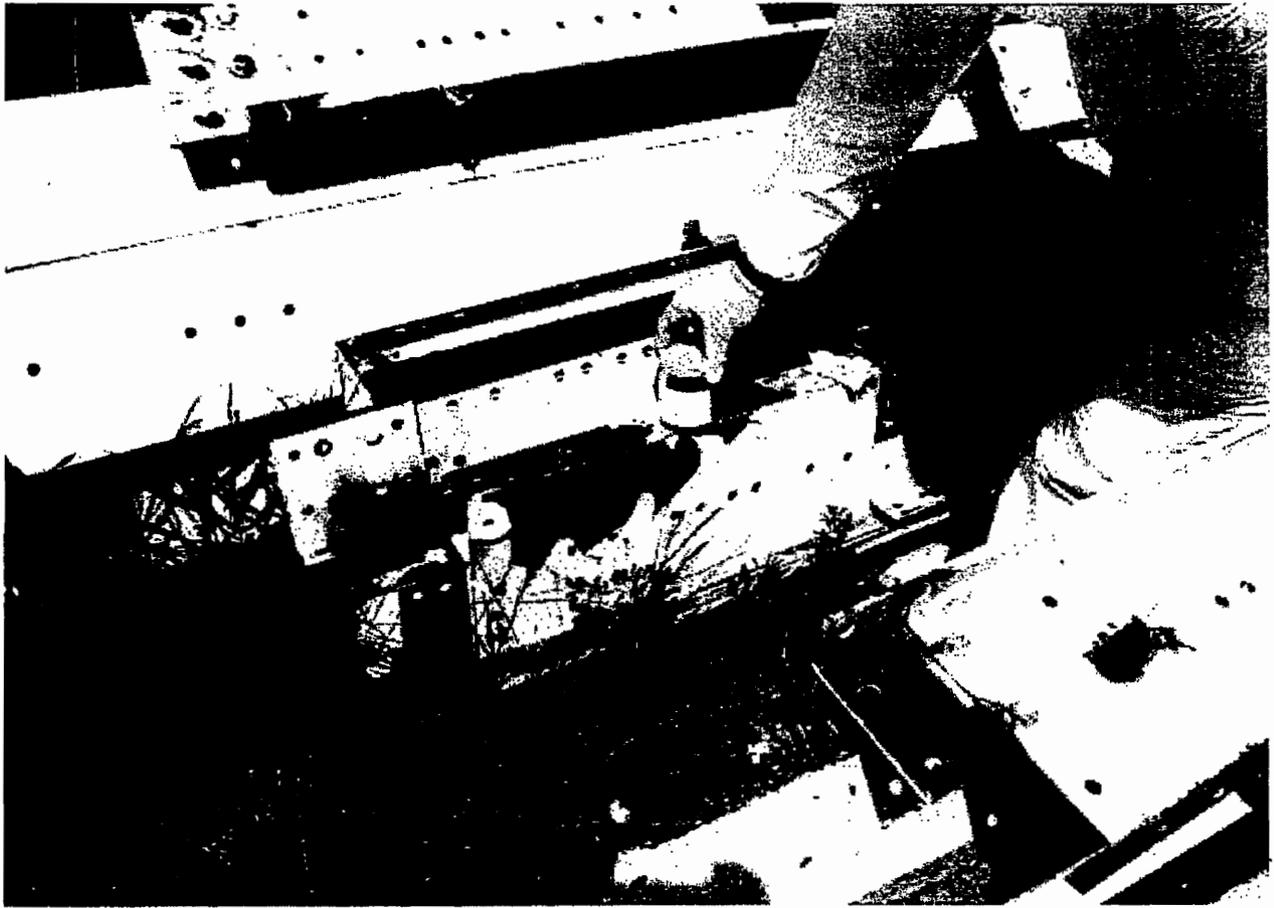




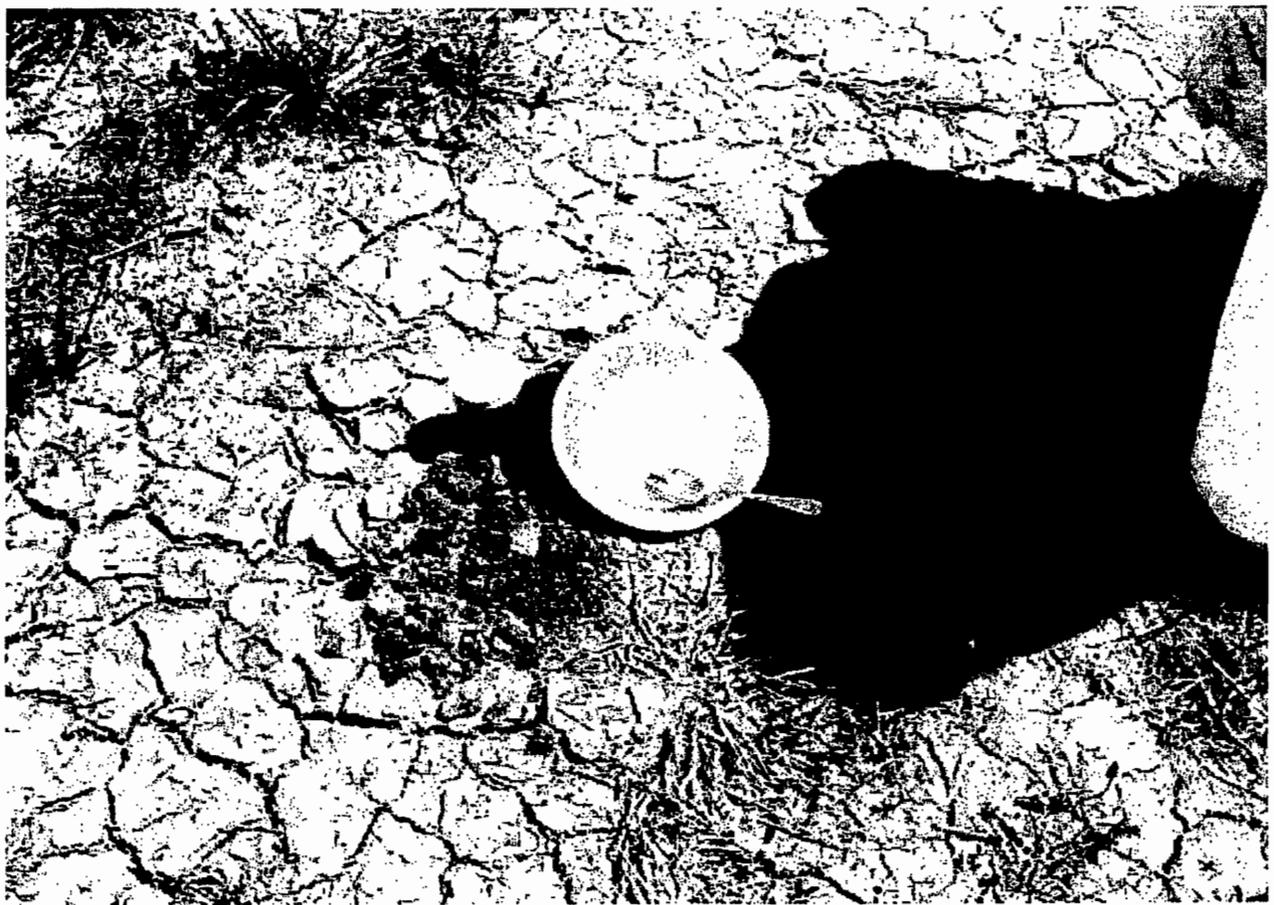




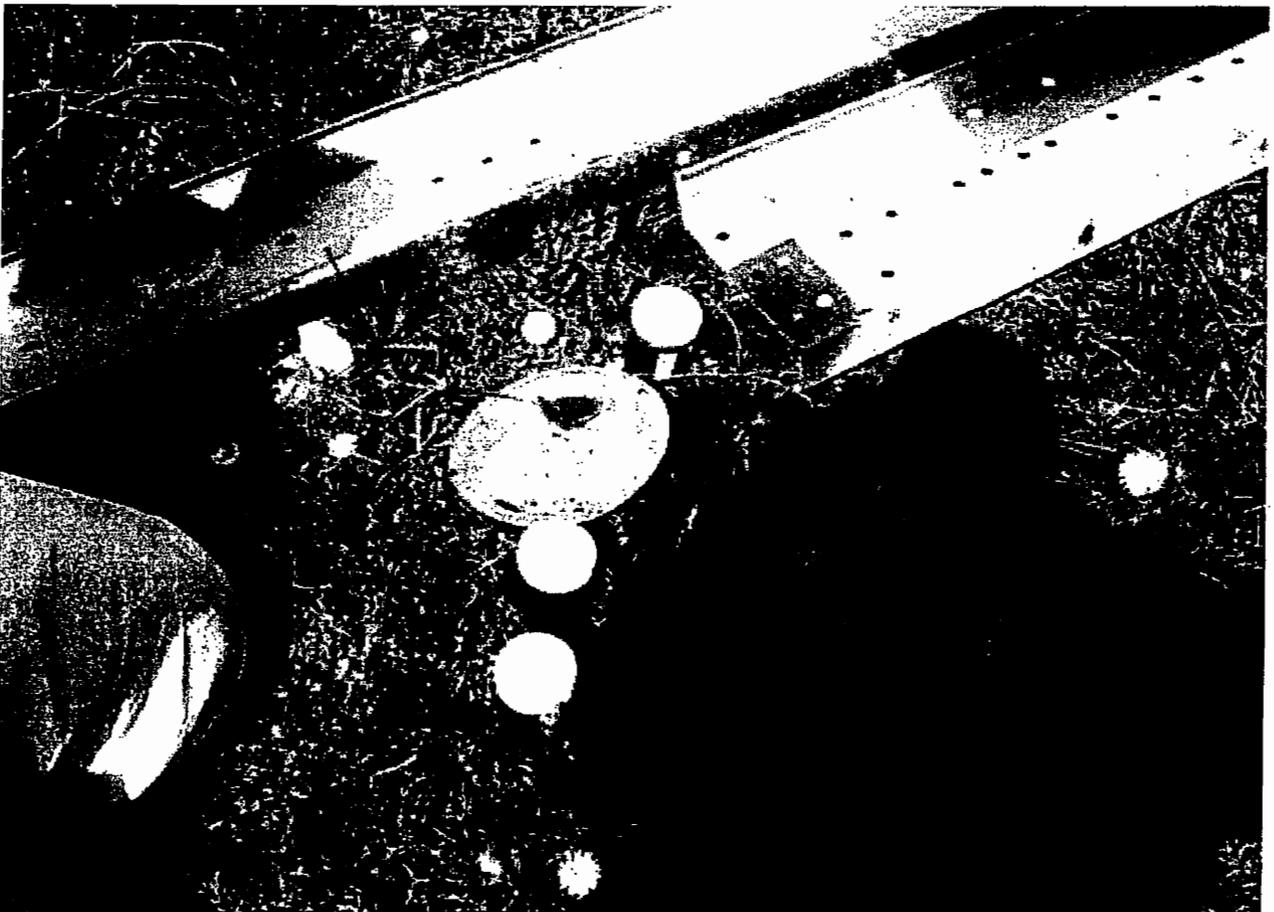


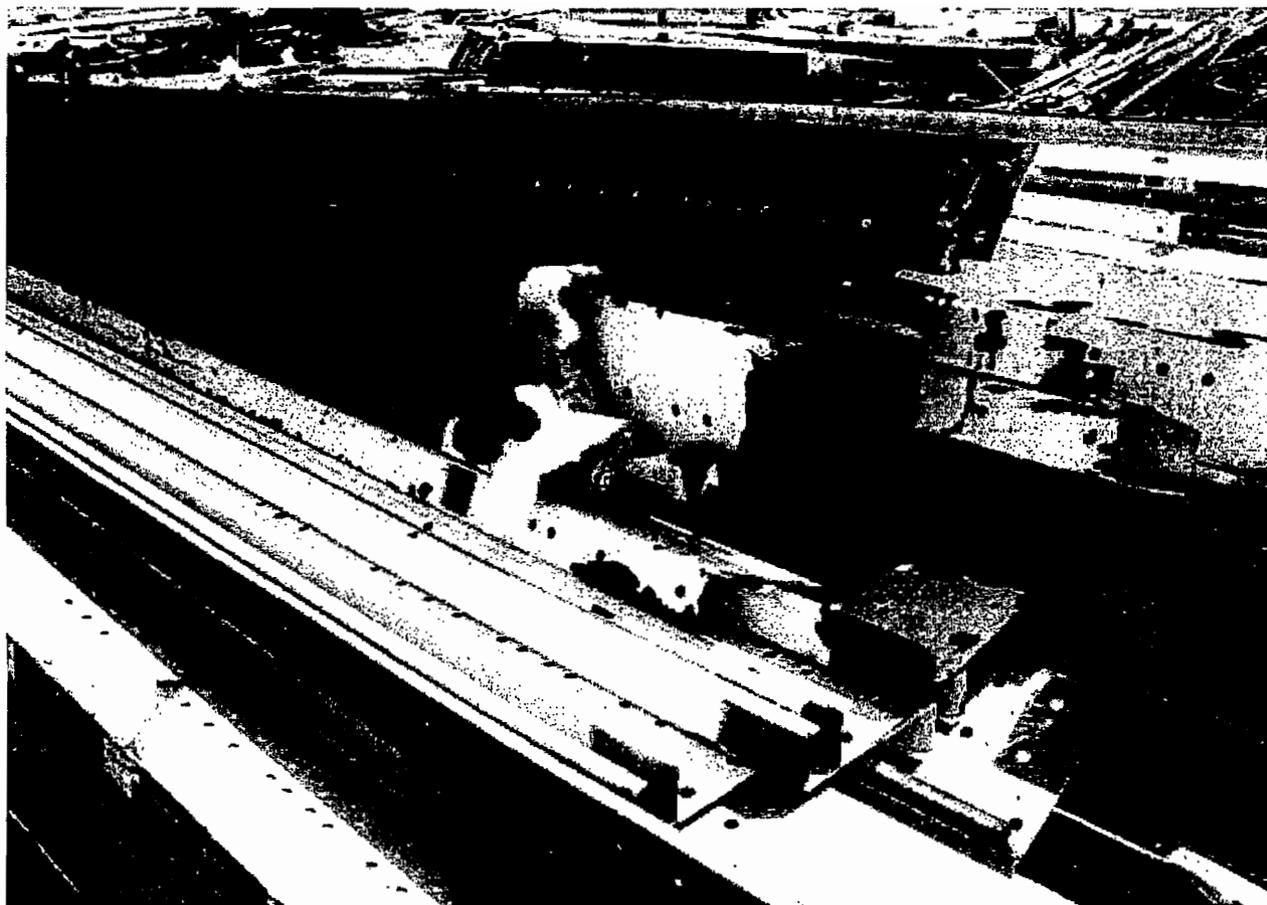


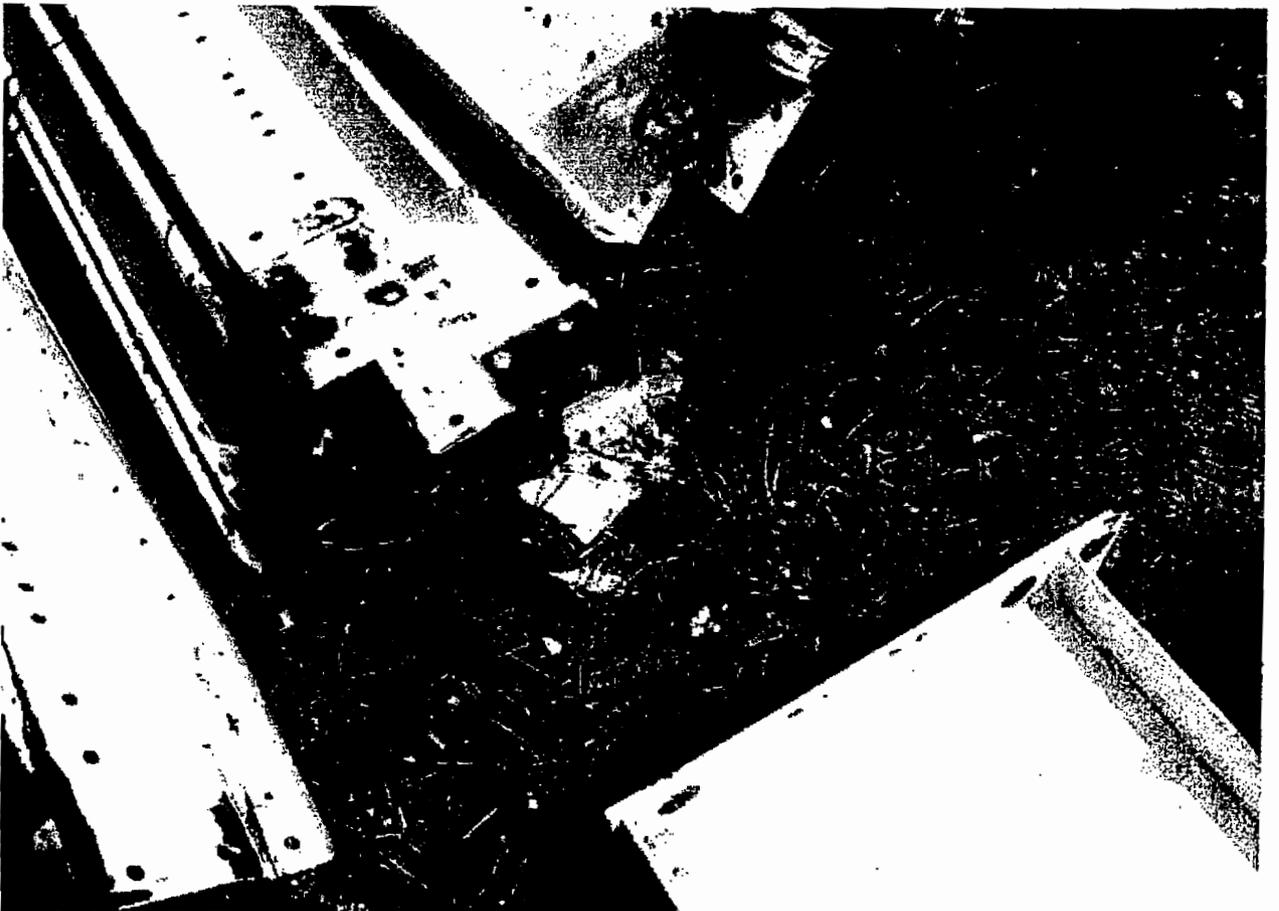
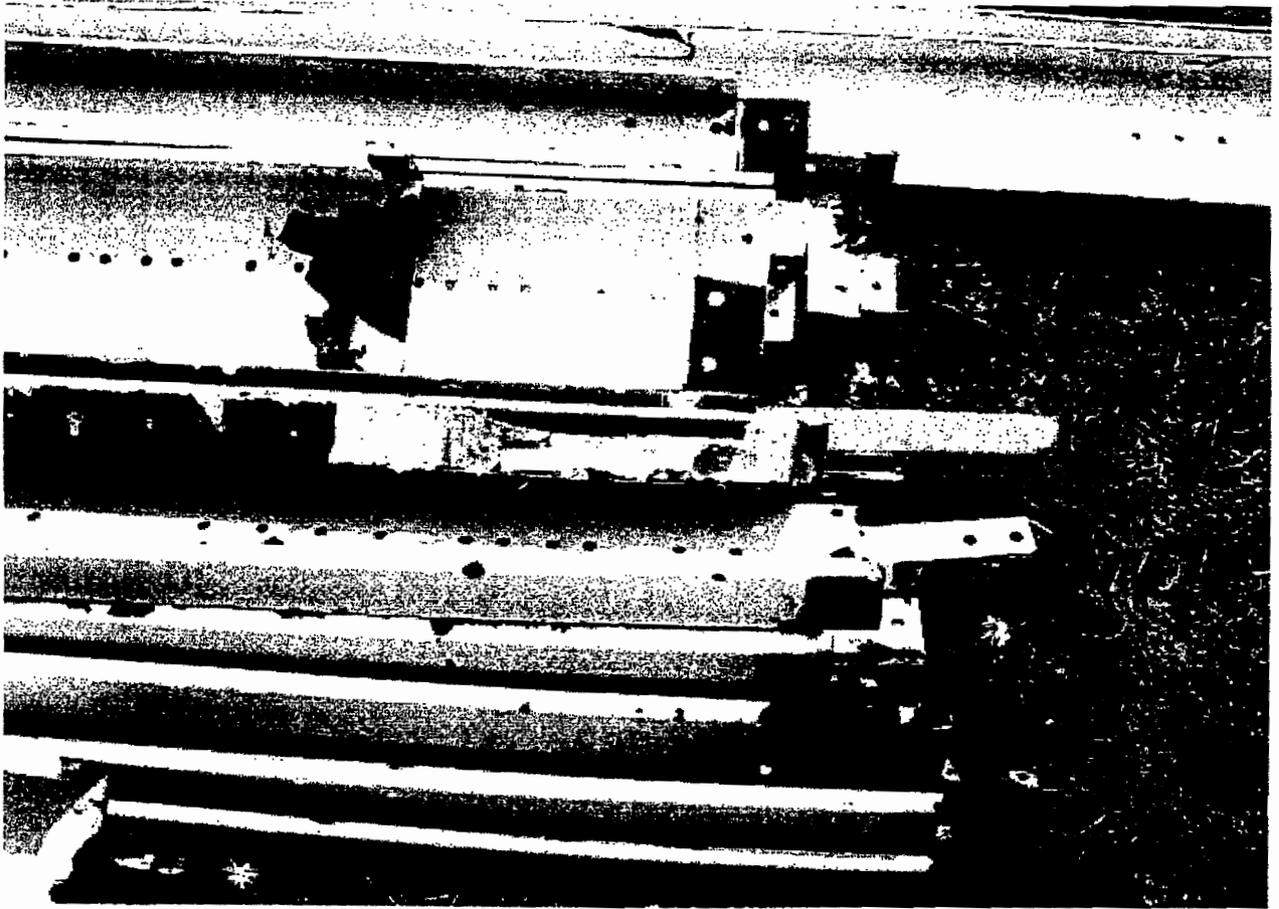
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## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**DEC 30 2008**

Mr. Mark E. Johnson  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, Missouri 64106-1208

Re: Southern Iowa Mechanical, Ottumwa, Iowa

Dear Mr. Johnson:

On September 18, 2008, the U.S. Environmental Protection Agency (EPA) Region 7 forwarded a proposed Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement) to various parties including Titan Tire Corp. (Titan Tire) and Dico, Inc. (Dico). Titan Tire's and Dico's responses to our efforts to engage them in settlement negotiations have been to assert that there were serious flaws in EPA's sampling and analysis; that EPA manipulated the beam sampling data to make it appear that concentrations of polychlorinated biphenyls (PCBs) exceeded the cleanup criteria; and that EPA's proposed cleanup is excessive, unwarranted, and dangerous. EPA categorically denies each of your assertions.

As we have previously explained to you and as indicated in the Quality Assurance Project Plan, a copy of which has already been provided to you, the purpose of EPA's May 2008 sampling was to determine whether PCBs were present on the beam surfaces and in the soil beneath the beams, not to do statistically based sampling. EPA therefore sampled the locations where the PCBs were most likely to be found. Having now found PCBs present on the beams, in insulation, and in the soil beneath the beams, additional more comprehensive testing would be needed as part of the site cleanup.

