



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

November 4, 2008

REPLY TO THE ATTENTION OF:

LU-9J

**CERTIFIED MAIL NO.7001 0320 006 1453 9605**  
**RETURN RECEIPT REQUESTED**

Jon Walton  
Executive Vice President  
TDY Industries, Inc.  
Allegheny Technologies Incorporated  
1000 Six PPG Place  
Pittsburgh, PA 15222-5479

RE: RCRA Section 3008(h) Administrative Order on Consent-TDY Industries, Inc. Former  
Teledyne Monarch Rubber Plant 1, in Hartville, Ohio, **RCRA-05-2009-0002**  
U.S. EPA ID No: OHD 068 901 610

Dear Mr. Walton:

I am enclosing a fully executed copy of the 3008(h) Administrative Order on Consent covering the completion of the corrective action work at the subject facility. This agreement will provide a framework to perform the necessary corrective action at your facility. We look forward to working with your staff on this project.

In accordance with Section V Project Manager of the agreement, I am hereby designating John Nordine as the U.S. EPA project manager for this project. If you have any questions, please contact him at (312) 353-1243 or e-mail [nordine.john@epa.gov](mailto:nordine.john@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jose G. Cisneros".

Jose G. Cisneros

Chief

Remediation and Reuse Branch

Enclosure

cc: Karen Peaceman, U.S. EPA ORC (without enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER ON CONSENT
	)	
TDY Industries, Inc	)	U.S. EPA Docket No: <b>RCRA-05-2009-0002</b>
Former Teledyne Monarch Rubber Plant 1	)	
10 Lincoln Park	)	
Hartville, Ohio 44632	)	Proceeding under Section 3008(h) of the
	)	
EPA ID#: OHD 068 901 610	)	
	)	Resource Conservation and Recovery Act,
RESPONDENT.	)	as amended, 42 U.S.C § 6928(h).
_____	)	

**RECEIVED**  
NOV - 5 2008

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**I. JURISDICTION**

1. The Administrator of the United States Environmental Protection Agency ("U.S. EPA") is issuing this Administrative Order on Consent ("Order") to TDY Industries, Inc. ("TDY" or "Respondent") under Section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6928(h). The Administrator has delegated the authority to issue orders under Section 3008(h) of RCRA to the Director, Land and Chemicals Division, U.S. EPA Region 5.

2. TDY, formerly doing business as Teledyne Monarch Rubber Plant Number 1, owns the Facility, which is located at 10 Lincoln Park, Hartville, Ohio. ("the Facility"). The Facility occupies approximately 16 acres of land. The Facility began producing rubber products, industrial tires, and related mechanical goods in 1912. TDY acquired Monarch Rubber and the Plant No. 1 facility in 1969 and operated the plant until June 1991. TDY no longer conducts manufacturing operations at the Facility. TDY leased the Facility to other industrial users who conducted operations similar to those formerly conducted by TDY until January 2007. The building is now vacant except for a small portion that is occupied by an industrial tenant. The surrounding land use is a mix of commercial and residential. Vacant parcels exist to the south and to the west. An elevated rail line extends along the eastern portion of the Facility.

3. TDY agrees not to contest U.S. EPA's jurisdiction to issue this Order, to enforce its terms, or to impose sanctions for violations of the Order.

4. TDY waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing under Section 3008(b) of RCRA as a Consent Order issued pursuant to Section 3008(h) of RCRA.

## II. DEFINITIONS

5. This Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 - 6922k, and the regulations promulgated under RCRA unless otherwise specified.

6. "Ohio EPA" is the Ohio Environmental Protection Agency. Ohio EPA is not a party to this Order. The parties to this Order intend Ohio EPA to be a party to any land use restrictive covenant implemented by Respondent pursuant to this Order.

## III. PARTIES BOUND

7. This Order applies to and binds U.S. EPA, TDY and its agents, successors, assigns, trustees, and receivers, acting on behalf of TDY. TDY ("Respondent") will be responsible for and liable for any violations of this Order, regardless of the use of employees, agents, contractors, or consultants to perform work required by this Order.

8. No change in ownership or corporate or partnership status relating to the Facility will alter the obligations of Respondent under this Order. Any conveyance of title, easement, or other interest in the Facility, or a portion of the Facility, will not affect Respondent's obligations under this Order. Respondent will give written notice of this Order to any successor in interest prior to transferring ownership or operation of the Facility or a portion thereof and will notify U.S. EPA and Ohio EPA in writing not less than ten (10) days in advance of the transfer. This written notice will describe how Respondent has assured that, despite the transfer, all institutional controls required now or in the future for the Facility will be implemented and maintained.

## IV. DETERMINATIONS

9. After consideration of the Administrative Record, the Director, Land and Chemicals Division, U.S. EPA Region 5 has made the following conclusions of law and determinations:

- 9.a TDY is a "person" within the meaning of Section 1004(15) of RCRA.
- 9.b TDY is the owner and/or operator of a Facility that has operated under interim status subject to Section 3005(e) of RCRA.
- 9.c Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 3001 of RCRA and 40 C.F.R. Part 261.
- 9.d There is or has been a release of hazardous wastes or hazardous constituents into the environment from the Facility.

- 9.e The actions required by this Order are necessary to protect human health or the environment.

#### V. PROJECT MANAGER

10. U.S. EPA and TDY must each designate a Project Manager and notify each other in writing of the Project Manager selected within twenty-one (21) days of the Effective Date of this Order. Each Project Manager will be responsible for overseeing the implementation of this Project. A party shall provide the other party prompt written notice whenever it changes its Project Manager.

#### VI. WORK TO BE PERFORMED

11. Pursuant to Section 3008(h) of RCRA, Respondent voluntarily agrees to and is hereby ordered to perform the actions specified in this section, in the manner and by the dates specified here. Respondent represents that it has the technical and financial ability to carry out corrective action at the Facility. Respondent must perform the work undertaken pursuant to this Order in compliance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant U.S. EPA guidance documents as appropriate to the Facility. This guidance includes, but is not limited to, the Documentation of Environmental Indicator Determination Guidance, Use of Institutional Controls in the RCRA Corrective Action Program, and relevant portions of the Model Scopes of Work for RCRA Corrective Action and of U.S. EPA's risk assessment guidance.

