UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of:	)	
	)	
Pools Prairie Site	)	
Components Test Area	)	**Docket No.** CERCLA-07-2003-0004
Neosho, Missouri	)	
	)	
United States Department of Defense,	)	
	)	
Federal Respondent,	)	
	)	
and	)	
	)	
TDY Industries, Inc. and	)	
The Boeing Company,	)	
	)	
Respondents	)	
	)	
Proceedings under Section 106(a)	)	
of the Comprehensive Environmental	)	
Response, Compensation, and	)	
Liability Act of 1980 (42 U.S.C. § 9606(a))	)	
and Section 260.530, RSMo.	)	
	)	

ADMINISTRATIVE ORDER ON CONSENT

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1 JURISDICTION AND GENERAL PROVISIONS

1.1 The parties to this Administrative Order on Consent ("Order") are the United States Environmental Protection Agency, Region VII ("EPA"), the Missouri Department of Natural Resources ("MDNR"), the United States Department of Defense ("DOD"), The Boeing Company ("Boeing") and TDY Industries, Inc. ("TDY"), collectively "The Parties"". For convenience in this Order, Boeing and TDY are referred to as the "Respondents" and DOD is referred to as the "Federal Respondent."

1.2 This Order pertains to the Components Test Area of the Pools Prairie Superfund Site (the "Components Test Area" or "CTA"). The CTA is located south of Neosho, Missouri, in rural Newton County, Missouri, as shown on the Site Map attached hereto as Appendix A. This Order requires the Respondents to conduct and the Federal Respondent to finance, in part, the removal actions described herein to address the release or threatened release of hazardous substances at or from the CTA. It further provides for the Respondents and the Federal Respondent to reimburse Response Costs incurred by the EPA in overseeing this action.

1.3 This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C. The

Regional Administrator redelegated these authorities to the Director, Superfund Division by EPA Delegation No. R7-14-14C, dated January 1, 1995.

1.4 The MDNR enters into this Order pursuant to Section 260.530, RSMo.

1.5 On _____, EPA obtained the concurrence of the Attorney General to issue this Order to the Federal Respondent.

1.6 The Parties agree that the actions undertaken by the Respondents and the Federal Respondent in accordance with this Order do not constitute an admission of liability by either Respondent or the Federal Respondent. Respondents and the Federal Respondent agree to comply with and be bound by the terms of this Order. However, Respondents and the Federal Respondent do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings brought by or on behalf of a Party to implement or enforce this Order, the validity of the Findings of Fact, Conclusions of Law and Determinations set forth in Sections 5 and 6 of this Consent Order.

1.7 The Findings of Fact are not intended to be a complete recitation of all facts and no inferences shall be drawn from the absence of any fact from the Findings of Fact.

2 STATEMENT OF PURPOSE

2.1 By entering into this Consent Order, the mutual objectives of the Parties are to conduct non-time critical removal actions:

2.1.1 to reduce potential exposures that exceed defined risk levels due to direct contact with surface soil, and

2.1.2 to minimize the potential for future off-site migration of volatile organic compounds (VOCs) by reducing the mass of VOCs in soil at the CTA.

3 PARTIES BOUND

3.1 This Order applies to and is binding upon EPA, MDNR, the Federal Respondent and upon the Respondents and their successors and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter their responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondent with any provision of this Order shall not excuse or justify noncompliance by any other Respondent or by the Federal Respondent.

3.2 Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order.

4 DEFINITIONS

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

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

4.1.2 "Components Test Area" or "CTA" shall mean that portion of the Test Site, as defined herein, which was used to test rocket engine components, and jet engines, the location of which is shown on the Test Site Map attached hereto as Appendix B.

4.1.3 "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

4.1.4 "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" or "business day" shall mean a day other than a Saturday, Sunday, or a Missouri State or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or a Missouri State or federal holiday, the period shall run until the close of business of the next working day.

4.1.5 "Document" shall mean any object that records, stores or presents information and includes writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, through detection devices into reasonably useable form; and, (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document, and (e) every document referred to in any other document.

4.1.6 "Effective Date" shall mean the date this Order is effective pursuant to paragraph 33.2 of this Order.

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

4.1.8 "Federal Respondent" shall mean the United States Department of Defense.

4.1.9 "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that EPA incurs on or after the Effective Date of this Order in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order.

4.1.10 "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

4.1.11 "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

4.1.12 "Matters Addressed" shall mean all Work performed and all payments made pursuant to this Order, and all Response Costs incurred by any Party in connection with this Order.

4.1.13 "MDNR" shall mean the Missouri Department of Natural Resources and any successor departments or agencies of the State.

4.1.14 "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

4.1.15 "Parties" shall mean the EPA, MDNR, Respondents and the Federal Respondent.

4.1.16 "Removal Action Work Plan" or "Removal Work Plan" shall mean the document submitted pursuant to Paragraph 7.2.1 of this Order.

4.1.17 "Respondents" shall mean TDY Industries, Inc., and The Boeing Company.

4.1.18 "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

4.1.19 "SCORE$ Report" shall mean an EPA cost summary prepared using EPA's Superfund Cost Organization and Recovery Enhancement System database management program.

4.1.20 "Site" shall mean the Pools Prairie Superfund Site, including *inter alia*, the Manufacturing Plant, the 900 Building and Test Site, located in Newton County, Missouri as generally shown on the Site Map attached hereto as Appendix A.

4.1.21 "Test Site" shall mean that portion of Plant 65 previously used to test rocket engines, rocket engine components, and jet engines, the location of which is shown on the Site Map attached hereto as Appendix A.

4.1.22 "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities.

4.1.23 "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

4.1.24 "Work" shall mean all activities Respondents are required to perform under this Order, except for retention of records pursuant to Section 12 of this Order.

5 FINDINGS OF FACT

5.1 In the 1940's, the United States government acquired land in Newton County, Missouri for construction and operation of Camp Crowder, an Army installation.

5.2 In approximately 1956 or 1957, the Army transferred a portion of Camp Crowder to the Air Force for construction of a rocket engine manufacturing plant. This installation was

known as Air Force Plant No. 65 ("Plant 65"). Construction of Plant 65 began in approximately 1956 and manufacturing operations began in approximately 1956 or 1957. This installation included, *inter alia*, the main manufacturing plant ("Manufacturing Plant"), an area initially used to test rocket engines and related components and later jet engines ("Test Site"), and a building initially used by the Army as a laundry, later as a warehouse and for engine overhaul and manufacturing purposes ("900 Building"). The Manufacturing Plant is located near the intersection of, and is included in portions of, Sections 2, 3, 10, and 11, Range 32 W, Township 24 N. The Test Site was located approximately one mile southeast of the Manufacturing Plant and was connected to the Manufacturing Plant by rail lines. The 900 Building is located near the intersection of 71 Highway and Quince Road. The location of each of these features is shown on the Site Map attached to this Order as Appendix A.

5.3 Plant 65 was a government owned, contractor operated facility. From approximately 1956 or 1957 until 1968, the Rocketdyne Division of North American Aviation, Inc. ("NAAI"), was the facility's operating contractor for the Air Force. During this time period, NAAI manufactured rocket engines and related components at Plant 65 pursuant to Air Force and NASA contracts. NAAI conducted performance testing of the rocket engines and components to verify compliance with Air Force and NASA contract specifications at the Test Site. The western half of the Test Site was used to test fire rocket engines ("Engine Test Area" or "ETA"). The eastern half of the Test Site was used to test components related to rocket engines ("Components Test Area" or "CTA").