The EPA laboratory data are correctly reported in units of microgram per square centimeter ( $\mu\text{g}/\text{cm}^2$ ). As indicated in the laboratory's standard operating procedures, which also have been provided to you, the area from which the wipe sample was collected is accounted for in the calculation of the results. Because the cleanup standard is expressed in terms of micrograms per 100 square centimeters ( $\mu\text{g}/100 \text{ cm}^2$ ), the laboratory data reported in  $\mu\text{g}/\text{cm}^2$  must be multiplied by 100 for comparison with the cleanup standard. If you prefer to compare the data expressed in  $\mu\text{g}/\text{cm}^2$  with the cleanup criteria, then the appropriate cleanup standard would be  $0.10 \mu\text{g}/\text{cm}^2$ . Either way you express the cleanup standard, EPA's May 2008 sampling data show PCBs present on the beam surfaces exceeding the cleanup standard which warrants cleanup.

Titan Tire's and Dico's argument that EPA's proposed cleanup is excessive appears to be based largely on the erroneous assumption that every beam must be cleaned by scarification. EPA's proposed cleanup requires only those portions of the beams with PCBs greater than 10 ug/100 cm<sup>2</sup> to be cleaned. EPA's proposal provides for a visual inspection of the beams subject to verification by statistical wipe sampling to determine which portions of the beams need to be cleaned.

The assertion that EPA's proposed cleanup is dangerous assumes that appropriate measures are not taken to control the materials resulting from the scarification process and to assure the safety of workers. These measures are required as part of EPA's proposed cleanup.