12. As specified below, Respondent must implement the remedy selected in U.S. EPA's July 8, 2006 Final Decision ("Final Decision"), as modified in the June 1, 2007, Explanation of Significant Difference ("ESD"). The components of the selected remedy include:

- 12.a Groundwater: Continue to operate the High Vacuum Dual Phase Extraction (HVDPE) system to depress groundwater elevations near the storm sewer and collect groundwater from the area around well IM-2. Discharge will be directed to the existing air stripper. The HVDPE system installed in the vicinity of the storm sewer can be shutdown, partially shutdown, or modified once there is a reduction of the concentrations of the constituents of concern in groundwater infiltrating into the storm sewer under non pumping conditions to levels that do not pose unacceptable risks in off-site surface water. Recovery from IM-2 can cease once VOC recovery reaches asymptotic levels.

Construct and operate a HVDPE system in the former hazardous waste storage area, and near the former degreaser and virgin product underground storage tank. The system will be capable of extracting surface and subsurface soil vapors, DNAPL (if encountered), and impacted perched unit groundwater. Several wells will be constructed in each area. Discharge will be directed to the existing air stripper. The HVDPE system will be operated in the perched unit aquifer until the mass removal in the soil vapor approach asymptotic levels as defined in the

U.S. EPA approved Corrective Measures Implementation (CMI) Design Revised March 27, 2007.

Continue operation of the existing hydraulic control groundwater treatment system in the unconsolidated aquifer. This option was chosen because of its demonstrated long-term effectiveness in maintaining hydraulic control at the Facility. Pumping in the unconsolidated aquifer shall continue until the concentrations of VOCs in groundwater at the Facility boundary meet the Media Cleanup Standards set forth in Attachment 1 under non-pumping conditions. Groundwater monitoring will continue until groundwater meets the Media Cleanup Standards set forth in Attachment 1 on Site.

Implement enhanced bioremediation as enhanced reductive dechlorination. The enhanced reductive dechlorination will be implemented in two reactive zones, as described in the Final Decision. Additional treatments will be applied if needed. This corrective measure will continue until the U.S. EPA determines that the Media Cleanup Standards set forth in Attachment 1 have been achieved at the property boundary under non-pumping conditions in perched groundwater.

Additional corrective measures for groundwater will continue until the U.S. EPA determines that the Media Cleanup Standards set forth in Attachment 1 have been achieved on Site.

Surface Soils: Excavate surface soils in the vicinity of soil sample SS-1 and SS-8 that exceed the surface soil cleanup standards set forth in Attachment 1. Alternatively, pave over and/or cap surface soils that exceed the above cleanup standards. The paved and/or capped areas shall be inspected quarterly and repaired if required. If the area is paved over either asphalt or concrete may be used. If the area is capped a 30 ml or greater polyethylene sheeting (liner) will be installed followed by a layer of 2-inches of sand for drainage of precipitation over the liner followed by placement of at least 10 inches of clean soil (resulting in a total thickness of 12-inches). The 30 ml liner shall be made of material that will not degrade when buried. The clean soil and topsoil materials will be tested and/or certified that the materials are not contaminated with volatile organic compounds, semi volatile organic compounds, pesticides, Polychlorinated Biphenyls (PCBS), and Resource Conservation and Recovery Act metals. The clean soil will be compacted to a degree that prevents subsidence. A minimum of 6-inches of clean topsoil shall be used. The areas shall be seeded with grasses or other suitable ground cover to prevent erosion.

- 12.b. Groundwater Monitoring: A component of this remedy requires groundwater to be sampled from the existing network of monitoring wells. The Respondent will submit a groundwater monitoring plan as part of its submittal required by paragraph 13 below. The groundwater monitoring plan shall achieve the

following three objectives: 1) regularly monitor the concentrations, flow direction(s) and aerial extent of the contaminated groundwater originating from the facility, 2) confirm that the contaminated groundwater is relatively stable by comparing actual to modeled conditions or other reasonably appropriate methods and 3) provide point of compliance monitoring at the source areas to demonstrate, in the future, achievement of Media Cleanup Standards set forth in Attachment I.

The compounds of interest are trichloroethene, tetrachloroethene, 1,1,1-trichloroethane, 1,1-dichloroethane, 1,2-dichloroethylene, 1,1-dichloroethene, and vinyl chloride.

- 12.c Paved and/or capped areas over contaminated surface soils must remain paved or capped so long as surface soil exceeds the Media Cleanup Standards in Attachment 1.
- 12.d Maintenance of site access controls such as fencing, as necessary, to minimize unacceptable risk associated with human exposure to site contaminants; and
- 12.e Implement deed restrictions, as set forth in U.S. EPA's Final Decision and this Order to restrict land use (i.e., non-residential use of the Facility) and groundwater use at those portions of the Facility where contaminants exceed their applicable cleanup standards in U.S. EPA's Final Decision; to prevent interference with remedial construction, long-term Operation and Maintenance of the remedy ("Operation and Maintenance"); and to ensure the effectiveness of the integrity of the constructed remedy.

13. Respondent must propose to U.S. EPA, within sixty (60) days of the Effective Date of this Order, a detailed schedule and plan to construct and implement the selected remedy required by paragraph 12, (including the plan and schedule for groundwater monitoring as required by paragraph 12.b above and a schedule and plan to implement the deed restrictions required by Paragraph 12. e above and Paragraphs 17, 18, and 20 below, and to submit to U.S. EPA a Final Remedy Construction Completion Report), for U.S. EPA approval. Respondent must complete as much of the initial construction work as practicable within one year of the Effective Date of this Order. Respondent must complete the selected remedy within a reasonable period of time to protect human health and the environment.