The locations of the ETA and CTA are shown on the Site Map attached to this Order as Appendix A.

5.4 In 1968, Continental Aviation and Engineering Corp. ("Continental Aviation") became the primary operating contractor for Plant 65. At this time, Plant 65's mission changed from manufacturing and testing rocket engines and components to manufacturing and overhauling jet engines. Continental Aviation used the CTA to test jet engines, which required modifying one or more of the component test stands. Continental Aviation tested jet engines at the CTA from 1968 until approximately 1973.

5.5 In approximately 1974 the Air Force initiated the process of disposing of the Test Site as excess property. In 1975, the Air Force transferred custody and control of the ETA back to the Department of the Army. In 1976, the United States sold the CTA to the Water and Wastewater Technical School, Inc.

5.6 The Test Site is located in an area of karst topography, characterized by sinkholes, losing streams, caves and springs, due to subsurface weathering of carbonate rock. Dye trace studies conducted by the Missouri Division of Geology and Land Survey ("DGLS") in June 1996 at the Test Site found ground water flow from the Test Site to be toward the north-northeast. DGLS calculated the rate of travel of the injection at between 875 and 2,100 feet per day.

5.7 Testing conducted by the Newton-MacDonald County Health Department, the Missouri Department of Natural Resources, the U.S. Army Corps of Engineers and EPA has identified an area of contaminated residential drinking water wells north and downgradient of the Test Site. Over 150 private drinking water wells have been sampled

in this area to date, with trichloroethylene and 1, 2-dichloroethylene being the contaminants detected most frequently in the drinking water wells. Of these 150 plus wells, approximately 27 have been found to exceed the Maximum Contaminant Level for trichloroethylene (5.0 µg/l). These wells are located approximately in the same "arc" defined by the DGLS dye detections in Hickory Creek.

5.8 In August 1996, EPA conducted a site investigation at the Test Site. EPA collected samples of the soil present in the CTA Hazardous Waste Pit, and soils and ground water in the area surrounding the Hazardous Waste Pit. EPA found elevated concentrations of TCE in ground water and soil at the CTA. EPA also found 1,2-dichloroethylene and vinyl chloride in the ground water and 1,2-dichloroethylene, 1,2-dichlorobenzene, perchloroethylene and vinyl chloride in the soil at the CTA.

5.9 Under terms of an Administrative Order on Consent, Docket Number VII-98-F-0011, Respondents completed a removal site evaluation for the CTA, documented in the report entitled "Removal Site Evaluation Report, Components Test Area, Pools Prairie Site, Newton County, Missouri," dated August 1999. The Removal Site Evaluation report describes sampling techniques and other methods which were used, *inter alia,* to more precisely define areas of VOC contamination in soil and groundwater at or in the vicinity of the CTA.

5.10 Under terms of an Administrative Order on Consent, Docket Number VII-98-F-0011, Respondents completed an engineering evaluation/cost analysis for the CTA, documented in the report entitled "Final Engineering Evaluation/Cost Analysis, Components Test Area, Pools Prairie Site, Newton County, Missouri," dated March 2001. The Engineering

Evaluation/Cost Analysis ("EE/CA") presented an analysis of various alternatives which could potentially achieve the objectives described in Section 2 ("Statement of Purpose"). The recommended alternative included the use of landfarming and soil-vapor extraction for removing VOCs from affected soils.

5.11 Trichloroethylene, 1,2-dichloroethylene, 1,1-dichloroethylene, and vinyl chloride are listed as a hazardous substances pursuant to 40 C.F.R. § 302.4.

5.12 The Department of Defense owned the CTA from approximately 1941 until 1976.

5.13 The MoARNG conducted training exercises on the Components Test Area at various times. In approximately 1981 the MoARNG demolished the dikes surrounding the hazardous waste pit on the CTA.

5.14 Boeing is the successor to North American Aviation, Inc.

5.15 TDY is the successor to Continental Aviation.

6 CONCLUSIONS OF LAW AND DETERMINATIONS

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

6.1 The CTA is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6.2 The contaminants found at the CTA, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and Section 260.500(5), RSMo.

6.3 Respondents and the Federal Respondent are each a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and Section 260.500(7)and (8), RSMo.

6.4 Each Respondent and the Federal Respondent may be liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and Section 260.530, RSMo.

6.5 The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C.§ 9601(22) and Section 260.500(9), RSMo.

6.6 The actual or threatened release of hazardous substances from the CTA may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

6.7 The actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP and CERCLA.

7 ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations it is hereby ordered and agreed that Respondents shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

7.1 Designation of Contractor, Project Coordinator, and On-Scene Coordinator

7.1.1 Respondents have designated Mark Underwood as their Project Coordinator. All verbal notices and written communications provided to be made to Respondents under this Order shall be directed to Respondents' Project Coordinator as follows:

Mark Underwood
PO Box 516, mail code S221-1400
St. Louis MO 63166

Address for overnight express deliveries:
153 McDonnell Blvd.,
Hazelwood, Missouri 63042
mail code S221-1400
Official phone no. (818) 519-1814
Cell phone (314) 234-5196 phone no. listed
Fax no. (314) 234-7177

To the greatest extent practicable, Respondents' Project Coordinator shall be present on site or readily available during site work. Receipt by Respondents' Project Coordinator of any notice or communication from EPA or the MDNR relating to this Order shall constitute receipt by all Respondents.

7.1.2 Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within forty-five (45) days of the Effective Date. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA. Respondents shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least thirty (30) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall

retain a different contractor and shall notify EPA of that contractor's name and qualifications within thirty (30) days of EPA's disapproval.

7.1.3 EPA has designated David Williams of the EPA Region VII Superfund Division as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC as follows:

David Williams
Superfund Division
US Environmental Protection Agency, Region VII
901 North 5th Street
Kansas City, KS 66101
Telephone (913) 551-7625
Fax (913) 551-7948

7.1.4 The MDNR has designated as its Project Coordinator for work conducted pursuant to this Order. Respondents shall direct all submissions required by this Order to the MDNR Project Coordinator as follows:

Jill K. Bruss
Superfund Section, HWP
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102
Telephone 573-522-9821
Fax (573) 751-7869

7.1.5 EPA, the MDNR and Respondents shall have the right to change their designated OSC, MDNR Project Coordinator, or Project Coordinator, respectively. To the extent practicable, Respondents shall notify EPA and the MDNR fourteen (14) business days before such a change is made. The initial notification may be orally made, but it shall be promptly followed by a written notice.

7.2 Work to Be Performed

7.2.1 Removal Action Work Plan Submittal: Respondents shall conduct a removal action at the CTA by performing the work as detailed in an EPA-approved Removal Action Work Plan ("RAWP"). Within one hundred twenty (120) calendar days after the Effective Date, Respondent shall submit to EPA and MDNR, for review and approval by EPA, after consultation with MDNR, a RAWP which shall be written in accordance with this Order. Upon approval, the document shall become the approved RAWP. The approved RAWP shall be incorporated in its entirety herein and shall be enforceable as a part of this Consent Order.

7.2.2 Removal Action Work Plan Requirements: The RAWP shall include a detailed description of the tasks and submissions Respondents will complete during the removal action and shall include a schedule for completing such tasks and submissions. The RAWP shall include the following:

7.2.2.1 A detailed description of the removal work to be performed including, but not limited to, the following:

7.2.2.1.1 A schedule for all removal activities to be performed.

7.2.2.1.2 A design plan for implementation of excavation, landfarming and/or ex-situ soil vapor extraction on soil from the Primary Lagoon, in general agreement with the conceptual plans outlined in the EE/CA. The area to be excavated for landfarming is shown on the Excavation Area Map attached to this Order as Appendix C.

