UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:
Moline Street PCB Site
Aurora, Adams County, Colorado

The Dow Chemical Company,

Respondent

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION

U.S. EPA Region 8
CERCLA Docket No. CERCLA-08-2014-0002

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

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and The Dow Chemical Company (Respondent). This Settlement Agreement provides for the performance of a removal action by Respondent and HiTec Plastics, Inc., a bona fide prospective purchaser (Purchaser), at or in connection with the Moline Street PCB Site (Site) generally located at 3555 Moline Street, Aurora, Adams County, Colorado. The obligations of Purchaser are addressed in a separate administrative settlement agreement and order on consent (Purchaser's Settlement Agreement).

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

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

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

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

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

a. "Action Memorandum" shall mean the Action Memorandum relating to the Site signed on January 14, 2014, by the Regional Administrator, EPA Region 8, or his delegate, and all attachments thereto. The Action Memorandum is attached hereto as Appendix A.

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

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

d. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

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

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to the Action Memorandum, this Settlement Agreement, and the Purchaser's Settlement Agreement verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 30 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 40 (emergency response), and Paragraph 65 (work takeover).

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

h. "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.

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

j. "Parties" shall mean EPA and Respondent.

k. "Property" shall mean the parcel of real property located at 3555 Moline Street, Aurora, Colorado, which is described in Appendix B of this Settlement Agreement.

l. "Purchaser" shall mean HiTec Plastics, Inc., the current lessor of the Site and prospective purchaser pursuant to a contract for purchase between itself and Aurora Smith RD Ventures, LLC.

m. "Purchaser's Settlement Agreement" shall mean the administrative settlement agreement and order on consent executed by EPA and HiTec Plastics, Inc., for the implementation of a portion of the response action set forth in the Action Memorandum and Statement of Work.

n. "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).

o. "Respondent" shall mean The Dow Chemical Company.

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

q. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "Site" shall mean the Moline Street PCB Site encompassing approximately 2 acres, located at 3555 Moline Street in Aurora, Adams County, Colorado, and depicted generally on the map attached as Appendix C. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of, placed, or otherwise come to be located.

s. "Statement of Work" or "SOW" shall mean the Statement of Work attached hereto as Appendix D for the implementation of the response action set forth in the Action

Memorandum by the Respondent and Purchaser and any modifications made in accordance with this Settlement Agreement.

t. "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); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any "hazardous material" under CRS § 25-15-101 *et seq.*

u. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

8. The USA-Magnesium Extrusion Fabrication Division of The Dow Chemical Company operated a magnesium extrusion facility on the Property from 1969 until 1998, under a lease agreement with Samuel Sokoloff, et al, a Colorado Limited Partnership.

9. The business operations were purchased by Timminco Corporation (Timminco) in 1998. In 2007, Aurora Smith RD Ventures, LLC purchased the Property. Timminco continued to operate the magnesium extrusion facility until 2009.

10. From 2009 through 2011, the Site remained unoccupied. In January 2012, the Purchaser leased the Site from Aurora Smith RD Ventures, LLC, for plastic recycling operations.

11. During Respondent's operation at the Property, there was at least one reportable spill of polychlorinated biphenyls (PCBs).

12. Sampling conducted in 2012 and 2013 found that the highest levels of PCBs in soils at the Site have been found within a building and a secondary outer structure. The highest levels range from 762 ppm to 9,240 ppm at depths of 1.5 to 4 feet. The highest concentrations in concrete range from 563 ppm to 3,180 ppm at depths of 0.5 inches to 2 inches.

13. The recommended soil action level for PCBs and industrial land use is 10-25 ppm pursuant to EPA's Guide on Remedial Actions at Superfund Sites with PCB Contamination (EPA Publication No. 9355.4OIFS, August 1990).

14. The Site is in an industrial area of Aurora and Purchaser runs a plastics recycling business on the property adjacent to the north of the Property. Purchaser's workers are in close proximity to the contaminated building and soils and could come into contact with hazardous substances despite existing safety protocols. The Site is .3 miles from a wildlife refuge, and .7 miles from a residential neighborhood. Trespass at the Property is possible because there is an unsecured gate during the day.

15. Exposure to PCBs has been shown to cause cancer in animals, and can cause negative effects in humans' reproductive, neurological, and immune systems. Humans or animals at or around the Site may come into contact with PCBs via inhalation of windblown PCB laden soils or dust, or through dermal contact. Breathing the PCB dust or coming into contact with the PCB laden soils may cause adverse health effects in humans at the Site and animals around the Site.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

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

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

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

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

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

VI. SETTLEMENT AGREEMENT AND ORDER

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

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

18. Respondent 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 5 days of the Effective Date. Respondent 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 5 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 Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval.

19. Respondent has designated Tom Gieck as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. 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, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 5 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

20. EPA has designated Joyel Dhieux of the Emergency Response Program, as its On-Scene Coordinator (OSC). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at OSC- Moline Street PCB Site, 8EPR, U.S. EPA Region 8, 1595 Wynkoop St., Denver, CO 80202.

21. EPA and Respondent shall have the right, subject to Paragraph 19, to change their respective designated OSC or Project Coordinator. Respondent 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.

VIII. WORK TO BE PERFORMED

22. Respondent shall perform, at a minimum, all actions necessary to implement the Action Memorandum and sections III through VII of the Statement of Work. The actions to be implemented generally include, but are not limited to, the following:

(a) Additional sampling of soils, concrete and building structure to better determine the scope of the removal action;
(b) Demolition of outer building structures;
(c) Excavation of contaminated concrete and soils underlying outbuildings; and
(d) Removal of concrete via grinding, where and if necessary.

23. Work Plan and Implementation.

a. Within 30 days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 22 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 15 days of receipt of EPA's notification of the required revisions. Respondent 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 Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 23(b).

24. Health and Safety Plan. Per the schedule in the approved Work Plan, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

25. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent 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. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

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

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 5 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 Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

26. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

27. Final Report. Within sixty (60) days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. 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 Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

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

28. Off-Site Shipments.

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

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

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 28(a) and 28(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

IX. SITE ACCESS

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

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

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

X. ACCESS TO INFORMATION

32. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information

gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

33. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

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

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

XI. RECORD RETENTION

36. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent 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.

37. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert

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

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

XII. COMPLIANCE WITH OTHER LAWS

39. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

40. 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, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at the Emergency Response and Preparedness Program, 303-312-6510 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

41. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 303-293-1788, and the National Response Center at (800) 424-8802. Respondent 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.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

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

XV. PAYMENT OF RESPONSE COSTS

43. Payments for Future Response Costs.

a. Respondent shall pay to EPA ninety five percent (95%) of all Future Response Costs not inconsistent with the NCP; the balance of the Future Response Costs will be paid by Purchaser pursuant to the Purchaser's Settlement Agreement. On a periodic basis, EPA will send Respondent and Purchaser a bill requiring payment that includes a cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 60 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 45 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds ("EFT") Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number A898 and the EPA docket number for this action.

c. At the time of payment, Respondent shall send notice that payment has been made to by email to acctsreceivable.cinwd@epa.gov, and to:

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

d. The total amount to be paid by Respondent pursuant to Paragraph 43(a) shall be deposited by EPA in the Moline Street PCB Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

44. In the event that the payment for Future Response Costs is not made within 60 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

45. Respondent may contest payment of any Future Response Costs billed under Paragraph 43 if it determines that EPA has made a mathematical error, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 60-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 43. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Colorado and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 10 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 43. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 43. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in

Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent' obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

47. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 15 days of such action (45 days for billings for Future Response Costs), unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

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

XVII. FORCE MAJEURE

49. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain action levels set forth in the Action Memorandum.

50. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent

shall notify EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

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

XVIII. STIPULATED PENALTIES

52. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 53 and 54 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

53. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 53(b):

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$5,000	31st day and beyond

b. Compliance Milestones

Failure to submit a Workplan
Failure to begin Work

54. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraphs 26-27:

Penalty Per Violation Per Day	Period of Noncompliance
$200	1st through 14th day
$400	15th through 30th day
$2,500	31st day and beyond

55. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 65 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of $50,000.

56. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation, under Paragraph 48 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. EPA shall consider Respondent's good faith and best efforts in seeking to meet the terms and conditions of this Settlement Agreement and associated Work Plans and schedules.

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

58. All penalties accruing under this Section shall be due and payable to EPA within 60 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis,

MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number A898, the EPA Docket Number, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 43.c.

59. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

60. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of EPA's decision.

61. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 58. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement, or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 65. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

62. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

63. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take,

direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

64. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

65. Work Takeover. In the event EPA determines that Respondent ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

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

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

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

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

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

XXII. OTHER CLAIMS

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

69. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXIII. CONTRIBUTION

71.a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

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

XXIV. INDEMNIFICATION

72. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

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

XXV. INSURANCE

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

XXVI. FINANCIAL ASSURANCE

76. Within 60 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $1.1 million in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

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; and/or

d. a demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. 264.143(f) with respect to the estimated cost of the Work (plus the amount(s) of any other federal or state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. 264.143(f) are met to EPA's satisfaction.

77. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 60 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 76, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 60 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

78. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 76 of this Section, Respondent 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. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XVI (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

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

XXVII. MODIFICATIONS

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

81. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 80.

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

XXVIII. NOTICE OF COMPLETION OF WORK

83. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

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

Appendix A: Action Memorandum
Appendix B: Property Description
Appendix C: Map of the Site
Appendix D: SOW

XXX. EFFECTIVE DATE

85. This Settlement Agreement shall be effective immediately after the Settlement Agreement is signed by the Regional Administrator or his delegate.

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

It is so ORDERED and Agreed this 30 day of Jan, 2014.

BY:

Andrea Madigan 1/29/14

Andrea Madigan
CERCLA Supervisory Attorney
CERCLA Response and Recovery Unit
U.S. EPA Region 8

Date

Kelcey Land 1/30/14

Kelcey Land, Director
CERCLA and RCRA Technical Enforcement Program
U.S. EPA Region 8

Date

David Ostrander 1/29/2014

David Ostrander, Director
Emergency Response and Preparedness Program
U.S. EPA Region 8

Date

Agreed this 17 day of January, 2014.

For Respondent: The Dow Chemical Company

By _____
Neil C. Hawkins

Title Corporate Vice President, Sustainability

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

Ref: 8EPR-ER

ACTION MEMORANDUM

SUBJECT: Approval and Funding for a Time-Critical Removal Action at the Moline Street Polychlorinated Biphenyls (PCB) Site, Adams County, Colorado (with attachments)

FROM: Joyel Dhieux
Federal On-Scene Coordinator

THRU: Laura Williams, Unit Leader
Emergency Response

TO: David Ostrander, Director
Emergency Response and Preparedness Program

Site ID #A898

I. Purpose

The purpose of this Action Memorandum is to request and document approval of a removal action described herein for the Moline Street PCB Site (Site), located in Aurora, Adams County, Colorado. This CERCLA removal action will be implemented by the Dow Chemical Company and Hi-Tec Plastics, Inc., to mitigate the threats to human health and the environment from the potential release of PCBs found on-site in the soils and groundwater and infrastructure. While additional petroleum hydrocarbons and metals have been detected on-site, the primary objective of the removal action is to address the high levels of PCBs.

The levels of contamination and the potential for release off-site meet the criteria for initiating a time-critical removal action under 40 CFR §300.415(b)(2) of the National Contingency Plan (NCP). The removal action will require less than 12 months and $2 million to complete. Based on the nature of the Site conditions and the response, there are no nationally significant or precedent-setting issues associated with this removal action.

II. Site Conditions and Background

Site Name:	Moline Street PCBs
Category of Removal:	Time-Critical Removal Action
Superfund Site ID (SSID):	#A898
NRC Case Number:	NA

CERCLIS Number:	COD030446637
Site Location:	3555 Moline Street, Aurora, Colorado 80010
Lat/Long:	39.765834° Latitude, -104.855612°Longitude
NPL Status:	Not an NPL site, not planned for future NPL listing
Removal Start Date:	Estimated January 2014

A. Site Description

1. Removal Site Evaluation

The Site has a long history of magnesium extrusion and fabrication operations. The Dow Chemical Company USA – Magnesium Extrusion Fabrication Division (Dow) operated a magnesium extrusion facility at the Site from 1969 – 1999. The business operations were purchased by Timminco Corporation in 1999. Aurora Smith RD Ventures LLC purchased the Site in 2007, and Timminco continued to operate the magnesium extrusion facility until 2009. The Site remained unoccupied from 2009 until 2011. In 2011, Hi-Tec Plastics leased the Site for plastic recycling operations and intends to purchase the Site property.

Over the past 15 years, several Phase I and Phase II environmental investigations have occurred. Only the most recent Phase II investigations conducted in 2012 and 2013 by the current property owner, Aurora Smith RD Ventures, LLC C/O David Goodell, and the prospective purchaser, Hi-Tec Plastics, Inc., sampled for and found high levels of PCBs in soils, groundwater and the concrete floor.

PCBs are suspected to have been used in the operation of metal presses at the magnesium extrusion facility. Dow reportedly had one spill of 10 to 20 gallons of PCBs in 1985[1]. PCBs saturated concrete within a building and the surrounding soils. Sampling conducted in 2012 and 2013 found concentrations in excess of the PCB action level in the sub-surface soils and concrete. The highest levels of PCBs in soils have been found in the skimmer room and a secondary outer structure. These levels range from 762 ppm – 9,240 ppm at depths of 1.5 to 4 feet. Concentrations in concrete range from 562 ppm – 3,180 ppm at depths of 0.5 inches – 2 inches[2]. By comparison, the recommended soil action level for industrial land use is 10-25 ppm. Sampling, however, has been limited. Additional sampling of the soils, concrete and building structure will be conducted to better define the extent of the removal action.

The majority of groundwater samples collected in 2012 and 2013 found concentrations of PCBs exceeding the maximum contaminant level (MCL) of 0.0005mg/L for drinking water. The highest concentration of 0.0858 mg/L was sampled in groundwater in 2013. This suggests some mobility of the PCBs from soils to groundwater. The closest receptor to surface water is Sand Creek which is

[1] Application for Inclusion in the Voluntary Clean-up Program, 11380 Smith Road, Aurora, Colorado. Strategic Environmental Management L.L.C., August 31, 2010.
[2] Limited Phase II Environmental Site Assessment. LT Environmental. May 14, 2013.

approximately 0.3 miles southwest of the facility. Storm water from the Site may carry PCB contamination and ultimately discharges to Sand Creek. There are no public water supply wells within one mile of the Site.

Dow will conduct the additional sampling and the proposed removal action described in this Action Memorandum. Hi-Tec Plastics will also be conducting a limited part of the removal action.

2. Physical Location and Characteristics

The Site is located in an area of light industry and commercial use in Aurora, Colorado, in Adams County. The Site encompasses approximately two acres and includes one building with several additions totaling approximately 39,350 square feet. The building housed an 1800 ton press and press pit when the Site operated as a magnesium extrusion facility. The Denver metro area, which includes Aurora, has a cold, semi-arid steppe climate. High wind gusts are generally common in the winter and spring. The Site location is depicted in Figure 1 with additional site maps in the attachments.

Much of the neighboring land is undergoing redevelopment and transitioning to mixed use development. The former Denver Stapleton Airport, located 0.7 miles west of the Site, has transitioned to housing. An urban wildlife refuge, the Bluff Lake Nature Center, has been designated along Sand Creek 0.3 miles southwest from the Site. A new light rail system is also under construction due north of the Site.

3. Release or Threatened Release into the Environment of a Hazardous Substance, Pollutant or Contaminant

During operation of the magnesium extrusion equipment, PCBs were released to the concrete in and around the building. Sampling and analyses conducted in 2012 and 2013 indicate the presence of PCBs in concrete, soils and groundwater above EPA's recommended action levels. Concentrations of PCBs measured in soil ranged from 762 ppm – 9,240 ppm, greatly exceeding EPA's recommended soil action level for industrial land use of 10-25 ppm.

PCBs are hazardous substances as defined by Section 101(14) of CERCLA. Exposure to PCBs has been shown to cause cancer in animals and can cause negative effects in human reproductive, neurological, and immune systems. Humans or animals at or around the Site may come into contact with PCBs via inhalation of windblown PCB-laden dust, disturbed soils, or through dermal contact.

4. NPL Status

This Site is not on the NPL, nor is it currently proposed for inclusion on the NPL.

5. Maps, Pictures and other Graphic Representations

Additional Site maps and photographs are included in the attachments.

Figure 1

B. Other Actions to Date

1. Previous Actions

No other CERCLA removal actions have been performed at the Moline Street PCB Site.

