

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 North 5th Street
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)

BLACKHAWK FOUNDRY AND)

MACHINE COMPANY)

323 SOUTH CLARK STREET)

DAVENPORT, IOWA)

EPA I.D. # IAD005264049)

RESPONDENT)

PROCEEDING UNDER SECTION)

3008(h) OF THE RESOURCE)

CONSERVATION AND RECOVERY ACT,)

AS AMENDED BY THE)

HAZARDOUS AND SOLID WASTE)

AMENDMENTS OF 1984,)

42 U.S.C. § 6928(h))

Docket No. RCRA-07-2008-0007

ADMINISTRATIVE ORDER ON CONSENT FOR
CORRECTIVE MEASURES IMPLEMENTATION

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I. JURISDICTION

1. This Administrative Order on Consent (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by 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. § 6928(h). The authority vested in the Administrator to issue orders under § 3008(h) of RCRA has been delegated to the Regional Administrators by EPA Delegation Nos. 8-31 and 8-32, May 11, 1994, and has been further delegated by the Regional Administrator for EPA, Region 7, to the Director of the Air and Waste Management Division, EPA Region 7, by EPA Delegation Nos. R7-8-31 and R7-8-32, January 1, 1995 and July 1, 2005 (and revised September 16, 2007) (hereinafter "Director")

2. This Order is issued to Blackhawk Foundry and Machine Company ("Respondent"), the owner and operator of Blackhawk Foundry and Machine Company located at 323 South Clark Street, Davenport, Iowa ("the Facility" or "the Property"). Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent's full compliance with the terms of this Order; or impose sanctions for violations of this Consent Order. Respondent neither admits nor denies the factual allegations set forth herein, but agrees not to contest such factual allegations in any proceeding to enforce the terms of this Order.

II. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Order which are defined in RCRA or in regulations promulgated under RCRA shall have the meaning assigned to them under RCRA or in such regulations.

“Acceptable,” in the phrase “in a manner acceptable to EPA ...” shall mean that submittals or completed work meet the terms and conditions of this Order, attachments, scopes of work, approved workplans, and/or EPA’s written comments and guidance documents.

“Additional work” shall mean any activity or requirement that is not expressly covered by this Order or its attachments but is determined by EPA to be necessary to fulfill the purposes of this Order as presented in Section III (Statement of Purpose) of this Order.

“Administrative Record” shall mean the record compiled and maintained by EPA relative to this Order.

“Area of Concern” shall mean any area of the facility under the control or ownership of the owner or operator where a release to the environment of hazardous waste(s) or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration of the release.

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

“Comply” or “compliance” may be used interchangeably and shall mean completion of work required by this Order of a quality approvable by EPA and in the manner and time specified in this Order or any modification thereof, its attachments or any modification thereof, or written EPA directives. The Respondent must meet both the quality and timeliness

components of a particular requirement to be considered to be in compliance with the terms and conditions of this Order.

“Contractor” shall include any subcontractor, consultant, or laboratory retained to conduct or monitor any portion of the work performed pursuant to this Order.

“Corrective Measures” shall mean those measures or actions necessary to control, prevent, or mitigate the release or potential release of hazardous waste or hazardous constituents into the environment.

“Corrective Measures Implementation” or “CMI” shall mean those activities necessary to initiate, complete, monitor, and maintain the remedies EPA has selected or may select to protect human health and/or the environment from the release or potential release of hazardous wastes, or hazardous constituents, into the environment from the Facility.

“Data Quality Objectives” shall mean the qualitative or quantitative statements, the application of which is designed to ensure that data of known and appropriate quality are obtained. Applicable guidance include, but is not limited to, “Guidance on Systematic Planning Using the Data Quality Objectives Process,” EPA QA/G-4, EPA/240/B-06/001, February 2006.

“Day” shall mean a calendar day unless expressly stated to be a business day. Business day shall mean a day other than a Saturday, Sunday, or Federal Holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the end of the next business day.

“EPA” or “U.S. EPA” shall mean the United States Environmental Protection Agency, and any successor departments or Agencies of the United States.

“Facility” shall mean all contiguous property under the control of the Respondent.

“Final Decision” shall mean EPA’s determination of the Corrective Measures to be implemented at the Facility, and made a part of this order as Attachment C.

“Hazardous Constituents” shall mean those constituents listed in Appendix VIII to 40 C.F.R. Part 261 or any constituent identified in Appendix IX to 40 C.F.R. Part 264.

“Hazardous Waste” shall mean hazardous waste as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), or 40 C.F.R. § 260.10.

“Hazardous Waste Management Unit” or “HWMU” or “Solid Waste Management Unit” or “SWMU” shall mean any discernible unit at which hazardous wastes have been placed at any time irrespective of whether the unit was intended for the management of hazardous waste. Such units include any area at a facility where hazardous wastes have been routinely and systematically released.

“Receptors” shall mean those humans, animals, or plants and their habitats which are or may receive or be affected by releases of hazardous waste or hazardous constituents from the Facility.

“RCRA Facility Investigation” or “RFI” shall mean the investigation and characterization of the source(s) of contamination and the nature, extent, direction, rate, movement, and concentration and releases of hazardous waste, including hazardous constituents, that have been or are likely to be released into the environment from the Facility.

“Scope of Work” or “SOW” shall mean the outline of work Respondent must perform to develop all workplans and reports required by this Order and its Attachment B. All SOW Attachments and modifications or amendments thereto, are incorporated into this Order and are an enforceable part of this Order.

“Submittal” shall include any workplan, report, progress report, or any other written document Respondent is required by this Order to send to EPA.

“Violations of this Order” shall mean those actions or omissions, failures or refusals to act by Respondent that result in a failure to meet the terms and conditions of this Order or its attachments.

“Work” or “Obligation” shall mean any activity Respondent must perform to comply with the requirements of this Order and its attachments.

“Workplan” shall mean the detailed plans prepared by Respondent to satisfy the requirements of the corresponding Scope of Work. The requirements for each workplan are presented in Section VIII (Work to be Performed) of this Order and/or Attachment B to this Order.

III. STATEMENT OF PURPOSE

4. In entering into this Consent Order, the mutual objectives of EPA and Respondent shall be the protection of human health and the environment through: (1) the implementation of the of the Corrective Measures described in EPA’s Statement of Basis, dated August 6, 2008, which has been adopted by the Final Decision Document and Response to Comments, dated October 2, 2008, (Attachment C); and (2) maintain the corrective measure to ensure optimal operational performance so that it remains capable of achieving clean-up objectives; and (3) to develop an Operations and Maintenance (O&M) Plan to monitor the long-term effectiveness of the engineering and land use controls and to prevent or mitigate any migration or release of hazardous wastes or hazardous waste constituents at or from the Facility. It is understood by EPA and Respondent that the O&M Plan required by this Order will be consistent with the CMI

Scope of Work and will ensure the corrective measure is performing in accordance with the Final Decision attached hereto and incorporated herein.

IV. PARTIES BOUND

5. This Order shall apply to and be binding upon EPA, Respondent and its officers, directors, successors and assigns, trustees, receivers, and upon all persons, including but not limited to contractors and consultants, acting on behalf of Respondent.

6. No change in ownership or corporate or partnership status of the Respondent will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Respondent's facility, or a portion of the Respondent's facility, shall not affect Respondent's obligations under this Order. Respondent will be responsible for, and liable for, any failure to carry out all activities required of Respondent by the terms and conditions of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform any such tasks.

7. Respondent shall provide a copy of this Order to all contractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within fourteen (14) days of the issuance of this Order or the retention of such person(s), whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

8. Prior to transferring ownership or operation of the Facility or any part of the Facility, Respondent shall notify the new owner or operator in writing of the requirements of this Order. At least ninety (90) calendar days prior to the anticipated date of transfer, the new owner and/or operator shall submit to the EPA a certification that the new owner or operator has read

this Order, understands its requirements and will comply with the terms and conditions herein. If the property transfer involves subdividing the property to more than one owner or operator, a map and legal description shall be provided to the Director that identifies the properties to be occupied by each new owner. An owner or operator's failure to notify the new owner or operator of the requirements of this Order in no way relieves the new owner or operator of his obligation to comply with all applicable requirements. A written agreement containing a specific date for transfer of Order responsibility between the Respondent and new Respondent(s) must also be submitted no later than 90 days prior to the scheduled change in ownership and/or operational control.

When this Order is modified to name a new Respondent, the old Respondent shall maintain compliance with the financial assurance requirements (Section XXIII) of this Order, until such time as the new Respondent has demonstrated compliance with these requirements. The new Respondent shall demonstrate compliance with the financial assurance requirements of this Order within six months of the date of the modification of this Order. Upon the new Respondent's demonstration of compliance with Section XXIII, the Director will notify the old Respondent that maintaining financial assurance pursuant to Section XXIII below is no longer required.

In the case of bankruptcy of the Respondent pursuant to Title 11 of the United States Code, the bankruptcy Trustee shall provide the required notices to the Director and shall ensure the new Owner and/or Operator demonstrate compliance with Section XXIII of this Order, within six months of the date of the transfer of this Order.

9. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference. Respondent waives any rights to request a hearing on this matter pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) and 40 C.F.R. Part 24, and consents to the issuance of this Order without a hearing pursuant to Section 3008(b) of RCRA 42 U.S.C. § 6928(b) as a Consent Order issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

V. FINDINGS OF FACT

10. Respondent is a corporation organized under the laws of and is authorized to conduct business in the State of Iowa.

11. Respondent is the owner and operator of a facility located at 323 South Clark Street, Davenport, Iowa. The Facility is located in Scott County, Iowa, in the approximate center of Section 33, Township 79 North, Range 3 East, of the U.S. Geological Survey 7.5 minute Quadrangle for Davenport East, Iowa-Illinois. The location of the Facility is depicted in Attachment A, attached hereto and incorporated by this reference.

12. The Facility is located adjacent to the Illinois border in southeastern Iowa and is situated less than one mile northwest of the Mississippi River. Blackhawk Creek runs along the northwestern corner of the facility, approximately 180 feet from the former surface impoundment. Private residences are located immediately west and south of the Facility.

13. The Facility is a foundry that produces gray and ductile iron castings for industry. Prior to November 19, 1980, and until at least September 6, 1985, Respondent operated an unlined surface impoundment (former "gator pit" or "pit" or "lagoon"), at the northeast corner of the Facility to treat the sludge from the cupola furnace melt process by dewatering the sludge.

The surface impoundment was thirty-six feet long, twenty-four feet wide, and five feet deep. Approximately every seventy to eighty days, Respondent removed the dewatered sludge from the surface impoundment and placed it in an off-site landfill. Respondent deposited approximately 3,500 to 4,660 pounds of cupola air emission scrubber sludge during each operating day. The baghouse sludge contained cadmium, arsenic and lead. This area is depicted in Attachment A, attached hereto and incorporated by this reference.

14. Respondent submitted a Notification of Hazardous Waste Activity to EPA on or about July 22, 1985, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930. On that Notification sheet, Respondent indicated that it was the owner and operator of a Treatment, Storage, and Disposal (TSD) facility for toxic waste (D000). EPA assigned the Facility the EPA identification number IAD005264049.

15. In May 1988, a RCRA Facility Assessment (RFA) was conducted. The RFA revealed substantially elevated levels of metals in soils and identified a number of solid waste management units (SWMU) and areas of concern (AOC).