7.2.2.1.3 A design plan for implementation of passive soil vapor extraction at the Test Shop, Sand Pit, and Secondary Lagoon Areas, in general agreement with the conceptual plans outlined in the EE/CA. Passive soil vapor extraction shall be performed until either a Record of Decision is issued addressing the CTA, or until five years after the soil vapor extraction has become operational, whichever occurs first.

7.2.2.1.4 Plans for soil sampling and treatment of contaminated soils to meet the target treatment standard of an average of 1 milligram per kilogram total VOCs,

7.2.2.1.5 Plans for conducting air monitoring for emissions during removal activities, including contingency plans in the event that emissions exceed health-based standards.

7.2.2.1.6 Plans for conducting annual groundwater monitoring until either an order has been issued for performance of a Remedial Investigation or for a period of five years following excavation and treatment of the soils from the Primary Lagoon, whichever occurs first. Annual monitoring shall be conducted in the month of October.

7.2.2.2 Upon approval by EPA, following consultation with MDNR, the document shall become the approved RAWP and the approved RAWP shall be incorporated in its entirety herein and shall be enforceable as a part of this Consent Order.

7.2.3 Removal Action Implementation: Respondents shall conduct a removal action at the CTA by performing the work in accordance with the requirements, including the schedule, set forth in the approved RAWP.

7.2.4 Removal Construction Report. Within ninety (90) days after completion of the activities required in the RAWP relating to excavation and treatment of soils in the Primary Lagoon and installation of the passive soil vapor extraction system, Respondents shall submit to EPA and MDNR, for review and approval by EPA, after consultation with MDNR, a Removal Construction Report ("RCR") summarizing the field activities and the results of those activities. The RCR shall include, but not be limited to, the following:

7.2.4.1 A description of the site: the site location, a facility description including past and present facility operations, existing structures, surrounding land use, site physiography, including topography, geology and hydrogeology;

7.2.4.2 A description of the work performed: a summary of all site work performed including all removal activities, any investigative activities, all laboratory analysis reports, a summary of all analytical data associated with the investigation including quality control data, and a sample results table covering all sampling;

7.2.4.3 A description of the nature and extent of contamination addressed during removal activities;

7.2.4.4 Copies of all manifests reflecting off-site shipment of hazardous substances except samples; and

7.2.4.5 Copies of any photographs taken during the removal action.

7.2.5 Removal Action Report. Within ninety (90) days of the date the obligation to perform passive soil vapor extraction ceases as provided in Paragraph 7.2.2.1.3 or the obligation to conduct annual groundwater monitoring ends pursuant to Paragraph 7.2.2.1.6, whichever is later, Respondents shall submit to EPA and the MDNR a report describing

all work conducted under this Order which meets the requirements set forth in Section 300.165 of the NCP (40 C.F.R. § 300.165, OSC Reports). For convenience in this Order this report will be referred to as the Removal Action Report ("RAR"). The RAR shall include the following information:

7.2.5.1 A description of the site: the site location, a facility description including past and present facility operations, existing structures, surrounding land use, site physiography, including topography, geology and hydrogeology;

7.2.5.2 A description of the work performed: a summary of all site work performed including all removal activities, any investigative activities, all laboratory analysis reports, a summary of all analytical data associated with the investigation including quality control data, and a sample results table covering all sampling;

7.2.5.3 A description of the nature and extent of contamination addressed during removal activities;

7.2.5.4 Copies of all manifests reflecting off-site shipment of hazardous substances except samples; and

7.2.5.5 Copies of any photographs taken during the removal action.

7.3 <u>Health and Safety Plan</u>

7.3.1 Within one hundred twenty (120) calendar days after the Effective Date of this Order, and before any field work related to Work under this Consent Order commences, the Respondents shall submit to EPA and the MDNR for review and comment a plan that ensures the protection of the public health and safety during performance of work under this Order ("Health and Safety Plan" or "HASP"). This plan shall be prepared in

accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988, but see latest version if different. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910 and include at a minimum the following elements:

7.3.1.1 Assessment of chemical and physical hazards at all relevant locations;

7.3.1.2 Identification of site control measures and required levels of protection and safety equipment;

7.3.1.3 Field monitoring requirements;

7.3.1.4 Equipment and personnel decontamination and residual management;

7.3.1.5 Training and medical monitoring requirements; and

7.3.1.6 Emergency planning and emergency contacts.

7.3.1.7 Within 30 days after receipt of EPA comments on the HASP, Respondents shall submit a revised HASP addressing comments from EPA and the MDNR, and implement the plan during the work required by this Order.

7.4 <u>Quality Assurance and Sampling</u>

7.4.1 Within one hundred twenty (120) days of the Effective Date of this Order, and before any sampling related to Work under this Consent Order commences, Respondents shall submit to EPA and the MDNR for review and comment a Quality Assurance Project Plan ("QAPP") which will describe all sampling and analysis procedures to be followed to document the type and quality of data needed to satisfy the requirements of this Order and to provide a blueprint for collecting and assessing those data which are to be collected to

meet the requirements of this Order. The QAPP shall comply with the requirements of, and follow the same general outline presented in, the document entitled "EPA Requirements for Quality Assurance Project Plans, EPA QA/R-5, March 2001."

7.4.2 All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation agreed to by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

7.4.3 Upon request by EPA or MDNR, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring.

7.4.4 Upon request by EPA, Respondents shall allow EPA or its authorized representatives and the MDNR to take split and/or duplicate samples of any samples collected by

Respondents while performing work under this Order. Respondents shall notify EPA and the MDNR not less than 10 days in advance of any sample collection activity. EPA and the MDNR shall have the right to take any additional samples that they deem necessary.

8 REPORTING

8.1 Monthly Progress Reports– Respondents shall submit Monthly Progress Reports to EPA and the MDNR on or before the 10th day of each month, starting with the first full month following the date of receipt of EPA's approval of the Removal Action Work Plan and continuing until the Respondents have submitted the RCR. Respondents shall continue submitting Monthly Progress Reports until EPA approves the RCR if requested to do so by EPA. The Monthly Progress Reports shall include, at a minimum:

8.1.1 A description of the actions completed during the reporting period;

8.1.2 A description of actions scheduled for completion during the reporting period which were not completed along with a statement indicating why such actions were not completed and an anticipated completion date;

8.1.3 Copies of all sampling and test results received during the reporting period;

8.1.4 Any proposed revisions to the project schedule for review and approval by EPA, after a reasonable opportunity for review and comment by the MDNR; and

8.1.5 A description of the actions which are scheduled for completion during the next reporting period.

8.2 Annual Reports– When Respondents' obligation to submit Monthly Progress Reports ends as provided in paragraph 8.1, above, Respondents shall submit Annual Reports until such time as EPA has approved the RAR. The first Annual Report shall be due on or

before the last day of the fourteenth month following submittal of the final Monthly Progress Report. The Annual Reports shall include, at a minimum:

8.2.1 A description of the activities conducted at the CTA during the reporting period;

8.2.2 A description of any activities which had been planned for the reporting period which were not conducted, along with a statement indicating why such activities were not completed.