14. For all documents submitted by Respondent for U.S. EPA approval, U.S. EPA may provide Respondent with its written approval, its approval with conditions and/or modifications, disapproval, or disapproval with comments. U.S. EPA will provide a statement of reasons for any approval with conditions and/or modifications, disapproval or disapproval with comments. Respondent shall revise any such submittal in accordance with U.S. EPA's written comments and will submit to U.S. EPA the revised submittal within forty five (45) days after receiving U.S. EPA's written comments (or longer time if agreed to by the parties.) Revised submittals are subject to U.S. EPA's approval, approval with conditions or modifications, or

disapproval. Upon receipt of U.S. EPA's written approval, the submittal becomes an enforceable part of this Order.

15. Consistent with the approved detailed schedule and plan to construct and implement the selected remedy, Respondent must complete the items identified in paragraph 12 above, including but not limited to, demonstrating that the Media Cleanup Standards as set forth in Attachment 1 are met at the Facility.

16. Within forty five (45) days after Respondent determines that the groundwater Media Cleanup Standards in Attachment 1 have been attained at the Facility, Respondent must submit a written report and certification to U.S. EPA for U.S. EPA's review and approval. A registered professional engineer and Respondent's Project Manager must attest in the report that the groundwater Media Cleanup Standards have been attained in full satisfaction of the requirements of this Order. Groundwater monitoring will continue in accordance with the Respondent's groundwater monitoring plan as approved by U.S. EPA.

17. Unless Respondent can satisfy that National Primary Drinking Water Regulations will be met, Respondent must not allow groundwater in the shallow or the intermediate aquifers at the Facility to be used for drinking, bathing, washing, or other human contact purposes or for livestock, farming, or irrigation until the groundwater Media Cleanup Standards specified in Attachment 1 are achieved, as approved by U.S. EPA. Respondent shall not allow the installation of any new water wells for drinking, bathing, washing, or other human contact purposes or for livestock, farming, or irrigation on this property until the groundwater Media Cleanup Standards specified in Attachment 1 are achieved, as approved by U.S. EPA.

18. Respondent shall not allow any residential activities at the Facility for as long as soils at the Facility remain contaminated above the U.S. EPA Region 9 Preliminary Remediation Goals for residential soils set forth at <http://www.epa.gov/region09/waste/sfund/prg/files/prgtable2004.xls>. The term "residential activities" shall include, but not be limited to, the following:

- 18.a Single and multi-family dwelling and rental units;
- 18.b Day care centers and preschools;
- 18.c Hotels and motels;
- 18.d Educational (except as a part of industrial activities at the Facility) and religious facilities;
- 18.e Restaurants and other food and beverage services (except as a part of industrial activities at the Facility);
- 18.f Entertainment and recreational facilities (except as a part of industrial

activities at the Facility);

18.g Hospitals and other extended care medical facilities (except as a part of industrial activities at the Facility); and

18.h Transient or other residential facilities.

19. For purposes of Section VI. Work to be Performed, the portions of the Facility owned by TDY to which this Section VI applies are shown on the map attached hereto as Attachment 2.

20. Respondent must take reasonable measures to restrict the use of the Facility in any manner that may interfere with a remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedy to be implemented pursuant to this Order. Such restrictions include, but are not limited to, the installation, construction, removal, or use of any wells, or the excavation of any soil within areas exceeding soil cleanup goals, except as approved by U.S. EPA as consistent with this Order. Approval is not required for normal Facility maintenance and operational activities.

21. Upon the conveyance of any interest in any portion of the Facility that TDY owns, including but not limited to easements, deeds, leases and mortgages, TDY must include in the instrument of conveyance that portion of the land use restriction instrument that describes the restriction on activities at the Facility.

22. No later than thirty (30) days prior to executing any instrument conveying any interest in any portion of the Facility, including but not limited to deeds, leases and mortgages, Respondents must provide written notice to Ohio EPA of the proposed conveyance as specified below:

Ohio Environmental Protection Agency  
Southwest District Office  
Attn: TDY Site Coordinator  
Division of Hazardous Waste Management  
2110 E. Aurora Road  
Twinsburg, Ohio 44087-1969

and

Michael A. Savage, Chief  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Hazardous Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049



and must provide written notice of the proposed conveyance to U.S. EPA as specified below:

Director  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

John Nordine, Project Manager Teledyne Site, Hartville, Ohio  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

23. Prior to executing any instrument conveying any interest in any portion of the Facility that TDY owns, including but not limited to easements, deeds, leases, and mortgages, TDY must notify the transferee of the existence of the use restrictions, respectively, and must provide a copy of the Order and attachments to the transferee.

24. U.S. EPA may request supplemental information from Respondent if U.S. EPA determines that any Cost Estimate required by Section XVI, and supporting information do not provide an adequate basis to implement and complete the selected remedy that will protect human health and the environment from the release of hazardous waste and hazardous constituents at or from the Facility. Respondent must provide timely any supplemental information that U.S. EPA requests in writing.

25. Reporting and other requirements:

25.a Respondent must continue to maintain a publicly accessible repository for information regarding site activities and conduct public outreach and involvement activities.

25.b Respondent must provide quarterly progress reports to U.S. EPA by the thirtieth (30<sup>th</sup>) day of the month after the end of each quarter. The report must list work performed to date, data collected, problems encountered, project schedule, and percent project completed. The frequency of this report may be modified by agreement of the parties during the operation and maintenance phase of the corrective action.

25.c The parties will communicate frequently and in good faith to assure successful completion of the requirements of this Order, and will meet or confer on at least a semi-annual basis to discuss the work proposed and performed under this Order. The frequency of this meeting may be modified by agreement of the parties.