16. The Facility includes area B4 where sampling found lead above the industrial preliminary remedial goal (PRGs) of 800 mg/kg. This area is depicted in Attachment A.

17. Closure activities involving excavation of the surface impoundment area have been performed. Certification of closure of the former surface impoundment area was provided in February 1996.

18. The site geology consists of up to 7 feet of fill material underlain by alluvial deposits to a depth of 19 feet to 21.5 feet below the surface. The fill material is predominantly cinders and rubble. The alluvial deposits consist of random alternating layers of clay and fine to

coarse grained sand. Bedrock is situated between 19 feet and 21.5 feet below ground surface and may be either Silurian or Devonian age stratigraphic units.

19. The uppermost aquifer at the Facility consists of saturated alluvial deposits and the underlying Silurian-Devonian bedrock aquifer. The alluvial deposits are hydraulically connected to the underlying bedrock units, forming a single unconfined hydraulic system. The primary water source in the City of Davenport is from water intakes on the Mississippi River.

20. All residences in the immediate area obtain their water from the City of Davenport water distribution system. The nearest potable water wells are located over three miles to the north and west of the site.

21. In August 1992, EPA and Respondent entered into an Administrative Order on Consent pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). This Order (U.S. EPA Docket No. VII-92-H-0020) required Respondent to complete a RCRA Facility Investigation ("RFI") to evaluate the sources of soil contamination at the facility and assess the extent of contamination both on and adjacent to the facility. The Order also required Respondent to perform a Corrective Measures Study ("CMS") to identify and evaluate alternatives for corrective action necessary to prevent any exposure of any contaminants to human or environmental receptors.

22. Respondent submitted a Final RFI Report to EPA, which was approved on June 25, 1998. Analytical data obtained during the RFI were compared to the background levels established for the closure of the surface impoundment and to human health risk-based standards. Lead concentrations in the soil were detected at levels which exceeded the background levels and EPA's risk-based PRGs for sites in close proximity to residential areas.

23. Respondent submitted a CMS Report to EPA on November 30, 1999. The CMS Report developed and evaluated four clean-up alternatives for EPA consideration. Based on the CMS Report, EPA proposed the following combination of remedies and institutional controls to address the soil contamination at the Facility:

- a. Excavation and offsite disposal of soil contaminated with lead at levels above the industrial use PRGs, 800 mg/kg (ppm);
- b. Engineering controls in the form of a gravel cap. The purpose of the gravel cap is to prevent contact with the remaining soil, sediment runoff during rainfall and flood events, and contaminated dust generation during dry periods.
- c. Institutional controls, in the form of a restrictive covenant, to prevent future uses of the facility that would cause unacceptable exposures to contaminated soil.
- d. EPA will also require Respondent to annotate the property's deed to identify the location of the surface impoundment. Additional land use controls will prevent installation of water supply wells, to ensure contaminated soil and the lagoon cover are not disturbed, and to prevent residential use of the facility without clean-up to residential standards.
- e. Long-term monitoring of the effectiveness of the engineering and land use controls.

24. This remedy was proposed in a Statement of Basis, which was made available to the public for comment during a comment period between August 12, 2008, and September 12, 2008. No substantive comments were received by the EPA on the Statement of Basis during the comment period.

25. On October 2, 2008, EPA issued the Final Decision Document and Response to Comments for the Facility. Since no comments were received on the remedy as proposed in the Statement of Basis, the selected remedy consisted of the remedial measures as proposed, as described in Paragraph 23. The Final Decision Document and Response to Comments is attached to this Order as Attachment C.

26. Hazardous waste and/or soil containing lead found at the Facility can cause adverse health effects in humans and animals. The primary human health pathway for exposure to lead is through soil and dust, which may be swallowed or breathed into the body. Children are most susceptible to lead contamination because of its ability to cause developmental deficits. Adverse effects of high exposure include neurological, reproductive, renal, and hematological. The effects of lead are the same whether it enters the body through breathing or swallowing. Lead can affect almost every organ and system in the body. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. High level exposure in men can damage the organs responsible for sperm production. The U.S. Department of Health and Human Services has determined that lead and lead compounds are reasonably anticipated to be human carcinogens and the EPA has determined that lead is a probable human carcinogen.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

27. Based on the foregoing findings of fact and the Administrative Record, the Director of the Air and Waste Management Division of EPA, Region 7, has made the following conclusions of law and determinations:

- a. Respondent is a person within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- b. Respondent is the owner or operator of a facility that has operated, is operating, should be operating, or should have been operating under interim status subject to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e).
- c. Certain wastes and constituents found at the Facility are hazardous wastes and/or hazardous constituents pursuant to Section 1004(5), 42 U.S.C. § 6903(5), Section 3001 of RCRA, 42 U.S.C. §6921 and 40 C.F.R. Part 261.
- d. There is or has been a release of hazardous wastes or hazardous constituents into the environment from Respondent's Facility.
- e. The actions required by this Order are necessary to protect human health and the environment.

VII. PROJECT COORDINATOR

28. EPA designates the individual listed below as its Project Coordinator for the purposes of this Order:

Cynthia L. Hutchison
EPA Project Coordinator
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

29. Within ten (10) days of the effective date of this Order, Respondent shall designate a Project Coordinator and notify EPA in writing of the Project Coordinator it has selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his/her absence. The EPA Project Coordinator will be EPA's designated representative for the Facility. All communications between Respondent and EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators.

30. The parties may change their Project Coordinators but agree to provide at least five (5) days written notice prior to changing a Project Coordinator.

31. The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of work.

VIII. WORK TO BE PERFORMED

32. All work undertaken pursuant to this Order (the "Work") shall be performed in a manner consistent with: (1) the Scope of Work attached hereto as Attachment B and incorporated herein by reference; (2) RCRA and its implementing regulations; and (3) applicable and published EPA guidance documents. Applicable guidance documents include, but are not limited to, "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," EPA 540-F-00-005, OSWER 9355.0-74FS-P, September 2000, and the draft "Institutional Controls: A Guide to Implementing, Monitoring, and Enforcing Institutional Controls at Superfund,

Brownfields, Federal Facility, UST and RCRA Corrective Action Cleanups,” February 2003, “Final Guidance on Completion of Corrective Action Activities at RCRA Facilities,” 68 Fed. Reg. 8757-8764 (Feb. 25, 2003), and other guidance as identified by EPA.

33. Pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), the parties agree and the Respondent is hereby ordered to perform the following acts in the manner and by the dates specified herein and the attached Scope of Work to implement the remedy selected by EPA:

a. Excavate and dispose of soil contaminated with lead at levels above the industrial PRGs of 800 mg/kg from the area identified as B4. Once contaminated soils have been excavated, install a gravel cap.

b. Implement institutional controls for the Facility, in the form of an environmental covenant pursuant to Iowa Code section 455I et seq. The environmental covenant shall be substantially similar to the draft environmental covenant included as Attachment D, incorporated herein by reference, and shall:

(i) bind Respondent and Respondent’s successors, assigns, and all transferees acquiring or owning any right, title, lien or interest in the areas of the Property specified herein and their heirs, successors, assigns, grantees, executors, administrators, and devisees.

(ii) Include the following activity and use limitation terms:

a) The Property shall not be used for residential purposes unless approved in writing by EPA and remediated to residential use standards.

- b) Any excavations of areas on the Property containing lead above the residential PRGs of 400 mg/kg shall be conducted in accordance with worker protection and soil disposal requirements as be required by applicable laws and requirements.
- c) No installation of residential water supply wells.
- d) The integrity of the gravel cap over the lagoon (former pit) and the gravel cap placed over area B4 must be preserved by maintaining appropriate cover, maintaining the specified grade of the cap as installed, repairing erosion of cap material, and preventing unplanned ponding, unless expressly authorized in writing by EPA.
- e) Notification must be made, in writing, to the Environmental Protection Agency, the state and federal Occupational Safety and Health Administrations (OSHA), the Scott County Health Department, and the City of Davenport, 10 calendar days prior to any excavations for facility expansion, major utility work, or in areas containing lead above the residential PRG of 400 mg/kg.
- f) The effectiveness of the gravel cap and the effectiveness of and compliance with the environmental covenant must be continually monitored. This information should be reported to EPA every 5 years on the anniversary of the effective date of the covenant.

(iii) include a brief narrative description of the contamination and remedy, which will include the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.

(iv) include a map with a scale which accurately depicts the following information:

- a) the location of the surface impoundment,
- b) the location of all SWMUs and AOCs, including but not limited to area B4 and the lagoon (former pit).

(v) include a provision to notify EPA and the Iowa Department of Natural Resources of any transfer of interest in the Property at least thirty (30) days prior to such transfer.

34. Commencing on the effective date of this Order, Respondent shall refrain from using the Facility in any manner which would interfere with or adversely affect the integrity or protectiveness of the corrective measures to be implemented pursuant to this Order. Such restrictions include, but are not limited to:

- a. the Facility or any portion thereof shall not be used for any use other than industrial or commercial use; residential dwellings, child care facilities, and schools shall be prohibited;
- b. excavation of soils located on the Facility in contaminated areas shall require prior notification to EPA, except for minor excavations necessary to install, maintain or repair utility poles, fence posts, sidewalks, paving, and other comparable activities; and

- c. any excavations in contaminated areas shall be conducted in accordance with worker protection and soil disposal requirements as may be required by applicable laws and requirements.

35. Within 30 days of the effective date of this Order, Respondent shall submit to EPA for review and approval the following:

- a. a Corrective Measures Implementation Workplan (“CMI Workplan”), prepared in accordance with Task 1 of the attached SOW. The EPA approved CMI Workplan shall be implemented by Respondent according to the schedule contained therein;
- b. a Health and Safety Plan (“HSP”) prepared in accordance with Task 2 of the attached SOW. (While EPA will not approve the HSP, it will review it and may provide comments.); and
- c. an Operation and Maintenance (“O&M”) Plan prepared in accordance with Task 3 of the attached SOW;

36. Within 60 days of the completion of physical construction of the corrective measures required by this Order, Respondent shall submit to EPA for review and approval a Construction Completion Report (“CCR”) prepared in accordance with Task 4 of the attached SOW.

37. Within 60 days of the 5-year anniversary of EPA’s approval of the CCR, Respondent shall submit to EPA for review and approval a 5-Year Corrective Measures Performance Evaluation Report prepared in accordance with Task 5 of the attached SOW.

38. Within 45 days after Respondent obtains information demonstrating that the completion criteria for all of the corrective measures have been achieved, Respondent shall

submit to EPA for review and approval a Corrective Measures Completion Report ("CMCR") that presents a summary of such information in sufficient detail and quality to provide EPA a basis to confirm that the criteria have been satisfied. The CMCR shall be prepared in accordance with Task 6 of the attached SOW.

39. Respondent shall submit quarterly progress reports to EPA as provided in Task 7 of the attached SOW.

40. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer, hydrologist, geologist, or environmental scientist, with expertise in hazardous waste cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the work for which it is responsible. Prior to the implementation of any work at the site, Respondent shall notify the EPA Project Coordinator in writing of the name, title, and qualifications of the engineer, hydrologist, geologist, or environmental scientist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Order. Respondent shall identify whether any contractor is on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs. EPA reserves the right to disapprove Respondent's contractor and/or consultant. If EPA disapproves a contractor or consultant, then Respondent must, within ten (10) days of receipt from EPA of written notice of disapproval, notify EPA, in writing, of the name, title, and qualifications of any replacement. EPA's disapproval shall not be subject to review under Section XVII (Dispute Resolution) of this Order.