2. Current Actions

No current actions are underway.

C. Federal, State and Local Authorities' Roles

The prospective purchaser, Hi-Tec, worked with the Colorado Department of Public Health and Environment (CDPHE) and the city of Aurora to explore alternative options for removing and/or containing the PCB contamination. The contamination was too high

for alternative programs such as the voluntary clean-up program. Hi-Tec was referred to the EPA Removal Program by CDPHE.

III. Threats to Public Health, Welfare or the Environment

The conditions existing at the Site present a threat to public health or welfare and the environment and meet the criteria for initiating a removal action under 40 CFR §300.415(b)(2) of the NCP. EPA has considered all of the factors from §300.415(b)(2) and determined that the following factors apply at the Site:

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

PCBs are in the soils, concrete and groundwater. If left in place, PCB contamination may continue to migrate into the groundwater and towards animal and human populations near Sand Creek. Further, humans or animals at or around the Site may come into contact with PCBs via inhalation of windblown PCB-laden dust, disturbed soils, or through dermal contact. Exposure to PCBs has been shown to cause cancer in animals and can cause negative effects in human reproductive, neurological, and immune systems.

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems.

The Site is located 0.3 miles from Sand Creek and the Bluff Lake Nature Center, a wildlife refuge and sensitive ecosystem. If left on Site, the PCBs may potentially continue to migrate into the groundwater and be transported towards Sand Creek and the wildlife refuge.

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

PCB contamination has been found in levels exceeding EPA's recommended action level in soils, groundwater and concrete. The highest levels of PCBs in the soils range from 762 ppm – 9,240 ppm at depths of 1.5 to 4 feet. Concentrations in concrete range from 562 ppm – 3,180 ppm at depths of 0.5 inches – 2 inches[3]. The hazardous substances have been released to the environment as defined under CERCLA section 101(22).

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

The Site is located in the Denver metro area and is subject to wind, rain and snow events. Storm water runoff from the Site discharges to Sand Creek and may carry contamination. In addition, wind events may transport potentially contaminated dust off-site.

[3] Limited Phase II Environmental Site Assessment. LT Environmental. May 14, 2013.

(vii) The availability of other appropriate federal or state response mechanisms to respond to the release;

Neither the State nor local authorities have the resources to conduct or oversee a removal action at this time.

IV. Endangerment Determination

Actual or threatened releases of hazardous substances from this site may present an imminent and substantial endangerment to public health, or welfare, or the environment.

V. Proposed Actions and Estimated Costs

A. Proposed Actions

1. Proposed Action Description

This removal action is proposed as a series of coordinated actions between Dow Chemical and Hi-Tec with oversight by the EPA removal program. The proposed action will reduce human exposure to the hazardous substances by (1) removing the bulk of the PCB contamination and (2) reducing the mobility and transport of any remaining PCB contamination with the installation of a concrete cap.

The removal action involves the following key elements: (1) additional sampling of the soils, concrete and building structure to better determine the scope of the removal action; (2) demolition of outer building structures including buildings A, C and all or a portion of building B (See Appendix 1, Figure 2); (3) excavation of contaminated concrete and soils underlying buildings A, B and C, as determined necessary, to achieve appropriate clean up levels; (4) removal of concrete via abrasive grinding, where appropriate; (5) cleaning of any PCB contamination remaining on the walls of the building structure; (6) proper disposal of PCB-contaminated wastes in a regulated landfill; and (7) replacement of the concrete to provide a cap for any PCB contamination left in place. The removal of PCB contamination in building D will be determined following additional sampling and assessment.

The goal of the removal action is to achieve a clean up level of 25 ppm at the surface and within the top twelve inches. This level was established based on the recommended soil action level for industrial land use which is 10-25 ppm. At sites where exposures will be limited (i.e. industrial) or where soil is already covered with concrete, PCB concentrations of 25 ppm may be protective of human health and the environment.[4]

[4] A Guide on Remedial Actions at Superfund Sites with PCB Contamination. U.S. Environmental Protection Agency, EPA Publication No. 9355.4-01FS. August 1990

Below the top twelve inches, the goal of the removal action is to achieve a clean up level of 100 ppm. All accessible contaminated soils and concrete at the Site will be replaced with clean soils and capped with concrete or asphalt. It is estimated that a ten inch cover of clean soil will reduce risks by approximately one order of magnitude. [5] A 12 inch cover of clean soil (i.e. PCB concentrations less than 25 ppm) in combination with a concrete or asphalt cap will minimize exposure to the remaining PCBs at the Site and further reduce the possibility of migration and transport. Additional post-removal site controls, such as covenants governing future land use or soil disturbance, may be required based on the extent of contamination left in place. The covenant may restrict groundwater use and ensure the Site is only used for industrial use, pending additional clean up activities.

2. Contribution to Remedial Performance

The proposed removal action is consistent with the overall objectives for the Site to mitigate the risks to human health and the environment due to releases of PCBs.

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

An EE/CA is not required for a time-critical removal action.

4. Applicable or Relevant and Appropriate Requirements (ARARs)

Removal actions conducted under CERCLA are required to attain ARARs to the extent practicable considering the exigencies of the situation. In determining whether compliance with ARARs is practicable, the EPA may consider appropriate factors including the urgency of the situation and the scope of the removal action to be conducted. A discussion of identified ARARs is included in Attachment 3.

5. Project Schedule:

The removal action is anticipated to begin in January 2014. All removal activities are planned to be completed by September 30, 2014.

B. Estimated Costs

Barring unforeseen events, EPA's costs for this PRP-led removal action will be limited to project oversight, which will be subject to reimbursement.

VI. Expected Change in the Situation Should Action Be Delayed or Not Taken

A delay in action or no action at this Site would increase the actual or potential threats to the public health and/or the environment

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[5] Guidance on Remedial Actions for Superfund Sites with PCB Contamination. U.S. Environmental Protection Agency, EPA/540/G-90/007. August 1990.

VII. Outstanding Policy Issues

None identified at this time.

VIII. Enforcement

A separate Enforcement Addendum provides a confidential summary of current and potential future enforcement actions for the Site.

IX. Recommendation

This decision document represents the selected removal action for the Moline Street PCB Site in Adams County, Colorado, developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the administrative record for the Site.

Conditions at the Site meet the NCP section 300.415(b) criteria for a removal action and I recommend your approval of the proposed removal action. Barring unforeseen events, EPA's costs for this PRP-led removal action will be limited to project oversight, which will be subject to reimbursement.