- 25.d Respondent must provide a Final Remedy Construction Completion Report documenting all work that has been performed pursuant to the schedule for construction and implementation of the selected remedy. A registered professional engineer and Respondent's Project Manager must certify in the report that the selected remedy has been constructed and implemented in accordance with the design and specifications.
- 25.e For ongoing monitoring and operation and maintenance after construction of the selected remedy, Respondent must include an operations and maintenance plan in the Final Remedy Construction Completion Report for approval by U.S. EPA. Upon U.S. EPA's written approval, Respondent must implement the approved operation and maintenance plan according to the schedule and terms of the plan.
- 25.f Any risk assessments Respondent conducts must estimate human health and ecological risk under reasonable maximum exposure for both current and reasonably expected future land use scenarios. In conducting the risk assessments, Respondent must follow the Risk Assessment Guidance for Superfund (RAGS) or other appropriate U.S. EPA guidance. Respondent must use appropriate, conservative screening values when screening to determine whether further investigation is required. Appropriate screening values include those derived from Federal Maximum Contaminant Levels, U.S. EPA Region 9 Preliminary Remediation Goals, U.S. EPA Region 5 Ecological Screening Levels, U.S. EPA Region 5 Risk Based Screening Levels, or RAGS.
- 25.g All required sampling and analysis conducted under this Order must be performed in accordance with the Region 5 RCRA Quality Assurance Project Plan Policy (April 1998) as appropriate for the site, and be sufficient to identify and characterize the nature and extent of all releases as required by this Order. U.S. EPA may audit laboratories Respondent selects or require Respondent to purchase and have analyzed any performance evaluation samples selected by U.S. EPA, which are compounds of concern. Respondent must notify U.S. EPA in writing at least fourteen (14) days before beginning each separate phase of field work performed under this Order. E-mail communication is acceptable as written communication as long as paper communication is sent to U.S. EPA within five days of the e-mail communication. At the request of U.S. EPA, Respondent must provide or allow U.S. EPA or its authorized representative to take split or duplicate samples of all samples Respondent collects under this Order.
26. Project Managers can agree in writing to extend, for ninety (90) days or less, any deadline in this Section. However, extensions of greater than ninety (90) days require obtaining approval from the Director, Land and Chemicals Division.

## VII. ACCESS

27. U.S. EPA, its contractors, employees, and any designated U.S. EPA representatives may enter and freely move about the Facility to, among other things: interview Facility personnel and contractors; review Respondent's progress in carrying out the terms of this Order; conduct tests, sampling, or monitoring as U.S. EPA deems necessary; use a camera, sound recording, or other documentary equipment; and verify the reports and data Respondent submits to U.S. EPA. Respondent will permit such persons to inspect and copy all non-privileged photographs and documents, including all sampling and monitoring data, that pertain to work undertaken under this Order and that are within the possession or under the control of Respondent or its contractors or consultants. Respondent may request split samples, or copies of all photographs, tapes, videos or other recorded evidence created by U.S. EPA and releasable under the Freedom of Information Act.

28. If Respondent must go beyond the Facility's boundaries to perform work required by this Order, Respondent must use its best efforts to obtain the necessary access agreements from the present owner(s) of such property within thirty (30) days after Respondent becomes aware of the need for such access. Any such access agreement must provide for access by U.S. EPA and its representatives. Respondent must submit a copy of any proposed access agreement to U.S. EPA for its review, and any final access agreement to U.S. EPA's Project Manager. If Respondent does not obtain agreements for access within thirty (30) days, Respondent must notify U.S. EPA in writing within fourteen (14) additional days of both the efforts undertaken to obtain access and the failure to obtain access agreements. U.S. EPA may, at its discretion, assist Respondent in obtaining access.

29. Nothing in this Section limits or otherwise affects U.S. EPA's right of access and entry under applicable law, including RCRA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601-9675.

## VIII. RECORD PRESERVATION

30. Respondent must retain, during the pendency of this Order and for at least six (6) years after the Order terminates, all data and all final documents now in its possession or control or which come into its possession or control which relate to this Order. Respondent must notify U.S. EPA in writing ninety (90) days before destroying any such records, and give U.S. EPA the opportunity to take possession of any non-privileged documents. Respondent's notice will refer to the Effective Date, caption, and docket number of this Order and will be addressed to:

Director  
Land and Chemicals Division  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

Respondent must also promptly give U.S. EPA's Project Manager a copy of the notice.

31. Within thirty (30) days of retaining or employing any agent, consultant, or contractor ("agents") to carry out the terms of this Order, Respondent will enter into an agreement with the agents to give Respondent a copy of all data and final non-privileged documents produced under this Order.

32. Respondent will not assert any privilege claim concerning any data gathered during any investigations or other actions required by this Order.

#### IX. STIPULATED PENALTIES

33. Respondent must pay the following stipulated penalties to the United States for violations of this Order:

- 33.a For failure to submit a detailed schedule and plan for the selected remedy as required by paragraph 13: \$1500 per day for the first fourteen (14) days and \$3,000 per day thereafter.
- 33.b For failure to submit quarterly progress reports by the dates scheduled in paragraph 25 b., above: \$500 per day for the first fourteen (14) days and \$1,000 per day thereafter.
- 33.c For failure to implement, according to the approved plan and schedule, the selected remedy described in paragraphs 12, 17, 18 and 20: \$3,000 per day for the first fourteen (14) days and \$6,000 per day thereafter.
- 33.d For failure to submit or revise and submit, the Final Remedy Construction Completion Report and Operation and Maintenance Plan as required and scheduled in paragraphs 25.d and 25.e.: \$1,000 per day for the first 14 days and \$2,000 per day thereafter.
- 33.e For failure to implement, according to the approved schedule and terms, the approved operation and maintenance plan: \$2,000 per day for the first fourteen (14) days and \$4,000 per day thereafter.
- 33.f For failure to submit the groundwater cleanup standards attainment report as required and scheduled in paragraph 16: \$2,000 per day for the first fourteen (14) days and \$4,000 per day thereafter.
- 33.g For failure to submit supplemental information as required and scheduled in paragraph 24: \$2,000 per day for the first fourteen (14) days and \$4,000 per day thereafter.
- 33.h For failure to provide any Cost Estimate as required in paragraphs 56 through 58,

inclusive: \$2,000 per day for the first fourteen (14) days and \$4,000 per day thereafter.

33.i For failure to implement or maintain the institutional controls as required in paragraphs 12.d, 20, 21, 22 and 23: \$3,000 per day for the first 14 days and \$6,000 per day thereafter.