8.2.3 Copies of all sampling and test results received during the reporting period; and

8.2.4 A description of the activities which are scheduled for the next reporting period.

9 SITE ACCESS

9.1 If the Site, or any other property where access is needed to implement this Order, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide EPA, MDNR, the Party doing the Work, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Order.

9.2 Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within forty five (45) days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the following:

9.2.1 Agreeing, upon request, to provide splits or duplicates of all samples collected on the property; and

9.2.2 Agreeing, upon request, to provide results of all analyses of samples collected on the property.

Any such access agreements shall be incorporated by reference into this Consent Order. Respondents shall immediately notify EPA and the MDNR if, after using their best efforts, it is unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section 19 (Reimbursement of Response Costs).

9.3 Notwithstanding any provision of this Order, EPA and MDNR retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

10 ACCESS TO INFORMATION

10.1 Respondents shall provide to EPA and the MDNR, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work.

10.2 Respondents may assert business confidentiality or privilege claims covering part or all of the documents or information submitted to EPA and MDNR under this Order as set forth in Section 13 (Confidential Business Information and Privileged Documents). Analytical

and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents.

11 AGENCY REVIEW AND APPROVAL

11.1 The following procedure will apply to the review and approval of all documents submitted to EPA for review and approval pursuant to the requirements of this Order. EPA will review each such document and, after a reasonable opportunity for review and comment by the MDNR, notify Respondents, in writing, as to its approval or disapproval thereof. In the event EPA does not approve any such document, it will provide a written statement as to the basis of the disapproval. Within 20 business days of receipt of the EPA comments, or such other time period as agreed to by the Parties, Respondents shall revise any document not approved by EPA addressing EPA's written comments and resubmit it to EPA and MDNR. Revised submittals are subject to EPA approval, approval with conditions, disapproval or disapproval with modifications by EPA, subject to dispute resolution. EPA will make the final determination as to whether the document submitted by Respondents is in compliance with the requirements of this Order. At that time when EPA determines that the report is in compliance with the requirements of this Order, EPA will transmit to Respondents a written statement to that effect.

11.2 EPA-approved documents shall be deemed incorporated into and made part of this Order. Prior to this written approval, no work plan, report, specification, or schedule shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA or MDNR representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

12 RECORD RETENTION

12.1 Respondents shall preserve all documents relating to work performed under this Order for ten years following completion of the removal actions required by this Order. Only one copy of identical documents needs to be retained. Drafts or other documents that are subsequently prepared in final form need not be retained in addition to the final document. At the end of this ten year period and at least ninety (90) calendar days before any document is destroyed, Respondents shall notify EPA and the MDNR that such documents are available to them for inspection, and upon the request of either EPA or the MDNR, shall provide the originals or copies of non-privileged documents to the party requesting the documents. In addition, Respondents shall provide non-privileged documents retained under this section at any time before expiration of the ten year period at the written request of EPA or the MDNR.

12.2 Respondents may assert a business confidentiality or privilege claim with respect to part or all of any information submitted to EPA or MDNR as provided in paragraph 13 of this Order.

13 CONFIDENTIAL BUSINESS /INFORMATION PRIVILEGED DOCUMENTS

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

13.2 Respondents may assert a business confidentiality claim pursuant to § 260.430, RSMo, with respect to part or all of any information submitted to the MDNR pursuant to the Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. The MDNR shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, § 260.430, RSMo. If no such claim accompanies the information when it is received by the MDNR, the MDNR may make it available to the public without further notice to Respondents.

13.3 Respondents may assert a claim of privilege for any documents at the time they are to be provided to EPA or MDNR under this Order. For each document claimed as privileged, Respondents shall provide the date, author(s), addressee(s), subject, the privilege or

grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege.

14 OFF-SITE SHIPMENTS

14.1 All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with 42 U.S.C. § 9621(d)(3), as determined by EPA, and the following rule: "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule" 58 Fed. Reg. 49,200 (September 22, 1993) codified at 40 C.F.R. § 300.440. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above rule.

14.2 Unless impracticable, prior notification of out-of-state Waste Material shipments should be given consistent with OSWER Directive 9330.2-07.

15 COMPLIANCE WITH OTHER LAWS

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

16 EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

16.1 If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the CTA or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action. The Respondents shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Removal Action Work Plan and the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify:

Regional Duty Officer
c/o Emergency Response and Removal Branch
US Environmental Protection Agency, Region VII—
901 North 5th Street
Kansas City, KS 66101
913-281-0991 (24-hour number)

and

Duty Officer
Environmental Emergency Response Section
Environmental Services Program
Missouri Department of Natural Resources
2701 W. Main St.
P.O. Box 176
Jefferson City, MO 65102-0176
314-634-2436 (24-hour number)

of the incident or site conditions. If Respondents fail to respond, EPA or the MDNR may respond to the release or endangerment and reserve the right to pursue cost recovery.

16.2 In addition, in the event of any new, unanticipated release of a reportable quantity of a hazardous substance from the CTA, Respondents shall immediately notify EPA's OSC at

913-281-0991 and the National Response Center at telephone number (800) 424-8802. Respondents shall submit a written report to EPA and the MDNR within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

17 AUTHORITY OF THE EPA ON-SCENE COORDINATOR

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

18 PAYMENT BY FEDERAL RESPONDENT

18.1 As soon as reasonably practical after the Effective Date, the United States, on behalf of the Federal Respondent, shall cause to be paid to the Respondents $1,113,562.50 by electronic funds transfer pursuant to instructions to be provided by Respondents. This payment and any payment pursuant to paragraphs 18.3 and 18.7 of this Order constitute Federal Respondent's interim allocable share of the Response Costs incurred in performing the Work and Future Response Costs.

18.2 If the Federal Respondent fails to make the payment required by paragraph 18.1 within one hundred twenty (120) days of the date EPA receives the Federal Respondent's

executed signature page, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the date EPA receives the Federal Respondent's executed signature page and accruing through the date of payment.

18.3 The estimated total Response Costs for Work to be performed by Respondents pursuant to this Order is $2,227,125.00. If the total Response Costs for Work to be performed by Respondents pursuant to this Order exceeds $2,227,125.00 ("Additional Response Costs"), the United States, on behalf of the Federal Respondent, shall pay 50% of all Additional Response Costs that are consistent with the National Contingency Plan. The Federal Respondent shall not be responsible for the payment of any Additional Response Costs that are incurred as a result of Respondents' failure to comply with any provision of this Order.

18.4 If the Respondents seek payment for 50% of the Additional Response Costs from the Federal Respondent, the Respondents shall make a written demand for payment from the Federal Respondent ("Federal Payment Demand"). The Federal Payment Demand shall include: 1) the amount of payment requested, 2) an explanation of why both the Response Costs and Additional Response Costs are necessary and consistent with the NCP, and 3) supporting documentation and information sufficient to show for each contractor, vendor, or other person to whom money was paid by Respondents, the amount paid and the services or goods provided.

18.5 If the Respondents comply with their obligations in paragraph 18.4 above, the United States, on behalf of the Federal Respondent, shall then pay 50% of the Additional

Response Costs incurred that are consistent with the NCP as soon as reasonably practical, less amounts withheld or disputed.

18.6 If the Federal Respondent in good faith questions or contests any invoiced fees or expense, in whole or in part, it shall have the right to withhold payment of such disputed amount; provided, however, that the Federal Respondent shall notify the Respondents in writing of any disputed amount within thirty (30) days of the date of such Federal Payment Demand and shall promptly make a good faith effort to resolve such dispute. In the event that the Federal Respondent and the Respondents cannot informally resolve the dispute, either Party may seek formal Dispute Resolution, in accordance with 5 U.S.C. § 571 et seq., not less than ninety (90) days after the date of the Federal Payment Demand.