APPROVE: _____ 1/14/14

David A. Ostrander, Director — Date
Emergency Response and Preparedness Program

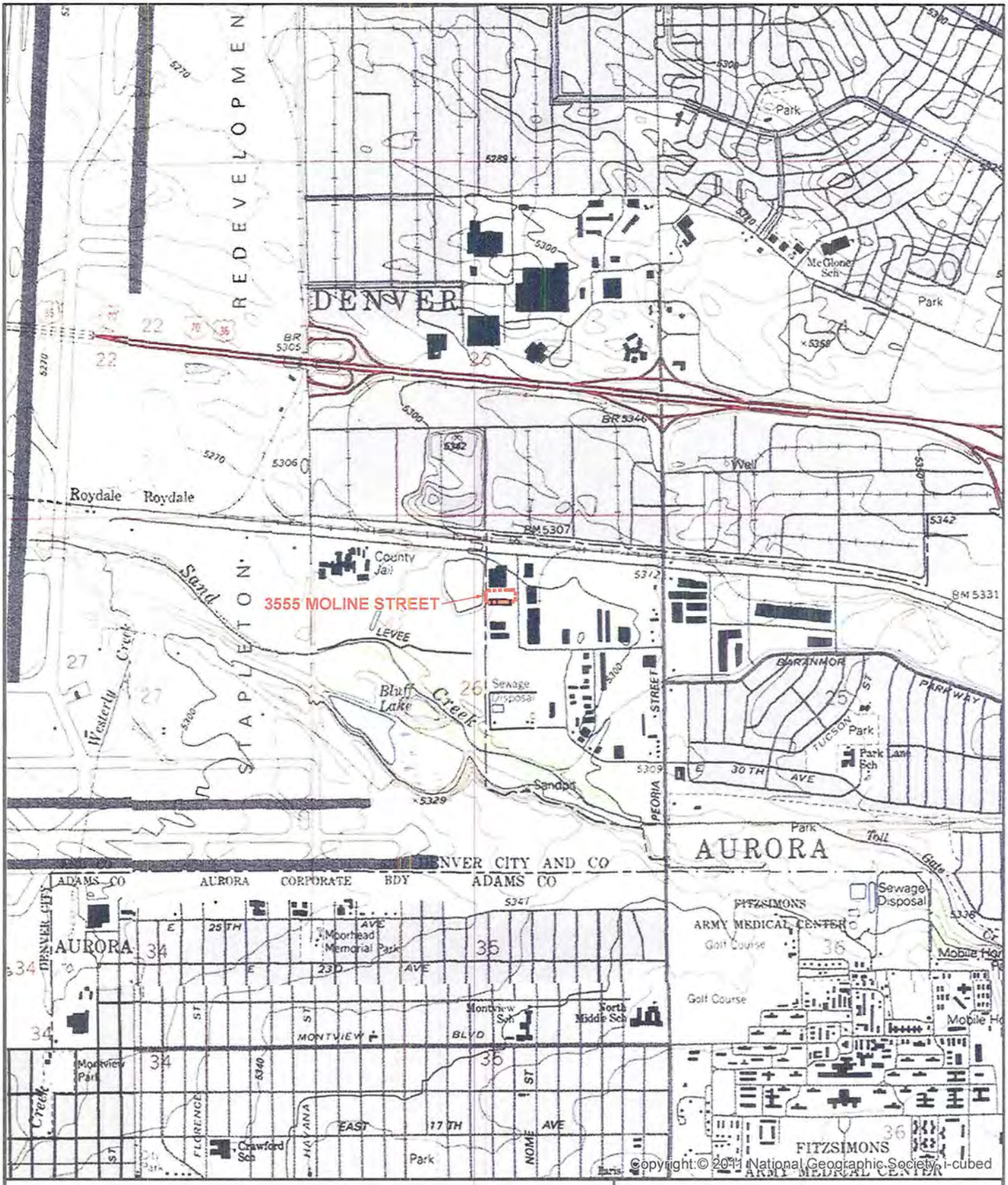
DISAPPROVE: _____

David A. Ostrander, Director — Date
Emergency Response and Preparedness Program

Attachments: 1 – Site Maps
2 – ARARs Table

Attachment 1
Site Maps[6]

[6] Smith Road and Moline Street, Investigation and Removal Action Work Plan, Draft. URS Corporation. October 2013.



EXPLANATION

Property Boundary

Map Projection:
State Plane Feet, Colorado Central Zone, NAD83.
Basemap Source:
National Geographic Society, i-cubed (2011)

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1 inch = 2,000 feet

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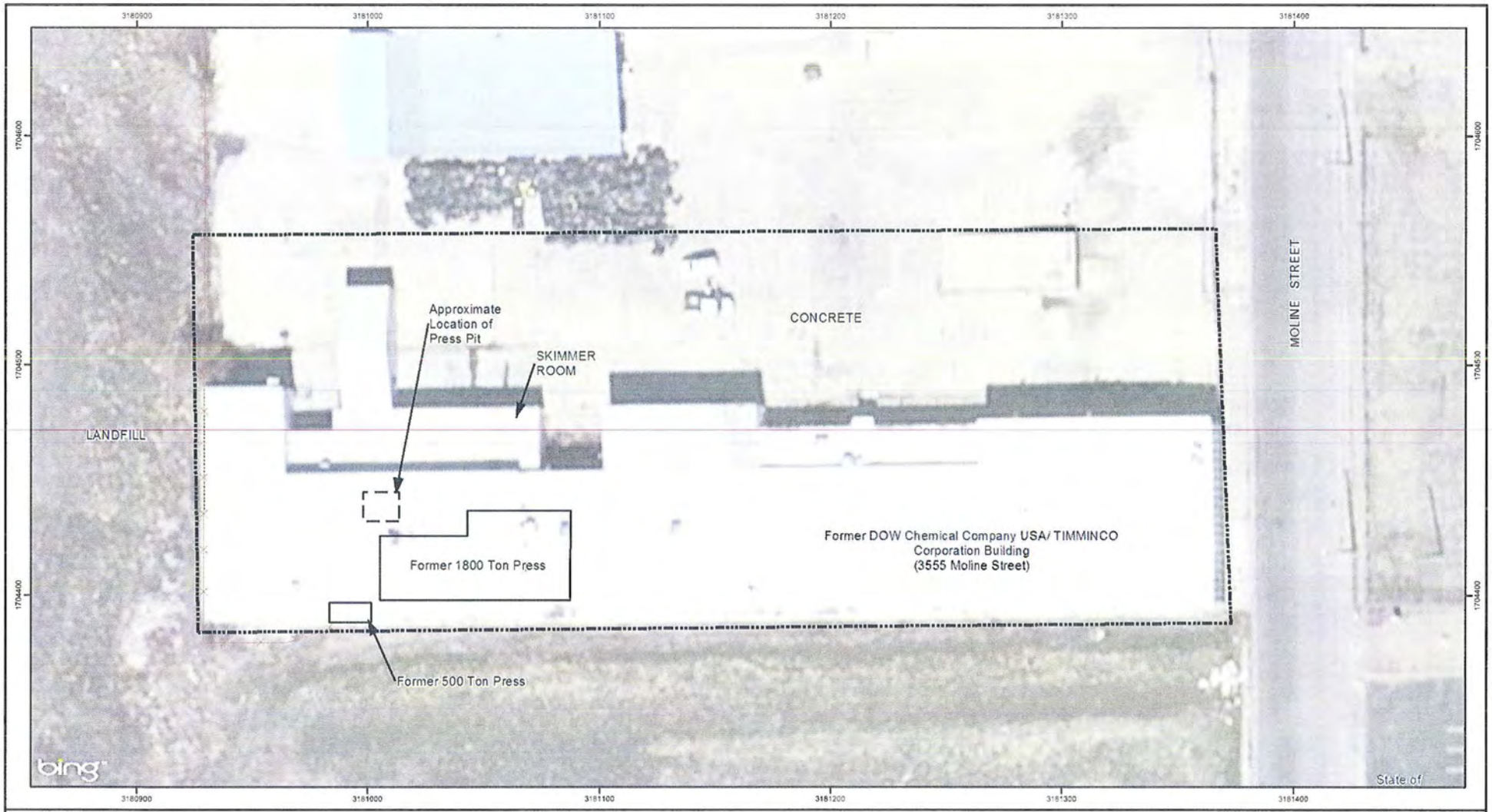
Figure 1 LOCATION MAP

SMITH ROAD & MOLINE STREET SITE
AURORA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
41569671	Fig1_Site_Location.mxd	10/16/13



EXPLANATION

- Property Boundary
- Former Press
- Press Pit
- Fence

Map Projection:
State Plane Feet, Colorado Central Zone, NAD83.
Aerial Photo Basemap Source:
Bing Maps, 2010 Microsoft Corporation and its data suppliers.