X. SUBMISSIONS/AGENCY APPROVAL/ADDITIONAL WORK

41. Respondent shall submit 2 copies of all documents to be submitted pursuant to this Order to EPA's Project Coordinator as designated pursuant to Section VII of this Order. These documents shall be hand delivered, sent by certified mail, return receipt requested, or by overnight express mail.

42. The following procedure will apply to the review and approval of all plans, reports, or other documents submitted to EPA for review and approval. EPA will review each such document and notify Respondent, in writing, as to its approval or disapproval thereof. In the event that EPA does not approve any such document, it will provide written comments regarding the basis of the disapproval. Within thirty (30) days of receipt of EPA's comments, or such longer time period as agreed to in writing by EPA, Respondent shall modify the submission in accordance with EPA's comments, and shall submit the revised document to EPA. Revised submittals are subject to EPA approval, approval with conditions, disapproval, or disapproval with comments and/or modifications.

43. If any revised submittal is disapproved or disapproved with comments or modifications, Respondent shall be deemed, at EPA's discretion, to have failed to submit such plan, report, or item in a timely and adequate manner. EPA may thereafter modify the submittal in accordance with EPA's requirements. Such modification issued by EPA shall be binding on the Respondent unless the Respondent timely invokes the procedures set forth in Section XVII (Dispute Resolution) of this Order, in which case for purposes of the dispute process the modification shall be considered an initial written decision. However, dispute resolution shall

not stay Respondent's obligation to perform any other Work required in accordance with EPA's requirements under this order.

44. Upon receipt of EPA's written approval, Respondent shall commence Work and implement any approved workplan in accordance with the schedule and provisions contained therein.

45. Any EPA approved report, workplan, specification, or schedule shall be deemed incorporated into this Order. Prior to this written approval, no workplan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

46. Beginning with the effective date of this Order, and throughout the period that this Order is effective, Respondent shall provide EPA with quarterly progress reports. The progress reports shall conform to requirements in the relevant scope of work contained in Attachment B.

47. EPA may determine, or Respondent may propose, that additional tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary to meet the purposes set forth in Section III (Statement of Purpose) of this Order. EPA will specify as a written decision, subject to dispute resolution, the basis for its determination that the additional work is necessary. Within ten (10) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a workplan for the additional work. Such workplan shall be submitted within thirty (30) days of receipt of

EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. Upon approval of a workplan, Respondent shall implement it in accordance with the schedule and provisions contained therein.

XI. QUALITY ASSURANCE

48. Respondent shall follow EPA guidance for sampling and analysis. Applicable guidance include, but is not limited to, "Guidance on Systematic Planning Using the Data Quality Objectives Process," EPA QA/G-4, EPA/240/B-06/001, February 2006.

Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by EPA prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

49. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).

50. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

51. Respondent shall ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, (SW-846)," or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify all such protocols in the applicable workplan (e. g., O&M Plan). EPA may reject any data that does not meet the requirements of

the approved workplan or EPA analytical methods and may require resampling and additional analysis.

52. Respondent shall ensure that laboratories it uses for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. EPA may conduct a performance and quality assurance/quality control audit of the laboratories chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control, resampling and additional analysis may be required.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

53. Respondent shall submit to EPA upon request the results of all sampling and/or tests or other data generated by Respondent's, agents, consultants, or contractors pursuant to this Order.

54. Notwithstanding any other provisions of this Order, the United States retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

55. Respondent shall notify EPA in writing at least thirty (30) days before initiating significant field activities, such as well drilling, installation of equipment, or sampling. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, his/her Branch Chief, to commence such activities

immediately. At the request of EPA, Respondent shall provide or allow EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representative(s) to take split or duplicate samples of all samples collected by EPA under this Order.

56. Respondent may assert a business confidentiality claim covering all or part of any information submitted to EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

XIII. ACCESS / INSTITUTIONAL CONTROLS

Property Owned or Controlled by Respondent

57. If the Facility, or any other property where access and/or land/water use restrictions are needed to implement this Order, is owned or controlled by Respondent, Respondent shall:

- a. Commencing on the effective date of this Order, provide to EPA, the State, and their representatives, including contractors, access at all reasonable times to the Facility, or such other property, for the purpose of conducting any activity related to this Order including, but not limited to, the following:

- i. Monitoring the Work;
 - ii. Verifying any data or information submitted to EPA;
 - iii. Conducting investigations relating to contamination at or near the Facility;
 - iv. Obtaining samples;
 - v. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
 - vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents;
 - vii. Assessing Respondent's compliance with this Order; and
 - viii. Determining whether the Facility or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Order;
- b. commencing on the effective date of this Order, refrain from using the Facility, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective measures to be implemented pursuant to this Order, including, but not limited to, the restrictions listed in Paragraph 34; and
- c. execute and record in the Recorder's Office (or other appropriate land records office) of Scott County, Iowa, an EPA-approved restrictive (environmental) covenant or other appropriate instrument ("instrument") that runs with the land, and grants to a party acceptable to EPA, and to EPA and the Iowa Department of Natural Resources, as Agencies, the right to enforce any land/water use

restrictions on the Facility as required by this Order, or other restrictions that EPA determines are necessary to ensure non-interference with, or ensure the protectiveness of, the corrective measures to be implemented pursuant to this Order. The environmental covenant shall bind Respondent and Respondent's successors, assigns, and all transferees acquiring or owning any right, title, lien or interest in the areas of the Property specified herein and their heirs, successors, assigns, grantees, executors, administrators, and devisees. Within 60 days of the effective date of this Order, Respondent shall submit to EPA for review and approval with respect to the Facility, the following:

- i. A draft instrument that is enforceable under the laws of the State of Iowa that includes the requirements identified in Paragraph 33(b) and that is substantially similar to the draft instrument located in Attachment D; and
- ii. A current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the instrument and title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to adversely affect title, record the instrument with the Recorder's Office (or other appropriate land records office) of Scott County, Iowa. Within 45

days of recording the instrument, Respondent shall provide to EPA a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument showing the clerk's recording stamps. The final recorded instrument shall be deemed incorporated into this Order.

Property Owned or Controlled by Persons Other Than Respondent

58. If the Facility, or any other property where access and/or land/water use restrictions are needed to implement this Order, is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons:

- a. Within 30 days of the effective date of this Order, an agreement to provide access to such property to EPA and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Order including, but not limited to, those activities set forth in Paragraph 57a above;
- b. within 30 days of the effective date of this Order, an agreement, enforceable by Respondent and EPA, to refrain from using the Facility, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the corrective measures to be implemented pursuant to this Order;
- c. the execution and recordation in the Recorder's Office (or other appropriate land records office) of Scott County, Iowa, of an appropriate instrument, running with the land, that grants to a party acceptable to EPA, and to EPA and the Iowa Department of Natural Resources, as Agencies, the right to enforce any land/water use restrictions required by this Order, or other restrictions that EPA

determines are necessary to ensure non-interference with, or ensure the protectiveness of, the corrective measures to be implemented pursuant to this Order. Within 30 days of the effective date of this Order, Respondent shall submit to EPA for review and approval with respect to such property:

- i. A draft instrument that is enforceable under the laws of the State of Iowa, and
- ii. a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the instrument to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the instrument and title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to adversely affect title, the instrument shall be recorded with the Recorder's Office (or other appropriate land records office) of Scott County, Iowa.

Within 30 days of the recording of the instrument, Respondent shall provide to EPA a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded instrument showing the clerk's recording stamps. The final recorded instrument shall be deemed incorporated into this Order.

59. As used in this Section, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive

easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If: (a) any access or land/water use restriction agreements required by this Section are not obtained within 30 days of Respondent's receipt of EPA's approval of the CMI Workplan; (b) any instrument required by Paragraph 58c of this Order is not submitted to EPA in draft form within 30 days of Respondent's receipt of EPA's approval of the CMI Workplan; or (c) Respondent is unable to obtain an agreement from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the instrument within 30 days of Respondent's receipt of EPA's approval of the CMI Workplan, Respondent shall promptly notify EPA in writing, and shall include in that notification a summary of the steps that it has taken to attempt to comply with Paragraphs 57 or 58 of this Order. EPA may, as it deems appropriate, assist Respondent in obtaining access or land/water use restrictions, or in obtaining the release or subordination of a prior lien or encumbrance.

60. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the corrective measures required by this Order, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Respondent shall cooperate with EPA's and the State of Iowa's ("State") efforts to secure such governmental controls.

61. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under RCRA and any other applicable statute or regulations.

XIV. RECORD PRESERVATION

62. For the purposes of this Section, "record(s)" shall mean all original copies of field notes and test and sampling results, and copies of documents, data, records, drawings, and tabulations prepared by Respondent or its employees, agents, or contractors which relate in any way to this Order, expressly excluding any such record which is attorney work product and/or attorney-client privileged.

63. Respondent shall retain, during the pendency of this Order and for a minimum of six (6) years after its termination, all data, records, and documents now in its possession or control or which come into its possession or control which relate in any way to Respondent's obligations under this Order or to hazardous waste management and/or disposal at the Facility. Thereafter, Respondent shall notify EPA in writing ninety (90) days prior to the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption and docket number of this Order and shall be addressed to:

Director
Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

64. Respondent further agrees that within thirty (30) days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondent will enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, and/or contractors will be required to provide Respondent with a copy of all documents produced pursuant to this Order.

65. All documents required to be maintained in accordance with Respondent's obligations under this Order shall be stored by the Respondent in a centralized location at the Facility to afford ease of access by EPA or its representatives.

XV. NOTIFICATION AND DOCUMENT CERTIFICATION

66. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submittals relating to or required under this Order shall be in writing and shall be sent to:

Cynthia L. Hutchison
EPA Project Coordinator
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

As to respondent:

Jim Grafton
Owner/Operator
Blackhawk Foundry and Machine Company
323 South Clark Street
Davenport, Iowa 52802.

67. Any report or other document submitted by Respondent pursuant to this Order which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation. The certification required by this paragraph shall be in the following form:

"I certify, to the best of my knowledge and belief, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify, to the best of my knowledge and belief, that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify, to the best of my knowledge and belief, that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____
Name: _____
Title: _____
Date: _____

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

68. Unless there has been a written modification by EPA of a compliance date, a written modification by EPA of an approved workplan condition, or excusable delay as defined in Section XVIII (Force Majeure and Excusable Delay) of this Order, or if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below upon written demand from EPA:

- a. For failure to commence, perform, and/or complete field work in a manner acceptable to EPA or at the time required pursuant to this Order: \$1000 per day for the first fourteen days of such violation, \$2,000 per day for the fifteenth through thirtieth day of such violation, and \$4,000 per day for each day of such violation, thereafter;

- b. For failure to complete and submit any workplans or reports (other than progress reports, including, but not limited, to CMI Workplan, Health and Safety Plan, Operation and Maintenance Plan, Community Relations Plan, Construction Completion Report, 5-Year Corrective Measures Performance Evaluation Report, an Agreement, easement or title insurance commitment as required by Section 57 and/or 59 (Access/Institutional Controls) in a manner acceptable to EPA or at the time required pursuant to this Order: \$1000 per day for the first fourteen days of such violation, \$2,000 per day for the fifteenth through thirtieth day of such violation, and \$4,000 per day for each day of such violation, thereafter;
- c. For failure to complete and submit, other written submittals not included in Paragraph b of this Section in a manner acceptable to EPA or at the time required pursuant to this Order: \$500 per day for the first fourteen days of such violation, \$1000 per day for the fifteenth through thirtieth day of such violation, and \$2,000 per day for each day of such violation, thereafter;
- d. For failure to comply in a manner acceptable to EPA with any mediation confidentiality requirements under dispute resolution: \$4,000 per occurrence; and
- e. For failure to comply with any other provisions of this Order in a manner acceptable to EPA: \$500 per day for the first fourteen days of such violation, \$1000 per day for the fifteenth through thirtieth day of such violation, and \$2,000 per day for each day of such violation, thereafter;

69. 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 day of correction of the

violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether EPA has notified the Respondent of a violation.

70. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of the Respondent's receipt from EPA of a written demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution) of this Order. Such written demand will describe the violation and will indicate the amount of penalties due.

71. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first day after Respondent's receipt of EPA's demand letter. Interest shall accrue at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for ninety (90) or more days.

72. All penalties shall be made payable by certified or cashier's check to the "Treasurer of the United States of America" and shall be remitted to:

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

All such checks shall reference the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA Project Coordinator.

73. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures under Section XVII (Dispute Resolution) of this Order. The stipulated penalties in dispute shall continue to accrue, but need not be paid, during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to EPA within seven (7) days of receipt of such resolution in accordance with Paragraph 72 of this Order.

74. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this Order.

75. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Order.

76. No payments under this Section shall be tax deductible for federal tax purposes.

XVII. DISPUTE RESOLUTION

77. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this Section are the sole procedures for resolving disputes arising under this Order.

78. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by EPA pursuant to this Order, Respondent's Project Coordinator shall notify the EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

79. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the EPA Project Coordinator. This written notice must be mailed to the EPA Project Coordinator within fourteen (14) days of Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. If Respondent fails to follow any of the requirements contained in this paragraph then it shall have waived its right to further consideration of the disputed issue.

80. EPA and Respondent shall then have thirty (30) days from Respondent's receipt of EPA's statement of position to attempt in good faith to resolve the dispute through formal negotiations. This time period may be extended by EPA for good cause. During such time period (Negotiation Period), Respondent may request a conference to discuss the dispute and Respondent's objections. EPA agrees to confer in person or by telephone to resolve any such disagreement with the Respondent. During this Negotiation Period, Respondent shall not be excused from performing any requirement of this Order that is not the subject of such dispute. If agreement is reached, the resolution shall be reduced to writing, signed by representatives of each party and shall be incorporated into and becomes a part of this Order.

81. If the parties are unable to reach an agreement within the Negotiation Period, the matter shall be referred to the Director of EPA Region 7's Air and Waste Management Division. The Director shall then decide the matter and provide a written statement of his/her decision to

Respondent. Such a decision shall then be incorporated into and become a part of this Order but will not be considered final Agency action for purposes of judicial review.

82. Except as provided in Section XVI (Delay in Performance/Stipulated Penalties) of this Order, the existence of a dispute as defined in this Section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

XVIII. FORCE MAJEURE AND EXCUSABLE DELAY

83. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the work to be performed under this Order or financial inability to complete the work.

84. 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 shall contact by telephone and communicate orally with EPA's Project Coordinator or, in his or her absence, the Branch Chief of the RCRA Corrective Action and Permits Branch, Air and Waste Management Division, EPA Region 7, within 48 hours of when Respondent first knew or should

have known that the event might cause a delay. Within ten (10) days thereafter, Respondent shall provide to EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; 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. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to substantially comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.

85. If EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Order that is affected by the force majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

86. If EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XVII (Dispute Resolution) of this Order. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

XIX. RESERVATION OF RIGHTS

87. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2). This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority of the United States.

88. EPA reserves the right to disapprove of work performed by Respondent pursuant to this Order and to request that Respondent perform additional tasks.

89. EPA reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and remedial work as it deems necessary to

protect human health and/or the environment. EPA may exercise its authority under CERCLA to undertake response actions at any time. In any event, EPA reserves its right to seek reimbursement from Respondent for costs incurred by the United States. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability, if any, for the costs of any response actions taken or authorized by EPA.

90. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this Order for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

91. This Order is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that EPA's approval of the SOW or any final workplan does not constitute a warranty or representation that the SOW or workplans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

92. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Director of the Air and Waste Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's

initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

93. In any action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with the law.

94. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

XX. OTHER CLAIMS

95. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the facility. The Respondent waives any claims or demands for compensation or payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, 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 pursuant to this Order.

Additionally, this Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XXI. OTHER APPLICABLE LAWS

96. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

97. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

XXIII. COST ESTIMATES AND ASSURANCES OF FINANCIAL RESPONSIBILITY FOR COMPLETING THE WORK

Estimated Cost of the Work

98. Respondent shall submit to EPA detailed written estimates, in current dollars, of the cost of hiring a third party to perform the Work to be Performed under this Consent Order (hereafter "Estimated Cost of the Work"). The Estimated Cost of the Work shall account for the total costs of the work activities that they cover, as described in Section VIII and the SOW(s),

including any necessary long term costs, such as operation and maintenance costs and monitoring costs. A third party is a party who (i) is neither a parent nor a subsidiary of Respondent and (ii) does not share a common parent or subsidiary with Respondent. The cost estimates shall not incorporate any salvage value that may be realized from the sale of wastes, facility structures or equipment, land or other assets associated with the facility.

99. Within thirty days upon EPA approval of the CMI Workplan, Respondent shall submit to EPA for review and approval an initial Estimated Cost of the Work to be Performed which covers Corrective Measures Implementation under Section VIII described in the Scope of Work, Attachment B.

100. Concurrent with the submission of additional Work Plan(s) required under Section VIII (Work To Be Performed), Respondent shall submit a revised Estimated Cost of the Work.

101. Respondent shall annually adjust the Estimated Cost of the Work for inflation within thirty days after the close of Respondent's fiscal year until the Work required by this Consent Order is completed. In addition, Respondent shall adjust the Estimated Cost of the Work if EPA determines that any additional Work is required, pursuant to Section X. (Additional Work), or if any other condition increases the cost of the Work to be performed under this Consent Order.

102. Respondent shall submit each Estimated Cost of the Work to EPA for review. EPA will review each cost estimate and notify Respondent in writing of EPA's approval, disapproval, or modification of the cost estimate.

Assurances of Financial Responsibility for Completing the Work

103. In order to secure the full and final completion of the Work in accordance with this Consent Order, Respondent shall establish and maintain financial assurance for the benefit of the EPA in the amount of the most recent Estimated Cost of the Work. Respondent may use one or more of the financial assurance forms generally described in Paragraphs a through f, below. Any and all financial assurance instruments provided pursuant to this Consent Order shall be satisfactory in form and substance as determined by EPA.

- a. A trust fund established for the benefit of 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 EPA. The trust agreement shall provide that the trustee shall make payments from the fund as the RCRA Corrective Action and Permits Branch Chief 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 RCRA Corrective Action and Permits Branch Chief 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 EPA has advised the trustee that the Work under this Consent Order has been successfully completed.
- b. A surety bond unconditionally guaranteeing performance of the Work in accordance with this Consent Order, or guaranteeing payment at the direction of

EPA into a standby trust fund that meets the requirements of the trust fund in Paragraph a, 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 U.S. Department of the Treasury.

- c. An irrevocable letter of credit, payable at the direction of RCRA Corrective Action and Permits Branch Chief, 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.
- d. A policy of insurance that (i) provides EPA with rights as a beneficiary which are acceptable to EPA; and (ii) is issued by an insurance carrier that (a) has the authority to issue insurance policies in the applicable jurisdiction(s), and (b) whose insurance operations are regulated and examined by a Federal or State agency. The insurance policy shall be issued for a face amount at least equal to the current Estimated Cost of the Work to be performed under this Consent Order, except where costs not covered by the insurance policy are covered by another financial assurance instrument, as permitted in Paragraph 107 of this Section. The policy shall provide that the insurer shall make payments as the RCRA Corrective Action and Permits Branch Chief shall direct in writing (i) to reimburse Respondent for expenditures made by Respondent for Work performed in accordance with this Consent Order, or (ii) to pay any other person whom the

RCRA Corrective Action and Permits Branch Chief determines has performed or will perform the Work in accordance with this Consent Order, up to an amount equal to the face amount of the policy. The policy shall also provide that it may not be canceled, terminated or non-renewed and the policy shall remain in full force and effect in the event that (i) the Respondent is named as a debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or (ii) EPA notifies the insurer of Respondent's failure to perform, pursuant to Paragraph 113.

- e. A corporate guarantee, executed in favor of the 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 in accordance with this Consent Order or to establish a trust fund as permitted by Paragraph a, above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee; or
- f. A demonstration by Respondent that Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

104.1 Within thirty days after EPA has approved the CMI Workplan, Respondent shall submit draft financial assurance instruments and related documents to EPA, concurrently with Respondent's submission of the initial Estimated Cost of the Work, for EPA's review and

approval. Within ten days after EPA's approval of both the initial Estimated Cost of the Work, and the draft financial assurance instruments, whichever date is later, Respondent shall execute or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the financial assurance documents reviewed and approved by EPA. Respondent shall submit all executed and/or otherwise finalized instruments or other documents to EPA within thirty days after EPA's approval of the initial Estimated Cost of the Work and the draft financial assurance instruments, whichever date is later.

104.2 Within thirty days after EPA has approved the CMI workplan, if Respondent intends to provide financial assurance for completion of the Work by means of a financial test, Respondent shall submit to EPA all documentation necessary to demonstrate that Respondent satisfies the financial test criteria pursuant to Paragraph 103f, concurrently with Respondent's submission of the initial Estimated Cost of the Work. Respondent's financial assurance shall be effective immediately upon EPA's approval of the initial Estimated Cost of the Work and Respondent's demonstration that Respondent satisfies the financial test criteria pursuant to Paragraph 103f, whichever date is later.

105. If Respondent seeks to establish financial assurance by using a surety bond, a letter of credit, or a corporate guarantee, Respondent shall at the same time establish, and thereafter maintain, a standby trust fund, which meets the requirements of Paragraph 103a above, into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by EPA, pursuant to Paragraph 113b.

106. Respondent shall submit all financial assurance instruments and related required documents by certified mail to the EPA Regional Financial Management Officer at the address listed below. Copies shall also be sent to the EPA Project Officer and the State of Iowa.

John Phillips
Regional Financial Management Officer
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

107. If at any time during the effective period of this Consent Order the Respondent provides financial assurance for completion of the Work by means of a corporate guarantee or financial test pursuant to Paragraphs 103e or 103f above, 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, unless otherwise provided in this Consent Order, including, but not limited to, (i) initial submission of required financial reports and statements from the guarantors' chief financial officer and independent certified public accountant; (ii) annual re-submission of such reports and statements within ninety days after the close of each of the guarantors' fiscal years; and (iii) notification of EPA within ninety days after the close of any of the guarantors' fiscal years in which any such guarantor no longer satisfies the financial test requirements set forth at 40 C.F.R. Part 264.143(f)(1). Respondent further agrees that if Respondent provides financial assurance by means of a corporate guarantee or financial test, EPA may request additional information (including financial statements and accountant's reports) from the Respondent or corporate guarantor at any time. For purposes of the regulations cited within this Section, references to "closure" shall mean work performed pursuant to an order issued in accordance with 42 U.S.C. § 6928(h).