33.j For failure to timely execute and submit original financial assurance documents in compliance with paragraph 57: \$2,000 per day for the first fourteen (14) days and \$4000 per day thereafter.

34. Whether or not the Respondent has received notice of a violation, stipulated penalties will begin to accrue on the day a violation occurs, and will continue to accrue until Respondent complies.

35. Respondent must pay any stipulated penalties owed to the United States under this Section within thirty (30) days of receiving U.S. EPA's written demand to pay the penalties, unless Respondent invokes the dispute resolution procedures under Section X: Dispute Resolution. A written demand for stipulated penalties will describe the violation and will indicate the amount of penalties due.

36. Interest will begin to accrue on any unpaid stipulated penalty balance beginning thirty-one (31) days after Respondent receives U.S. EPA's demand letter. Interest will accrue at the current value of funds rate established by the Secretary of the Treasury. Under 31 U.S.C. § 3717, Respondent must pay an additional penalty of six percent per year on any unpaid stipulated penalty balance more than ninety (90) days overdue.

37. Respondents must pay all penalties by certified or cashier's check payable to the United States of America, or by wire transfer, and will send the check to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

A transmittal letter stating the name of the facility, Respondent's name and address, and the U.S. EPA docket number of this action must accompany the payment. Respondent will simultaneously send a copy of the check and transmittal letters to the U.S. EPA Project Manager.

38. Respondent may dispute U.S. EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section X: Dispute Resolution. The stipulated penalties in dispute will continue to accrue, but need not be paid, during the dispute resolution period. Respondent must pay stipulated penalties and interest, if any, according to the dispute

resolution decision or agreement. Respondent must submit such payment to U.S. EPA within thirty (30) days after receiving the resolution according to the payment instructions of this Section.

39. Neither invoking dispute resolution nor paying penalties will affect Respondent's obligation to comply with the terms of this Order not directly in dispute.

40. The stipulated penalties set forth in this Section do not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to U.S. EPA for Respondent's violation of any terms of this Order. However, U.S. EPA will not seek both a stipulated penalty under this Section and a statutory penalty for the same violation.

#### X. DISPUTE RESOLUTION

41. The parties will use their best efforts to informally and in good faith resolve all disputes or differences of opinion.

42. If any party disagrees, in whole or in part, with any decision made or action taken under this Order, that party will notify the other relevant party's Project Manager of the dispute. The Project Managers will attempt to resolve the dispute informally.

43. If the Project Managers cannot resolve the dispute informally, any party may pursue the matter formally by placing its objections in writing. A written objection must state the specific points in dispute, the basis for that party's position, and any matters which it considers necessary for determination.

44. The parties will in good faith attempt to resolve the dispute through formal negotiations within twenty-one (21) days, or a longer period if agreed in writing by the parties. During formal negotiations, any party may request a conference with appropriate senior management to discuss the dispute.

45. If the parties are unable to reach an agreement through formal negotiations, within fourteen (14) business days after any formal negotiations end, the parties may submit additional written information to the Director of the Land and Chemicals Division, U.S. EPA Region 5. U.S. EPA will maintain a record of the dispute, which will contain all statements of position and any other documentation submitted pursuant to this Section. U.S. EPA will allow timely submission of relevant supplemental statements of position by the parties to the dispute. Based on the record, U.S. EPA will respond to Respondent's arguments and evidence and provide a detailed written decision on the dispute signed by the Director of the Land and Chemicals Division, U.S. EPA Region 5 ("U.S. EPA Dispute Decision").

## XI. FORCE MAJEURE AND EXCUSABLE DELAY

46. Force majeure, for purposes of this Order, is any event arising from causes not foreseen and beyond Respondent's control that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts.

47. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent must notify U.S. EPA within two (2) business days after learning that the event may cause a delay. If Respondent wishes to claim a force majeure event, within fifteen (15) business days thereafter, Respondent must provide to U.S. EPA in writing all relevant information relating to the claim, including a proposed revised schedule.

48. If U.S. EPA determines that a delay or anticipated delay is attributable to a force majeure event, U.S. EPA will extend in writing the time to perform the obligation affected by the force majeure event for such time as U.S. EPA determines is necessary to complete the obligation.

## XII. MODIFICATION

49. This Order may be modified only by mutual agreement of U.S. EPA and Respondent, except as provided in Section VI - Work to be Performed. Any agreed modifications will be in writing, will be signed by both parties, will be effective on the date of signature by U.S. EPA, and will be incorporated into this Order.

## XIII. RESERVATION OF RIGHTS

50. Nothing in this Order restricts U.S. EPA's authority to seek Respondent's compliance with the Order and applicable laws and regulations. For violations of this Order, U.S. EPA reserves its rights to bring an action to enforce the Order, to assess penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. Section 6928(h)(2), and to issue an administrative order to perform corrective actions or other response measures. In any later proceeding, Respondent shall not assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon a contention that the claims raised by the United States in the later proceeding were or should have been raised here. This Order is not a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, or authorities of U.S. EPA.

51. U.S. EPA reserves all of its rights to perform any portion of the work consented to here or any additional site characterization, feasibility study, and remedial work as it deems necessary to protect human health or the environment.

52. If U.S. EPA determines that Respondent's actions related to this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to

human health or the environment, or that Respondent cannot perform any of the work ordered, U.S. EPA may order Respondent to stop implementing this Order for the time U.S. EPA determines may be needed to abate the release or threat and to take any action that U.S. EPA determines is necessary to abate the release or threat of a release.

53. Respondent does not admit any of U.S. EPA's factual or legal determinations. Except for the specific waivers in this Order, Respondent reserves all of its rights, remedies, and defenses, including all rights and defenses it may have: (a) to challenge U.S. EPA's performance of work; (b) to challenge U.S. EPA's stop work orders; and (c) regarding liability or responsibility for conditions at the Facility. Respondent waives any right it may have to contest, and shall not contest U.S. EPA's jurisdiction to issue or enforce this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondent reserves its right to seek judicial review of U.S. EPA's actions taken under this Order, including a proceeding brought by the United States to enforce the Order or to collect penalties for violations of the Order.