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1 inch = 40 feet

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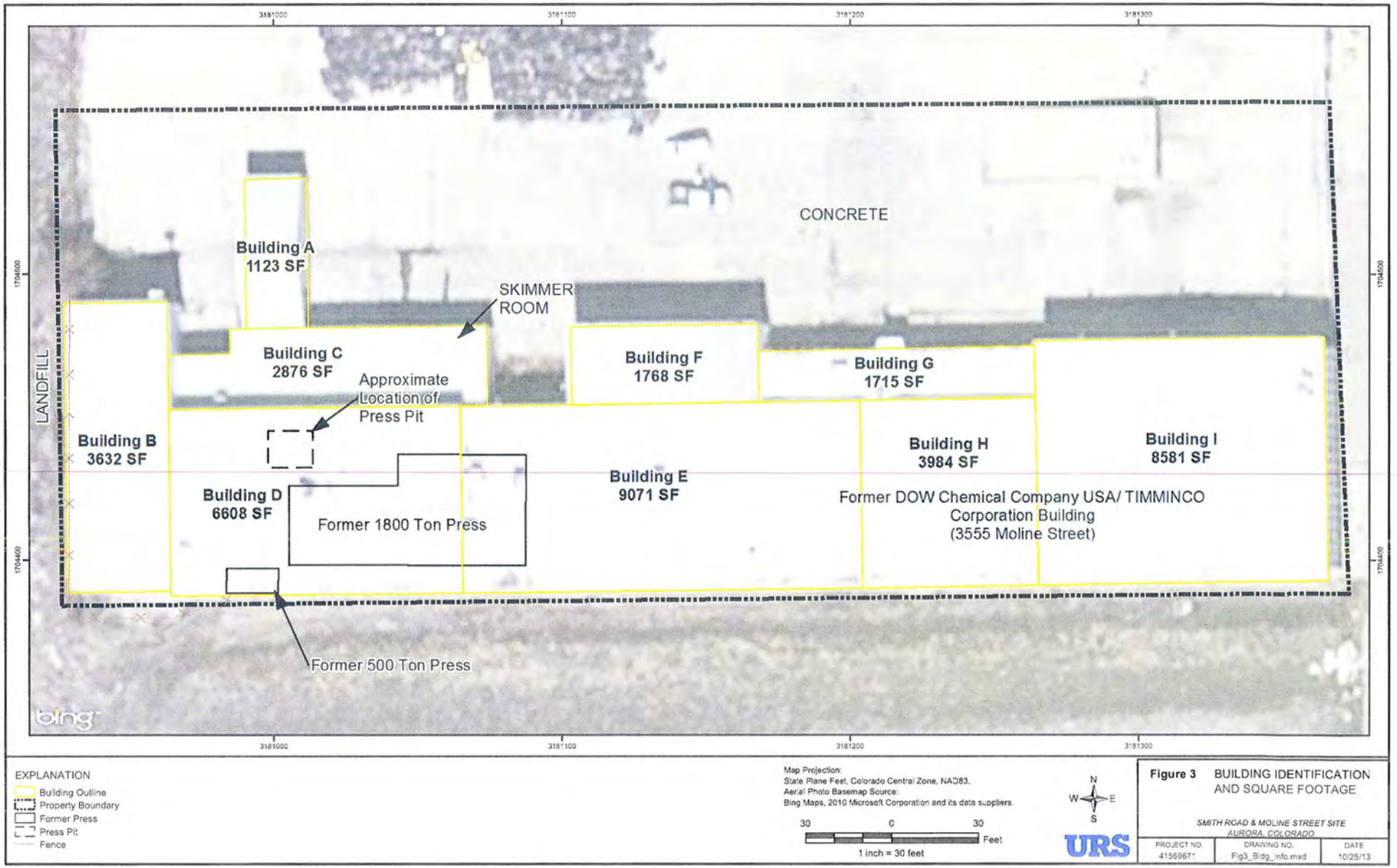
Figure 2 SITE MAP

SMITH ROAD & MOLINE STREET SITE
AURORA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
41569671	Fig2_Site_Map.mxd	10/25/13



EXPLANATION

- Building Outline
- Property Boundary
- Former Press
- Press Pit
- Fence

Map Projection:
State Plane Feet, Colorado Central Zone, NAD83.
Aerial Photo Basemap Source:
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1 inch = 30 feet

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Figure 3 BUILDING IDENTIFICATION AND SQUARE FOOTAGE

SMITH ROAD & MOLINE STREET SITE
AURORA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
41569671	Fig3_Bldg_Info.mxd	10/25/13

Attachment 2
Applicable or Relevant and Appropriate Regulations (ARARs) Table
Moline PCB Site – Location, Action and Chemical-Specific ARARs

I. INTRODUCTION

40 CFR 300.415(i) provides that fund financed removal actions under CERCLA section 104, 42 U.S.C. § 9604, attain, to the extent practicable considering the exigencies of the situation, all state and federal applicable or relevant and appropriate requirements (ARARs). In considering whether compliance with ARARs is practicable, the EPA will consider the urgency of the situation and the scope of the removal action being conducted. See 40 CFR §§ 300.415(i)(1) and (2).

This document identifies potential ARARs for the removal action to be conducted at the Moline PCB CERCLA Site. The following ARARs or groups of related ARARs are each identified by a statutory or regulatory citation, followed by a brief explanation of the ARAR and how and to what extent the ARAR is expected to apply to the activities to be conducted under this removal action.

Substantive provisions of the requirements listed below are identified as ARARs pursuant to 40 CFR § 300.400. ARARs must be attained during and at the completion of the removal action. See Preamble to the National Oil and Hazardous Substances Pollution Contingency Plan, 55 Federal Register (FR) 8695 (March 8, 1990). No federal, state or local permit will be required for the portion of any removal action conducted entirely on site in accordance with Section 121(e) of CERCLA, 42 U.S.C. § 9621(e).

II. TYPES OF ARARs

ARARs are either "applicable" or "relevant and appropriate." Both types of requirements are mandatory under the NCP. See CERCLA § 121(d)(2)(A), 42 U.S.C. § 6921(d)(2)(A). See also, 40 CFR § 300.430(f)(1)(i)(A) (note that these references apply to remedial actions). Applicable requirements are those cleanup standards, standards of control, and other substantive requirements, criteria or limitations promulgated under federal environmental or state environmental and facility siting laws that specifically address a hazardous substance, pollutant, contaminant, removal action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than federal requirements may be applicable. See 40 CFR § 300.5.

Relevant and appropriate requirements are those cleanup standards, standards of control, and other substantive requirements, criteria or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not "applicable" to hazardous substances, pollutants, contaminants, locations, or other circumstances at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site. Only those state standards that are identified in a timely manner and are more stringent than federal requirements may be relevant and appropriate. See 40 CFR § 300.5.

The determination that a requirement is relevant and appropriate is a two-step process: (1) determination if a requirement is relevant and (2) determination if a requirement is appropriate. In general, this involves a comparison of a number of site-specific factors, including an examination of the purpose of the requirement and the purpose of the proposed CERCLA action; the medium and substances regulated by the requirement and the proposed action; the actions or activities regulated by the requirement and the removal action; and the potential use of resources addressed in the requirement and the removal

action. When the analysis results in a determination that a requirement is both relevant and appropriate, such a requirement must be complied with to the same degree as if it were applicable. See CERCLA Compliance with Other Laws Manual, Vol. I, OSWER Directive 9234.1-01, August 8, 1988, p. 1-11.

ARARs are contaminant, location, or action specific. Contaminant specific requirements address chemical or physical characteristics of compounds or substances on sites. These values establish acceptable amounts or concentrations of chemicals which may be found in or discharged to the ambient environment.

Location specific requirements are restrictions placed upon the concentrations of hazardous substances or the conduct of cleanup activities, because they are in specific locations. Location specific ARARs relate to the geographical or physical positions of sites, rather than to the nature of contaminants at sites. Action specific requirements are usually technology based or activity based requirements or limitations on actions taken with respect to hazardous substances, pollutants or contaminants. A given cleanup activity will trigger an action specific requirement. Such requirements do not themselves determine the cleanup alternative but define how chosen cleanup methods should be performed.

Many requirements listed as ARARs are promulgated as identical or near identical requirements in both federal and state law, usually pursuant to delegated environmental programs administered by the EPA and the state. The Preamble to the NCP provides that such a situation results in citation to the state provision and treatment of the provision as a federal requirement. Also contained in this list are policies, guidance or other sources of information which are "to be considered" in the implementation of the removal action. Although not enforceable requirements, these documents are important sources of information which the EPA and the Colorado Department of Public Health and Environmental (CDPHE) may consider, especially in regard to the evaluation of public health and environmental risks; or which will be referred to, as appropriate, in developing cleanup actions. See, 40 CFR Section 300.400(g)(3); Preamble to the NCP, 55 Fed. Reg. 8744-8746 (March 8, 1990). These final ARARs will be set forth as performance standards for any and all removal work plans.