108. For purposes of the corporate guarantee or the financial test described in Paragraphs 103e and 103f 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 all environmental remediation obligations” (including obligations under CERCLA, RCRA, UIC, TSCA, and any other state or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the cost of the Work to be performed in accordance with this Consent Order.

109. Respondent may combine more than one mechanism to demonstrate financial assurance for the Work to be performed in accordance with this Consent Order, except that mechanisms guaranteeing performance rather than payment may not be combined with other instruments.

110. If at any time EPA determines that a financial assurance instrument provided pursuant to this Section is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, EPA shall so notify Respondent in writing. If at any time Respondent becomes aware of information indicating that any financial assurance instrument provided pursuant to this Section is inadequate or no longer satisfies the requirements set forth or incorporated by reference in the Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, then Respondent shall notify EPA in writing of such information within ten days. Within thirty days of receipt of notice of EPA’s determination, or within thirty days of Respondent’s becoming aware of such information, as the

case may be, Respondent shall obtain and present to EPA for approval a proposal for a revised or alternative form of financial assurance listed in Paragraph 103 above that satisfies all requirements set forth or incorporated by reference in this Section. In seeking approval for a revised or alternative form of financial assurance, Respondent shall follow the procedures set forth in Paragraph 114b below.

111. 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 Consent Order, including, without limitation, the obligation of Respondent to complete the Work in strict accordance with the terms of this Consent Order.

112. Any and all financial assurance instruments provided pursuant to Paragraphs 103b, 103c, 103d, or 103e shall be automatically renewed at the time of their expiration unless the financial assurance provider has notified both the Respondent and the RCRA Corrective Action and Permits Branch Chief at least one hundred and twenty days prior to expiration, cancellation or termination of the instrument of a decision to cancel, terminate or not renew a financial assurance instrument. Under the terms of the financial assurance instrument, the one hundred and twenty days will begin to run with the date of receipt of the notice by both the RCRA Corrective Action and Permits Branch Chief and the Respondent. Furthermore, if Respondent has failed to provide alternate financial assurance and obtain written approval for such alternate financial assurance within ninety days following receipt of such notice by both Respondent and the RCRA Corrective Action and Permits Branch Chief, then the RCRA Corrective Action and Permits Branch Chief will so notify the financial assurance provider in

writing prior to the expiration of the instrument, and the financial assurance provider shall immediately deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial assurance instrument for the performance of the Work in accordance with this Consent Order.

113. Performance Failure

- a. In the event that EPA determines that Respondent (i) has ceased implementation of any portion of the Work, (ii) is significantly or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner that may cause an endangerment to human health or the environment, 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 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 EPA’s satisfaction before the expiration of the ten-day notice period specified in Paragraph 113a shall trigger EPA’s right to have immediate access to and benefit of the financial assurance provided pursuant to Paragraphs 103a, 103b, 103c, 103d, or 103e. EPA may at any time thereafter direct the financial assurance provider to immediately (i) deposit into the standby trust fund, or a newly created trust fund approved by EPA, the remaining funds obligated under the financial

assurance instrument or (ii) arrange for performance of the Work in accordance with this Consent Order.

- c. If EPA has determined that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 113a have occurred, and if EPA is nevertheless unable after reasonable efforts to secure the payment of funds or performance of the Work in accordance with this Consent Order from the financial assurance provider pursuant to this Consent Order, then, upon receiving written notice from EPA, Respondent shall within ten days thereafter deposit into the standby trust fund, or a newly created trust fund approved by 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 EPA.
- d. Respondent may invoke the procedures set forth in Section XVII (Dispute Resolution), to dispute EPA's determination that any of the circumstances described in clauses (i), (ii), or (iii) of Paragraph 113a have occurred. Invoking the dispute resolution provisions shall not excuse, toll or suspend the obligation of the financial assurance provider, under Paragraph 113b 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, 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 EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Performance Failure Notice or (ii) the date that a final decision is rendered in accordance with Section XVII (Dispute Resolution), that Respondent has not failed to perform the Work in accordance with this Consent Order.

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

- a. Reduction of Amount of Financial Assurance. If Respondent believes that the estimated cost to complete the remaining Work has diminished below the amount covered by the existing financial assurance provided under this Consent Order, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 101, or at any other time agreed to by EPA, submit a written proposal to EPA to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining Work to be performed. The written proposal shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval of a revised financial assurance amount, Respondent shall follow the procedures set forth in Paragraph 114b(ii) of this Section. If EPA decides to accept such a proposal, EPA shall notify Respondent of its decision in writing. After receiving EPA's written decision, Respondent may reduce the amount of the financial assurance only in accordance with and to the extent permitted by such written decision. In the event of a dispute, Respondent may reduce the

amount of the financial assurance required hereunder only in accordance with the final EPA Dispute Decision resolving such dispute. No change to the form or terms of any financial assurance provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 114b below.

b. Change of Form of Financial Assurance.

- i. If Respondent desires to change the form or terms of financial assurance, Respondent may, at the same time that Respondent submits the annual cost adjustment, pursuant to Paragraph 101, or at any other time agreed to by EPA, submit a written proposal to EPA to change the form of financial assurance. The submission of such proposed revised or alternative form of financial assurance shall be as provided in Paragraph ii, below. The decision whether to approve a proposal submitted under this Paragraph 114 shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Consent Order or in any other forum.
- ii. A written proposal for a revised or alternative form of financial assurance shall specify, at a minimum, the cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of financial assurance, including all proposed instruments or other documents required in order to make the proposed financial assurance legally binding. The proposed revised or alternative

form of financial assurance shall satisfy all requirements set forth or incorporated by reference in this Section. EPA shall notify Respondent in writing of its decision to accept or reject a revised or alternative form of financial assurance submitted pursuant to this paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative financial assurance, Respondent shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such financial assurance shall be fully effective. Respondent shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative financial assurance, with a copy to the EPA Project Officer and the State of Iowa. EPA shall release, cancel, or terminate the prior existing financial assurance instruments only after Respondent has submitted all executed and/or otherwise finalized new financial assurance instruments or other required documents to EPA.

- c. Release of Financial Assurance. Respondent may submit a written request to the RCRA Corrective Action and Permits Branch Chief that EPA release Respondent from the requirement to maintain financial assurance under this Section at such

time as EPA and Respondent have both executed an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Right" pursuant to Section XXVII (Termination and Satisfaction) of the Consent Order. The RCRA Corrective Action and Permits Branch Chief shall notify both the Respondent and the provider(s) of the financial assurance that Respondent is released from all financial assurance obligations under this Consent Order. Respondent shall not release, cancel, or terminate any financial assurance provided pursuant to this Section except as provided in this paragraph or Paragraph 114b(ii). In the event of a dispute, Respondent may release, cancel, or terminate the financial assurance required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XXIV. ATTACHMENTS

115. The following attachments are incorporated into and are enforceable parts of this Order:

Attachment A – Map of Facility Treatment, Storage and Disposal Areas

Attachment B – Corrective Measures Implementation Scope of Work

Attachment C – Final Decision Document and Response to Comments

Attachment D – Draft Environmental Covenant.

XXV. MODIFICATION

116. This Order may only be modified by mutual agreement of EPA and Respondent. Any agreed modifications shall be in writing, be signed by both parties, shall have as their

effective date the date on which they are signed by EPA, and shall be incorporated into this Order.

117. Any requests for a compliance date modification or revision of an approved workplan requirement must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or workplan revision. EPA has no obligation to approve such requests, but if it does so, such approval must be in writing. Any approved compliance date or workplan modification shall be incorporated by reference into the Order.

XXVI. SEVERABILITY

118. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XXVII. TERMINATION AND SATISFACTION

119. The provisions of this Order shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment"). EPA will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation (a) to preserve

all records and (b) to recognize EPA's reservation of rights, in accordance with these respective sections of the Order after the rest of the Order is satisfactorily completed.

XXVIII. SURVIVABILITY/PERMIT INTEGRATION

120. Except as otherwise expressly provided in this Section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, or expressly states that its requirements are intended to replace some or all of the requirements of this Order, Respondent may request a modification of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

XXIX. WAIVER OF HEARING

121. Respondent waives its right to request a public hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) relating to this Administrative Order On Consent.

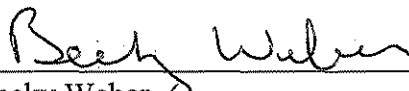
XXX. EFFECTIVE DATE

122. The effective date of this Order shall be 5 days after EPA has signed the Order.

IT IS SO AGREED AND ORDERED

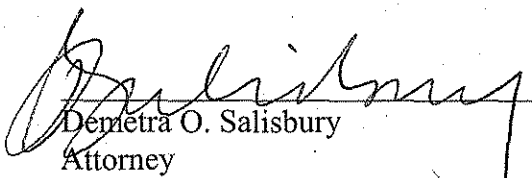
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

8/14/09
Date



Becky Weber
Director
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

8/13/09
Date

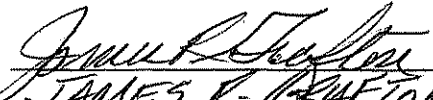


Demetra O. Salisbury
Attorney
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

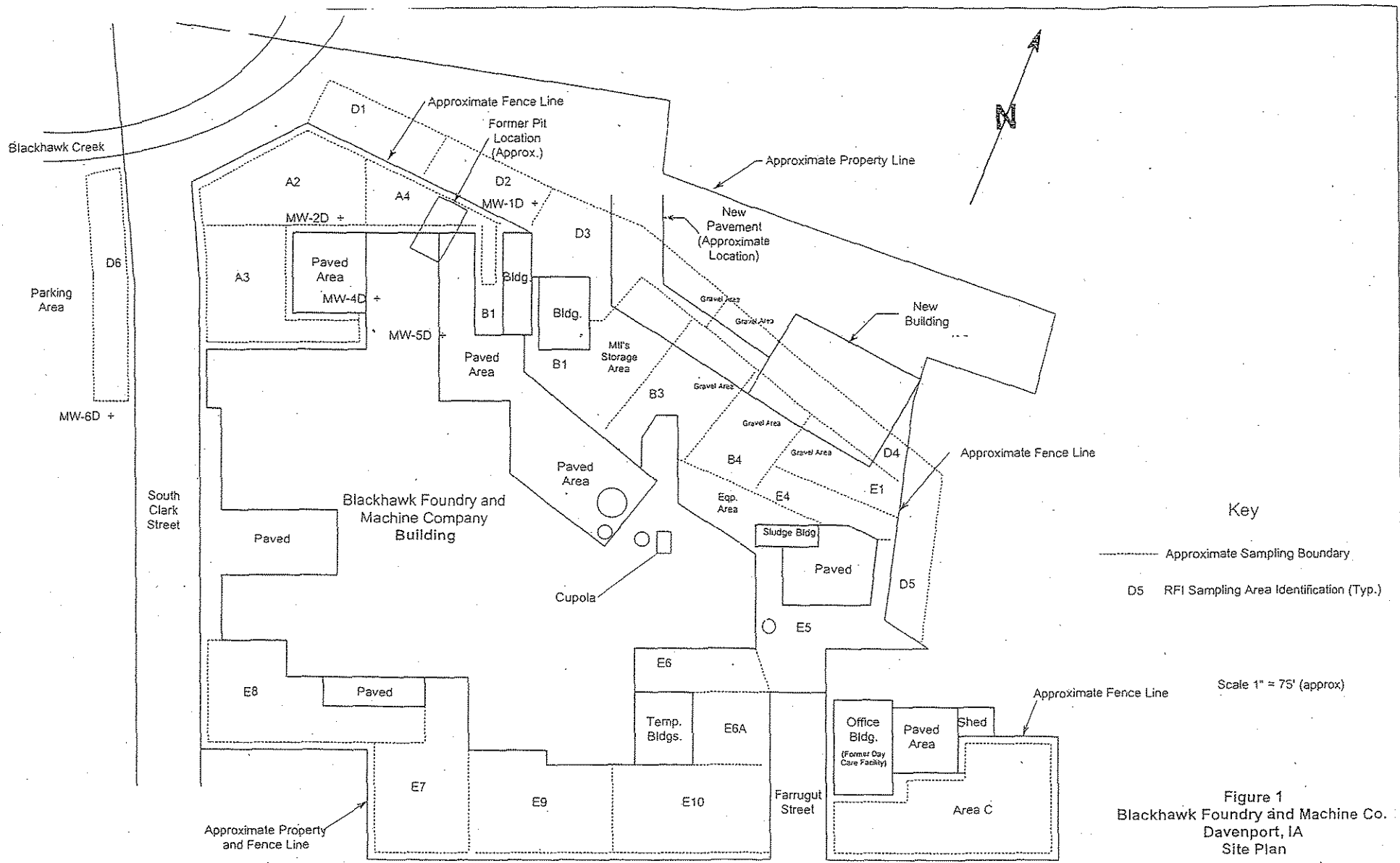
The undersigned representative of Respondent certifies that he/she is fully authorized to enter into this Order and to bind Respondent to this Order.

FOR BLACKHAWK FOUNDRY AND MACHINE COMPANY, INC.

8/7/09
Date

Signature: 
Name (print): JAMES R. GRAFTON
Title: PRESIDENT & CEO
Address: 323 S. CLARK ST.
DAVENPORT, IA 52802

ATTACHMENT A



Key

- Approximate Sampling Boundary
- D5 RFI Sampling Area Identification (Typ.)

Scale 1" = 75' (approx)

Figure 1
 Blackhawk Foundry and Machine Co.
 Davenport, IA
 Site Plan

ATTACHMENT B

Scope of Work

CORRECTIVE MEASURES IMPLEMENTATION SCOPE OF WORK

INTRODUCTION: Based on the outcome of the Corrective Measures Study (“CMS”), Respondent is responsible for the design, construction, implementation, and continued performance monitoring of corrective measures at the Facility. The selected corrective measures must be implemented and maintained until the corrective measures objectives and the conditions of the Order for Termination and Satisfaction have been met.

Purpose - The purpose of the Corrective Measures Implementation (“CMI”) is to construct, operate, maintain, and monitor the performance of the corrective measures selected by EPA for implementation by Respondent at the Facility.

Scope - Submittals required for the CMI include:

- Task 1: CMI Workplan;
- Task 2: Health and Safety Plan (“HSP”);
- Task 3: Operation and Maintenance (“O&M”) Plan;
- Task 4: Construction Completion Report (“CCR”);
- Task 5: 5-Year Corrective Measures Performance Evaluation Report;
- Task 6: Corrective Measures Completion Report (“CMCR”); and
- Task 7: Progress Reports.

TASK 1: CMI WORKPLAN - The CMI Workplan shall contain the following elements:

- a. **Introduction/Purpose** - Describe the purpose of the document and provide a summary description of the project. Elements of this description shall include:
 - i. A summary description of current conditions at the Facility;
 - ii. A summary of the corrective measures objectives;

- iii. A description of the selected corrective measures;
- iv. Preliminary design criteria and rationale;
- v. Performance expectations and proposed corrective measures completion criteria, including criteria for verifying attainment of the industrial preliminary remedial goal (PRG) of 800 mg/kg (ppm) for lead in soil;
- vi. General operation and maintenance requirements;

b. **Remedial Quality Assurance Project Plan/Sampling and Analysis Plan** - In order to properly describe any sampling and monitoring activities necessary for effective operation and maintenance of the corrective measures, and to ensure that all information, data and resulting decisions are technically sound, statistically valid, and properly documented, the CMI Workplan shall include a Quality Assurance Project Plan ("QAPP")/Sampling and Analysis Plan ("SAP"). This QAPP/SAP shall document all remedial goal verification (how Respondent will demonstrate that the cleanup standards have been attained), monitoring procedures, sampling, field measurements, and sample analyses to be performed during implementation of the corrective measures.

c. **Project Schedule** - The project schedule must include timing for initiation and completion of all major corrective measure construction tasks, and specify when the other deliverables required by this Order are to be submitted to EPA.

d. **Corrective Measures Objectives** - Discuss the objectives of the corrective measures (engineered and institutional controls) to be implemented at the Facility, including applicable media cleanup standards.

e. **Construction Quality Assurance/Quality Control Plan** - The purpose of construction quality assurance is to ensure, with a reasonable degree of certainty, that the completed corrective measures will meet or exceed all design criteria, plans, and specifications. The CMI Workplan must include a Construction Quality Assurance Plan to be implemented by Respondent.

f. **Waste Management Procedures** - Describe the wastes generated by construction of the corrective measures and how such wastes will be managed.

g. **Contingency Procedures** - General contingency procedures to be described in the text of the CMI Workplan include the following:

- i. Changes to the design and/or specifications may be needed during

construction to address unforeseen problems encountered in the field. Procedures to address such circumstances, including notification of EPA, must be included;

- ii. The CMI Workplan must specify that, in the event of a construction emergency (e.g., fire, earthwork failure, etc.), Respondent shall orally notify EPA within 24 hours of the event and will notify EPA in writing within 72 hours of the event. The written notification must, at a minimum, specify what happened, what response action is being taken and/or is planned, and any potential impacts on human health and/or the environment;
- iii. Procedures to be implemented if unforeseen events prevent corrective measure construction; and
- iv. A list of all emergency contacts (including phone numbers).

h. Preliminary design criteria and rationale

- i. In addition to general considerations, with regard to area B4, explain how it will be delineated, excavated and disposed of according to appropriate state and federal requirements. Include a description of how sampling will be accomplished to ensure removal of all lead contamination above the PRG of 800 ppm. Describe the areal extent and locations of gravel cap to be placed over all areas of residual contamination. Include a description of the thickness of the cap and plans for monitoring the efficacy of the cap.

TASK 2: HEALTH AND SAFETY PLAN

Respondent shall submit to EPA a HSP for all field activities, although it does not require approval by EPA. The HSP shall be developed as a stand alone document but may be submitted with the CMI Workplan. The HSP must, at a minimum, comply with all applicable Occupational Safety and Health Act ("OSHA") requirements.

TASK 3: OPERATION AND MAINTENANCE PLAN

Respondent shall prepare an O&M Plan that outlines procedures for performing operations, long-term maintenance and monitoring of the corrective measures. The O&M Plan shall, at a minimum, include the following:

- a. **Introduction/Purpose** - Describe the purpose of the document and provide a summary description of the project.

b. **Project Management** - Describe the management approach including levels of personnel authority and responsibility (including an organizational chart), lines of communication and the qualifications of key personnel who will operate and maintain the corrective measures (including contractor personnel).

c. **Personnel Training** - Describe the training process for O&M personnel, as applicable.

d. **Operation and Maintenance Procedures** - Describe normal operation and maintenance procedures including:

- i. A description of tasks for maintenance;
- ii. A schedule showing the frequency of each O&M task.

e. **Data Management and Documentation Requirements** - The O&M Plan shall specify that Respondent will collect and maintain the following information:

- i. Records of any necessary maintenance of the gravel cap;
- ii. Any monitoring and laboratory data;
- iii. Records of operating and maintenance costs; and
- iv. Personnel and inspection records.

This data and information should be used to prepare Progress Reports.

f. **Replacement Schedule for the Gravel Cap** - Describe how the integrity of the gravel cap will be maintained. Specifically, address the maintenance of an appropriate cover and the specified grade of the cap as installed. Address how the any erosion of the cap material will be repaired and include a schedule for replacing any gravel that may wash away or decrease in size and depth due to wear or other factors.

g. **Waste and/or Contaminated Media Management Practices** - Describe any wastes and/or contaminated media which may be generated by operation of the corrective measures and how they will be managed.

h. **Corrective Measure Completion Criteria** - Describe the process and criteria for determining when the corrective measures have achieved corrective action objectives.

TASK 4: CONSTRUCTION COMPLETION REPORT

The purpose of the CCR is to document the construction and implementation of the corrective measures at the Facility. The CCR shall include the following:

- a. a description of the purpose of the CCR;
- b. a synopsis of the corrective measures, design criteria, and certification that the corrective measures were constructed in accordance with the final plans and specifications;
- c. an explanation and description of any modifications to the final CMI Workplan and specifications and why such modifications were necessary;
- d. the results of any operational testing and/or monitoring, indicating how initial operation of the corrective measures compares to the design criteria;
- e. a summary of significant activities that occurred during construction, including a discussion of problems encountered and how they were addressed;
- f. a summary of all inspection findings (including copies of key inspection documents in appendices); and
- g. as-built drawings and photographs depicting the constructed corrective measures.

TASK 5: 5-YEAR CORRECTIVE MEASURES PERFORMANCE EVALUATION REPORT

Respondent shall conduct a Corrective Measure Performance Evaluation and submit a Corrective Measure Performance Evaluation Report documenting the effectiveness of the contaminated soil removal and gravel cap installation and maintenance and the institutional control in preventing human or environmental exposure. EPA will review the Corrective Measure Performance Evaluation Report upon its submittal and evaluate the Report for compliance with the SOW. The Corrective Measure Performance Evaluation Report shall, at a minimum, include the following elements:

- a. a description of its purpose;
- b. a synopsis of the objectives of contaminated soil removal and gravel cap installation; and
- c. a synopsis of the objectives of the institutional control.

TASK 6: CORRECTIVE MEASURES COMPLETION REPORT

Respondent shall prepare a CMCR when Respondent obtains information demonstrating that the completion criteria for all of the corrective measures have been achieved. The purpose of the CMCR is to fully document how the corrective action objectives and corrective measure

completion criteria have been satisfied, and to justify why the corrective measure and/or monitoring may cease. The CMCR shall, at a minimum, include the following elements:

- a. a synopsis of the corrective measures implemented;
- b. the Corrective Measures Completion Criteria: Describe the process and criteria for determining when the corrective measures and maintenance and monitoring may cease. Corrective measure completion criteria were given in the EPA-approved O&M Plan;
- c. a demonstration that the completion criteria have been met. Include results of testing and/or monitoring, indicating how operation of the corrective measures compare to the completion criteria;
- d. a summary of work accomplishments (e.g., performance levels achieved, total treated and/or excavated volumes, nature and volume of wastes generated, etc.);
- e. a summary of significant activities that occurred during operations. Include a discussion of problems encountered and how they were addressed;
- f. a summary of inspection findings (including copies of key inspection documents in appendices);
- g. a summary of total operation and maintenance costs; and
- h. a discussion of the potential impacts that cessation of maintenance and monitoring could have on the future effectiveness of the corrective measure and/or potential receptors.

TASK 7: PROGRESS REPORTS

Respondent shall provide quarterly progress reports, as required by the Order, on the design, construction, implementation, and operation of the corrective measures at the Facility. The progress reports shall be due quarterly on or before the 15th day of the month following the end of the reporting period, with the first reporting period beginning on the first day of the third month immediately following the effective date of the Order. The progress reports shall contain the following information to allow the EPA to monitor the progress of the corrective measure.

- a. a description and estimate of the percentage of the corrective measure construction completed;
- b. a description of significant activities (e.g., sampling events, inspections, etc.) and

- work completed/work accomplishments (e.g., performance levels achieved, hours of operation, treated and/or excavated volumes, concentration of contaminants in treated and/or excavated volumes, nature and volume of wastes generated, etc.) during the reporting period;
- c. summaries of all changes made in the corrective measure construction during the reporting period;
 - e. summaries of all contacts with representatives of the local community, public interest groups, Federal or State government during the reporting period;
 - f. summaries of all findings (including any inspection results);
 - g. summaries of all problems or potential problems encountered during the reporting period;
 - h. actions being taken and/or planned to rectify problems;
 - i. changes in relevant personnel during the reporting period;
 - j. projected work for the next reporting period; and
 - k. the results of any sampling tests and/or other data generated during the reporting period, as well as copies of the raw data, field logs, etc., which were used to compile those results.

Following completion of the construction of the corrective measures, upon Respondent's request and at EPA's discretion, EPA may reduce the frequency of progress reporting.

ATTACHMENT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FINAL DECISION DOCUMENT AND RESPONSE TO COMMENTS BLACKHAWK FOUNDRY AND MACHINE DAVENPORT, IOWA

The U.S. Environmental Protection Agency (EPA) Region 7 has decided to issue a final Remedy Decision for the Blackhawk Foundry and Machine site in Davenport, Iowa. The draft document was available for public review and comment from August 12, 2008 through September 12, 2008. One comment was received regarding particulate emissions from the facility's active manufacturing processes and stack. This comment was referred to the EPA air program for review and response. Since the comment was not related to the proposed remedy including the soil clean-up, no changes were made to the remedy.

The EPA issued a public notice in the Quad City Times of Davenport, Iowa. It ran at the beginning of the public comment period, on Tuesday, August 12, 2008. The public notice told people that they could view the administrative record of the Blackhawk Foundry and Machine site to further understand the history and background of the site. The administrative record was available for viewing on compact disk (CD) at the EPA office in Kansas City, KS and at two Davenport libraries: The Davenport Main Public Library and the Fairmount Street Public Library for the entire period of the public notice, August 12 through September 12, 2008.

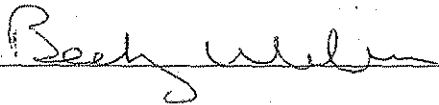
The final remedy being chosen by the EPA for this site is excavation and offsite disposal of all soils contaminated above the industrial cleanup goals for lead, along with engineering and proprietary controls. In summary, the final remedy chosen at Blackhawk Foundry includes:

- Excavation and offsite disposal of soil contaminated above industrial use cleanup levels
- Engineering controls in the form of a gravel cap, the purpose of which is to prevent contact with the remaining soil, prevent sediment runoff during rainfall and flood events, and prevent contaminated dust generation during dry periods
- Institutional controls, in the form of a restrictive covenant, to prevent future uses of the facility that could allow unacceptable exposures to contaminated soil. EPA will also require Blackhawk to annotate the property's deed to identify the location of the former surface impoundment. The covenant will contain land use controls to prevent installation of water supply wells, to ensure that contaminated soil and the former surface impoundment cover are not disturbed, and prevent residential use of the facility without clean up to residential standards
- Long-term monitoring of the effectiveness of the engineering and land use controls

FINAL DECISION DOCUMENT
AND RESPONSE TO COMMENTS
BLACKHAWK FOUNDRY AND MACHINE
DAVENPORT, IOWA

Declarations

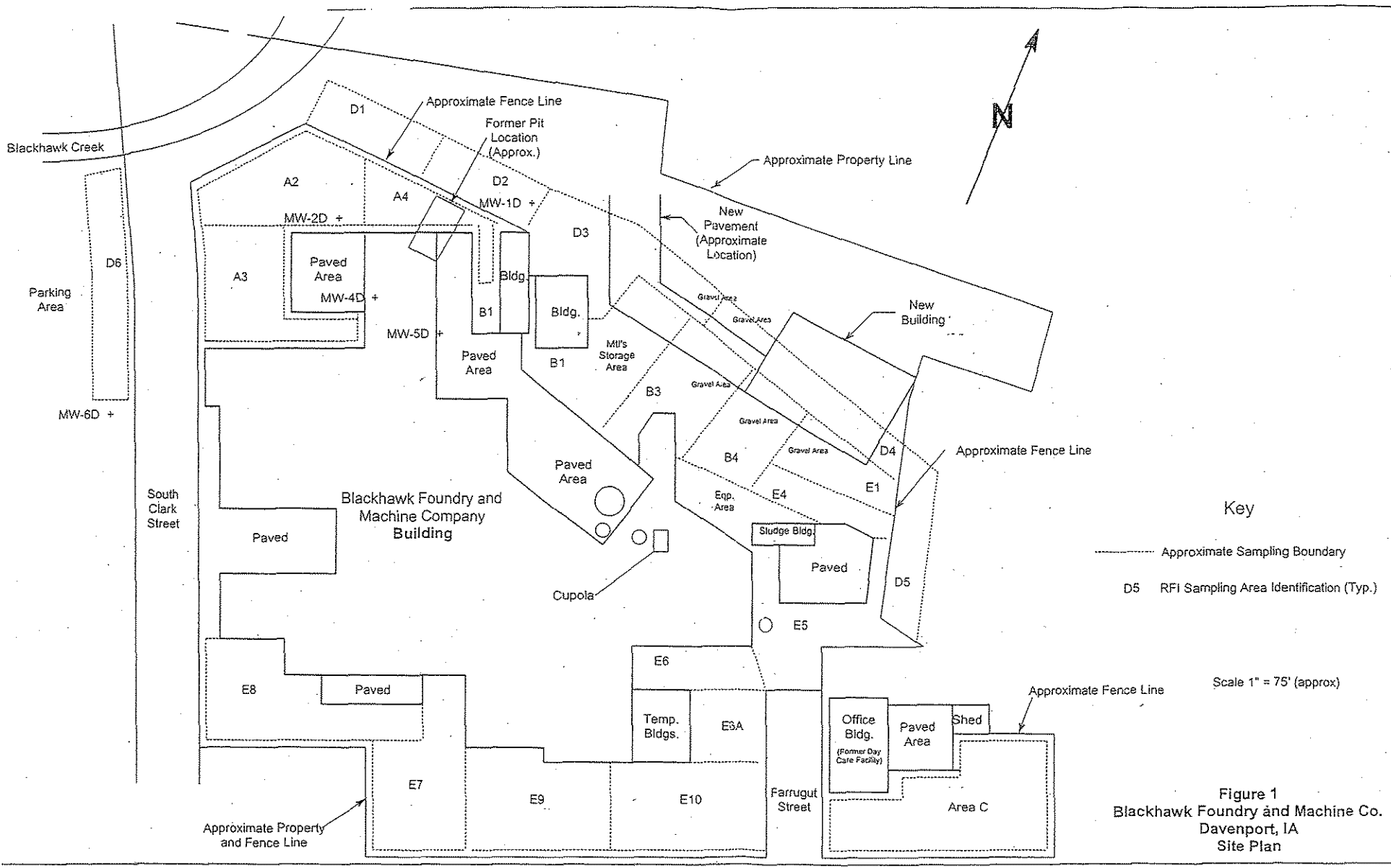
Based on the administrative record compiled for this corrective action, I have determined that the selected remedy to be ordered at this site is appropriate and will be protective of human health and the environment.



Becky Weber
Director, Air and Waste Management Division
Region 7, Kansas City, KS

10/2/08

Date



Key

----- Approximate Sampling Boundary

D5 RFI Sampling Area Identification (Typ.)

Scale 1" = 75' (approx)

Figure 1
Blackhawk Foundry and Machine Co.
Davenport, IA
Site Plan

ATTACHMENT D

Environmental Covenant

Registered Agent: Blackhawk Foundry and Machine Company
Jerry V. Hanson
323 S Clark Street
P.O. Box 3527
Davenport, IA 52808
(563) 323-3621

Grantor: Blackhawk Foundry and Machine Company
323 South Clark Street
Davenport, Iowa 52802

Holder/Grantee: Blackhawk Foundry and Machine Company
323 South Clark Street
Davenport, Iowa 52802

Legal Description: PT OF SEC 33-76-3-COM AT PT BEARING N 24.5D W 373'
FROM NW COR BLK 16 DITTMER'S 3RD ADD & BEING
INTERSEC OF E/L OF CLARK ST & S/L OF CR1 & P R/W-S
24.5D E 323' TO NE COR CLARK ST & HOBSON AVE 618'
TO S/L OF SD R/W-WLY ALG

ENVIRONMENTAL COVENANT

This Environmental Covenant is made this ____ day of _____, 200__, by and between Blackhawk Foundry and Machine Company ("Grantor"), having an address of 323 South Clark St., Davenport, Iowa 52802 and Blackhawk Foundry and Machine Company ("Grantee"), having an address of 323 South Clark St., Davenport, Iowa 52802. This Environmental Covenant is established for the purpose of subjecting the affected property described below to certain activity and use limitations in accordance with the terms and conditions specified below and the provisions of Iowa's Uniform Environmental Covenants Act, Iowa Code Chapter 455I. The Iowa Department of Natural Resources ("IDNR") and the United States Environmental Protection Agency ("EPA") are entering into this covenant in their capacity as "Agencies" as provided in Iowa Code sections 455I.2 and 455I.3.

A. WHEREAS, Grantor is the fee simple owner of a parcel of land located in the county of Scott, State of Iowa, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") and located at or near Blackhawk Street and South Clark Street in Davenport, Iowa.

B. WHEREAS, Blackhawk Foundry produces gray and ductile iron castings for industry and generates heavy metals waste, including lead, cadmium and chromium. Some of this waste

was deposited on the ground causing contamination of the soil with lead as the primary contaminant of concern. The primary human health pathway for exposure to lead is through soil and dust, which may be swallowed or breathed into the body. In areas where the lead in the soil exceeded the industrial preliminary remedial goal (PRG) of 800 mg/kg, the soil was excavated and a gravel cap put in place. At this time, lead remains in the soil above the residential preliminary remedial goal (PRG) of 400 mg/kg in several locations, including B1, B3 and B4. (See attached map).

C. WHEREAS, in a Final Remedy Decision and Response to Comments dated October 2, 2008, the EPA Region VII Director of Air and Waste Management selected a remedy for the Property and Corrective Measures Study was carried out with the approval of EPA and documents contained in the administrative record may be reviewed at the EPA offices at the address specified in Paragraph 15 below; and

D. WHEREAS, in an Administrative Order on Consent for Corrective Measures Implementation was entered on [insert effective date of Order], in the United States of America Environmental Protection Agency Region VII v. Blackhawk Foundry and Machine, (Docket No. RCRA-07-2008-0007) (“AOC”), certain parties agreed to conduct a remedial action that is generally described as excavation of contaminated soils, installation of a gravel cap, and institutional controls in the form of deed restrictions to prevent exposure to contaminated soil.

NOW, THEREFORE:

1. **The Property.** The Grantor, Blackhawk Foundry and Machine Company, is the fee simple owner of a parcel of land located in the City of Davenport, Scott County, Iowa, and more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”).

2. **Purpose.** Because contamination remains on the Property at levels above those appropriate for unlimited use and unrestricted exposure, this Environmental Covenant is being imposed on the Property for the purposes of protecting public health and the environment by reducing the risk of exposure to contamination and to prevent interference with the performance, and the operation and maintenance of any environmental response project required under the terms of the above-referenced AOC.

3. **Identity of Grantor, Grantee/Holder, and Agency, as each is defined in this Environmental Covenant and as provided in Iowa’s Uniform Environmental Covenants Act (Iowa Code Chapter 455I).**

Grantor: Blackhawk Foundry and Machine Company is the current owner of the Property and the Grantor of this Environmental Covenant.

Grantee/Holder: Blackhawk Foundry and Machine Company is also the Grantee/Holder of this Environmental Covenant.

Agency: IDNR and EPA are each an Agency under this Environmental Covenant.

4. **Representations and Warranties.** The Grantor warrants to the other signatories to this Environmental Covenant the following:

- A. that it is the sole fee simple title owner of the Property;
- B. that it holds sufficient fee simple title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- C. that it has identified all other persons holding legal or equitable interests to the Property, including, but not limited to, contract buyers, mortgagees, other consensual lien holders, and lessees and secured their consent to this Environmental Covenant either by obtaining their signatures hereto or by a separate subordination agreement attached hereto.

5. **Running with the Property.** This Environmental Covenant is perpetual and runs with the Property as provided in Iowa Code Chapter 455I until modified or terminated as provided below in Paragraph 9. This Environmental Covenant is binding on Grantor and all of Grantor's successors, assigns, and all transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators, and devisees. The term "transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders, and/or lessees.

6. **Activity and Use Limitations and Terms.** The Property is subject to the following activity and use limitations:

- A. The Property shall not be used for residential purposes unless approved in writing by EPA and remediated to residential use standards.
- B. Any excavations of areas on the Property containing lead above the residential preliminary remedial goal of 400 mg/kg shall be conducted in accordance with worker protection and soil disposal requirements as be required by applicable laws and requirements.
- C. No installation of residential water supply wells.
- D. The integrity of the gravel cap over the lagoon (former pit) and the gravel cap placed over area B4 must be preserved by maintaining appropriate cover, maintaining the specified grade of the cap as installed, repairing erosion of cap material, and preventing unplanned ponding, unless expressly authorized in writing by EPA.
- E. Notification must be made, in writing, to the Environmental Protection Agency, the state and federal Occupational Safety and Health Administrations (OSHA), the Scott County Health Department, and the City of Davenport, 10 calendar days prior to any excavations for facility expansion, major utility work, or in areas containing lead above the residential preliminary goal of 400 mg/kg.
- F. The effectiveness of the gravel cap and the effectiveness of and compliance with the environmental covenant must be continually monitored. This information should be reported to EPA every 5 years on the anniversary of the effective date of this covenant.

7. **Notice of Non-Compliance.** Grantor and any subsequent transferee of the Property shall notify IDNR and EPA as soon as possible of any conditions that would constitute a breach of the activity and use limitations specified above in Paragraph 6.

8. **Access to Property.** Grantor grants to the Holder and its authorized representatives and to IDNR, an Agency, and its authorized representatives, an irrevocable, permanent and continuing right of access at all reasonable times to the Property, and also hereby assures the access of EPA, an Agency, and its authorized representatives, to the Property for the purposes of:

- A. Implementing the remedial action in the AOC and Final Decision Document and Response to Comments;
- B. Verifying any data or information submitted to EPA or IDNR;
- C. Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- D. Monitoring corrective action on the Property and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of soil, air, and groundwater, and specifically, without limitation, obtaining split or duplicate samples;
- E. Drilling and construction of groundwater monitoring wells authorized or otherwise directed by EPA or IDNR;
- F. Conducting periodic reviews of the Grantor's corrective actions, including but not limited to reviews required by the AOC and applicable statutes and/or regulations; and
- G. Implementing additional or new corrective actions if EPA or IDNR, in their sole discretion, determine: i) that such actions are necessary to protect the environment because either the original corrective actions performed have proven to be ineffective or because new technology has been developed which will accomplish the purposes of the response action in a significantly more efficient or cost effective manner; and ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

9. **Modification and Termination.** This Environmental Covenant may be modified or terminated in accordance with and subject to the provisions of Iowa Code Chapter 455I. The termination or modification of this Environmental Covenant is not effective until the document evidencing consent of all necessary persons is properly recorded.

10. **Enforcement.** The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Iowa Code Chapter 455I.

11. **Severability.** If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

12. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the state of Iowa, except as provided in Iowa Code Chapter 455I.9 subsection 3.

13. **Recordation.** Within thirty (30) days following execution of this Environmental Covenant by all parties hereto, Grantor shall properly record this Environmental Covenant in the same manner as a deed to the property with the Cerro Gordo County, Iowa, Recorder's Office.

14. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been properly recorded with the Scott County, Iowa, Recorder's Office.

15. **Notice.** Unless otherwise notified in writing by an Agency, any document or notice required by this Environmental Covenant shall be submitted to:

To Grantor:

Blackhawk Foundry and Machine Company
323 South Clark Street
Davenport, Iowa 52802

To Holder:

Blackhawk Foundry and Machine Company
323 South Clark Street
Davenport, Iowa 52802

To Agencies:

Bureau Chief, Contaminated Sites
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319

and

Director, Air and Waste Management Division
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

and

City of Davenport, Iowa
Legal Department
City Hall - Room 303
226 W. 4th St.
Davenport IA 52801

16. **Subordination and Consent.** By signing this Environmental Covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the property.

17. **Notice of Transfer of Interest.** The Grantor and any subsequent transferee of the Property shall notify EPA and IDNR of any transfer of interest in the Property at least thirty (30) days prior to such transfer.

ACKNOWLEDGMENTS

GRANTOR:

Blackhawk Foundry and Machine Company
323 South Clark Street
Davenport, Iowa 52802

By: _____
Title: _____
Date: _____

State of _____)
) ss.
County of _____)

On this ____ day of _____, 200_, before me personally appeared _____, who being duly sworn, did say that he/she is the _____ of the Blackhawk Foundry and Machine Company and that the instrument was signed on behalf of said Blackhawk Foundry and Machine Company by authority of its Board of Directors and that he/she acknowledged the execution of said instrument to be the voluntary act and deed of said Blackhawk Foundry and Machine Company and of the fiduciary, by it, and by him/her voluntarily executed.

Notary Public, State of Iowa

AGENCY:

IOWA DEPARTMENT OF NATURAL RESOURCES

_____ Signed this _____ day of _____, 20__.

Richard A. Leopold
Director, Iowa Department of Natural Resources

State of _____)
County of _____) ss.

On this _____ day of _____, 200__, before me personally appeared _____, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Notary Public, State of Iowa

AGENCY:

U.S. ENVIRONMENTAL PROTECTION AGENCY

_____, 200__

By: _____
Becky Weber, Director
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

State of _____)
County of _____) ss.

On this ____ day of _____, 200__, before me personally appeared Becky Weber, the Director of the Air and Waste Management Division of Region VII of the U.S. Environmental Protection Agency, who being duly sworn, did sign this Environmental Covenant.

Notary Public, State of Kansas

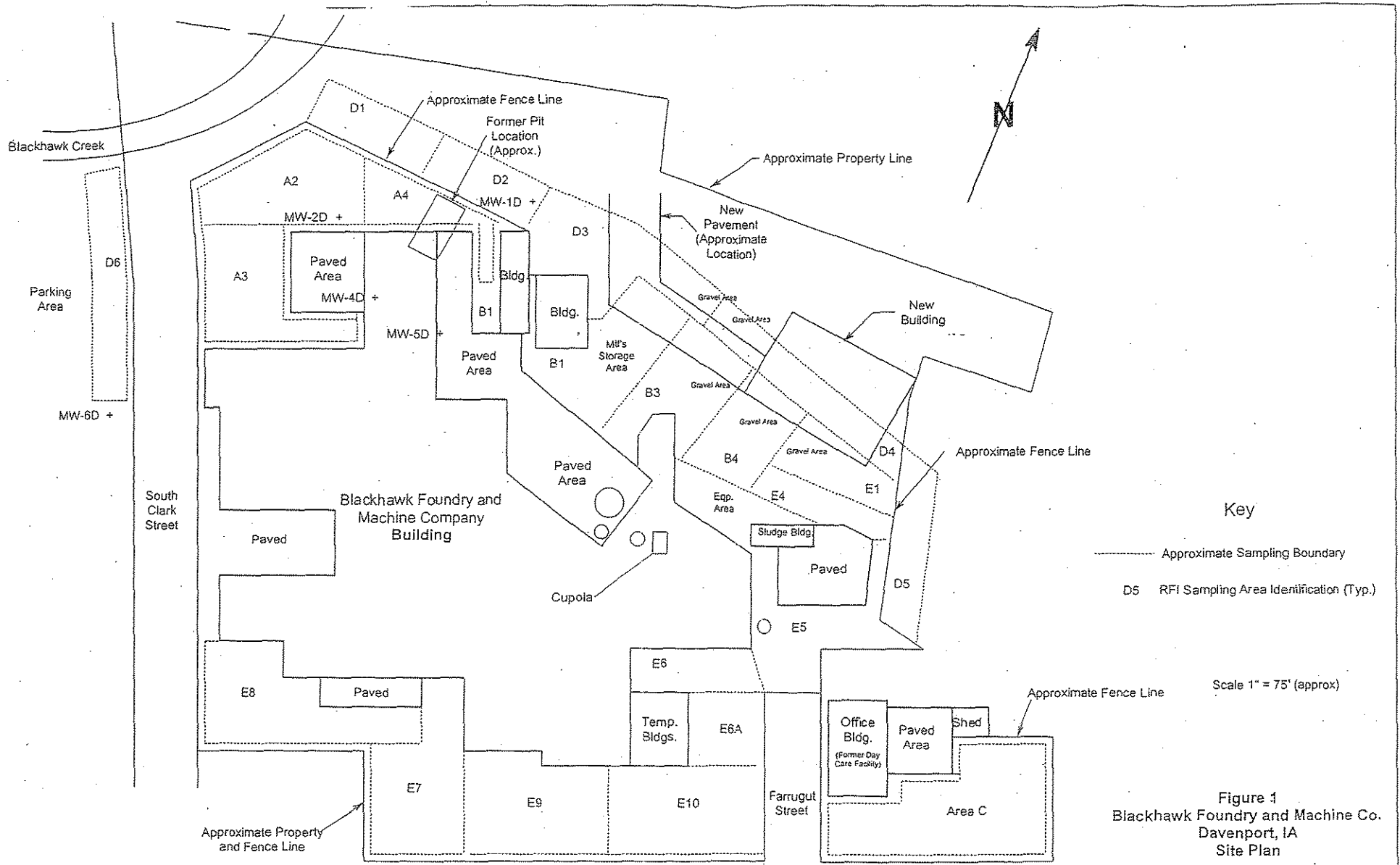


Figure 1
Blackhawk Foundry and Machine Co.
Davenport, IA
Site Plan