As an alternative to scarification or off-site disposal, Titan Tire and Dico propose solvent washing the beam surfaces identified as contaminated with PCBs. EPA's Toxic Substances and Control Act (TSCA) regulations provide for using a solvent wash to clean nonporous surfaces which have been in contact with liquid PCBs. The situation at Southern Iowa Mechanical is not consistent with these conditions so solvent washing is not an acceptable approach to clean the beams. With some possible exceptions, the beam surfaces to be cleaned have been painted so we are dealing with a nonporous surface covered with a porous surface. Also, the PCBs resulting in the contamination were not in liquid form as envisioned by the TSCA regulations.

Finally, Titan Tire's and Dico's attempt to characterize their arrangements with Southern Iowa Mechanical to dismantle the buildings on Dico's property as a sale of a useful product is not acceptable. Titan Tire and Dico were in effect disposing of the hazardous substances, including PCBs, encapsulated within the building. Considering the totality of the circumstances, Dico's intention was to get rid of the buildings including the contaminated insulation without incurring considerable expense to dispose of the insulation properly. Disposition of the contaminated insulation was an integral part of the transaction.

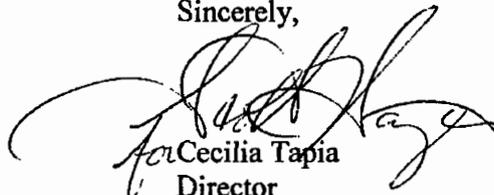
You have now had the proposed Settlement Agreement for over two months, and EPA does not believe it would be fruitful to engage in further negotiations. Enclosed are both a Settlement Agreement and a Unilateral Administrative Order (UAO) for Removal Response Activities. The work required in both is the same, but there are provisions in the Settlement Agreement that would be more favorable to Dico and Titan Tire, e.g., dispute resolution, force majeure, covenants not to sue, etc.