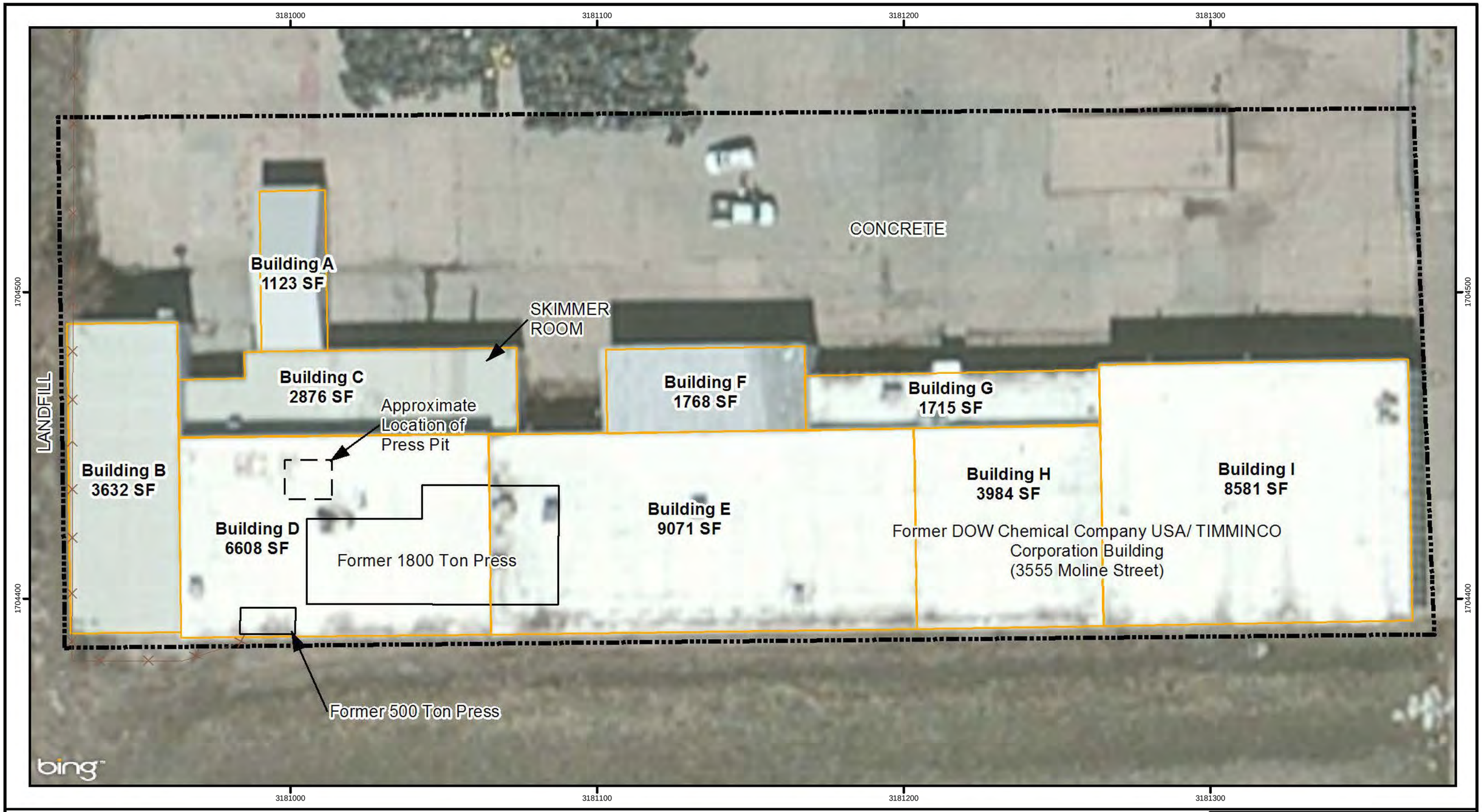
Standard, Requirement, Criteria, or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
FEDERAL				
Toxic Substances Control Act, PCB Spill Cleanup Policy	52 FR 10688 April 2, 1987	Regulates hazardous materials from manufacture to disposal	To be considered	PCB Spill Clean up policy considered in development of clean up levels. Clean up standards are applicable and will be applied, to the extent practicable and in consideration of the exigencies. PCB contaminated waste generated during the removal action will be disposed off-site consistent with RCRA and TSCA regulations.

Standard, Requirement, Criteria, or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
STATE				
Colorado Hazardous Waste Regulations	6 CCR 1007-3, pursuant to CRS § 25-15-101 et seq.	Regulates generation, storage and disposal of hazardous waste, and the siting, construction, operation, and maintenance of hazardous waste disposal facilities	Applicable	PCB contaminated waste generated during the removal action will be disposed off-site consistent with RCRA and TSCA regulations.
Colorado Fugitive Dust Control Plan/Opacity Regulation No. 1	5 CCR 1001-3, pursuant to CRD 25-7-101 et seq.	Regulates fugitive emissions generated during construction	Relevant and appropriate	Contemplated actions would not trigger permit requirements; however dust control will be required.
Colorado Groundwater Standards	5 CCR 1002-8 § 3.11.0-3.11.8 and 1002-41, pursuant to CRS § 25-8-101 et. seq.	Sets standards for contaminants in groundwater	Not applicable	Removal action is limited in scope. Contemplated actions will remove source of contamination, but will not treat groundwater.
Colorado Environmental Covenants Law	CRS §§ 25-15-317 to 327	Requires environmental covenants (ECs) or notices of environmental use restrictions (RNs) whenever residual contamination not safe for all uses is left in place or an engineered feature or structure that requires monitoring, maintenance, or operation is included in the remedy	Applicable (Substantive Provisions)	Covenant may restrict land use and/or groundwater use.

Standard, Requirement, Criteria, or Limitation	Citation	Description	Applicable or Relevant and Appropriate	Comments
Colorado Noise Abatement Statute	CRS § 25-12-101, et seq.	Establishes standards for controlling noise	Applicable	Site is in a commercial or industrial area.

APPENDIX B

SUB:MORRIS HE GHTS FILING NO 2 AMENDED BLK: 18 DESC: BEG 584/69 FT S OF NW COR BLK 18 TH ELY ON ANG TO LEFT OF 90D 471/235 FT TH S 180/81 FT TH W 471/235 FT TH N 180/81 FT TO POB EXC E 30 FT



EXPLANATION

- Building Outline
- Property Boundary
- Former Press
- Press Pit
- Fence

Map Projection:
State Plane Feet, Colorado Central Zone, NAD83.
Aerial Photo Basemap Source:
Bing Maps, 2010 Microsoft Corporation and its data suppliers.

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1 inch = 30 feet

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Figure 2 BUILDING IDENTIFICATION AND SQUARE FOOTAGE

SMITH ROAD & MOLINE STREET SITE
AURORA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
41569671	Fig3_Bldg_Info.mxd	10/25/13

Moline Street PCB Site
Statement of Work (SOW)
December 12, 2013

I. INTRODUCTION

This Statement of Work (SOW) provides an overview of the tasks and activities necessary to conduct investigation and removal activities at the former magnesium extrusion facility (Site) southern building(s) located at 3555 Moline Street in Aurora, Colorado (Figure 1). The work activities summarized below will be divided and conducted separately by The Dow Chemical Company (TDCC) and the property tenant/prospective purchaser, Hi-Tec Plastics, and include Site investigation, building demolition, soil excavation and removal, and site restoration. To the extent required by EPA, TDCC and Hi-Tec Plastics will each prepare a work plan to detail the work each will perform as described in this SOW.

II. REMOVAL OF BUILDING A (Hi-Tec Plastics)

As shown on Figure 2, Building A is attached to Building B and will need to be removed to access Building B. Building A is an open metal storage shed.

III. SITE INVESTIGATION (TDCC)

The Site investigation consists of various tasks associated with delineation of polychlorinated biphenyl (PCB)-contaminated materials. Upon completion of the investigation activities, data obtained will be reviewed in conjunction with historical data to estimate the extent and volume of impacted soils and the degree of building demolition necessary to facilitate excavation activities.

Asbestos Building Inspection and Sampling - Asbestos samples will be collected from Buildings C and B (Figure 2) and the buildings will be inspected by a Colorado Certified Asbestos Building Inspector. If asbestos is present in the buildings to be demolished, asbestos abatement will be conducted prior to any demolition work.

Wipe Sampling - Wipe samples will be collected from the walls and ceiling of each building (Buildings A through I) prior to the investigation and soil removal action. If PCB wipe samples indicate that PCB dust is present in the building, personal protective equipment may be upgraded to Level C for the investigation activities.

When the building demolition and soil removal are completed, wipe samples will be collected from the walls and ceiling of Building D or any other building where excavation dust is a concern. If PCB dust is present, the building(s) will be cleaned to remove the dust.

Soil and Concrete Sampling - The investigation will involve drilling borings to delineate the PCB contamination (Figure 3). Soil samples generally will be collected to a depth of approximately 4 feet below ground surface with select borings drilled deeper to delineate the vertical extent of PCB contamination. Groundwater will not be sampled. Delineation borings will be used to establish the initial excavation extent, which will be used to estimate removal volumes and aid in planning the anticipated demolition areas. The actual depth of contamination will be determined during excavation activities.