#### XIV. OTHER CLAIMS

54. Respondent waives any claims or demands for compensation or payment under Section 106(b), 111, and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9507 for, or arising out of, any activity performed or expense incurred under this Order. Additionally, this Order is not a decision on preauthorization of funds under Section 111(a) (2) of CERCLA.

#### XV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

55. Respondent indemnifies, saves and holds harmless the United States, its agencies, departments, agents, and employees, from all claims or causes of action arising from or on account of acts or omissions of Respondent's or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification will not affect or limit the rights or obligations of Respondent or the United States under their various contracts. This indemnification will not create any obligation on the part of Respondent to indemnify the United States from claims arising from the acts or omissions of the United States.

#### XVI. COST ESTIMATES AND ASSURANCE OF FINANCIAL RESPONSIBILITY FOR COMPLETION OF WORK

##### 56. Estimated Cost of the Work

a. Within ninety (90) days of the Effective Date of this Order, Respondent shall submit to U.S. EPA, for review and approval, a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the Work to be Performed under this Consent Order ("Cost Estimate"). The Cost Estimate shall account for the total costs of the work activities that it covers, as described in Section VI including any necessary long term costs, such as operation and



maintenance costs and monitoring costs. The term “third party” shall be defined as in 40 C.F.R. § 264.142. The Cost Estimate shall be consistent with the requirements of 40 C.F.R. § 264.142.

b. Respondent shall annually adjust the Cost Estimate for inflation, costs spent and for changes in the scope of the Work to be Performed, within sixty (60) days prior to the anniversary date of the establishment of the financial assurance instrument(s) pursuant to Paragraph 57.a. (“Anniversary Date”) until the Work required by this Consent Order is completed

c. If at any time Respondent becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Respondent shall notify U.S. EPA in writing of such information within thirty (30) days and submit a revised Cost Estimate for approval within thirty (30) days from the date of notification to U.S. EPA. If at any time U.S. EPA determines that a cost estimate provided pursuant to the Paragraph is inadequate, U.S. EPA shall notify Respondent in writing, stating the basis for its determination. Within thirty (30) days of receipt of such notice of inadequacy, Respondent may submit to U.S. EPA additional information to demonstrate the adequacy of the Cost Estimate. If after review of this submission U.S. EPA still deems the Cost Estimate to be inadequate, it shall so notify Respondent in writing. Within thirty (30) days of the initial notification of inadequacy or, if additional information is provided by Respondent, within 30 days of its receipt of a second notice of delinquency, Respondent shall submit to U.S. EPA a revised Cost Estimate for approval.

#### 57. Assurances of Financial Responsibility for Completing the Work

a. After U.S. EPA approves the initial Cost Estimate under Paragraph 56.a above, Respondent shall establish and maintain financial assurance for the benefit of the U.S. EPA in the amount of the approved Cost Estimate within ninety (90) days of the end of Respondent’s fiscal year (the Sunday closest to December 31). In the event that U.S. EPA approval of Respondent’s initial Cost Estimate is not received within sixty (60) days of the close of Respondent’s fiscal year, Respondent shall establish and maintain the financial assurance in the amount of the draft initial Cost Estimate within ninety (90) days of the end of its fiscal year. In such event Respondent shall update the financial assurance instrument or financial test demonstration to reflect the approved initial cost estimate by the one year Anniversary Date. Respondent shall thereafter update the financial assurance to reflect changes to the Cost Estimate by the next Anniversary Date following U.S. EPA’s approval of the revised Cost Estimate. Respondent may use one or more of the financial assurance forms generally described in paragraphs a.1 — a.6 below. Any and all financial assurance instruments provided pursuant to this Consent Order shall be satisfactory in form and substance as determined by U.S. EPA.

a.1 A trust fund established for the benefit of U.S. EPA, administered by a trustee who has the authority to act as a trustee under Federal or State law and whose trust operations are regulated and examined by a Federal or State agency, and that is acceptable in all respects to the U.S. EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the U.S. EPA shall direct in writing (1) to reimburse Respondent from the fund for expenditures made by Respondent for Work performed in accordance with this Consent Order,

or (2) to pay any other person whom the U.S. EPA determines has performed or will perform the Work in accordance with this Consent Order. The trust agreement shall further provide that the trustee shall not refund to the grantor any amounts from the fund unless and until U.S. EPA has advised the trustee that the Work under this Consent Order has been successfully completed.

a.2. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Consent Order, or guaranteeing payment at the direction of U.S. EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph 57.a.1 above. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal Bonds as set forth in Circular 570 of the U.S. Department of the Treasury.

a.3. An irrevocable letter of credit, payable at the direction of U.S. EPA, into a standby trust fund that meets the requirements of the trust fund in Paragraph a above. The letter of credit shall be issued by a financial institution (i) that has the authority to issue letters of credit, and (ii) whose letter-of-credit operations are regulated and examined by a Federal or State agency.

a.4. An insurance policy that provides U.S. EPA with rights as a beneficiary, issued for a face amount at least equal to the current Cost Estimate, except where costs not covered by the insurance policy are covered by another financial assurance instrument.

a.5. A corporate guarantee, executed in favor of the U.S. EPA by one or more of the following: (i) a direct or indirect parent company, or (ii) a company that has a "substantial business relationship" with Respondent (as defined in 40 C.F.R. § 264.141(h)), to perform the Work to be Performed under Section VI of this Order or to establish a trust fund as permitted by subparagraph a above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the U.S. EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee; or

a.6. A demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

b. Respondent must submit original executed/or otherwise finalized financial assurance instruments or documents. Facsimiles or photocopies are not acceptable.

c. If Respondent chooses to use mechanisms a.1-a.5, the required financial instruments shall be submitted to U.S. EPA for review in draft form at least thirty (30) days before they are due to be executed or finalized as legally binding. The financial instruments shall meet the requirements of 40 C.F.R. § 264.143 and shall be consistent in form and substance with the instruments specified in 40 C.F.R. § 264.151. References in these regulations to closure and post closure care obligations pursuant to RCRA permits and closure and post closure cost estimates shall mean the Work to be Performed under Section VI of this Order and the Cost Estimate for the Work to be Performed.