18.7 In the event that payment of Additional Response Costs required by paragraph 18.3 is not made within one hundred twenty (120) days of receipt of the Federal Payment Demand, Interest on the unpaid amount shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the Federal Respondent's receipt of the Federal Payment Demand and accruing through the date of payment.

18.8 The Parties to this Order recognize and acknowledge that the payment obligation of the Federal Respondent under this Order can only be paid from appropriated funds legally available for such purpose. Nothing in this Order shall be interpreted or construed as a commitment or requirement that the Federal Respondent obligate or pay funds in

contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

18.9 Respondents shall submit copies of all reports prepared pursuant to this Order to the Federal Respondent, including but not limited to, the Removal Action Work Plan, Removal Construction Report, Removal Action Report, Respondents' request that EPA issue a Notice of Completion submitted pursuant to paragraph 30, Monthly Progress Reports, and Annual Reports. One copy of all such reports shall be transmitted to the Federal Respondent at the same time they are transmitted to EPA and MDNR and shall be directed to:

U.S. Army Corps of Engineers
Kansas City District
CENWK-PM-ED (Attn: Ed Kost), Room 632
601 E. 12th Street
Kansas City, MO 64106-2896

19 REIMBURSEMENT OF COSTS

19.1 On a periodic basis, EPA will submit to Respondents a bill for Future Response Costs that includes a SCORE$ Report. EPA will send the original bill to the Respondent's Project Coordinator.

19.2 Respondents shall, within 45 days of receipt of each EPA bill for Future Response Costs, remit a cashier's or certified check for the total amount of the bill for Future Response Costs, made payable to the "Hazardous Substance Superfund," to the following address:

Mellon Bank, EPA Region VII
Superfund
Financial Management Section
Post Office Box 360748M
Pittsburgh, PA 15251

19.3 Respondents shall simultaneously transmit a copy of each check paying a bill for Future Response Costs to the EPA OSC. Payments shall be designated as "Response Costs-Pools Prairie Site" and shall reference the payor's name and address, the EPA site identification number 07WT, and the docket number of this Order.

19.4 In the event that any payment for Future Response Costs is not made within 45 days of the Respondents' receipt of EPA's bill for Future Response Costs, Respondents shall pay Interest on the unpaid balance. Interest is established at the rate specified in section 107(a) of CERCLA. The Interest on Future Response Costs shall begin to accrue on the 46th day after the Respondents' receipt of the bill and shall continue to accrue through the date of the payment. Payments of Interest made under this paragraph shall be in addition to such other remedies or sanctions available under this Order by virtue of Respondents' failure to make timely payments under this Section.

19.5 Respondents may dispute all or part of a bill for Future Response Costs submitted under this Order if they allege that EPA has made an accounting error, if a cost is not a Future Response Cost, or if they allege that a cost item is inconsistent with the NCP.

19.6 If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If a dispute by the Respondents is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Respondents shall simultaneously transmit a copy of this check to the OSC. Except as otherwise agreed by the Parties, to the extent EPA prevails, Respondents shall ensure that the amount upon

which EPA prevailed is paid plus Interest within thirty (30) calendar days after the dispute is resolved.

20 DISPUTE RESOLUTION

20.1 The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

20.2 If the Respondents object to any EPA action taken pursuant to this Order, including billings for Future Response Costs, they shall notify EPA in writing of their objection within thirty (30) calendar days of such action, unless the objection has been informally resolved. This notice shall set forth the specific points of the dispute, the position they are maintaining should be adopted as consistent with the requirements of this Order, the factual and legal bases for their position, and all matters they consider necessary for EPA's determination.

20.3 The Parties shall have twenty one (21) calendar days from EPA's receipt of the Respondents' written objections to attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The Negotiation Period may be extended by agreement of the Parties.

20.4 Any agreement reached by the Parties pursuant to this section shall be in writing, signed by parties to the dispute, and shall, upon the signature by all parties to the dispute, be incorporated into and become an enforceable element of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, the Director, Superfund Division, EPA Region VII, after reasonable opportunity for review and comment by the MDNR, will issue a written decision on the dispute to the Respondents. The decision of

EPA shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of the EPA decision regarding the dispute. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section, unless otherwise agreed to by the Parties, taking into account Respondents' good faith in invoking the Dispute Resolution procedure.

20.5 Following resolution of the dispute, as provided by this section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review.

21 FORCE MAJEURE

21.1 Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless otherwise agreed to by the Parties in accordance with Section 29 (Modifications), or unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

21.2 Respondents shall notify EPA and the MDNR orally within forty eight (48) hours and in writing within seven (7) calendar days after Respondents become or should have become aware of events which constitute a force majeure. Such notice shall: identify the event

causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondents.

21.3 If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA, taking into consideration the length of the delay and necessary remobilization requirements. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

22 STIPULATED AND STATUTORY PENALTIES

22.1 In the event Respondents fail to meet any requirement of this Order, Respondents shall pay stipulated penalties as set forth below. Compliance by Respondents shall include completion of an activity under this Order or a plan approved under this Order or any matter under this Order in accordance with the requirements of this Order and within the specified time schedules in and approved under this Order.

22.1.1 For failure to submit a Monthly Progress Report as prescribed in this Order: $50.00 per day for the first through seventh days of noncompliance and $100.00 per day for the eighth day and each succeeding day of noncompliance thereafter;

22.1.2 For failure to submit an Annual Report as prescribed in this Order: $75.00 per day for the first through seventh days of noncompliance and $125.00 per day for the eighth through thirtieth days of noncompliance and $250.00 per day for each succeeding day of noncompliance thereafter;

22.1.3 For failure to submit the Removal Action Work Plan, Removal Construction Report or the Removal Action Report at the time required pursuant to this Order: $150.00 per day for the first through seventh days of noncompliance and $250.00 per day for the eighth through thirtieth days of noncompliance and $500.00 per day for each succeeding day of noncompliance thereafter;

22.1.4 For the failure to complete the removal action in accordance with the requirements of the approved Removal Action Work Plan, including the project schedule, $250.00 per day for the first through seventh days of noncompliance and $500.00 per day for the eighth through thirtieth days of noncompliance and $750.00 per day for each succeeding day of noncompliance thereafter.

22.2 All penalties shall begin to accrue on the date that complete performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance.

22.3 Upon receipt of written demand by EPA, Respondents shall make payment to EPA within forty five (45) calendar days. Interest shall accrue on late payments as of the 46th day after receiving notice the payment is due.

22.4 Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall

accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance, except that stipulated penalties shall not run with respect to documents submitted for review and approval prior to Respondents' receipt of a notice of disapproval. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order.