During drilling activities, coring will be required to penetrate the concrete slab at a majority of the delineation borings. Concrete cores will be tested for the presence of PCBs to the extent practical, i.e., based on saturation levels and the ability of the analytical testing to detect PCBs.

Soil samples collected will be field screened using a Polychlorinated Biphenyl Field Test Kit manufactured by Dexsil Corporation (L2000DX). The field kits have detection limits between 3 mg/kg and 2,000 mg/kg and will be used as a field screening confirmation tool, with 10% of the samples split and sent off for confirmation laboratory analysis.

IV. BUILDING DEMOLITION, SOIL EXCAVATION AND DISPOSAL (TDCC)

Once the Site Investigation is complete a contaminant excavation plan will be developed. The criteria for design of the excavation plan is removal of PCB contaminated soils outside of excavation limits necessary to preserve the integrity of building foundations, with the exception of Buildings A and C, which will be demolished, and Building B, which may be fully or partially demolished. To the extent any portion of Building B remains, soil removal will be done in a manner to preserve the integrity of that portion. The excavation limits will be established by TDCC's consulting structural and geotechnical engineers. Prior to performance of contaminated soil excavation, the excavation plan will be submitted to EPA and Hi-Tec Plastics for review, discussion, and ultimate approval by EPA.

If determined feasible by the results of the site investigation, clean-up of buildings E-I will be prioritized to allow for occupancy. Hi-Tec Plastics will construct a wall between building D and E to segregate the new tenants work space from the on-going clean-up activities, if determined safe for the tenants. The wall could be constructed at a location that was safe given the adjacent excavation. General descriptions of the anticipated tasks are included below.

Demolition of Building C and Possible Demolition of Building B – The building structures (roof and walls) will be removed to access the concrete slab and PCB contaminated soil beneath the concrete. Prior to building demolition, required shoring will be addressed. As the building structure is taken down, the building material will be separated into recyclable material and landfill material.

If the investigation results indicated the need to demolish a portion of Building B, TDCC will evaluate the feasibility of partial demolition. If partial demolition is not feasible the entire building will be demolished. TDCC will be responsible for any backfill and resurfacing of excavations on the interior of the building in accordance with Section V. Hi-Tec Plastics will be responsible for resurfacing on the exterior of the building as well as any reconstruction of walls and roofs resulting from partial demolition of Building B.

PCB-Contaminated Concrete – In areas where known PCB contaminated concrete surface is present, it will undergo abrasive grinding to remove the contamination. If the PCB contamination cannot be removed by abrasive grinding, the concrete will be removed by saw-cutting or chipping and separated as necessary for disposal.

Excavation of Contaminated Soils - The target depth and extent of the excavation will be estimated following the completion of the Site investigation; however, excavation will continue until sampling confirms that PCB concentrations are below 25 mg/kg in surficial soil (one foot below ground surface) or 100 mg/kg in deeper soil (greater than one foot below ground surface), groundwater is reached, or until no longer deemed safe for personnel or building integrity. Safety measures (e.g., shoring, benching, and/or sloping) will be implemented for excavation areas deeper than four feet per Occupational Safety and Health Administration (OSHA) guidance. Building D (Figure 2) is a concrete building that will not be demolished during the removal activities. If PCB- contaminated soil is present near the foundation of Building D, the soil will only be removed to the extent that the building stability is not compromised.

Building B is located adjacent to a landfill that is at the property boundary (Figure 2). Soil excavation will only be conducted to approximately 3 feet in this building to avoid sloughing of the landfill. Building B may only be partially demolished, depending on the extent of PCB contaminated soil.

Transport and Disposal

PCB contaminated materials (soil and concrete) will be hauled to disposal facilities approved by EPA. Demolition debris will be hauled to an approved landfill.

Confirmation Sampling

After soil excavation is completed, confirmation sampling of the excavation sidewalls and bottom will be performed to confirm removal of soil exceeding 25 mg/kg of PCBs for surficial soil (one foot below ground surface) or 100 mg/kg of PCBs in deeper soil (greater than one foot below ground surface). PCB contaminated soil or concrete than cannot be removed due to proximity to the Building D foundations will be documented in an environmental covenant for the property to be filed by Hi Tec.

V. BACKFILL INSIDE BUILDINGS (TDCC)

TDCC will prepare a backfill plan for the interior of portions of buildings which require excavation for contaminated soil removal. The backfill plan shall be submitted to EPA and Hi-Tec Plastics for discussion and ultimate EPA approval. The backfill plan will outline specific materials; capping of remaining contaminants; placement and compaction requirements; and applicable standards which will result in a prepared subgrade suitable for replacement of the concrete floor as discussed in Section VII. In general, the backfill placement method will be direct release from trucks and reworking of the soil using common earth-moving equipment. Backfill will subsequently be placed in sequentially discrete work zones in loose lifts (6-8") followed by necessary compaction and/or grading to achieve a uniform backfill thickness and surface. Clean backfill materials will be approved by EPA and will be placed until reaching the current sub-grade surface, where it will be smoothed and prepared for replacement of the concrete floor.

VI. BACKFILL OUTSIDE BUILDINGS (TDCC)

TDCC will prepare a backfill plan and submit to EPA and Hi-Tec Plastics for discussion and ultimate EPA approval. The backfill plan will outline specific materials; capping of remaining contaminates; placement and compaction requirements; and applicable standards which will result in a compacted subgrade suitable for placement of concrete or asphalt suitable to the existing use of the areas outside the buildings. In general, the backfill placement method will be direct release from trucks and reworking of the soil using common earth-moving equipment. Backfill will subsequently be placed in sequentially discrete work zones in loose lifts (6-8") followed by necessary compaction and/or grading to achieve a uniform backfill thickness and surface. Clean backfill materials will be approved by EPA and will be placed until reaching the current subgrade surface.

VII. SITE RESTORATION (TDCC and Hi-Tec Plastics)

TDCC will replace the concrete floor slabs at locations in which the existing floors are removed to facilitate contaminate soil removal in the buildings or portions of buildings that remain. The concrete floor slabs will be designed and replaced in accordance with applicable standards in a manner that will result in a floor slab equivalent to the existing floor but, in the case of Building D, absent the foundations and sumps associated with former hydraulic press equipment.

Hi-Tec Plastics will place concrete or asphalt outside of the buildings to effectively cap any remaining contamination. The placement of the concrete or asphalt will be placed in such a manner that promotes drainage and prevents water from ponding. Site restoration will be considered complete when the site is returned to normal use. No buildings will be replaced as part of the site restoration.

US EPA Primary Contact:

The primary contact for this SOW is Joyel Dhieux.

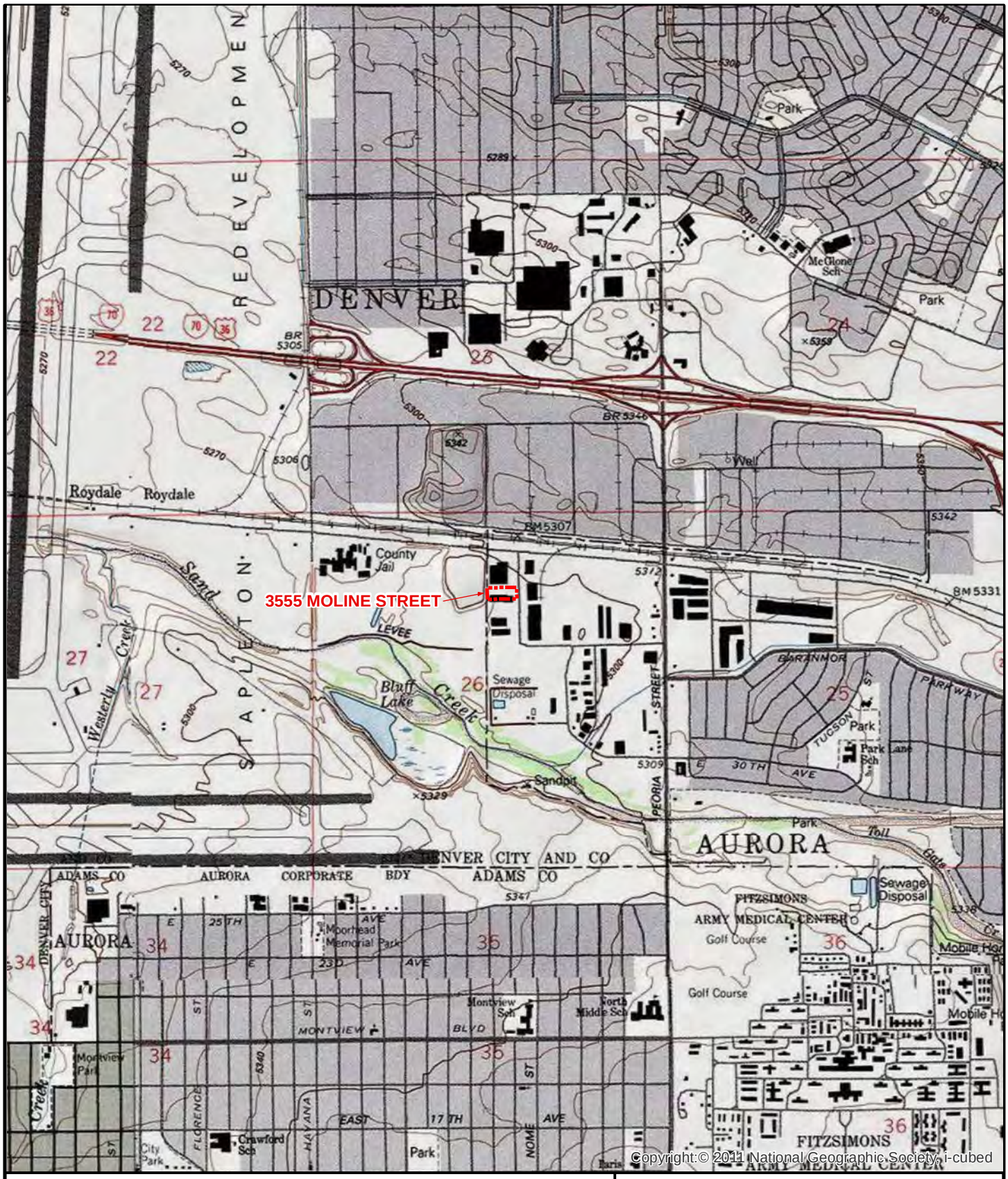
Joyel Dhieux
Federal On-Scene Coordinator
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Phone: 303-312-6647
Email: Dhieux.Joyel@epa.gov

TDCC Primary Contact:

Tom Gieck
TDCC Remediation Leader
2754 Compass Drive, Suite 280
Grand Junction, CO 81506
Phone: (970) 256-8889
Fax: (970) 245-7543
Email: gieckte@dow.com

Hi-Tec Plastics Primary Contact:

Louis Hard
Hi- Tec Plastics
11380 East Smith Road
Aurora, Colorado 80010
Phone: 303-375-9115
Email: LouisHard@comcast.net



EXPLANATION

Property Boundary

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Figure 1 LOCATION MAP

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AURORA, COLORADO

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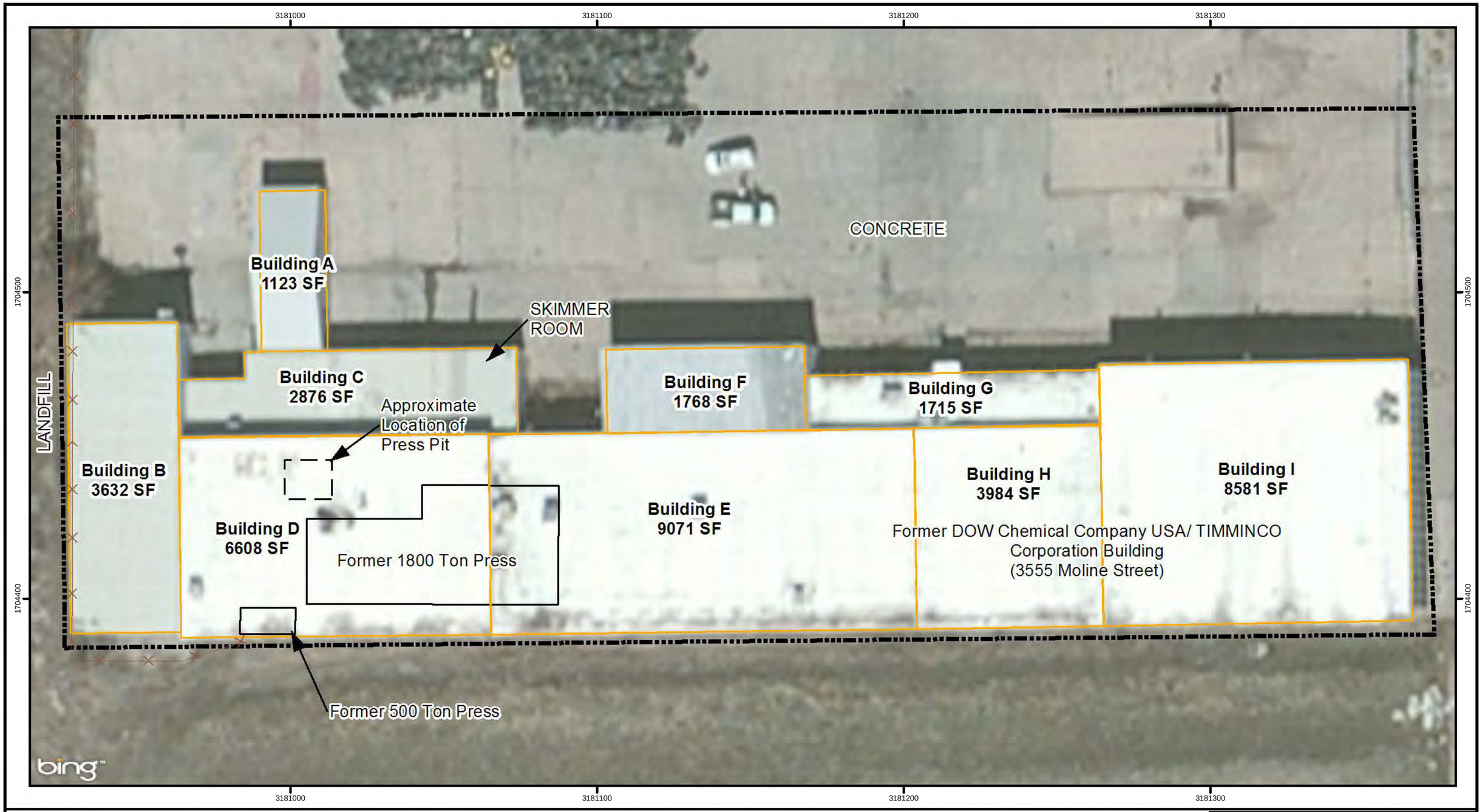

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Figure 2 BUILDING IDENTIFICATION AND SQUARE FOOTAGE

SMITH ROAD & MOLINE STREET SITE
AURORA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
41569671	Fig3_Bldg_Info.mxd	10/25/13

3181000 3181100 3181200 3181300

1704500 1704400

CONCRETE

Near Doorway

Near Doorway

Approximate Location of Press Pit

SKIMMER ROOM

Near Doorway

Near Doorway

Near Building Shift "Backdoor" may have been here before "addition"

LANDFILL

Check Depth of contamination (for Excavation Shoring decision)

Former 1800 Ton Press

Former DOW Chemical Company USA/ TIMMINCO Corporation Building (3555 Moline Street)

Near Back Door

Near Fan Exhaust Vent

Former 500 Ton Press

Near Building Shift "Backdoor" may have been here before "addition"

Near Fan Exhaust Vent

Near Building Shift "Backdoor" may have been here before "addition"

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EXPLANATION

- 8 Step Out Borings to 4 feet bgs
- 10 Perimeter Borings to 4 feet bgs
- 14 Delineation Borings to 4 feet bgs
- 6 Delineation Borings to 14 feet bgs

- Property Boundary
- Former Press
- Press Pit
- Fence

NOTE:
- Investigation/delineation borings will be advanced to estimate the volume and extent for excavation.
- Step out borings are not anticipated unless contamination is encountered in borings to the west.
- Notes near borings are the rationale for boring location.

Map Projection:
State Plane Feet, Colorado Central Zone, NAD83.
Aerial Photo Basemap Source:
Bing Maps, 2010 Microsoft Corporation and its data suppliers.

30 0 30 Feet

1 inch = 30 feet

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Figure 3 PROPOSED INVESTIGATION SAMPLING LOCATIONS

SMITH ROAD & MOLINE STREET SITE
AURORA, COLORADO

PROJECT NO.	DRAWING NO.	DATE
41569671	Fig5_Prop_Samp_Locs.mxd	10/25/13