d. If Respondent provides financial assurance for completion of the Work to be Performed by means of a corporate guarantee or financial test, Respondent shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods (including annual updated resubmissions), and will promptly provide any additional information requested by U.S. EPA from the Respondent or corporate guarantor at any time.

e. For purposes of the corporate guarantee or the financial test described above, references in 40 CFR § 264.143(f) to “the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates” shall mean “the sum of current closure, post-closure and corrective action under RCRA and the environmental remediation obligations under CERCLA, UIC, TSCA or their state equivalents, guaranteed by such company or for which such company is using the financial test as the mechanism to provide financial assurance.”

f. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to Be Performed under Section VI of this Order.

g. Respondent shall submit all original executed and/or otherwise finalized instruments to U.S. EPA’s Regional Comptroller (MF-10J), 77 W. Jackson Blvd., Chicago, IL 60604-3590, within thirty (30) days after date of execution or finalization as required to make the documents legally binding. Respondent shall also provide copies to the U.S. EPA Project Manager.

h. If at any time Respondent becomes aware of information indicating that any financial assurance mechanism provided pursuant to this Section is inadequate, whether due to an increase in the estimated cost of completing the Work to be Performed or for any other reason, Respondent shall notify U.S. EPA in writing of such information within thirty (30) days of receipt of such information. If at any time U.S. EPA determines that a financial assurance mechanism provided pursuant to this Paragraph is inadequate, U.S. EPA shall notify Respondent in writing, stating the basis for its determination. Within forty five (45) days of receipt of such notice of inadequacy, Respondent may submit to U.S. EPA additional information to demonstrate the adequacy of the financial assurance mechanism. If after review of this submission U.S. EPA still deems the financial assurance mechanism to be inadequate, it shall so notify Respondent in writing. Respondent shall implement a revised or alternate financial assurance mechanism listed in Paragraph 57 above that satisfies all requirements set forth or incorporated by reference in this Paragraph on the next Anniversary Date following Respondent’s becoming aware of the inadequacy, or of U.S. EPA’s final determination of inadequacy.

i. Respondent’s inability or failure to establish or maintain financial assurance for completion of the Work shall in no way excuse performance of any other requirements of this Order.

58. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Financial Assurance. If Respondent believes that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Order, Respondent may at any time submit a revised Cost Estimate and a written proposal to U.S. EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate. If U.S. EPA approves the revised Cost Estimate Respondent may reduce the amount of its financial assurance commensurate with the approved Cost Estimate at the next Anniversary Date. If the proposed reduction has been adequately demonstrated, U.S. EPA shall not unreasonably withhold its approval to reduce the financial assurance.

b. Change of Form of Financial Assurance. If Respondent desires to change the form or terms of financial assurance, Respondent may, at any time, establish an alternative form of financial assurance in the amount of the current Cost Estimate so long as it meets the applicable requirements of 40 C.F.R. Sections 264.143 and 264.151 and Paragraph 59 above. If the alternative form of financial assurance is 57.a.1, a.2, a.3, a.4 or a.5, Respondent shall submit the required financial instruments in draft form for U.S. EPA review at least sixty (60) days prior to the next Anniversary Date. Respondent shall submit all original executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the U.S. EPA Comptroller's Office, with copies to U.S. EPA's Project Manager, as provided in Paragraph 57.g. of this Order.

c. Release of Financial Assurance. Respondent may submit a written request to the Director, Waste, Pesticides & Toxics Division that U.S. EPA release Respondent from the requirement to maintain financial assurance under this Section once U.S. EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XVIII (Termination and Satisfaction) of this Order. The Director, Land and Chemicals Division shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Order.

59. Performance Failure

a. in the event that U.S. EPA determines that Respondent (i) has ceased implementation of any portion of the Work to be Performed, (ii) is significantly or repeatedly deficient or late in its performance of the Work to be Performed, or (iii) is implementing the Work to be Performed in a manner that may cause an endangerment to human health or the environment, U.S. EPA may issue a written notice ("Performance Failure Notice") to both the Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by U.S. EPA will specify the grounds upon which such a notice was issued and will provide the Respondent with a period of ten days within which to remedy the circumstances giving rise to the issuance of such notice.

b. Failure by the Respondent to remedy the relevant Performance Failure to U.S. EPA's satisfaction before the expiration of the ten-day notice period specified in Paragraph 59a. shall

trigger U.S. EPA's right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 57.a.1- 57.a 6

c. If U.S. EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 59.a. have occurred, and if U.S. EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work to be Performed in accordance with this Consent Order from the financial assurance provider pursuant to this Consent Order, then, upon receiving written notice from U.S. EPA, Respondent shall within ten days thereafter deposit into a trust fund approved by U.S. EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining Work to be Performed in accordance with this Consent Order as of such date, as determined by U.S. EPA.

d. Respondent may invoke the procedures set forth in Section X (Dispute Resolution), to dispute U.S. EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 58.a. have occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider, under Paragraph 59.b. of this section, to fund the trust fund or perform the Work. Furthermore, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, U.S. EPA may in its sole discretion direct the trustee of such trust fund to make payments from the trust fund to any person that has performed the Work in accordance with this Consent Order until the earlier of (i) the date that Respondent remedies, to U.S. EPA's satisfaction, the circumstances giving rise to U.S. EPA's issuance of the relevant Performance Failure Notice or (ii) the date that a final decision is rendered in accordance with Section X (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Consent Order.

#### XVII. SEVERABILITY

60. If any judicial or administrative authority holds any provision of this Order to be invalid, the remaining provisions will remain in force and will not be affected.

#### XVIII. TERMINATION AND SATISFACTION

61. Respondent may request that U.S. EPA issue a determination that Respondent has met the requirements of the Order for all or a portion of the Facility. Respondent may also request that U.S. EPA issue a "no further interest" or "no further action" determination for all or a portion of the Facility.