22.5 Except for those violations for which stipulated penalties have been assessed by EPA and paid by Respondents, violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-five thousand dollars ($25,000) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. section 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

23 COVENANTS NOT TO SUE BY EPA AND MDNR

23.1 In consideration of the Work that will be performed and the payments that will be made by the Respondents and the payment or payments that will be made by the Federal Respondent under the terms of this Order, and except as specifically reserved in Section 24 (EPA and MDNR Reservation of Rights) of this Order, the EPA covenants not to sue and agrees not to assert any claims or causes of action or take administrative action against any Respondent or the Federal Respondent for Matters Addressed pursuant to Sections 106 of CERCLA, 42 U.S.C. § 9606. The EPA's covenants shall take effect with respect to Respondents upon EPA's issuance of a Notice of Completion pursuant to Section 30 (Notice of Completion) of this Order. EPA's covenants not to take

administrative action against the Federal Respondent shall take effect upon receipt of the Federal Respondent's payment or payments as required by Section 18 (Payment by Federal Respondent) of this Order. EPA's covenants in this paragraph extend only to Respondents and the Federal Respondent and do not extend to any other persons.

23.2 In consideration of the Work that will be performed and the payments that will be made by the Respondents and the payment or payments that will be made by the Federal Respondent under the terms of this Order, and except as specifically reserved in Section 24 (EPA and MDNR Reservation of Rights) of this Order, the MDNR covenants not to sue and agrees not to assert any claims or causes of action or take administrative action against any Respondent or the Federal Respondent for Matters Addressed pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, or Section 260.530, *et seq.*, RSMo. The MDNR's covenants shall take effect with respect to Respondents upon EPA's issuance of a Notice of Completion as required by Section 30 of this Order. MDNR's covenants with respect to the Federal Respondent shall take effect upon receipt of the Federal Respondent's payment or payments as required by Section 18 (Payment by Federal Respondent) of this Order. MDNR's covenants in this paragraph extend only to Respondents and the Federal Respondent and do not extend to any other persons.

24 EPA AND MDNR RESERVATIONS OF RIGHTS

24.1 Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or

hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Order, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents or the Federal Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any Response Costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents or the Federal Respondent.

24.2 Except as specifically provided in this Order, nothing herein shall limit the power and authority of the Missouri Department of Natural Resources or the state of Missouri to take, direct, or order all actions necessary to protect public health, welfare or the environment, or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Order, nothing herein shall prevent the MDNR from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from seeking to require Respondents and/or the Federal Respondent in the future to perform additional activities pursuant to CERCLA, Section 260.500, et seq., RSMo, or any other applicable law, including the common law of public nuisance. The MDNR reserves the right to bring an action against Respondents and/or the Federal Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607 and/or § 260.530, RSMo, for recovery

of any Response Costs incurred by the state of Missouri related to this Order or the Site and not reimbursed by Respondents and/or the Federal Respondent.

25 OTHER CLAIMS

25.1 By issuance of this Order, the United States and the MDNR assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. Neither the United States nor the MDNR shall be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

25.2 Except as expressly provided herein, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents, the Federal Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law.

25.3 This Order does not constitute a preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to 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 arising out of any action performed under this Order.

25.4 Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Order. The United States, the State of Missouri, and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may

have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

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

25.6 In any subsequent administrative or judicial proceeding initiated by the United States or MDNR for injunctive relief, recovery of Response Costs, damages (as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6)), or other relief relating to the Site, Respondents 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 in the subsequent proceeding were or should have been brought in the instant action.

25.7 In any subsequent administrative or judicial proceeding initiated by the Respondents for injunctive relief, recovery of Response Costs, damages (as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6)), or other relief relating to the Site, the United States and the State of Missouri 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 in the subsequent proceeding were or should have been brought in the instant action. Nothing in this paragraph shall affect Respondents' waiver of claims to payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612 made in paragraph 25.3, above.

26 CONTRIBUTION PROTECTION

26.1 Except as provided in paragraph 26.3, with regard to claims for contribution against Respondents or the Federal Respondent for Matters Addressed in this Order, the Parties hereto agree that the Respondents and the Federal Respondent are each entitled to protection from such contribution actions or claims to the extent provided by section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4).

26.2 Nothing in this Order precludes the Parties from asserting any claims, causes of action or demands against any persons not parties to this Order, including claims for indemnification, contribution, or cost recovery.

26.3 Payments made and work performed under this Order are not intended to establish a final allocation of liability or Response Costs between and/or among the Respondents and the Federal Respondent. Notwithstanding anything in this Order to the contrary, including the contribution protection provided in paragraph 26.1, the Federal Respondent and each of the Respondents expressly reserve their right to seek (under section 113(f) of CERCLA, 42 U.S.C. § 9613(f)) to recover from each other (and/or any other person who is liable for Response Costs incurred in connection with the Site) any and all Response Costs incurred in connection with this Order that exceed that Party's final allocated share of all Response Costs (no matter when or by whom) incurred in connection with the Site. Furthermore, notwithstanding anything in this Order to the contrary, except for paragraph 25.3, (with respect to preauthorization of funds and claims against the Fund), each of the Respondents and the Federal Respondent reserve their rights, if any, to assert any claims, causes of action or demands, whether under federal, state or common law, against each

other for, *inter alia*, indemnification, contribution, or cost recovery for any costs or damages incurred in connection with this Order or the Site.

26.4 The participation of the Respondents and the Federal Respondent in this Order shall not be considered an admission of liability and is not admissible in any judicial or administrative proceeding other than a proceeding by the Parties, including EPA, to enforce this Order or a judgment relating to it.

27 INDEMNIFICATION

Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives, and the MDNR from any and all claims or causes of action: (A) arising from, or on account of, negligent or otherwise wrongful acts or omissions of the Respondents, their officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondents and any persons for performance of work on or relating to the CTA, including claims on account of construction delays. In addition, Respondents agree to pay the United States and the MDNR all costs incurred by the United States and the MDNR, respectively, including litigation costs arising from or on account of claims made against the United States or the MDNR based on any of the acts or omissions referred to in the preceding paragraph. Provided, however, that if in performing any work at the Components Test Area under this Order, Respondents discover or encounter any military ordnance or military training devices, including munitions and explosive devices, or

chemical weapons materials related to either United States Army activities at Camp Crowder or the Missouri Army National Guard at the CTA, and Respondents (1) notify EPA and MDNR as to the discovery or encounter in the manner provided in Section 16 of this Order (Emergency Response and Notification of Releases), (2) follow the Health and Safety Plan submitted pursuant paragraph 7.3, and (3) comply with EPA-approved work plans in performing the work, then Respondents' obligations set forth in this paragraph shall not apply to any claims or causes of action arising from or on account of the military ordnance or military training devices, including munitions and explosive devices, or chemical weapons materials related to activities performed by the United States Army at Camp Crowder or the Missouri Army National Guard at the CTA which are discovered or encountered at the Components Test Area.

28 INSURANCE

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

29 MODIFICATIONS

29.1 Any requirements of the Order may only be modified in writing by the mutual agreement of the Parties.

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

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

30 NOTICE OF COMPLETION

When Respondents believe that all actions required by this Order, with the exception of continuing obligations, have been fully performed in accordance with this Order, including payment of Response Costs pursuant to Section 19 (Reimbursement of Costs) and any stipulated penalties due, and EPA has approved Respondents' Removal Action Report submitted pursuant to paragraph 7.2.5, they shall notify EPA and request that EPA issue a Notice of Completion. Continuing obligations include and this notice shall not terminate Respondents' obligation to comply with paragraph 1.3 (Jurisdiction), Section 12 (Record Retention), Section 24 (EPA and MDNR Reservation of Rights), and Section 27 (Indemnification) of this Order. If EPA agrees that all actions required by this Order, with the exception of continuing obligations, have been fully performed in accordance with this Order, EPA will provide written Notice of Completion to

the Respondents and the Federal Respondent. If EPA determines that any actions have not been completed in accordance with this Order, EPA will notify the Respondents and the Federal Respondent and provide a list of the deficiencies.

31 SEVERABILITY

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

32 APPENDICES

Appendix A– Site Map

Appendix B– Test Site Map

Appendix C– Excavation Area Map

33 EFFECTIVE DATE

33.1 This Order may be executed in any number of counterparts, each of which, when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

33.2 This Order shall be effective five (5) business days after a copy of the fully executed Order, is placed in the United States mail, sent by express delivery service or hand-delivered to each of the Respondents and the Federal Respondent.

IN WITNESS WHEREOF, the parties have affixed their signatures below:

For the Missouri Department of Natural Resources

James D. Werner, Director JCB
Air and Land Protection Division
Missouri Department of Natural Resources

9/30/02
Date

Jeremiah W. ("Jay") Nixon
Attorney General

Shelley A. Woods
Assistant Attorney General

September 16, 2002
Date

For the United States Environmental Protection Agency, Region VII

Daniel J. Shiel
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

10/3/02
Date

IT IS SO ORDERED.

Michael J. Sanderson
Director, Superfund Division
U.S. Environmental Protection Agency
Region VII

10-8-02
Date

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

FOR RESPONDENT: The Boeing Company

By: Steve Lafflam 9/24/02

Steve Lafflam
Division Director
Safety, Health, Environmental Affairs
Rocketdyne Propulsion & Power
The Boeing Company

Date

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

FOR RESPONDENT: TDY Industries, Inc.

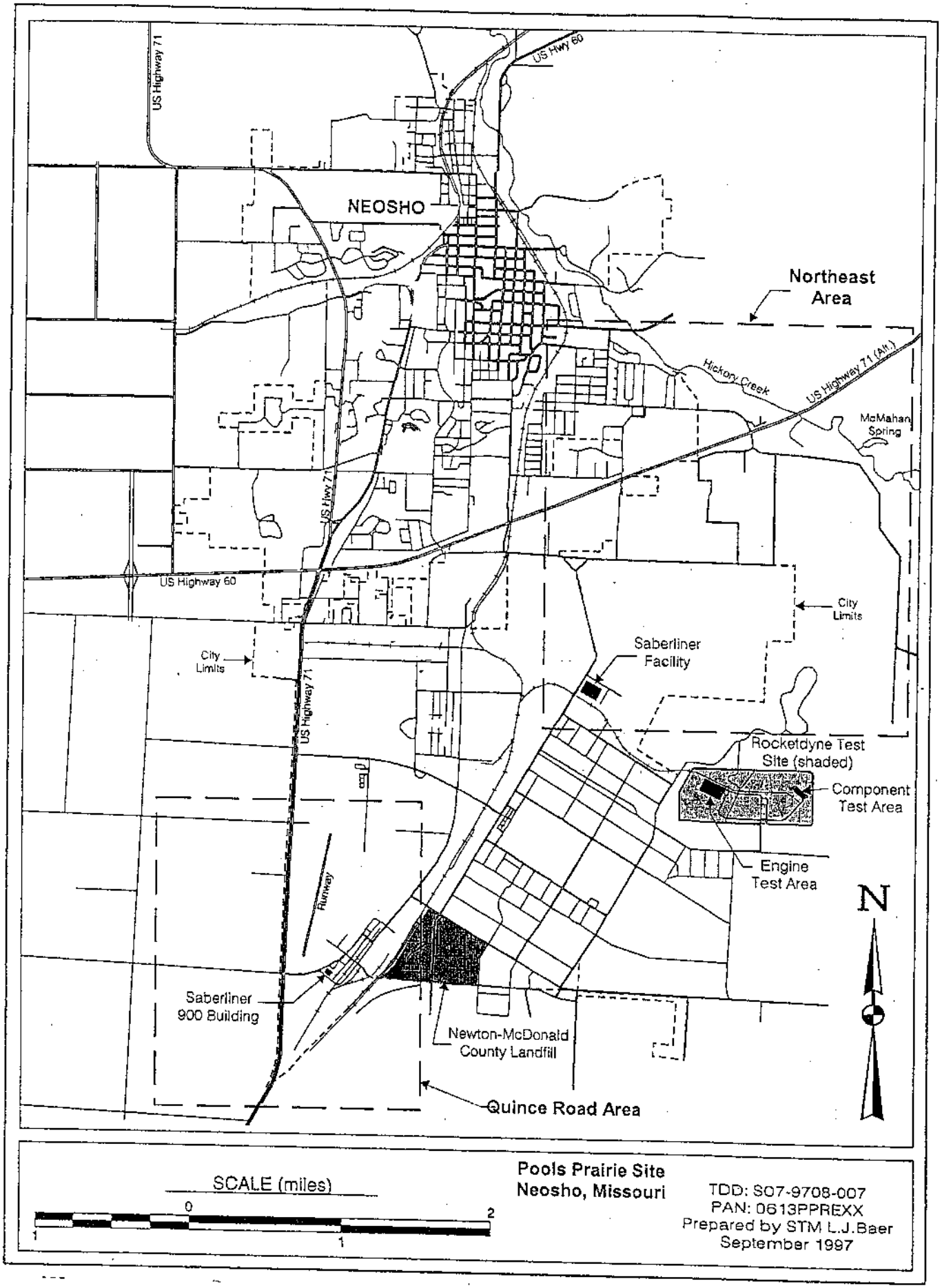
By: _____ 9/19/02
Date

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

FOR THE FEDERAL RESPONDENT: United States Department of Defense:

By: _____ 09-25-02
Date

Donald R. Curtis, Jr.
Colonel, Corps of Engineers
District Engineer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US Hwy 60
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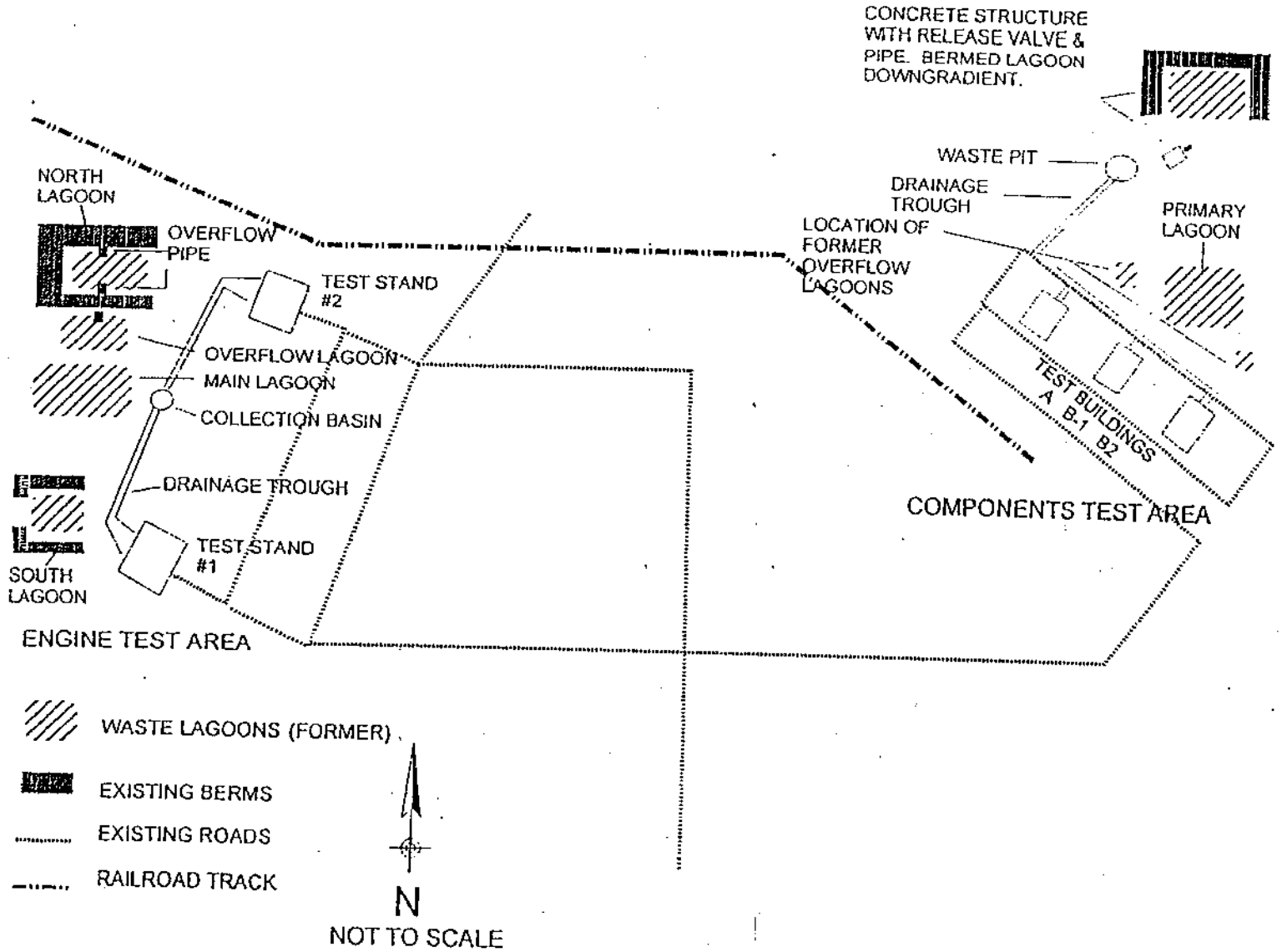
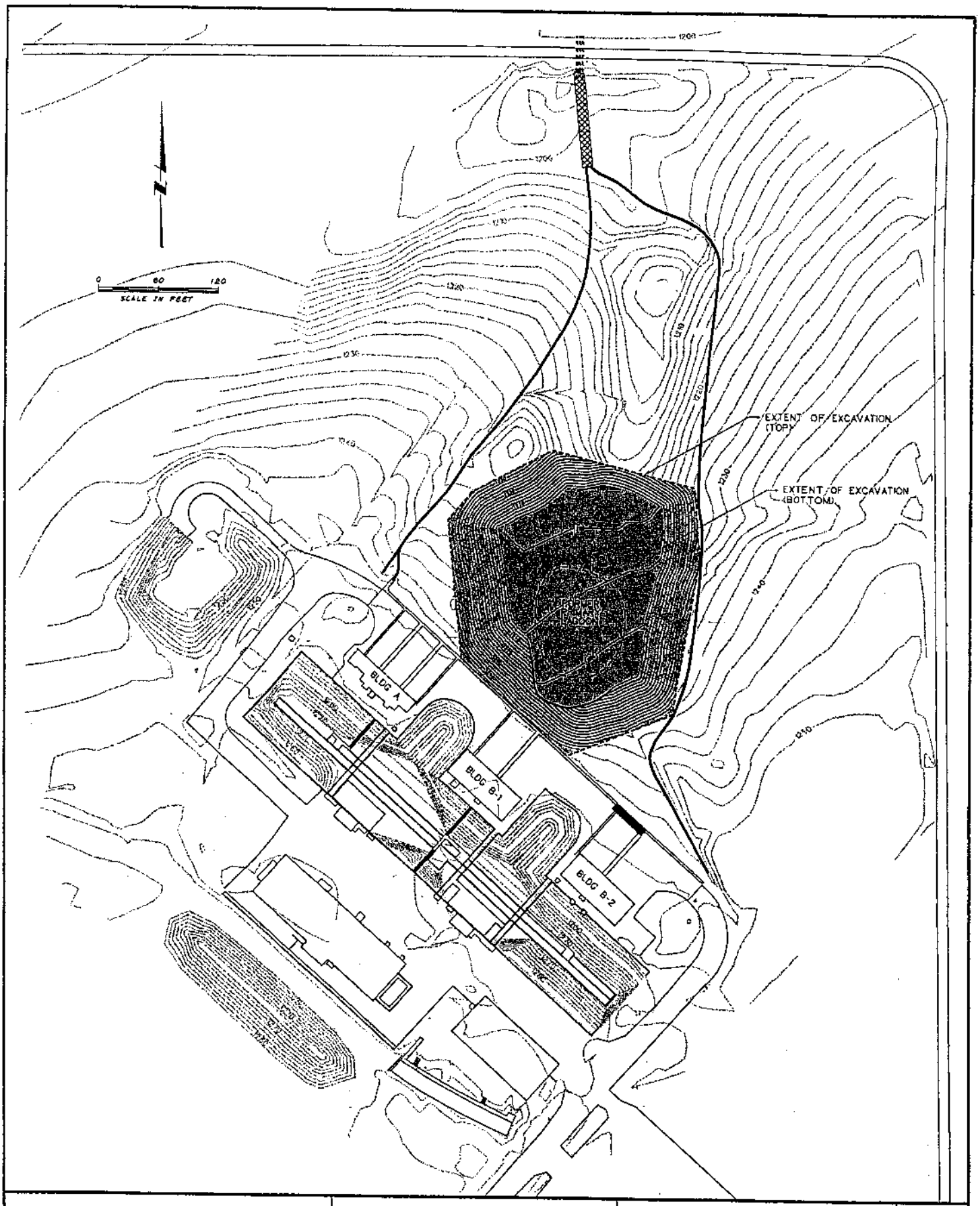
Northeast Area
Hickory Creek
US Highway 71 (Alt.)
McMahan Spring
US Hwy 71
US Highway 60
City Limits
Saberliner Facility
City Limits
US Highway 71
Rocketdyne Test Site (shaded)
Component Test Area
Engine Test Area
Runway
N
Saberliner 900 Building
Newton-McDonald County Landfill
Quince Road Area
SCALE (miles)
0
2
1
1
Pools Prairie Site
Neosho, Missouri
TDD: S07-9708-007
PAN: 0613PPREXX
Prepared by STM L.J.Baer
September 1997

APPENDIX A

APPENDIX B


CONCRETE STRUCTURE WITH RELEASE VALVE & PIPE. BERMED LAGOON DOWNGRADIENT.
WASTE PIT
DRAINAGE TROUGH
LOCATION OF FORMER OVERFLOW LAGOONS
PRIMARY LAGOON
NORTH LAGOON
OVERFLOW PIPE
TEST STAND #2
OVERFLOW LAGOON
MAIN LAGOON
COLLECTION BASIN
DRAINAGE TROUGH
TEST STAND #1
SOUTH LAGOON
ENGINE TEST AREA
TEST BUILDINGS A B-1 B2
COMPONENTS TEST AREA
WASTE LAGOONS (FORMER)
EXISTING BERMS
EXISTING ROADS
RAILROAD TRACK
N
NOT TO SCALE



APPENDIX C	COMPONENTS TEST AREA POOLS PRAIRIE SITE NEWTON COUNTY, MISSOURI	EXTENT OF EXCAVATION	FIGURE