EPA encourages Titan Tire and Dico to sign and return the Settlement Agreement prior to the effective date of the UAO, and it is our hope that they do so. However, should they choose not to, they must begin compliance with the UAO by notifying EPA of their intent to comply under Section VII of the UAO. If they do not provide a timely

notice of intent to comply, EPA will consider them to be in violation of the UAO which can carry substantial penalties under section 106 of CERCLA. The notice of intent to comply should be sent to Mary Peterson, Superfund Division, EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

EPA urges you to consider carefully this offer and respond in a timely manner. Questions about the UAO should be directed to Dan Shiel, Attorney, EPA Region 7, at (913) 551-7278.

Sincerely,



for Cecilia Tapia  
Director  
Superfund Division

Enclosures

**3**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**MAR 18 2009**

**Certified Mail**  
**Return Receipt Requested**

Mr. Jeffrey T. Brown, CHMM  
Greenleaf Environmental  
4943 Austin Park Drive  
Buford, Georgia 30518

Re: In the Matter of Southern Iowa Mechanical, Ottumwa, Iowa  
Order for Removal Response Activities  
Docket No. CERCLA-07-2009-0006  
Section XI, EPA Approval of Plans and Other Submissions

Dear Mr. Brown:

This letter is to inform you that the United States Environmental Protection Agency (EPA) has reviewed the work plan and related documentation submitted on February 10, 2009, via electronic mail pursuant to the Order referenced in the above subject line. In accordance with Section XI of the Order, EPA is disapproving the submission in part and requesting that the submission be modified.

Primarily, the document is being disapproved as a result of failure to comply with Section IX, paragraph 29b, and Section X, paragraph 30d, for soil remediation. The Order states that "all soils contaminated with PCBs above 1 ppm shall be excavated and transported..." Consistently, the submitted documents state that "the soil beneath the current metal beam stockpiles will be sampled to verify they do not exceed the 25 mg/kg PCB cleanup standard..." Cleanup standards should be revised to align with the 1 ppm standard prescribed in the Order. Additionally, the document does not identify the disposal facility to be utilized for disposal of the excavated soils.

Other comments to note from the PCB Decontamination Work Plan include the following:

- Section 1.4 Regulatory Compliance: The first sentence of the second paragraph in this section states, "The handling of hazardous materials present at site will be in accordance with applicable Federal and State regulations to the extent practicable." Any variance to the regulation should be covered by the work plan and approved prior to the work being done to maintain compliance with the regulations. If a change in the work plan is required, approval from EPA must be secured prior to deviation from the approved work plan.

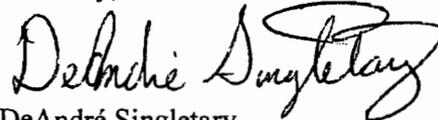
In addition, references in this paragraph to hazardous waste transporters should be changed to PCB transporters since they will be hauling PCB waste. The transporters must notify EPA and receive a TSCA number or register their RCRA number for PADS as required by 40 CFR 761.205(a)(2).

- Section 4.1 Segregation and Decontamination: The work plan states that “if visual inspection reveals no indication of residual insulation or adhesive, the metal beam will be documented as not being in contact with adhesive and insulation exceeding 10 µg/100cm<sup>2</sup>.” In accordance with Section IX, paragraph 29a, of the Order, the work plan should state that beams or portions of beams determined by visual inspection not to contain insulation or adhesive residues and which do not undergo scarification shall be tested by standard wipe testing to verify that those surfaces do not contain PCBs over a level of 10 µg/100cm<sup>2</sup>.
- Section 4.2 Metal Decontamination Activities: The work plan should mention efforts taken to mitigate the spread of potentially contaminated dust and particulate matter as a result of mechanical processes such as sanding and grinding.
- Section 7.0 Transportation and Disposal: In accordance with Section X, paragraphs 30b and 30d, disposal facilities to be used for residual insulation and material resulting from the scarification process as well as excavated soils should be included.
- Section 9.0 Site Restoration and Demobilization: While a mention is made to “correct surface features which may present physical hazards”, restoration activities should include reasonable measures to leave the property in a condition substantially similar to the condition the property was in immediately prior to the response action.

Please note that although this letter specifically addresses concerns regarding the work plan, these comments may also impact related submissions and should be modified in those documents as well. The receipt of this letter shall initiate the 10 days by which revisions should be submitted to EPA per Article XI, paragraph 35.

If you have any questions about this matter, you may contact me at (913) 551-7373.

Sincerely,



DeAndré Singletary  
Iowa/Nebraska Remedial Branch  
Superfund Division

cc: Mark E. Johnson, Stinson Morrison Hecker LLP ✓  
Gary Norton, Whitfield & Eddy, PLC





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR 29 2009

**Certified Mail**  
**Return Receipt Requested**

Mr. Jeffrey T. Brown, CHMM  
Greenleaf Environmental  
4943 Austin Park Drive  
Buford, Georgia 30518

Re: In the Matter of Southern Iowa Mechanical, Ottumwa, Iowa  
Order for Removal Response Activities, Docket No. CERCLA-07-2009-0006  
Section XI, EPA Approval of Plans and Other Submissions

Dear Mr. Brown:

This letter is to inform you that the United States Environmental Protection Agency (EPA) has reviewed the work plan and related documentation submitted on April 1, 2009, via electronic mail pursuant to the Order referenced in the above subject line. In accordance with Section XI of the Order, EPA is approving the submittal with the exception of the Quality Assurance Project Plan (QAPP).

EPA disapproves the QAPP and directs Respondents to modify the QAPP in accordance with the enclosed comments. The modified QAPP shall be submitted to EPA within five days of your receipt of this letter. If Respondents fail to correct these deficiencies in the modified QAPP, EPA anticipates modifying the QAPP to cure the deficiencies.

It should be noted that although EPA does not issue approvals for the HASP, the document has been reviewed and is accepted.

If you have any questions about this matter, you may contact me at (913) 551-7373.

Sincerely,

DeAndré Singletary  
Iowa/Nebraska Remedial Branch  
Superfund Division

Enclosure

cc: Mark E. Johnson, Stinson Morrison Hecker LLP with Enclosure ✓  
Gary Norton, Whitfield & Eddy, PLC with Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

15 APR 2009

**MEMORANDUM**

**SUBJECT:** Quality Assurance Project Plan for Southern Iowa Mechanical Site, 3043 Pawnee Drive, Ottumwa, Iowa - Reviewed

**FROM:** Diane Harris *Diane Harris*  
Regional Quality Assurance Manager  
ENSV/IO

**TO:** DeAndre' Singletary  
EPA Project Manager  
SUPR/IANE

The review of the subject document prepared by Greenleaf Environmental Services, dated March 31, 2009, has been completed according to "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations," EPA QA/R-5 March 2001.

This document was reviewed as a draft. The document was found to be incomplete in addressing some key areas to the extent of potentially jeopardizing the quality of the data. These areas are fully described in this review memorandum as critical comments and can be adequately addressed by incorporation into the document. The document will not be approved without addressing these issues. General comments identify opportunities for strengthening the document but do not affect approval.

**Critical Comments**

1. The approval page is not signed and dated by the appropriate approval officials.
2. **§5.3 Field Procedures. Page 10.**
  - a. How will the location for the 100 square centimeter wipe samples be determined?
  - b. Will the sampling gauze from the wipe test be analyzed with Method 8082A?
  - c. What other field equipment/instrument and supplies (if any) will be needed for this project?

d. If field equipment/instruments will be used for this project, what are the testing, inspection and measurement requirements (acceptance and measurement systems and any preventive and corrective maintenance)?

e. If field equipment/instruments will be used for this project, what is the calibration and frequency, calibration information and how will the calibration records be traceable to the equipment?

3. **§Data Acquisition Requirements for Non-direct Measurements (not found).** Will any data from non-measurement sources be used? What are the acceptance criteria and/or any limitations of that data?

#### General Comments

4. **§Documentation and Records (not found).** What is the process and responsibility for ensuring that the most current approved version of the QAPP is available?
5. **§Distribution List (not found).** A distribution list with a list of people who will receive the completed QAPP is beneficial.

If you have any questions, please contact me at x7258, or the lead reviewer, Gabrielle Thompson at x7569.

R7QAO Document Number: 2009125





4943 Austin Park Avenue  
Buford, Georgia 30518  
678-714-8420, phone  
678-714-8425, fax

May 8, 2009

USEPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Attention: Mr. DeAndre' Singletary, Remedial Project Manager

Re: **Quality Assurance Project Plan Critical Comments Response  
Southern Iowa Mechanical Site  
3043 Pawnee Drive  
Ottumwa, Iowa**

Dear Mr. Singletary:

Greenleaf Environmental Services (GES) is pleased to submit this response to address the comments outlined in the EPA's review of the Quality Assurance Project Plan (QAPP) for the above referenced project. GES appreciates the opportunity to provide clarification and address any document deficiencies identified by the EPA.

GES has listed the EPA's critical comments below with our response or correction identified directly following the EPA critical comment:

### **Critical Comments**

1. The approval page is not signed and dated by the appropriate approval officials.

*The QAPP presented for review is a draft document and will be signed and dated by all appropriate officials listed on the title page once all parties agree the document is approved for final distribution.*

2. **Section 5.3 Field Procedures. Page 10.**

- a. How will the location of the 100 square centimeter wipe samples be determined?

*Section 5.3 discusses the field procedures to properly sample the locations previously identified in section 5.1 Metal Surface Sampling and 5.1.1 Metal Sample Identification.*

- b. Will the sampling gauze from the wipe test be analyzed with Method 8082A?

*As indicated in Table 5.0 Confirmation Sampling Requirements, all sampling gauze collected from the wipe tests will be analyzed for PCBs (Arclors only) by Method 8082A.*

- c. What other field equipment/instrument and supplies (if any) will be needed for this project?

*Due to the fact that EPA requires laboratory analysis to confirm PCB concentrations for this project, GES does not anticipate utilizing any field screening equipment/instruments for this project.*

- d. If field equipment/instruments will be used for this project, what are the testing, inspection and measurement requirements (acceptance and measurement systems and any preventative and corrective maintenance)?

*If field equipment/instruments were to be used on this project, section 13.1 Field Measurements outlines the testing, inspection and measurement requirements and section 14.1 Sample Collection/Field Measurements reviews the corrective action procedures.*

- e. If field equipment/instruments will be used for this project, what is the calibration and frequency, calibration information and how will the calibration records be traceable to the equipment?

*If field equipment/instruments were to be used on this project, section 6.1.2 Field Logbooks/Documentation describes the procedures utilized to properly document and record sample collection and measurements, including all identifying all equipment used to make measurement and the calibration information. As stated above, section 13.1 Field Measurements outlines the testing, inspection and measurement requirements*

- 3. Data Acquisition Requirements for Non-direct Measurements (not found).** Will any data from non-measurement sources be used? What are the acceptance criteria and/or any limitations of that data?

*GES does not anticipate utilizing data from non-measurement sources. However, section 13.1 Field Measurements outlines the acceptance criteria and data limitations.*

### General Comments

- 4. Documentation and Records (not found).** What is the process and responsibility for ensuring that the most current version of the QAPP is available?

*Each time revisions are made to the QAPP the title page is revised to reflect the recent revision number and date. Once all parties agree the document is approved for final*



4943 Austin Park Avenue  
Buford, Georgia 30518  
678-714-8420, phone  
678-714-8425, fax

*distribution, the QAPP will be finalized, signed and dated by all appropriate officials listed on the title page.*

- 5. Distribution List (not found).** A distribution list with a list of people who will receive the completed QAPP is beneficial.

*GES considers the distribution list to be the appropriate officials and corresponding company/Agency listed on the title page. In addition, GES considers these site documents to be the property of the client they are engaged with and therefore will not reproduce them for additional distribution without the clients' permission.*

GES appreciates the opportunity to provide environmental services to the EPA and looks forward to working with you on this and future projects. Please call me at (678) 714-8420, if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "JTB", is written over a horizontal line.

Jeffrey T. Brown, CHMM  
Project Coordinator

Attachments: 010901 WP – Attachment 1 QAPP



Appendix A, Exhibit 6 EPA QAPP Approval 52209

From: Singletary.DeAndre@epamail.epa.gov  
Sent: Friday, May 22, 2009 3:47 PM  
To: Jeff Brown  
Cc: Williams, Brian; shiel.daniel@epa.gov; gazigeorge@gmail.com;  
inmann@adams.net; Johnson, Mark; norton@whitfieldlaw.com  
Subject: Re: Southern Iowa Mechanical Site--Submittal in Response to EPA  
Letter of April 29, 2009

Attachments: pic29700.jpg; QAPP Critical Comments Response to EPA.doc;  
010901 WP- Attachment 1 QAPP, rev. 1 033109.doc

Jeff,

Your response to critical comments regarding the Quality Assurance Project Plan is sufficient and only requires the following changes:

Add a signature line on the title page for the EPA Quality Assurance Manager below the EPA RPM signature line  
Reference 40 CFR § 761.123 in Section 5.1 regarding Metal Surface Sampling

Once the final document incorporating the above changes and appropriate signatures is submitted (and EPA quality assurance folks have signed), I will send a letter informing you of approval and authorizing you to proceed with field work. Please submit final document for EPA signature by next Friday, May 29, 2009.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101 Office (913) 551-7373  
Fax (913) 551-9373

"Johnson,  
Mark"  
<MJohnson@stinson.com>

05/08/2009  
07:24 PM

DeAndre  
Singletary/SUPR/R7/USEPA/US@EPA

Daniel Shiel/R7/USEPA/US@EPA,  
<norton@whitfieldlaw.com>, "Jeff  
Brown" <JBrown@greenleafgroup.net>,  
<gazigeorge@gmail.com>,  
<inmann@adams.net>, "Williams,  
Brian" <BWilliams@stinson.com>,  
"Johnson, Mark"  
<MJohnson@stinson.com>

To

cc

Subject

Southern Iowa Mechanical  
Site--Submittal in Response to EPA  
Letter of April 29, 2009

Appendix A, Exhibit 6 EPA QAPP Approval 52209

DeAndré, attached is the submittal of Titan Tire and Dico in response to your letter of April 29, 2009. Please let me know if you have any questions or need additional information.

Mark

Mark Johnson | Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900, Kansas City, MO 64106-2150  
816.691.2724 | mjohnson@stinson.com

(Embedded image moved to file: pic29700.jpg)

This communication is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others. (See attached file: QAPP Critical Comments Response to EPA.doc) (See attached file: 010901 WP- Attachment 1 QAPP, rev. 1 033109.doc)

7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUN 03 2009

Certified Mail

Return Receipt Requested

Mr. Jeffrey T. Brown, CHMM  
Greenleaf Environmental  
4943 Austin Park Drive  
Buford, Georgia 30518

Re: In the Matter of Southern Iowa Mechanical, Ottumwa, Iowa  
Order for Removal Response Activities, Docket No. CERCLA-07-2009-0006  
Section XI, EPA Approval of Plans and Other Submissions

Dear Mr. Brown:

This letter is to inform you that the United States Environmental Protection Agency (EPA) has received the final Quality Assurance Project Plan (QAPP) submitted May 28, 2009, via electronic mail. In accordance with Section XI of the Order, EPA is approving the submission. You were previously notified of the approval of the work plan and other affiliated documents in a separate letter dated April 29, 2009. The QAPP now has the appropriate signatures and is ready for implementation.

Based on the work plan, site mobilization is estimated to occur one week after approval. Please coordinate mobilization activities with me as soon as possible.

I may be reached regarding this matter at (913) 551-7373.

Sincerely,

DeAndré Singletary  
Iowa/Nebraska Remedial Branch  
Superfund Division

Enclosure

cc: Mark E. Johnson, Stinson Morrison Hecker LLP with Enclosure ✓  
Gary Norton, Whitfield & Eddy, PLC with Enclosure

D1038





**Dianee Harris/R7/USEPA/US**  
06/03/2009 06:47 AM

To Daniel Shiel/R7/USEPA/US@EPA  
cc DeAndre Singletary/SUPR/R7/USEPA/US@EPA, Nancy Swyers/SUPR/R7/USEPA/US@EPA  
bcc

Subject Re: Southern Iowa Mechanical Site

History: This message has been replied to.

Daniel -- per DeAndre's request, I am letting you know we have signed off and approved the QA Project Plan for the Southern Iowa Mechanical Site.



2009156 01tumwa Iowa.app.doc

The signed memo and QAPP will be forwarded to DeAndre.

Please let me know if you have any questions.

Diane H.  
x7258  
DeAndre Singletary/SUPR/R7/USEPA/US



**DeAndre Singletary/SUPR/R7/USEPA/US**  
05/29/2009 03:54 PM

To Dianee Harris/R7/USEPA/US@EPA  
cc  
Subject Southern Iowa Mechanical Site

Diane,

I placed in your chair the final QAPP for the Southern Iowa Mechanical Site. Attached to the back of it are previous submittals and comments. I am going to be away on vacation all next week. To keep things moving as this is a time-critical, PRP-lead response, I would like to ask that you notify Daniel Shiel (x7278) by phone or email when you have signed off on the document. Dan is the site attorney and we need to get a letter to the PRP notifying them to proceed with the response action. If you could assist in this manner, it would be much appreciated.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101  
Office (913) 551-7373  
Fax (913) 551-9373

**MEMORANDUM**

SUBJECT: Quality Assurance Project Plan for Southern Iowa Mechanical Site, 3043 Pawnee Drive, Ottumwa, Iowa - Approved

FROM: Diane Harris  
Regional Quality Assurance Manager  
ENSV/IO

TO: DeAndre' Singletary  
EPA Project Manager  
SUPR/IANE

The review of the subject document, prepared by Greenleaf Environmental Services and dated May 27, 2009, has been completed according to "*EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations*," EPA QA/R-5 March 2001. This document was also reviewed against the critical comments found in QA document 2009150.

The document is approved; it complies with R-5 and addresses the key issues satisfactorily.

If you have any questions, please contact me at x7258, or the lead reviewer, Gabrielle Thompson at x7569.

R7QAO Document Number: 2009156





STINSON  
MORRISON  
HECKER LLP

Mark E. Johnson  
(816) 691-2724  
mjohanson@stinson.com  
www.stinson.com

1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150

Tel (816) 842-8600  
Fax (816) 412-1208

August 20, 2009

Mr. Dan Shiel  
Office of Regional Counsel  
US EPA Region VII  
901 North 5th Street  
Kansas City, KS 66101

**Via E-Mail**

Mr. DeAndré Singletary  
Remedial Project Manager  
Iowa/Nebraska Remedial Branch  
Superfund Division  
US EPA REGION 7  
901 North Fifth Street  
Kansas City, KS 66101

Re: Southern Iowa Mechanical Site, Ottumwa, Iowa

Dear Mr. Shiel and Mr. Singletary:

On behalf of Titan Tire and Dico, I object to the biased sampling that EPA ordered at the Southern Iowa Mechanical Site. My understanding is that EPA representatives directed the sampling contractor to collect samples from the beams at specific locations chosen by EPA. EPA representatives at the Site admitted that they were doing "biased sampling." Please include this letter in the administrative record.

Such directions by EPA: (1) distort and bias the sampling results; (2) violate the express terms of the EPA-approved Work Plan and Quality Assurance Project Plan ("QAPP"); and (3) cost more money to do the Work. The EPA-approved Work Plan and QAPP required that indiscriminate and random statistical sampling be done rather than biased sampling. E.g., Section 5.1 of both the Work Plan and the QAPP.

Although the sampling has now been completed, Titan Tire and Dico insist that they be given notice of any further deviations or alterations to the Work Plan and QAPP and an opportunity to object to such deviations or alterations. This conduct is another example of EPA action in this case that is arbitrary and capricious and otherwise not in accordance with law. Titan Tire and Dico will seek their costs, fees and expenses as a result of this conduct.

KANSAS CITY  
OVERLAND PARK  
WICHITA  
WASHINGTON, D.C.  
PHOENIX  
ST. LOUIS  
OMAHA  
JEFFERSON CITY

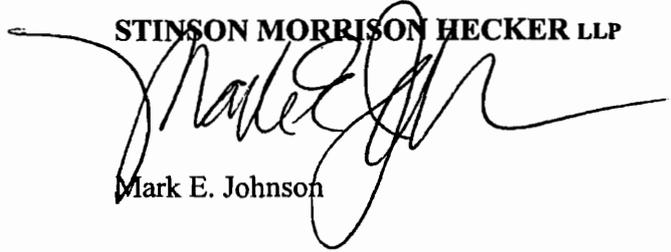
DB01/758803.0032/7140404.1 CR09

D1042

Mr. Dan Shiel  
Mr. Deandre Singletary  
August 20, 2009  
Page 2

Very truly yours,

**STINSON MORRISON HECKER LLP**

A handwritten signature in black ink, appearing to read "Mark E. Johnson", is written over the typed name and firm name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark E. Johnson

MEJ:gc



Appendix A, Exhibit 9 - EPA Sampling Change Request 070209

From: Singletary.DeAndre@epamail.epa.gov

Sent: Thursday, July 02, 2009 8:48 AM

To: Jeff Brown

Cc: Williams, Brian; Shiel.Daniel@epamail.epa.gov; Gazi George;  
inmann@adams.net; Jeff Rothwell; Johnson, Mark

Subject: Southern Iowa Mechanical Sampling

Jeff,

Per our discussions yesterday, EPA has requested to move the sampling event scheduled for July 13 forward one week to July 20 to ensure the presence of adequate EPA representation at this event. Based on our discussion this does not impact the project schedule. In addition, I spoke with Gazi George regarding this request. Moving forward one week will also allow him to be present for this event as he was otherwise obligated the week of July 13.

Thanks,

DeAndré D. Singletary

Remedial Project Manager

Superfund Division

U.S. EPA

901 N 5th Street, Kansas City, KS 66101 Office (913) 551-7373

Fax (913) 551-9373

**10**

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-6  
Project ID: DSA7K9

These are the results from the analysis of solid sample number 4508-6. This sample was collected on 08/12/2009 at the location described as: C10. If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-6 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Soil by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 41	Micrograms per Kilogram
Aroclor 1221	Less Than 41	Micrograms per Kilogram
Aroclor 1232	Less Than 41	Micrograms per Kilogram
Aroclor 1242	Less Than 41	Micrograms per Kilogram
Aroclor 1248	Approximately 75	Micrograms per Kilogram
Aroclor 1254	64	Micrograms per Kilogram
Aroclor 1260	Less Than 41	Micrograms per Kilogram
Aroclor 1262	Less Than 41	Micrograms per Kilogram
Aroclor 1268	Less Than 41	Micrograms per Kilogram

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-7  
Project ID: DSA7K9

These are the results from the analysis of solid sample number 4508-7. This sample was collected on 08/12/2009 at the location described as: C20. If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-7 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Soil by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 40	Micrograms per Kilogram
Aroclor 1221	Less Than 40	Micrograms per Kilogram
Aroclor 1232	Less Than 40	Micrograms per Kilogram
Aroclor 1242	Less Than 40	Micrograms per Kilogram
Aroclor 1248	Less Than 40	Micrograms per Kilogram
Aroclor 1254	Less Than 40	Micrograms per Kilogram
Aroclor 1260	Less Than 40	Micrograms per Kilogram
Aroclor 1262	Less Than 40	Micrograms per Kilogram
Aroclor 1268	Less Than 40	Micrograms per Kilogram

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-8  
Project ID: DSA7K9

These are the results from the analysis of solid sample number 4508-8. This sample was collected on 08/12/2009 at the location described as: B3. If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-8 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Soil by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 40	Micrograms per Kilogram
Aroclor 1221	Less Than 40	Micrograms per Kilogram
Aroclor 1232	Less Than 40	Micrograms per Kilogram
Aroclor 1242	Less Than 40	Micrograms per Kilogram
Aroclor 1248	Less Than 40	Micrograms per Kilogram
Aroclor 1254	90	Micrograms per Kilogram
Aroclor 1260	Less Than 40	Micrograms per Kilogram
Aroclor 1262	Less Than 40	Micrograms per Kilogram
Aroclor 1268	Less Than 40	Micrograms per Kilogram

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-9  
Project ID: DSA7K9

These are the results from the analysis of solid sample number 4508-9. This sample was collected on 08/12/2009 at the location described as: A1. If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-9 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Soil by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 40	Micrograms per Kilogram
Aroclor 1221	Less Than 40	Micrograms per Kilogram
Aroclor 1232	Less Than 40	Micrograms per Kilogram
Aroclor 1242	Less Than 40	Micrograms per Kilogram
Aroclor 1248	260	Micrograms per Kilogram
Aroclor 1254	160	Micrograms per Kilogram
Aroclor 1260	Less Than 40	Micrograms per Kilogram
Aroclor 1262	Less Than 40	Micrograms per Kilogram
Aroclor 1268	Less Than 40	Micrograms per Kilogram

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-101-FB  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-101-FB. This sample was collected on 07/21/2009 at the location described as: Field Blank = Wipe sample (Area wipe: 100 cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-101-FB for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1254	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-102  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-102. This sample was collected on 07/21/2009 at the location described as: 1141-LE-10'11 = Wipe sample (Area wipe: 100 cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-102 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1254	0.085	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-103  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-103. This sample was collected on 07/21/2009 at the location described as: 0978-LE-9 = Wipe sample (Area wipe: 100 cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-103 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	0.034	Micrograms per Square Centimeter
Aroclor 1254	0.043	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-104  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-104. This sample was collected on 07/21/2009 at the location described as: 0839-LE-30 = Wipe sample (Area wipe: 100 cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-104 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	0.0064	Micrograms per Square Centimeter
Aroclor 1254	Approximately 0.011	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-105  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-105. This sample was collected on 07/21/2009 at the location described as: 0772-B-34 = Wipe sample (Area wipe: 100 cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-105 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1254	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-106  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-106. This sample was collected on 08/11/2009 at the location described as: T23 (2033) (Area wipe: 100 ug/cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-106 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
roclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1254	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-107  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-107. This sample was collected on 08/11/2009 at the location described as: T91 (2253) (Area wipe: 100 ug/cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-107 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
roclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1254	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter

**United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101**

10/07/2009

**Results of Sample Analysis**

Sample: 4508-120  
Project ID: DSA7K9

These are the results from the analysis of waste sample number 4508-120. This sample was collected on 07/21/2009 at the location described as: 792 = Wipe sample (Area wipe: 100 cm<sup>2</sup>). If you have any questions about these results, contact DeAndre Singletary at the above address or by calling 913-551-7373. Correspondence should refer to sample number 4508-120 for project: DSA7K9 - PRP-Lead Removal at Southern Iowa Mechanical Site.

<b>Analysis/Analyte</b>	<b>Amount Found</b>	<b>Units</b>
<b><u>Polychlorinated Biphenyls (PCBs) in Wipe Samples by Gas Chromatography and Electron Capture Detection (GC/EC)</u></b>		
Aroclor 1016	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1221	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1232	Less Than 0.00033	Micrograms per Square Centimeter
roclor 1242	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1248	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1254	Less Than 0.00033	Micrograms per Square Centimeter
Aroclor 1260	Less Than 0.00033	Micrograms per Square Centimeter



Appendix A, Exhibit 11 - PC email to EPA

RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009  
From: Jeff Brown  
Sent: Friday, August 21, 2009 3:40 PM  
To: Singletary.DeAndre@epamail.epa.gov  
Cc: Williams, Brian; Shiel.Daniel@epamail.epa.gov; gazigeorge@gmail.com; inmann@adams.net; Jeff Rothwell; Johnson, Mark  
Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

DeAndré,

Per my voicemail, I've just recieved word that all the site soil sample results were less than the 1 mg/kg PCB cleanup criteria established for the site and per the site work plan no soil excavation will be required. I'm traveling today, but am available on my cell phone at 770-335-3612.

Thanks,  
Jeff

---

From: Singletary.DeAndre@epamail.epa.gov [mailto:Singletary.DeAndre@epamail.epa.gov]  
Sent: Fri 8/21/2009 7:59 AM  
To: Jeff Brown  
Cc: Williams, Brian; Shiel.Daniel@epamail.epa.gov; gazigeorge@gmail.com; inmann@adams.net; Jeff Rothwell; Johnson, Mark  
Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

Jeff,

I forwarded your request regarding the Clean Harbors facility in Utah to the appropriate person on yesterday to be assessed. I will let you know when I hear something.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101  
Office (913) 551-7373  
Fax (913) 551-9373

From: "Jeff Brown" <JBrown@greenleafgroup.net>  
To: DeAndre Singletary/SUPR/R7/USEPA/US@EPA  
Cc: "Williams, Brian" <BWilliams@stinson.com>, <gazigeorge@gmail.com>, <inmann@adams.net>, "Jeff Rothwell" <JRothwell@greenleafgroup.net>, "Johnson, Mark" <MJohnson@stinson.com>, Daniel Shiel/R7/USEPA/US@EPA

Appendix A, Exhibit 11 - PC email to EPA

Date: 08/20/2009 01:23 PM

Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

DeAndré,

Per my voicemail, the disposal profile sample results for the soil rolloff composite and the paint chip drum composite were <50 ppm PCB and will be sent for offsite disposal at the Metro Waste Authority Sub Title D landfill, which is also known as the Metro Park East Sanitary Landfill, located at 12181 NE University Avenue in Mitchellville, IA 50169. Per your email below, we previously established that this landfill is acceptable to receive CERCLA off-site waste.

Also, I noticed below that the acceptable status for the TSCA Incinerator we submitted in the Site Work Plan was only valid until June 27, 2009. In the event that we should need to send anything for incineration, could you check CERCLA compliance for this facility again? For your convenience the facility is listed below:

Clean Harbors, Aragonite, POBOX 22890, Salt Lake City, UT 84122-0890,  
EPA ID # UTD981552177  
Phone # 801-323-8100

Sincerely,

Jeffrey T. Brown, CHMM  
Greenleaf Environmental  
4943 Austin Park Drive  
Buford, GA 30518  
678-714-8420, phone  
678-714-8425, fax  
770-335-3612, cell

"The best part of my life  
was everything that happened"

-----Original Message-----

From: Singletary.DeAndre@epamail.epa.gov [mailto:Singletary.DeAndre@epamail.epa.gov]  
Sent: Thursday, June 25, 2009 10:21 PM  
To: Jeff Brown  
Cc: Williams, Brian; gazigeorge@gmail.com; inmann@adams.net; Jeff Brown; Jeff Rothwell; Johnson, Mark; Shiel.Daniel@epamail.epa.gov  
Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

Jeff,

The purpose of this email is to request as well as relay some information.

Appendix A, Exhibit 11 - PC email to EPA

The two pieces of information that I am requesting are the tentative work schedule for the week of July 6, 2009, and the tentative sampling dates for the PCB wipe samples.

The information that I am relaying is EPA's designated lab for split/duplicate samples and the results that I have acquired thus far regarding the list of potential TSCA-approved disposal facilities that you submitted:

I am designating EPA Region 7 Laboratory as the receiver of split samples:

United States Environmental Protection Agency  
Science & Technology Center  
300 Minnesota Ave  
Kansas City, KS 66101  
(913) 551-5005

The following contains information regarding facilities that you requested to potentially dispose of wastes:

1. EQ - Wayne Disposal, 49350 North I-94 Service Drive, Belleville, MI 48197, EPA ID# MID 048 090 633 (Currently acceptable)  
Phone # 313-480-8080

2. US Ecology, Hwy 9511 Miles South of Beatty, Beatty, NV 89003  
EPA ID # NVT330010000, Phone # 800-239-3943 (Some recent PCB violations and some off-site contamination however EPA Region 9 declares at this point that it is currently acceptable)

3. US Ecology, 10.5 miles NW on HWY 78, Lemley Road, Grandview, ID, EPA ID# IDD073114654  
Phone # 800-274-1516 (Currently acceptable)

4. Waste Management, Highway 17 North, Mile Marker 163, Emelle, AL 35459, EPA ID #ALD000622464  
Phone # (205) 652-8156 (Haven't heard yet, will follow up)

Sub Title D landfill (< 50 ppm PCB)  
Metro Park East Sanitary Landfill, 12181 NE University Avenue in Mitchellville, IA 50169  
Phone # 515-967-2076 (If you can confirm that Metro Park East Sanitary Landfill and Metro Waste Authority are the same facility, then it is acceptable to receive CERCLA off-site waste)

TSCA Incinerator  
Clean Harbors, Aragonite, POBOX 22890, Salt Lake City, UT 84122-0890, EPA ID # UTD981552177  
Phone # 801-323-8100 (Valid until June 27, 2009; will need to resubmit if you need to use this one)

Appendix A, Exhibit 11 - PC email to EPA

I am in Ottumwa today and tomorrow observing field activities.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101  
Office (913) 551-7373  
Fax (913) 551-9373

[attachment "Disposal profile analysis 081109.pdf" deleted by DeAndre Singletary/SUPR/R7/USEPA/US]





STINSON  
MORRISON  
HECKER LLP

Mark E. Johnson  
(816) 691-2724  
mjohnson@stinson.com  
www.stinson.com

1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150

Tel (816) 842-8600  
Fax (816) 412-1208

August 21, 2009

Mr. Dan Shiel  
Office of Regional Counsel  
US EPA Region VII  
901 North 5th Street  
Kansas City, KS 66101

**Via E-Mail**

Mr. DeAndré Singletary  
Remedial Project Manager  
Iowa/Nebraska Remedial Branch  
Superfund Division  
US EPA REGION 7  
901 North Fifth Street  
Kansas City, KS 66101

Re: Southern Iowa Mechanical Site, Ottumwa, Iowa

Dear Dan and DeAndré:

This letter is to inform you of the status of the Southern Iowa Mechanical Site, Ottumwa, Iowa. The soil assessment and confirmation testing conducted in August, 2009, indicates that all samples were below the 1 part per million standard imposed by EPA for high occupancy areas. The latest wipe testing of the beams indicate all samples were below the 10 ug/100 cm<sup>2</sup> standard imposed by EPA for porous surfaces.

Pursuant to your conversations with Jeff Brown, Titan Tire and Dico hereby request authorization from EPA to demobilize the equipment and staff from the Site starting on Monday, August 24. Please advise as soon as possible.

KANSAS CITY  
OVERLAND PARK  
WICHITA  
WASHINGTON, D.C.  
PHOENIX  
ST. LOUIS  
OMAHA  
JEFFERSON CITY

DB01/758803.0032/7140459.1 CR09

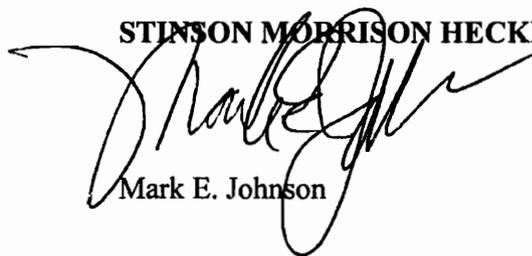
D1065

Mr. Dan Shiel  
Mr. DeAndre Singletary  
August 21, 2009  
Page 2

We will keep you advised of any developments. You, of course, will be receiving a final report from the contractors regarding Site activities, sampling and testing.

Yours truly,

**STINSON MORRISON HECKER LLP**

A handwritten signature in black ink, appearing to read 'Mark E. Johnson', is written over the printed name and firm name.

Mark E. Johnson

MEJ:gc



Mark,

Receipt of your request for authorization to demobilize the Southern Iowa Mechanical Site is acknowledged. Although your letter references concentrations of PCBs detected from recent sampling efforts, EPA can not concur with this authorization until the actual laboratory data packages can be reviewed.

Please send all laboratory data associated with this response action at your earliest convenience.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101  
Office (913) 551-7373  
Fax (913) 551-9373

From:  
"Johnson, Mark" <MJohnson@stinson.com>

To:  
Daniel Shiel/R7/USEPA/US@EPA, DeAndre Singletary/SUPR/R7/USEPA/US@EPA

Cc:  
"Johnson, Mark" <MJohnson@stinson.com>, <norton@whitfieldlaw.com>, <inmann@adams.net>, "Gazi George" <gazigeorge@gmail.com>, "Williams, Brian" <BWilliams@stinson.com>, "Jeff Brown" <JBrown@greenleafgroup.net>

Date:  
08/21/2009 04:27 PM

Subject:  
Southern Iowa Mechanical Site, Ottumwa, Iowa--Requested Authorization to Demobilize

---

Please see the attached letter.

Mark

Mark E. Johnson  
Partner

ix A, Exhibit 13 - RE Southern Iowa Mechanical Site Ottumwa Iowa--Requested Authorization to Demol

Stinson Morrison Hecker LLP  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150  
Direct: (816) 691-2724  
Mobile: (816) 560-1123  
Fax: (816) 412-1208  
MJohnson@stinson.com  
www.stinson.com

Working for a Greener Tomorrow

This communication is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.

[attachment "Ltr. D. Shiel & D. Singletary re Southern Iowa Mechanical Site.PDF" deleted by DeAndre Singletary/SUPR/R7/USEPA/US]

ix A, Exhibit 13 - RE Southern Iowa Mechanical Site Ottumwa Iowa--Requested Authorization to Demol  
From: Johnson, Mark [MJohnson@stinson.com]  
Sent: Monday, August 24, 2009 6:08 PM  
To: Shiel.Daniel@epamail.epa.gov; Singletary.DeAndre@epamail.epa.gov  
Cc: inmann@adams.net; Gazi George; Johnson, Mark; Jeff Brown; Gary Norton  
(norton@whitfieldlaw.com)  
Subject: RE: Southern Iowa Mechanical Site, Ottumwa, Iowa--Requested Authorization  
to Demobilize

Attachments: Southern Iowa Mechanical Site, Ottumwa, Iowa--Requested Authorization  
to Demobilize; 35429\_PandC.pdf; 35430\_PandC.pdf

Dan and DeAndré, attached are the lab data you requested. Also attached is my  
letter requesting authorization to demobilize. Please give such authorization.  
Thank you.

Mark

From: Shiel.Daniel@epamail.epa.gov [mailto:Shiel.Daniel@epamail.epa.gov]  
Sent: Monday, August 24, 2009 12:06 PM  
To: Johnson, Mark  
Cc: Singletary.DeAndre@epamail.epa.gov  
Subject: Fw: Southern Iowa Mechanical Site, Ottumwa, Iowa--Requested Authorization  
to Demobilize

See DeAndre's email, attached.

Daniel J. Shiel  
Office of Regional Counsel  
US EPA Region VII  
901 North 5th Street  
Kansas City, KS 66101  
Direct Dial 913-551-7278  
Fax 913-551-7925  
shiel.daniel@epa.gov

----- Forwarded by Daniel Shiel/R7/USEPA/US on 08/24/2009 12:04 PM -----

From:  
DeAndre Singletary/SUPR/R7/USEPA/US

To:  
Daniel Shiel/R7/USEPA/US@EPA

Date:  
08/24/2009 10:42 AM

Subject:  
Re: Southern Iowa Mechanical Site, Ottumwa, Iowa--Requested Authorization to  
Demobilize



Appendix A, Exhibit 14 - EPA Disposal Concurrence

From: Singletary.DeAndre@epamail.epa.gov  
Sent: Monday, August 24, 2009 1:00 PM  
To: Jeff Brown  
Cc: Williams, Brian; Shiel.Daniel@epamail.epa.gov; gazigeorge@gmail.com; inmann@adams.net; Jeff Rothwell; Johnson, Mark  
Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

Attachments: Disposal profile analysis 081109.pdf

Jeff,

Upon review of the data provided, EPA concurs with the method of disposal indicated. This concurrence is given with the presumption that samples collected for the profile were representative of materials requiring disposal.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101 Office (913) 551-7373  
Fax (913) 551-9373

From: "Jeff Brown" <JBrown@greenleafgroup.net>

To: DeAndre Singletary/SUPR/R7/USEPA/US@EPA

Cc: "Williams, Brian" <BWilliams@stinson.com>, <gazigeorge@gmail.com>, <inmann@adams.net>, "Jeff Rothwell" <JRothwell@greenleafgroup.net>, "Johnson, Mark" <MJohnson@stinson.com>, Daniel Shiel/R7/USEPA/US@EPA

Date: 08/20/2009 01:23 PM

Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

DeAndré,

Per my voicemail, the disposal profile sample results for the soil rolloff composite and the paint chip drum composite were <50 ppm PCB and will be sent for offsite disposal at the Metro Waste Authority Sub Title D landfill, which is also known as

Page 1

D1072

Appendix A, Exhibit 14 - EPA Disposal Concurrence  
the Metro Park East Sanitary Landfill, located at 12181 NE University Avenue in Mitchellville, IA 50169. Per your email below, we previously established that this landfill is acceptable to receive CERCLA off-site waste.

Also, I noticed below that the acceptable status for the TSCA Incinerator we submitted in the Site Work Plan was only valid until June 27, 2009. In the event that we should need to send anything for incineration, could you check CERCLA compliance for this facility again?  
For your convenience the facility is listed below:

Clean Harbors, Aragonite, POBOX 22890, Salt Lake City, UT 84122-0890, EPA ID # UTD981552177 Phone # 801-323-8100

Sincerely,

Jeffrey T. Brown, CHMM  
Greenleaf Environmental  
4943 Austin Park Drive  
Buford, GA 30518  
678-714-8420, phone  
678-714-8425, fax  
770-335-3612, cell

"The best part of my life  
was everything that happened"

-----Original Message-----

From: Singletary.DeAndre@epamail.epa.gov [mailto:Singletary.DeAndre@epamail.epa.gov]  
Sent: Thursday, June 25, 2009 10:21 PM  
To: Jeff Brown  
Cc: Williams, Brian; gazigeorge@gmail.com; inmann@adams.net; Jeff Brown; Jeff Rothwell; Johnson, Mark; Shiel.Daniel@epamail.epa.gov  
Subject: RE: Southern Iowa Mechanical Site--Submittal in Response to EPA Letter of April 29, 2009

Jeff,

The purpose of this email is to request as well as relay some information.

The two pieces of information that I am requesting are the tentative work schedule for the week of July 6, 2009, and the tentative sampling dates for the PCB wipe samples.

The information that I am relaying is EPA's designated lab for split/duplicate samples and the results that I have acquired thus far regarding the list of potential TSCA-approved disposal facilities that you submitted:

I am designating EPA Region 7 Laboratory as the receiver of split samples:

United States Environmental Protection Agency Science & Technology Center 300  
Minnesota Ave Kansas City, KS 66101  
(913) 551-5005

The following contains information regarding facilities that you requested to potentially dispose of wastes:

1. EQ - Wayne Disposal, 49350 North I-94 Service Drive, Belleville, MI 48197, EPA ID# MID 048 090 633 (Currently acceptable) Phone # 313-480-8080

Appendix A, Exhibit 14 - EPA Disposal Concurrence

2. US Ecology, Hwy 9511 Miles South of Beatty, Beatty, NV 89003  
EPA ID # NVT330010000, Phone # 800-239-3943 (Some recent PCB violations and some off-site contamination however EPA Region 9 declares at this point that it is currently acceptable)

3. US Ecology, 10.5 miles NW on HWY 78, Lemley Road, Grandview, ID, EPA ID# IDD073114654  
Phone # 800-274-1516 (Currently acceptable)

4. Waste Management, Highway 17 North, Mile Marker 163, Emelle, AL 35459, EPA ID #ALD000622464  
Phone # (205) 652-8156 (Haven't heard yet, will follow up)

Sub Title D landfill (< 50 ppm PCB)  
Metro Park East Sanitary Landfill, 12181 NE University Avenue in Mitchellville, IA 50169 Phone # 515-967-2076 (If you can confirm that Metro Park East Sanitary Landfill and Metro Waste Authority are the same facility, then it is acceptable to receive CERCLA off-site waste)

TSCA Incinerator  
Clean Harbors, Aragonite, POBOX 22890, Salt Lake City, UT 84122-0890, EPA ID # UTD981552177 Phone # 801-323-8100 (Valid until June 27, 2009; will need to resubmit if you need to use this one)

I am in Ottumwa today and tomorrow observing field activities.

Thanks,

DeAndré D. Singletary  
Remedial Project Manager  
Superfund Division  
U.S. EPA  
901 N 5th Street, Kansas City, KS 66101 office (913) 551-7373  
Fax (913) 551-9373

(See attached file: Disposal profile analysis 081109.pdf)