62. The provisions of the Order will be satisfied upon Respondent's and U.S. EPA's execution of an "Acknowledgment of Termination and Agreement on Record Preservation and Reservation of Rights," consistent with this Order.

63. Respondent's execution of the Acknowledgment will affirm its continuing obligation to preserve all records as required by Section VIII, to maintain any necessary institutional controls or other long terms measures, and to recognize U.S. EPA's reservation of rights as required in Section XIII.

XVIII. EFFECTIVE DATE

64. This Order is effective on the date that U.S. EPA signs the Order.

IT IS SO AGREED:

DATE: 9/16/08

BY: Jon Walton  
Jon Walton,  
Executive Vice President  
TDY Industries, Inc.

IT IS SO ORDERED:

DATE: 10/31/08

BY: Margaret M. Guerriero *for MMC*  
Margaret M. Guerriero, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency  
Region 5

Attachment 1 – Table 1/Media Cleanup Standards

Attachment 2 – Map of the Facility

**RECEIVED**  
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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

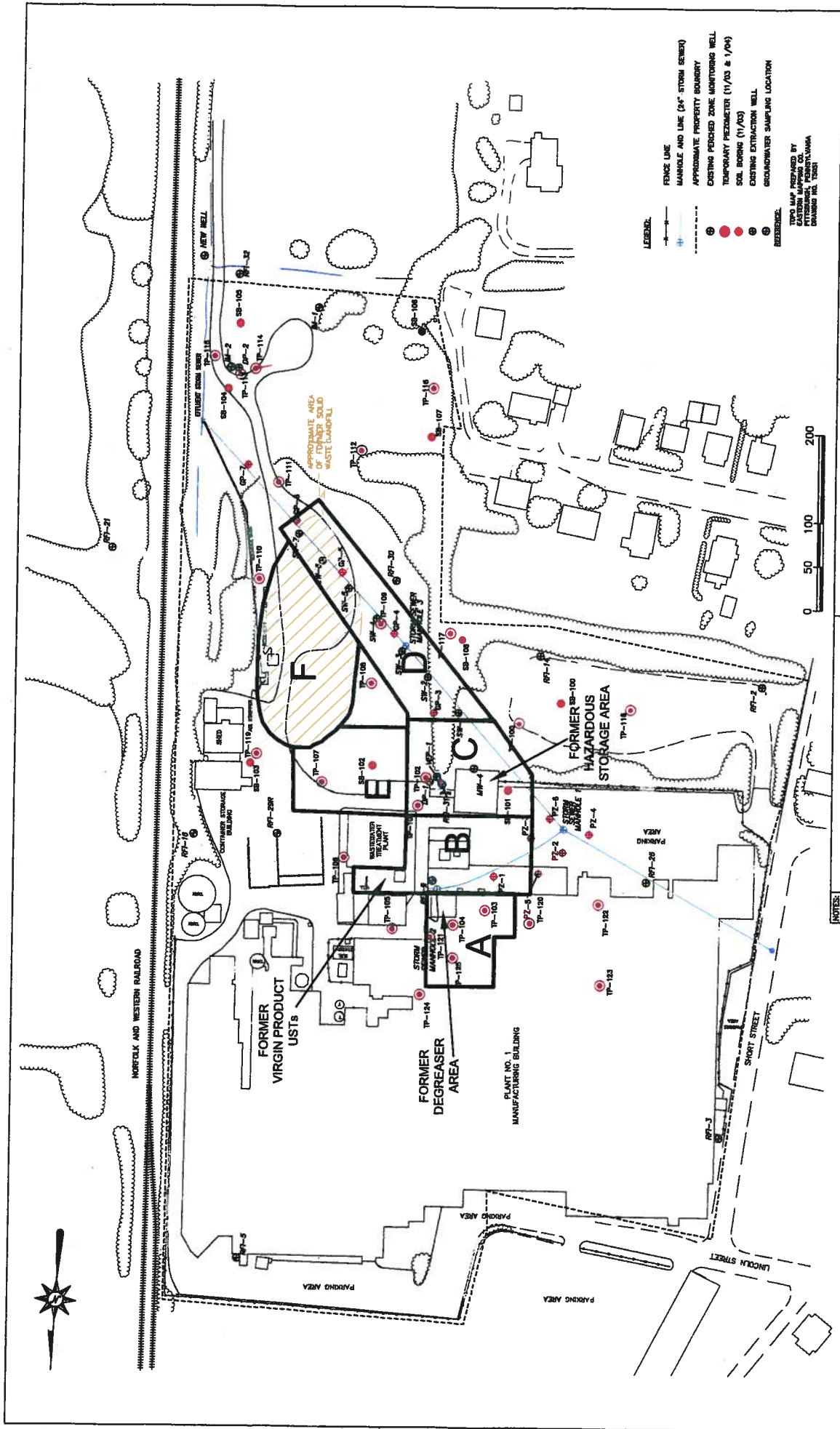
# ATTACHMENT 1

<b>Table 1</b> <b>Summary of the Media Cleanup Standards</b>		
<b>Contaminants of Concern</b>	<b>Surface Soil (mg/kg)</b>	<b>Groundwater (<math>\mu\text{g/l}</math>)</b>
Trichloroethene	84	5
Tetrachloroethene	16	5
1,1,1-Trichloroethane	12,000	200
1,1-Dichloroethane	17,000	810
1,2-Dichloroethylene	1,500	70
1,1-Dichloroethene	410	7
Vinyl Chloride	7.5	2

Mg/kg = micrograms per kilogram  
 $\mu\text{g/l}$  = milligrams per liter



## **ATTACHMENT 2**



IMPACTED AREAS  
FORMER TELEDYNE MONARCH RUBBER PLANT 1  
HARTVILLE, OHIO

MACTEC

PROJECT NUMBER: 34-10040147  
DRAWING NUMBER: Impacted\_Areas.dwg  
DATE: 1-14-05  
DESIGNER: BCF  
APPROVED BY: [Signature]  
REVISIONS:

FIGURE

NOTES: