IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	CONSENT DECREE
MICHAEL COSOLA,	)	
	)	
Defendant	)	

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607 ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Twin Cities Iron and Metal Site in Bristol, Virginia ("the Site").

B. The defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. Significant lead and PCB contamination was removed. Some contamination was left in place, with geotextile placed on top of the contaminated area to delineate the area of contamination, and clean soil was backfilled over the area (the "Capped Area").

D. Because contamination was left in place at the Site, on March 26, 2013, EPA approved a Modification of the Removal Scope of Work, setting forth certain use restrictions on the Capped Area of the Site.

E. In performing these response actions at the Site, EPA has incurred response costs and may incur additional response costs in the future.

F. The United States alleges that Settling Defendant is a responsible party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

G. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that he may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and his successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree, except as provided in Paragraph 6 below.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that 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 Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Capped Area" shall mean the geographic area at which the Site Cap is located, as generally shown on the map included as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

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

e. "DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

f. "Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

g. "Environmental Covenant" shall mean the covenant executed and recorded in compliance with Paragraph 10 in substantially the same form as Appendix B, which shall run with the Property.

h. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

i. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. “Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action; and/or (iii) provide information intended to modify or guide human behavior at or in connection with the Site.

k. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

l. “Parties” shall mean the United States and the Settling Defendant.

m. “Plaintiff” shall mean the United States.

n. “Property” shall mean that portion of the Site consisting of Bristol Tax Parcels 29-9-1A, 29-9-7A, 29-9-6, 29-9-7B and 29-9-1B.

o. “Proprietary Controls” shall mean the Environmental Covenant and any other easements or covenants running with the land that (i) limit land, water, or resource use and/or provide access rights and (ii) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

p. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

q. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

r. “Settling Defendant” shall mean Michael Cosola.

s. "Site" shall mean the Twin Cities Iron and Metal Superfund Site, encompassing approximately 12 acres, located along 950-1000 Fairview Street in Bristol, Virginia, and generally shown on the map included as Appendix A. The Site includes the Property.

t. "Site Cap" shall mean the geotextile materials placed on the Site as part of the removal action, as well as the engineered soil backfill materials which cover and protect the underlying geotextiles on the Site.

u. "State" shall mean the Commonwealth of Virginia.

v. "Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

w. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

x. "Waste Material" shall mean (i) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (iii) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. TRANSFER

4. Commencing on the Effective Date of this Consent Decree and continuing thereafter, Settling Defendant shall not Transfer the Property unless he has complied with all of the requirements of Paragraph 10 in the time and manner required therein.

5. Settling Defendant shall, at least 60 Days prior to any Transfer of the Property, give written notice: (a) to the transferee regarding the Consent Decree and any Institutional Controls on the Property; and (b) to EPA regarding the proposed Transfer, including the name and address of

the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

6. In the event of any Transfer of the Property, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with his obligations under the Consent Decree.

VI. ACCESS, SITE ASSESSMENT, USE RESTRICTIONS, AND ENVIRONMENTAL COVENANT

7. Access. Settling Defendant shall provide the United States and its representatives, contractors, and subcontractors, with access at all reasonable times to the Property, or such other real property, to conduct any activity relating to response actions at the Site, including, but not limited to, the following activities:

a. Monitoring, investigation, removal, remedial, or other activities at the Site;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations regarding contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or his agents that relate to the release or threatened release of hazardous substances and/or any response action at the Site;

g. Assessing compliance by Settling Defendant;

h. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

i. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

8. Site Assessment. The Settling Defendant shall conduct a Phase II Environmental Site Assessment of the Property, in accordance with ASTM E1903, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, prior to conducting any activities that may disturb soil on the Property to determine if contamination on the Property poses a threat to human health or the environment.

9. Use Restrictions. Commencing on the date of lodging of the Consent Decree, and continuing thereafter, Settling Defendant shall not use the Property in any manner that EPA determines will interfere with or adversely affect the implementation, integrity, or protectiveness of any removal or remedial measures performed and to be performed at the Site. The restrictions shall include, but not be limited to, the following:

a. Cap Restrictions. Any future activity on the Capped Area shall be performed with the proper precautions to prevent any release of the lead contaminated soil there, and to prevent human exposure to the lead contaminated soil.

b. Property Restrictions. Except as may be approved by EPA in advance and in writing, the Property shall not be used in any manner inconsistent with the Cap Restrictions and the Environmental Covenant. Uses consistent with the Environmental Covenant and the Cap Restrictions include, but are not limited to, paving over the Capped Area for use as a parking lot and installing a concrete slab over the Capped Area to build upon, except to the extent that any such proposed use involves excavation of the Capped Area.

c. Settling Defendant shall provide EPA with 120 Day's advance written notice of any proposal to use or perform any work on the Property in a manner that has the potential to: (i) affect the Capped Area, (ii) impede the implementation of any response action, or (iii) cause any

change which could affect the protectiveness, permanence, or functional integrity of any response action.

10. Environmental Covenant.

a. Within 15 Days after the Effective Date, Settling Defendant shall execute and record an Environmental Covenant in substantially the same form as Appendix B to this Consent Decree in the appropriate land records office.

b. Within 30 Days after recording the Environmental Covenant, Settling Defendant shall provide EPA with a certified copy of the original recorded Environmental Covenant showing the clerk's recording stamps.

11. If EPA determines that additional Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Settling Defendant shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

12. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

13. Stipulated Penalty.

a. If Settling Defendant fails to comply with the provisions herein, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, $500 per violation per Day until Settling Defendant comes into compliance.

b. Stipulated penalties are due and payable within 30 Days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number 03-EN, and DOJ Case Number 90-11-3-10712/2.

c. At the time of payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

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

Such notice shall reference the CDCS Number, Site/Spill ID Number 03-EN, and DOJ Case Number 90-11-3-10712/2.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

14. If the United States brings a successful action to enforce this Consent Decree against Settling Defendant, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

15. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

16. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from performance of any other requirements of this Consent Decree.

17. Stipulated penalties shall continue to accrue as provided in Paragraph 13.d. during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Settling Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

VIII. DISPUTE RESOLUTION

18. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Settling Defendant's failure to seek resolution of a dispute under this Section shall preclude Settling Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Defendant arising under this Decree.

19. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Settling Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, Settling Defendant invokes formal dispute resolution procedures as set forth below.

20. Formal Dispute Resolution. Settling Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Settling Defendant's position and any supporting documentation relied upon by Settling Defendant.

21. The United States shall serve its Statement of Position within 45 Days of receipt of Settling Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any

supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Settling Defendant, unless Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

22. Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Settling Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

23. The United States shall respond to Settling Defendant's motion within the time period allowed by the Local Rules of this Court. Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

24. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 20 pertaining to disputes that are accorded review on the administrative record under applicable principles of administrative law, Settling Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 20, Settling Defendant shall bear the burden of

demonstrating that his position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

25. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 17. If Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Failure to Comply With Consent Decree).

IX. COVENANTS NOT TO SUE BY UNITED STATES

26. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of his obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

27. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenants Not to Sue by United States in Paragraph 26. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b. criminal liability;

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

d. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a Waste Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and

f. liability arising from the past, present, or future disposal, release or threat of release of a Waste Material outside of the Site.

XI. COVENANTS NOT TO SUE BY DEFENDANT

28. Settling Defendant covenants not to sue, and agrees not to assert any claims or cause of action against the United States or its contractors or employees with respect to the Site and this Consent Decree, including but not limited to:

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

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

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Site.

29. Except as provided in Paragraph 31 (claims against other PRPs) and Paragraph 35 (res judicata and other defenses), the covenants in this Section shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations in Section X (Reservations of Rights by United States), other than in Paragraph 27.a. (liability for failure to meet a requirement of the Consent Decree) or 27.b. (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

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

31. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

32. Except as provided in Paragraph 31 (claims against other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 31 (claims against other PRPs), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of

the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

33. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs 27.a. (liability for failure to meet a requirement of Consent Decree) or 27.b. (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

34. Settling Defendant shall, with respect to any suit or claim brought by him for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 Days prior to the initiation of such suit or claim. Settling Defendant also shall, with respect to any suit or claim brought against him for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 Days after service of the complaint or claim upon him. In addition, Settling Defendant shall notify EPA and DOJ within 10 Days after service or receipt of any Motion for Summary Judgment, and within 10 Days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

35. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant 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 brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by United States set forth in Section IX.

XIII. CERTIFICATION

36. Settling Defendant certifies that, to the best of his knowledge and belief, after thorough inquiry, he has: not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to his potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against him regarding the Site, and that he has fully complied with any and all EPA requests for information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XIV. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOJ, and Settling Defendant, respectively.

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10712/2

As to EPA:

Robin Eiseman, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street, Mail Code 3RC41
Philadelphia, PA 19103

As to Settling Defendant:
Mark D. Miller
Dubeck & Miller LLC
P.O. Box 1584
Morristown, NJ 07963

XV. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

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

Appendix A: Site Map, including the Capped Area

Appendix B: Environmental Covenant

Appendix C: Declaration of Michael Cosola

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

41. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

42. The undersigned representative of Settling Defendant and the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

43. Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

44. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on his behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendant need not file an answer

to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XIX. FINAL JUDGMENT

45. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 2017.

_____
United States District Judge
Western District of Virginia

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Michael Cosola*

FOR THE UNITED STATES OF AMERICA:

2/28/17
Date

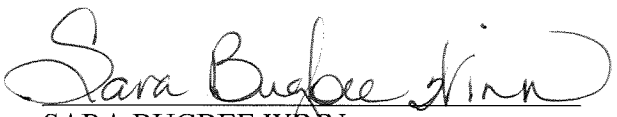
BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources
Division U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

LAURA A. THOMS
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Michael Cosola*

FOR THE UNITED STATES OF AMERICA:

RICK A. MOUNTCASTLE
Acting United States Attorney
Western District of Virginia



SARA BUGBEE WINN
Assistant United States Attorney
Virginia State Bar No. 35924
P. O. Box 1709
Roanoke, VA 24008
Phone: (540) 857-2250
Sara.winn@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Michael Cosola.*

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CECIL A. RODRIGUES
Acting Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street, (3RA00)
Philadelphia, PA 19103

MARY B. COE
Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street, (3RC00)
Philadelphia, PA 19103

ROBIN E. EISEMAN
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street, (3RC41)
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Michael Cosola.*

FOR DEFENDANT MICHAEL COSOLA

2.8.17
Date

Name: Michael Cosola
Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): MARK D. MILLER, ESQ
Title: ATTORNEY
Address: 122 WASHINGTON ST. MORRISTOWN NJ 07960
Phone: 973-856-0771
email: mdm@dmlawgroup.com

CONSENT DECREE APPENDIX A:
SITE MAP, INCLUDING THE CAPPED AREA
United States v. Michael Cosola

Twin Cities Iron and Metals Site

PARCEL 1B

PARCEL 6

PARCEL 7B

Capped Area

PARCEL 7A

PARCEL 1A

CONSENT DECREE APPENDIX B:
ENVIRONMENTAL COVENANT
United States v. Michael Cosola

UECA ENVIRONMENTAL COVENANT

This environmental covenant is made and entered into as of the ___ day of ____ 2017, by Michael Cosola, whose address is 6 Liberty Lane, Millstone, NY 08535, as both the Grantor/Owner and the Grantee/Holder. The Environmental Protection Agency, whose address is 1650 Arch Street, Philadelphia, Pennsylvania 19103, (hereinafter referred to as the "Agency") also joins in this environmental covenant. This environmental covenant is executed pursuant to the Virginia Uniform Environmental Covenants Act, § 10.1-1238 *et seq*. of the Code of Virginia (UECA). This environmental covenant subjects the Property identified in Paragraph 1 to the activity and use limitations in this document.

1. **Property affected.** The property affected (Property) by this environmental covenant is located along 950-1000 Fairview Street in Bristol, Virginia, and is further described as follows:

Bristol Tax Parcels 29-9-1B, 29-9-6 and 29-9-7B totaling approximately 2.79 acres and more fully described as Parcel 1 in the attached Attachment A.

Bristol Tax Parcels 29-9-1A and 29-9-7A totaling 9 acres and more fully described as Parcel 2 in the attached Attachment A.

2. **Description of Contamination & Remedy.** The Twin Cities Iron and Metal Site is comprised of multiple parcels, totaling approximately 12 acres, known as Bristol Tax Parcels 29-9-1A, 29-9-7A, 29-9-6, 29-9-7B and 29-9-1B located in Bristol, Virginia. The Site is the location of a former scrap metal and iron yard, whose operations led to widespread lead and PCB contamination on the Site. Two removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") have been conducted at the Site:

A. The first removal action took place from 1995-1997, and involved the excavation and disposal of soil contaminated by lead and/or PCBs in 37 "hot spots" located near the center of operations at the Site. The removal action also included placement of a geotextile and

limestone cap over contamination left in place in the area of the Site formerly used for shear operations. This cap consisted of a 150-foot long, 15-foot wide segment of woven geotextile fabric with an 18-inch layer of crusher run aggregate base course placed above the geotextile. *See* Attachment B (Feb. 1997 Closure Report – Implementation of Total Lead and PCB Removal Plan for Twin City Iron & Metal). The Administrative Record for the 1995-1997 removal action at the Site is located at:

US EPA Region III, Sixth Floor Docket Room
1650 Arch Street, 6th Floor
Philadelphia, Pennsylvania 19103
(215) 814-3024

B. The second removal action took place from 2009-2010, and involved the excavation and disposal of soil contaminated by lead and/or PCBs in an area of the Site adjacent to Beaver Creek not previously addressed by the first removal action. The removal action also included placement of orange hi-vis fencing and geo-tech liner over known areas of remaining contamination, capped with at least two feet of clean fill. *See* Attachment C (Federal On-Scene Coordinator's After Action Report for Twin City Iron & Metal Site, Bristol, Washington County, Virginia Oct. 28, 2009 to April 2, 2010). The Administrative Record for the 2009-2010 removal action at the Site is located at:

US EPA Region III, Sixth Floor Docket Room
1650 Arch Street, 6th Floor
Philadelphia, Pennsylvania 19103
(215) 814-3024

3. **Activity & Use Limitations.** The Property is subject to the following activity and use limitations, which shall run with the land and become binding on Grantor(s) and any successors, assigns, tenants, agents, employees, and other persons under its control, until such time as this covenant may terminate as provided by law:

A. <u>Cap Restrictions</u>

Any future activity on the Capped Area of the Property delineated on the Site Map (Attachment D) should be performed with the proper precautions to prevent any release of the lead contaminated soil there, and to prevent human exposure to the lead contaminated soil.

In a clockwise direction, the area remediated approximately includes:

36°36'14.37"N; 82°10'21.44"W

36°36'13.96"N; 82°10'20.79"W

36°36'12.53"N; 82°10'20.60"W

36°36'10.42"N; 82°10'22.68"W

36°36'10.14"N; 82°10'23.51"W

36°36'10.84"N; 82°10'24.14"W

B. Property Restrictions

Except as may be approved by the EPA in advance and in writing, the Property shall not be used in any manner inconsistent with this Environmental Covenant. Uses consistent with the Environmental Covenant and the Cap Restrictions include paving over the Capped Area for use as a parking lot and installing a concrete slab over the Capped Area to build upon, except to the extent that any such proposed use involves excavation of the Capped Area.

EPA shall be provided with one hundred and twenty (120) calendar days advance written notice of any proposal to use or perform any work on the Property in a manner that would either impede the implementation of any response action, or likely cause any change which could affect the protectiveness, permanence, or functional integrity of any response action. The then current owner of the Property shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Environmental Covenant, unless prior written approval has been received from EPA. In addition, the then current owner of the Property shall not allow any action of any kind on the Property which would either impede the

implementation of any response action or could affect the protectiveness, permanence or functional integrity of any response action, unless owner has received prior written approval from EPA.

The then current owner of the Property will allow and not impede the operations and maintenance of any environmental response action required by EPA to be conducted at the Property.

4. **Notice of Limitations in Future Conveyances.** Each instrument hereafter conveying any interest in the Property subject to this environmental covenant shall contain a notice of the activity and use limitations set forth in this environmental covenant and shall provide the recorded location of this environmental covenant.

5. **Compliance and Use Reporting.**

A. Starting with January 31st of the year after this environmental covenant is recorded and continuing on an annual basis thereafter, the then current owner of the Property shall submit, to the Agency, written documentation stating whether or not the activity and use limitations in this environmental covenant are being observed. This documentation shall be signed by a qualified official of the then current owner of the Property, who has inspected and investigated compliance with this environmental covenant. The then current owner shall also submit such documentation upon written request by the Agency.

B. In addition, within 30 days after any of the following events, the then current owner of the Property shall submit, to the Agency and the Holder, written documentation describing the following: noncompliance with the activity and use limitations in this environmental covenant; transfer of the Property; changes in use of the Property; or filing of applications for building permits for the Property and any proposals for any site work, if such building or proposed site work will affect the contamination on the Property subject to this environmental covenant.

6. **Access by the Holder and the Agency.** In addition to any rights already possessed by the Holder and the Agency, this environmental covenant grants to the Holder and the Agency a right of reasonable access to the Property in connection with implementation, inspection, or enforcement of this environmental covenant.

7. **Subordination.** The then-current owner shall provide EPA written notice of the pendency of any foreclosure referred to in VA. CODE § 10.1-1245 within seven (7) calendar days of becoming aware of such pendency.

8. **Recording & Proof & Notification.**

A. Within 15 days after the date of the Agency's approval of this UECA environmental covenant, the Grantor shall record, or cause to be recorded, this environmental covenant with the Clerk of the Circuit Court for each locality wherein the Property is located. The Grantor shall likewise record, or cause to be recorded, any amendment, assignment, or termination of this UECA environmental covenant with the applicable Clerk(s) of the Circuit Court within 90 days of their execution. Any UECA environmental covenant, amendment, assignment, or termination recorded outside of these periods shall be invalid and of no force and effect.

B. The Grantor shall send a file-stamped copy of this environmental covenant, and of any amendment, assignment, or termination, to the Holder and the Agency within 30 days of recording. Within that time period, the Grantor also shall send a file-stamped copy to the Mayor of Bristol, Virginia, 300 Lee Street, Bristol, VA 24201, any persons who are in possession of the Property who are not the Grantors, any signatories to this covenant not previously mentioned, and any other parties to whom notice is required pursuant to the Uniform Environmental Covenants Act.

9. **Termination or Amendment.** This environmental covenant is perpetual and runs with the land unless terminated or amended (including assignment) in accordance with UECA.

10. **Enforcement of environmental covenant.** This environmental covenant shall be enforced in accordance with § 10.1-1247 of the Code of Virginia.

ACKNOWLEDGMENTS: GRANTOR/GRANTEE

_____ By (signature): _____

Date

Name (printed): _____

Title: _____

STATE OF NEW JERSEY

CITY/COUNTY OF _____

On this ___ day of _____, 20__, before me, the undersigned officer, personally appeared _____ {*Grantor/Owner and Grantee/Holder}* who acknowledged himself/herself to be the person whose name is subscribed to this environmental covenant, and acknowledged that s/he freely executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

My commission expires: _____

Registration #: _____

_____

Notary Public

ACKNOWLEDGMENTS: AGENCY

APPROVED by the United States Environmental Protection Agency as required by § 10.1-1238 et seq. of the Code of Virginia

_____ By (signature): _____

Date

Name (printed): _____

Title: _____

SEEN AND RECEIVED by the Department of Environmental Quality *{if the Department is not the Agency or the Holder}*

{INSTRUCTIONS: In accordance with 9VAC15-90-40, notice and payment of a fee to DEQ is required for every UECA environmental covenant in Virginia. However, when DEQ is not the Agency or Holder, no approval of the UECA document by DEQ is necessary or will be provided.}

_____ By (signature): _____

Date

Name (printed): _____

Title: _____

ENVIRONMENTAL COVENANT ATTACHMENT A

BK571PG0276

INSTRUMENT #120000958

Tax Map ID:
29-9-1A & 7A; 29(9)-5, 7B & 1B
Tax Assessed Value: $202,100
Consideration $45,000.00

THIS DEED WAS PREPARED BY:
Robert T. Copeland, Esq.
COPELAND, & BIEGER, P.C
212 W. VALLEY STREET
ABINGDON, VA 24210
(276) 628-9525

THIS TRUSTEE'S DEED, made and entered into on this the 24th day of May, 2012, by and between **Robert T. Copeland**, acting as Substitute Trustee, Grantor, and **Michael Cosola**, Grantee;

WITNESSETH

THAT WHEREAS, by Deed of Trust dated November 26, 2002, and recorded in the office of the Clerk of the Circuit Court of the City of Bristol, Virginia, in Deed Book 429, at Page 232, Jack Barker Real Property, Inc, a Virginia corporation, conveyed the herein described property to Elizabeth Smith Jones, Trustee, to secure the payment of that certain note dated November 26, 2002 in the amount of $17,500 with interest thereon at an annual rate of 7%, payable to the order of Poor Charlie and Company, in one lump sum payment due not later than November 25. 2003. The said Deed of Trust Note contained a waiver of the homestead exemption; and

WHEREAS, the said Jack Barker Real Property, Inc. failed to pay said note in accordance with the terms upon demand to do so; and whereas Poor Charlie and Company assigned the note and deed of trust to Abram Forrest Barker, IV, who in turn assigned the note and Deed of Trust to 950 Fairview St. LLC and

WHEREAS, Robert T. Copeland was named as Substitute Trustee by Instrument dated March 17, 2007, recorded in the Clerk=s Office of the Circuit Court of the City of Bristol, Virginia, in Deed Book 509 at page 721 as Instrument No. 070000298; and,

WHEREAS the said Substitute Trustee, upon the request of the holder of said note, advertised the property for sale under the terms of said Deed of Trust by publishing notice of the time, place, and terms of sale once a week for two (2) consecutive weeks in *The Bristol Herald-Courier*, a newspaper with general circulation in this area, to-wit: on April 8, 2007 and April 15, 2007.

WHEREAS the Substitute Trustee gave notice of the time, place, and terms of sale to Jack Barker Real Property, Inc., and to the subordinate lien creditors, by certified mail, in compliance with the provisions of '55-59.1 of the *Code of Virginia*, as amended; and

WHEREAS the Substitute Trustee proceeded to offer the property for sale at public auction on the steps of the Courthouse, City of Bristol, Virginia, as advertised, on the 16th day of April, 2007, at 11:00 a.m., at which sale 950 Fairview St, LLC bid the sum of $45,000.00, that being the highest and last bid therefore; and

WHEREAS the Substitute Trustee sold the property to 950 Fairview St. LLC for the sum of Forty Five Thousand Dollars ($45,000.00) and

WHEREAS 950 Fairview St. LLC assigned it's winning bid to Michael Cosola

NOW THEREFORE, in consideration of the premises and the sum of Forty Five Thousand Dollars ($45,000.00), cash in hand paid, the receipt of which is hereby acknowledged by the Grantor, the Grantor does hereby grant, bargain, sell and convey with Special Warranty of Title unto the Grantee the following described property, lying and being in the City of Bristol, Virginia, and described as follows:

PARCEL 1:

BEGINNING at an iron pin on the west right of way of Fairview Street and the south corner of the property of the City of Bristol, Virginia; thence with said right of way S 1 24 W 95.06 feet to an iron pin; thence with a new line N 30 20 W 266.74 feet to an iron pin, 9 feet from the center line of a railroad siding; thence parallel to said center line 9 feet, S 52 55 222.27 feet to an iron pin; thence N 26 17 E 19.03 feet to an iron pin on the center line of said siding; thence N 63 43 W 411.28 feet with the line of Tri-State Steel

Corporation, to the center of Beaver Creek; thence with the center of Beaver Creek N 34 14 E 182.01 feet to a point; thence with the line of Gordon Garment (A. H. Schreiber Co., Inc.) S 68 42 E 156.78 feet to an iron pin; thence continuing with Gordon Garment line N 87 47 E 248.75 feet to an iron pin on the line of the City of Bristol, Virginia property; thence with said line S 30 20 E 351.66 feet to the point of BEGINNING, containing 2.79 acres, more or less

The property herein conveyed as Tract 1 is shown on that certain plat entitled, "Property of J. H. Kegley and Tri-State Steel Corp., Bristol, Virginia" dated July 19, 1975, and prepared by Frank Holbrook, C.L.S., a copy of which is attached to Deed dated August 1, 1975, of record in the Circuit Court Clerk's Office for the City of Bristol in Deed Book 186, Page 282.

PARCEL 2:

TRACT I

BEGINNING at a point marked by an iron pin at the north edge of a concrete retaining wall, said point being N 63 43 W 390.53 feet from a point of reference marked by an iron pin in the western line of Fairview Street, which point of reference is N 31 15 E 540.0 feet (on a line with the western edge of Fairview Street) from the northerly side of Bluff Street; thence with the north edge of said wall S 63 43 E 4.27 feet to an iron pin; thence S 26 17 W 79.25 feet to a point marked by an iron pin an the south edge of a second concrete retaining wall; thence with the south edge of said second concrete retaining wall S 63 43 E 81.70 feet to an iron pin; thence leaving said wall S 26 17 W across a railroad siding and with the western edge of a party wall between two existing buildings a distance of 137.96 feet to an iron pin set in the center line of a 15.2 foot wide passageway between two existing buildings; thence with the center line of said 15.2 foot passageway N 63 43 W 143.78 feet to a point marked by an iron pin; thence running on a line parallel to and 3.65 feet east of the east wall of the new boiler room S 26 17 W 103.56 feet to an iron pin; thence N 63 43 W 21.34 feet to an iron pin; thence running S 26 17 W a distance of 220.11 feet to a point in the approximate corner of Beaver Creek, a common corner with property now or formerly owned by J.H. Kegley and wife; thence continuing with the existing southern and western boundary line of the old Meade Corporation property and with the bed of Beaver Creek S 84 55 W 52.10 feet; N 64 49 W 172.51 feet to a point; thence continuing with said existing boundary lines and leaving Beaver Creek N 70 44 W 222.89 feet to a point marked by an iron pin on the southwest side of Beaver Creek in the line of the Norfolk & Western Railway Company; thence continuing with said existing boundary line and with the line of the Norfolk & Western Railway Company N 42 25 E 163.00 feet to a point in Beaver Creek; N 08 09 E 73.29 feet to a point in said Creek; N 34 14 E 687.55 feet to a point in said Creek, a corner; thence leaving Beaver Creek and the line of Norfolk & Western Railway Company on a new line S 63 43 E 287.22 feet to a point marked by an iron pin in the western edge of an existing railroad right-of-way; thence continuing S 63 43 E 72.58 feet to a point marked by an

iron pin; thence continuing on the same course S 63 43 E 72.58 feet to a point marked by an iron pin; thence continuing on the same course S 63 43 E 39.97 feet to a point marked by an iron pin, in the line of Tract II hereinafter described, a corner, thence continuing with the line of Tract II S 26 17 W 38.53 feet to a point marked by an iron pin, being a corner to Tract II; thence continuing on the same course, S 26 17 W 218.0 feet to a point marked by an iron pin set in the south right-of-way line of an existing railroad right-of-way, said point being 8 feet south of the center line of said right-of-way; thence continuing S 26 17 W 52.11 feet to a point marked by an iron pin set at the north edge of a concrete retaining wall, the point of BEGINNING.

TRACT II

BEGINNING at a point marked by an iron pin, said point being the northeast corner of Tract I hereinabove described; thence N 26 17 E 11.47 feet to an iron pin marking a common corner with property now or formerly owned by J. H. Kegley and wife; thence turning at a right angle S 63 43 E 38.81 feet to a point marked by an iron pin set in the line of a cul de sac in and over which there are certain easements as hereinafter referred to; thence continuing on the same course S 63 43 E 298.03 feet to a point marked by an iron pin in the western line of Fairview Street; thence with the western line of Fairview Street S 01 24 W 55.12 feet to a point in said street line marked by an iron pin; thence running N 63 43 W 360.03 feet to a point marked by an iron pin, set in the east line of Tract I herein; thence turning at a right angle and running with said line of Tract I, N 26 17 E 38.53 feet to the point of BEGINNING; HOWEVER THERE IS EXCEPTED FROM SAID TRACT II the following: BEGINNING at an iron pin on the west right of way line of Fairview Street, being S 1 24 W 118.70 feet from the corner of the present or former City of Bristol, Virginia property; thence with said right of way S 1 24 W 55.12 feet to an iron pin corner to what is or formerly was the J. H. Kegley property; thence with said line of J. H. Kegley property N 63 43 W 355.49 feet to an iron pin; thence N 26 17 E 19.50 feet to an iron pin; thence N 52 55 E 27.26 feet to an iron pin; thence S 63 43 E 317.00 feet to the point of BEGINNING.

This conveyance is made subject to the exceptions, reservations, restrictions, covenants and easements, if any, as contained in prior deeds properly of record.

TO HAVE AND TO HOLD, said lands and premises, together with all privileges and appurtenances thereunto belonging, to the said grantee, his successors and assigns, in as full and ample manner as the said Substitute Trustee has power to convey the same.

BK571PG0280

IN TESTIMONY WHEREOF, said by Robert T. Copeland, acting as Substitute Trustee as herein above stated, has hereunto set his hand and seal the day and year first above written.

TERESA G. BLANKENSHIP NOTARY PUBLIC REG. #7230625 MY COMMISSION EXPIRES 3/31/13 COMMONWEALTH OF VIRGINIA

By _____
Robert T. Copeland,
Substitute Trustee

STATE OF VIRGINIA
COUNTY OF WASHINGTON, to-wit:

I, TERESA G. BLANKENSHIP, a Notary Public in and for the County aforesaid, in the State of Virginia, do hereby certify that ROBERT T. COPELAND, acting as Substitute Trustee, whose name is signed to the foregoing Trustee's deed bearing the date of May 24, 2012, has acknowledged the same before me in my County and State aforesaid, on behalf of the corporation.

Given under my hand this 24th day of May, 2012.

_____
NOTARY PUBLIC
My commission expires: 3/31/2013

INSTRUMENT #120000958
RECORDED IN THE CLERK'S OFFICE OF
CITY OF BRISTOL ON
MAY 29, 2012 AT 12:28PM
$202.50 GRANTOR TAX WAS PAID AS
REQUIRED BY SEC 58.1-802 OF THE VA. CODE
STATE: $101.25 LOCAL: $101.25

Page -5-

TERRY G. ROHR, CLERK
RECORDED BY: JKL

ENVIRONMENTAL COVENANT ATTACHMENT B

ORIGINAL

TERRADON

TERRADON CORPORATION
P.O. Box 519
Nitro, WV 25143
Tel: (304) 755-8291
FAX: (304) 755-2636

CLOSURE REPORT - IMPLEMENTATION OF TOTAL LEAD AND PCB REMOVAL PLAN FOR TWIN CITY IRON & METAL BRISTOL, VIRGINIA

Job No. 95X043

Prepared for:

The Raleigh Junk Company
141 Campbells Creek Drive
Charleston, West Virginia 25323

Reference:
EPA Administrative Order
Docket No. III-94-47-DC
Dated: 8-11-95

Prepared by:

TERRADON Corporation
P.O. Box 519
Nitro, West Virginia 25143

February 1997

RN: REM-PIN
RD: 2-10-97

ORIGINAL

FOREWORD

TERRADON Corporation (TERRADON) has prepared this report based on a Phase II environmental site characterization and subsequent remediation which was completed at the Twin City Iron & Metal facility in Bristol, Virginia. The remediation activities were completed in accordance with the approved "Revised Total Lead and PCB Removal Plan" which was submitted to the US Environmental Protection Agency (USEPA) on April 25, 1996. The attached document, "Closure Report, Implementation of the Removal Action Plan" was developed for the exclusive use of the client, Twin City Iron and Metal. This remedial effort was conducted in accordance with generally accepted environmental practices and guidelines.

The intent of this report is to document the remediation efforts which occurred. Conclusions regarding the assessed condition(s) of the site does not necessarily represent a warranty that all segments of the site are of the same quality. Specific conditions may not be observable or readily interpreted from available information, but may become evident at a later date.

Roderic E. Moore
Project Manager

Ronald R. Potesta
President

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

CLOSURE REPORT
IMPLEMENTATION OF TOTAL LEAD AND PCB REMOVAL PLAN
TWIN CITY IRON & METAL
BRISTOL, VIRGINIA

1.0 SITE CONDITIONS DESCRIPTION

1.1 Site Location

Twin City Iron & Metal is located at 1000 Fairview Street in Bristol, Washington County, Virginia. Bordered to the north and west by Beaver Creek, the site encompasses approximately 12 acres. Industrial and domestic property lies to the south and west across Beaver Creek. The Bristol City Bus System Garage is located to the north of the site, and Gordon Garments lies to the east of the site. Industrial and residential areas are located within the three-mile area of concern.

1.2 Topographic Setting

The subject property is located in a flat lying area which is bordered by Beaver Creek to the south and west. From Figure 1, the Virginia USGS topographic map of the Bristol Quadrangle (USGS, 1959; photo revised, 1991), the site is approximately 1710 feet above sea level. The approximate topographic coordinates of the site are 36 36' 10" N, 82 10' 20" W.

1.3 Current Property Usage

The subject property is currently occupied by Twin City Iron & Metal Company which functions as a scrap metal and iron yard. Materials are received, segregated, sheared, and staged for future sale or recycling. The site consists mainly of large scrap metal and various material piles. Structures on site include a scale house/office building, an equipment maintenance shop/storage building, a shearer and an abandoned smoke stack. Railroad spur lines transect the site, which provide crane access to the scrap metal piles. The north and west boundaries of the site are separated from Beaver Creek by wooded/heavily vegetated areas.

2.0 INTRODUCTION AND BACKGROUND

On May 19, 1994, EPA Region III's Technical Assistance Team (Roy F. Weston, Inc.) accompanied the EPA representative to conduct a site reassessment of the Twin City facility. Eight soil samples were collected for analysis during this reassessment. Two of the eight soil samples were found to contain elevated polychlorinated biphenyl (PCB) levels (38-73 ppm). Five of the eight samples contained elevated total lead levels ranging from 1500 to 2300 ppm.

2.1 Administrative Order

As a result of the findings of the EPA sampling event described above, EPA and the Raleigh Junk Company (Raleigh Junk) entered into a Consent Order (Order) to conduct a removal action, to abate, mitigate, and/or eliminate the release or threat of release of hazardous substances at the site by preventing the migration of hazardous substances by removing/ disposing hazardous substances from the site. This Order was entered into on August 11, 1995.

2.2 EPA Cleanup Levels

In response to Section 8.3 (a) and (b) of the Order, Raleigh Junk was required to excavate and properly dispose of, or treat in accordance with an EPA-approved plan, soils contaminated with lead in excess of 1,000 ppm and soils contaminated with PCBs in excess of 25 ppm.

2.3 Response Action Plan

In accordance with Sections 8.4 through 8.8 of the Order, Raleigh Junk proceeded with the implementation of the EPA-approved Response Action Plan and completed an Extent of Contamination study which characterized the nature, concentration and vertical and horizontal extent of lead and PCB contamination in soils and sediments at the site. The extent of contamination was performed by implementing an exhaustive sampling scheme using a 50-foot sampling grid. Locations of the sampling points are presented in Figure 2. A summary of the sample locations, depths and analytical results are presented in Table 1.

2.4 Removal Action Plan

Raleigh Junk submitted a "Revised Total Lead and PCB Removal Plan (RAP)," dated March 1996, which outlined the proposed remedial efforts. The RAP was approved by the EPA in a letter dated May 6. 1996, which gave permission to proceed with implementation. Generally, the goal of the RAP was to excavate total lead and PCB "hot spots" so that the remaining overall average of contaminants within the waste area was below EPA established cleanup levels (i.e., ≤ 1000 ppm Pb, ≤ 25 ppm PCB). The site averaging concept (SAC) was utilized to achieve this goal. In this case, approved lower limits for excavation ("hot spots") were 1400 ppm (mg/kg) for lead and 150 ppm for PCBs. Excavation of those hot spots resulted in a site average that was much less than the cleanup levels and a 95% upper confidence level on the mean that is near or below the cleanup levels.

3.0 REMEDIAL SITE EXCAVATION

3.1 Goal of the Removal Plan

Generally, the goal of the Removal Plan was to excavate total lead and PCB "hot spots" so that the remaining overall site average of contaminants within the waste area is below EPA established cleanup levels (i.e., ≤ 1000 ppm Pb, ≤ 25 ppm PCB). The site averaging concept (SAC) was utilized to achieve this goal. In this case, approved lower limits for excavation ("hot spots") were 1400 ppm (mg/kg) for lead and 150 ppm for PCBs. Excavation of the hot spots was to result in an overall site average that was significantly less than the cleanup levels and a 95% upper confidence level on the mean that was near or below the cleanup levels.

3.2 Location of Total Lead and PCB Hot Spots

The locations of total lead and PCB hot spots as presented in the RAP are illustrated on Figure 3. "Hot spots" were defined as sampling locations with values of total lead and/or PCBs greater than 1400 ppm and 150 ppm, respectively. The hot spots consisted of 31 total lead-contaminated areas, 1 PCB-contaminated area, and 5 areas with both total lead and PCB contamination. Concentrations of contaminants ranged from 1417 to 32,730 ppm total lead in the lead hot spots and from 150 to 409 ppm PCB in the PCB hot spots.

3.3 Removal of Hot Spot Areas

TERRADON personnel mobilized to the site on May 13, 1996, in preparation of excavation activities. Excavation of the hot spots commenced on May 14, 1996, and were completed on July 16, 1996. Mr. Brian Croft (Roy F. Weston, Inc.) was on site as a representative of the EPA during the remedial activities. Initially, each hot spot was removed by excavating the area using a backhoe. Excavation continued vertically in each area to the depth where previous sample results identified a concentration of lead and PCBs that were less than 1400 ppm Pb and 150 ppm PCB in the lower soil horizon(s). Confirmation samples were collected in other areas to verify removal of the hot spot.

sample indicated levels greater than the lower limits of excavation, then the excavation continued vertically until the soil exhibited analytical values that were below the lower limits of excavation.

Analytical results obtained during the previous grid sampling were used as a means of horizontal confirmation of surficial (*i.e.*, 0 - 0.5 feet) soil remediation. During the remedial efforts, horizontal confirmation was performed on the soil strata below the level defined as the "A" horizon (i.e., 0.5 to 1.5 feet BGS). Where sampling was required, five samples were collected from each sidewall where the excavation has proceeded to depths greater than 1.5 feet BGS. The five samples were then composited into one sample container for analysis. If the analytical results of a sidewall sample indicated concentrations of lead and/or PCBs greater than the lower limits of excavation, the excavation continued in one-foot increments until lead and PCB concentrations were below the lower limits of excavation. A summary of the depths and analytical results of the confirmation samples is presented in Tables 2 and 3.

3.5 Geotextile and Limestone Cap

TERRADON placed a geotextile and limestone cap in the shear area as agreed to at the site on Thursday, May 16, 1996. The geotextile and stone cap was placed on the north side of the shear in the vicinity of sample locations TC-29, TC-30 and TC-33. A 150-foot long, 15-foot wide segment of woven geotextile fabric rated for moderate duty roadway stabilization (Linq GTF 200S) was rolled out into the desired location. An 18-inch layer of crusher run aggregate base course was placed above the geotextile. A minimum of 8 inches of cover was kept between the equipment tires and the geotextile at all times during placement to prevent tearing/ripping. Approximately 196.44 tons of crusher run was placed over the geotextile fabric (Appendix A). Photographs of the geotextile and limestone cap are presented in the Photographs Appendix. The location of the geotextile and stone cap is presented in Figure 4.

3.6 Equipment Decontamination

All equipment used for collection of confirmation samples was disposable in nature and, therefore, did not require decontamination. This material was disposed of with the excavated

soils (see Section 3.7). The backhoe bucket was decontaminated between excavations to ensure that cross contamination did not occur. Backhoe bucket decontamination was conducted as follows:

1. A decontamination station was constructed utilizing a steel box used for scrap storage lined with plastic sheeting to contain decontamination solutions;
2. Large debris was physically removed and transported to the soil staging area;
3. Equipment was pressure washed and rinsed utilizing a source of tap water;
4. Equipment was then rinsed with kerosene (Only following excavation of PCB Hot Spots);
6. Equipment was then rinsed again with the pressure washer water.
7. Decontamination fluids were then pumped from the decontamination area onto the stockpiled soil prior to profile sampling.

3.7 Soil Staging and Disposal

Excavated contaminated soil was staged on-site in one of two lined and diked areas until all excavations were complete. Waste profile sampling was conducted to determine the appropriate disposal methods. The two staging areas consisted of: (1) a stockpile containing lead-impacted soil (Pb-only pile) and (2) a stockpile containing soil with both total lead and PCB impact (Pb/PCB Pile). Photographs of the stockpiles are presented in the Photographs Appendix. The dimensions of each pile are listed below:

Pb-Only Pile:

Length	=	50 feet
Width	=	15 feet
Average Height	=	3.5 feet

Pb/PCB Pile:

Length	=	20 feet
Width	=	9 feet
Average Height	=	3 feet

3.7.1 Waste Profile Sampling

TERRADON collected samples from each of the soil stockpiles for purposes of waste profiling prior to disposal. The waste profile samples for each stockpile were collected by implementing the sampling procedures outlined in the USEPA guidance document titled, Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup (EPA-560/5-86-017). The sampling scheme involves a hexagonal grid of 7, 19, or 37 sample points. The following is a discussion of the field sampling methodology which was used to sample the soil stockpiles. Analytical results of the stockpile samples are presented in Table 4.

Pb-Only Pile: The pile was divided into three equal areas each approximately 16 feet 4 inches long. A 19-point sample grid was laid out on each section using flags according to the sampling guidance document. A composite sample, consisting of an equal amount of soil from each flagged location, was collected from each section and placed into resealable sample bags. TERRADON then composited an equal amount of soil from each sample bag into one sample [TC-Pb Pile (01B, 02B, 03B)]. The sample was transferred to a 4-ounce glass jar with Teflon®-lined lid and proper label. This sample was submitted, with proper chain-of-custody, to a qualified laboratory for analysis of total lead and leachable lead per the toxicity characteristic leaching procedure (TCLP). Laboratory analytical results are presented in the Analytical Appendix.

Pb/PCB Pile: The pile was divided into two equal areas each approximately 10 feet long. A 19-point sample grid was laid out on each section using flags according to the sampling guidance document. A composite sample, consisting of an equal amount of soil from each flagged location, was collected from each section and placed into a resealable sample bag. The samples were transferred to 4-ounce glass jars with Teflon®-lined lid and proper label. These samples were submitted, with proper chain-of-custody, to a qualified laboratory for analysis of total lead, TCLP lead and PCBs. Laboratory analytical results are presented in the Analytical Appendix.

3.7.2 Disposal of Stockpiled Soil

An application for disposal of the stockpiled soil was filed with the Tennessee Division of Solid Waste Management (TDSWM) on September 27, 1996. The proposed disposal facility was the Iris Glen Environmental Center in Johnson City, Tennessee. Approval for disposal was granted by the TDSWM in a letter dated December 9, 1996. A copy of the disposal application and the approval letter is included in Appendix B.

On January 2, 1997, TERRADON coordinated the loading, transport and disposal of the stockpiled soil. Approximately 132.32 tons of soil resulting from the stockpiles were disposed as a special waste at the Iris Glen Environmental Center Landfill. Copies of the landfill scale tickets are presented in Appendix C.

4.0 REMOVAL PLAN STATISTICAL JUSTIFICATION

Basic statistical analysis, applicable to sampling plans for solid wastes, was conducted on the sample results according to Chapter 9 of SW-846. Prior to excavation of hot spots, the analyses indicated that considering the waste area as a whole, the mean total lead and PCB values were 1,899 ppm and 37 ppm, respectively. The standard bell curves representing the frequency distribution of total lead and PCB data obtained during the investigation were skewed to the left (*i.e.*, most of the data points were significantly less than the mean). The frequency distributions for the original lead and PCB data are presented in Figures 5 and 6, respectively. Ideally, a normally distributed data set would have an equal number of points lying on each side of the mean. Therefore, each of the lead and PCB values was transformed to their respective natural logarithmic form. In doing so, their distributions become nearly normal (Figures 7 and 8). The original and transformed data for lead and PCBs are presented in Table 4 and 5, respectively.

As long as the data remains in its transformed state, all of the statistical procedures that are appropriate for ordinary variables are applicable to the transformed variables. Statistical justification of the SAC was performed by making the following assumptions:

- Hot spots (*i.e.*, ≥1400 ppm Pb and ≥150 ppm PCB) were excavated and backfilled with clean material;
- Confirmation sampling was performed in the areas where previous analytical data was not obtained.
- The analytical value of the excavated area was replaced using either: (1) the existing underlying value, assuming it is less than the lower excavation limit; or (2) the analytical result of the confirmation sample.
- To provide a more conservative estimation of the overall site average for lead, values less than 10 mg/kg were replaced with 10 mg/kg.

The lead and PCB data following excavation are presented in Tables 6 and 7, respectively. A summary of the average values for lead and PCBs and the 95% upper confidence level (UCL) of the mean is presented in Table 8.

The site mean ($\bar{x}$) for lead (using the natural log values) decreased from 776.42 ppm to 174.14 ppm. The 95% UCL decreased from 3847.30 ppm to 1098.11 ppm. This method is being employed because the site mean is approximately 825.86 ppm less than the EPA cleanup level of 1000 ppm.

The site mean ($\bar{x}$) for PCBs (using the natural log values) decreased from 8.73 ppm to 2.74 ppm. The 95% UCL decreased from 91.13 ppm to 21.16 ppm. The site mean is approximately 22.26 ppm below the EPA cleanup level of 25 ppm.

N
W E
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PHOTOCOPIED FROM
BRISTOL, TENN.–VA.
USGS 7.5' SERIES
TOPOGRAPHIC MAP
PHOTOREVISED 1991

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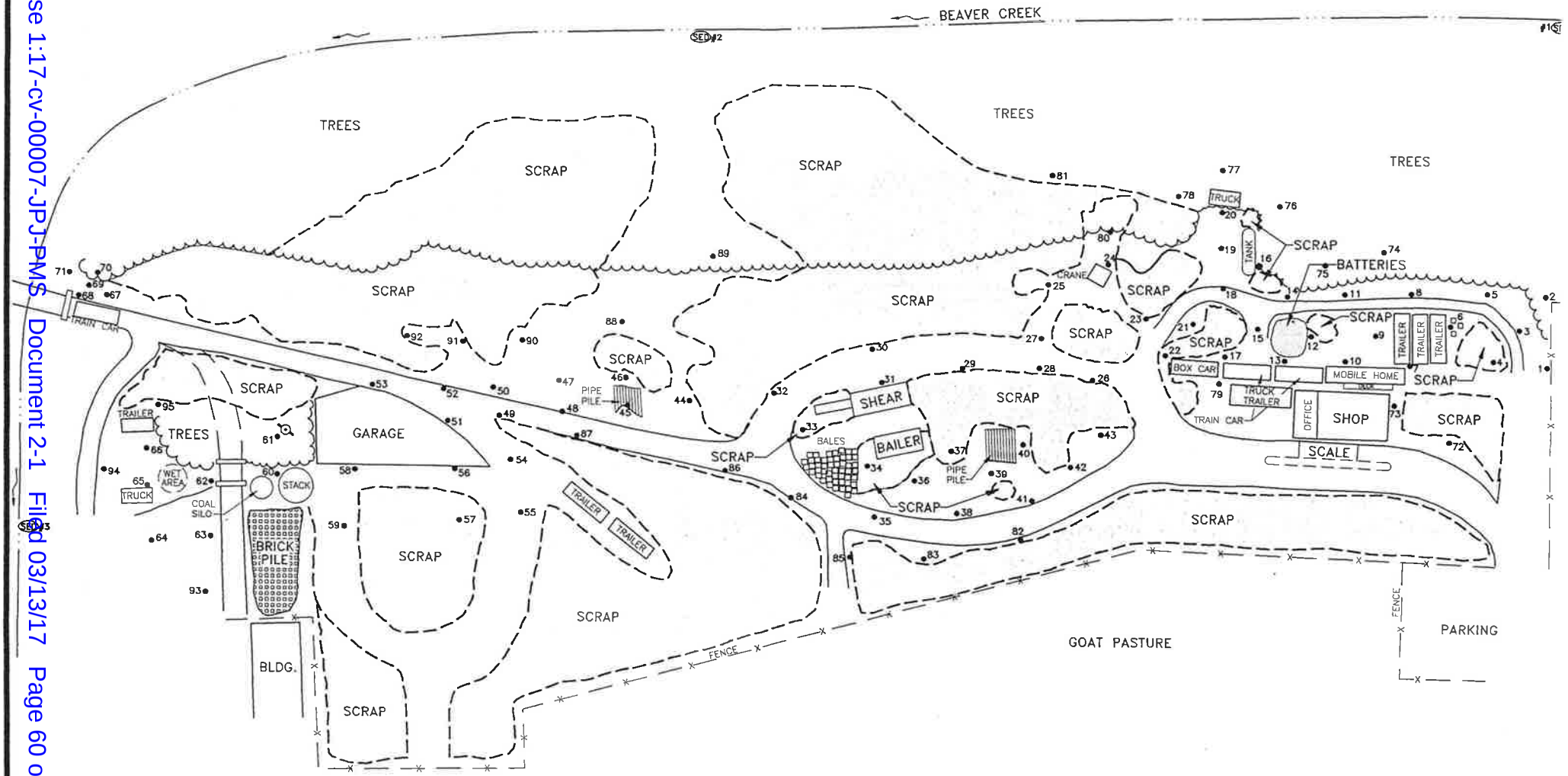
TERRADON CORPORATION
P.O. Box 519
Nitro, West Virginia 25143
(304) 755-8291 FAX 755-2636

Project
THE RALEIGH JUNK COMPANY
TWIN CITY IRON & METAL
LOCATION MAP

Scale	1" = 2000'	Dwg. No.
Date	MAY 1995	FIGURE 1

A9504301



LEGEND

- SCRAP METAL PILES
- •10 SOIL SAMPLING POINTS
- SED#3 SEDIMENTATION SAMPLING POINTS
- POWER POLE

TERRADON CORPORATION
P.O. Box 519
Nitro, West Virginia 25143
(304) 755-8291 FAX 755-2636

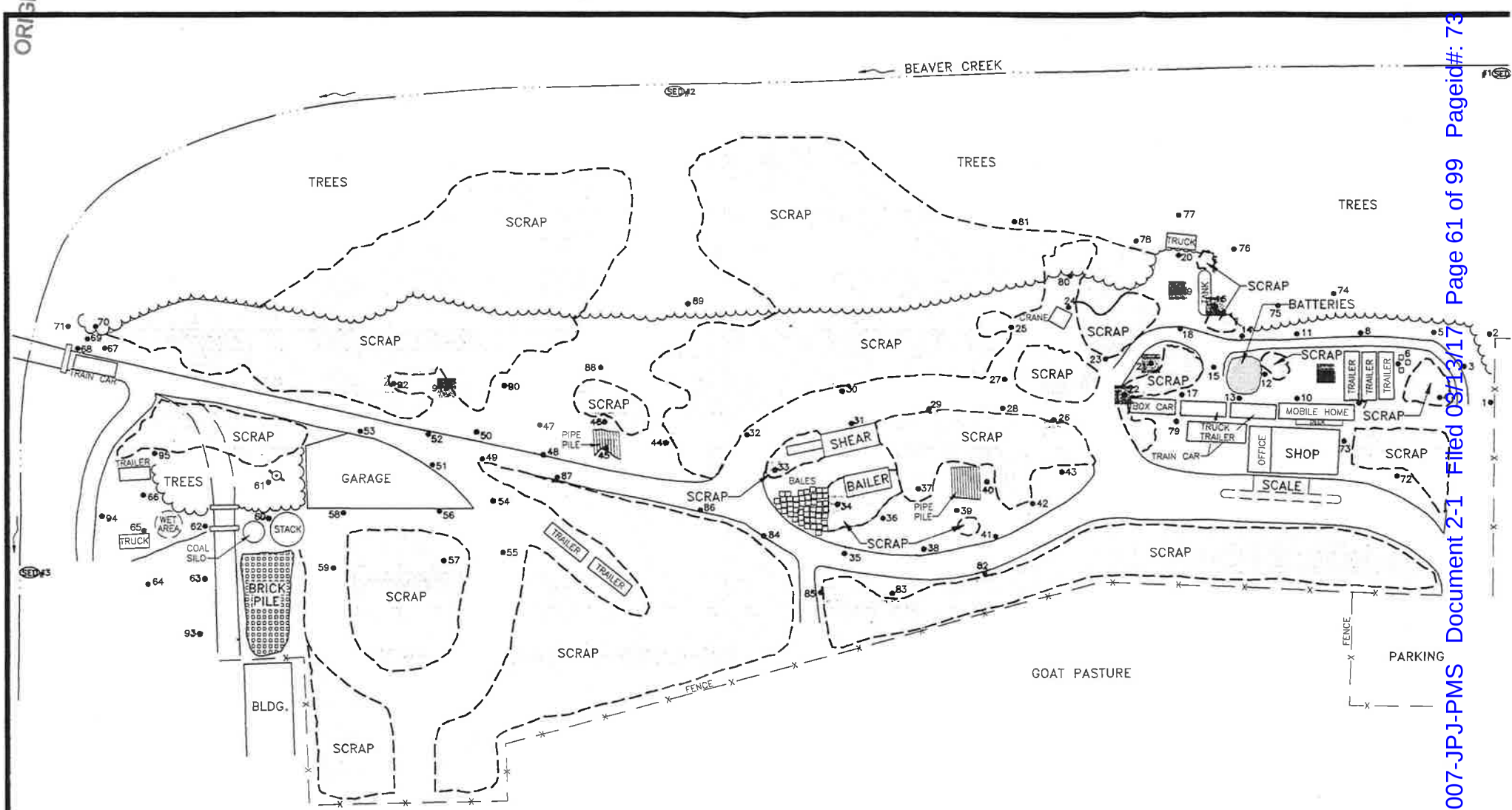
Project: RALEIGH JUNK COMPANY
TWIN CITY IRON & METAL
CHARACTERIZATION SAMPLING LOCATIONS
50'x50' SAMPLE GRID

Scale: NONE
Date: FEB. 1997
Dwg. No.: FIGURE 1

ORIGINAL

9504310

ORIGINAL



LEGEND

- SCRAP METAL PILES
- •10 SOIL SAMPLING POINTS
- SED#3 SEDIMENTATION SAMPLING POINTS
- POWER POLE
- • TOTAL LEAD HOTSPOT
- PCB HOTSPOT
- TOTAL LEAD & PCB HOTSPOT

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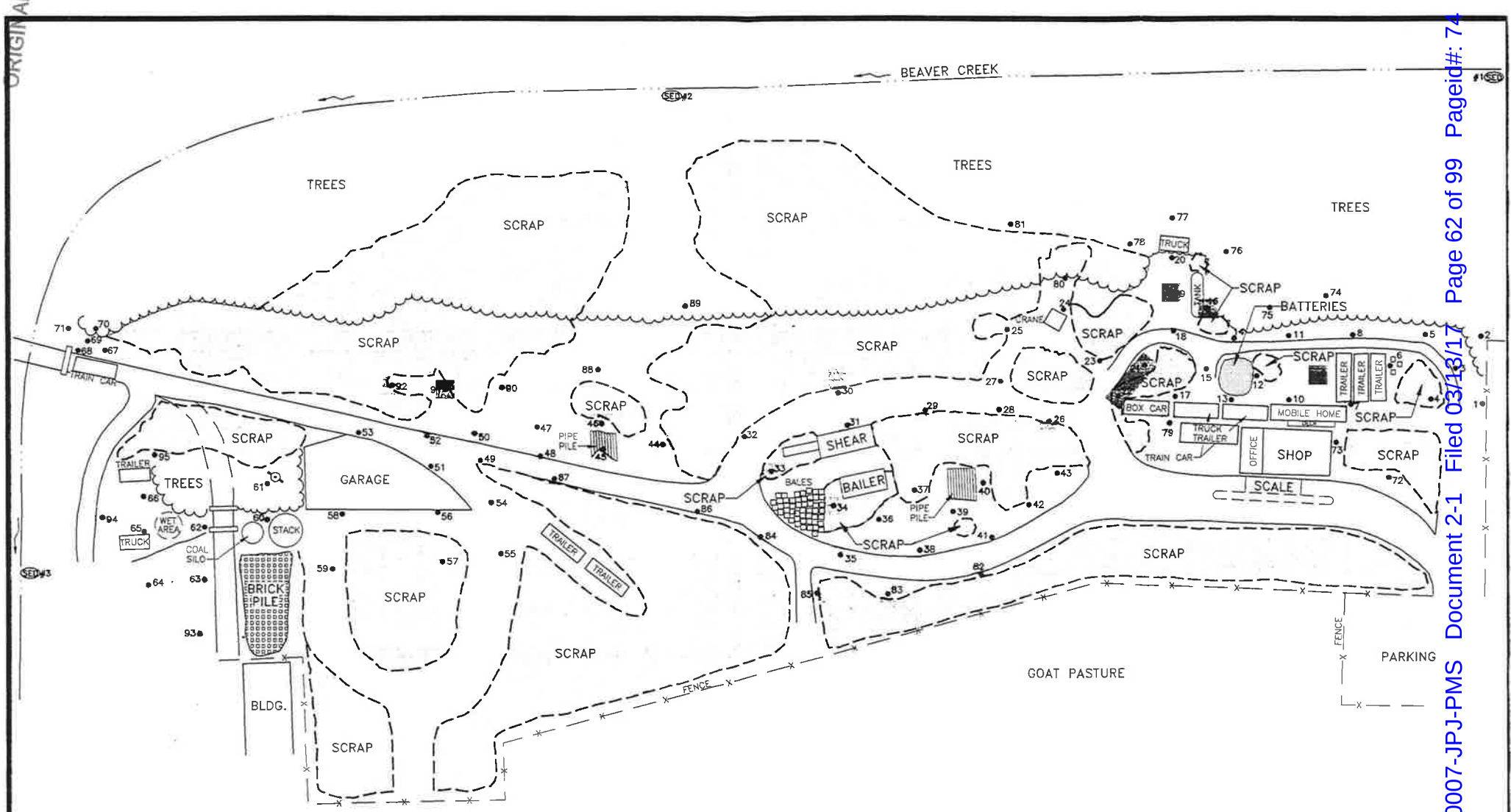
TERRADON CORPORATION
P.O. Box 519
Nitro, West Virginia 25143
(304) 755-8291 FAX 755-2636

Project: RALEIGH JUNK COMPANY
TWIN CITY IRON & METAL
REMOVAL HOTSPOT LOCATIONS

Scale: NONE
Date: FEB. 1997
Dwg. No.: FIGURE 3



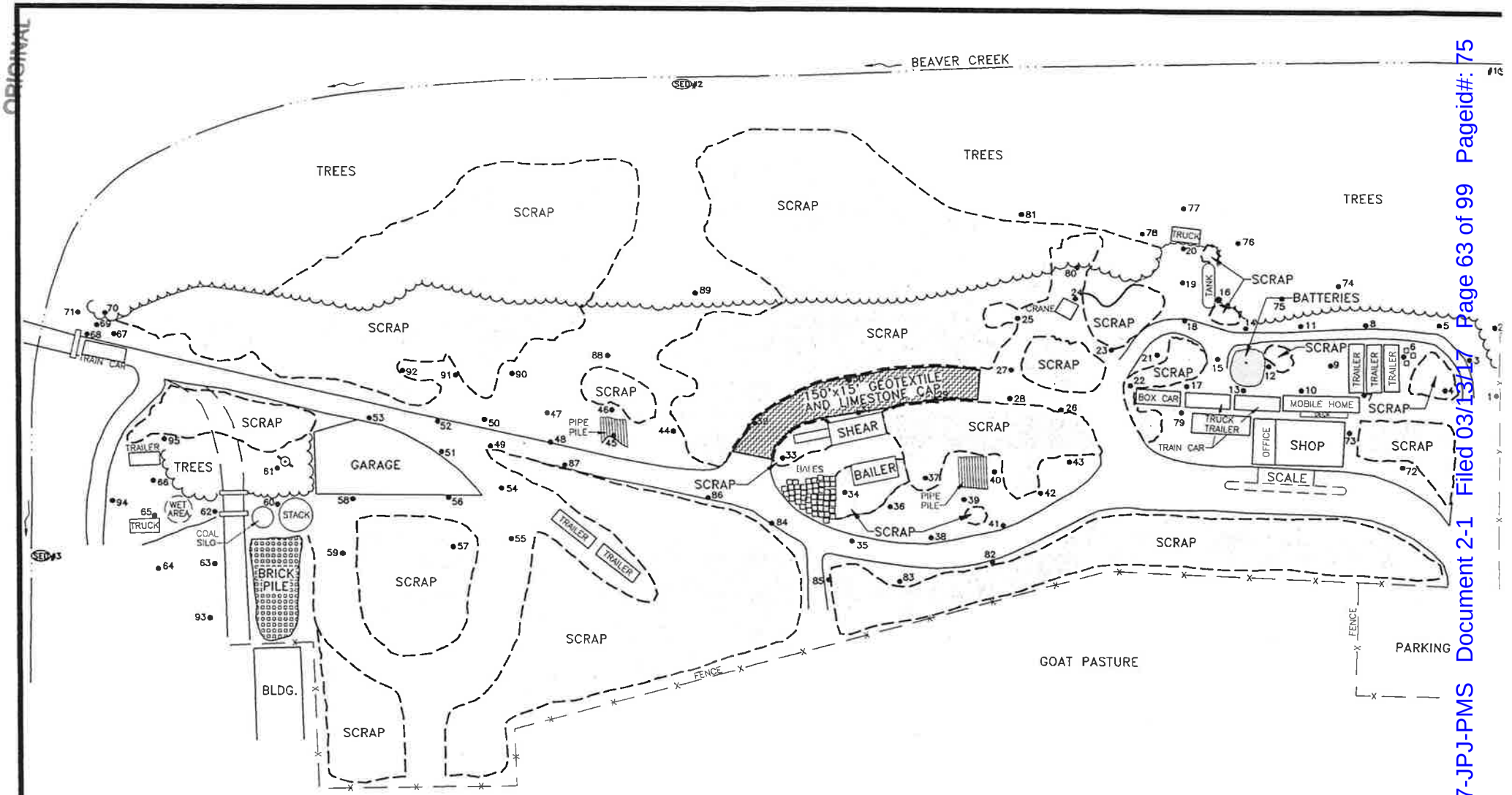
LEGEND

- SCRAP METAL PILES
- •10 SOIL SAMPLING POINTS
- SED#3 SEDIMENTATION SAMPLING POINTS
- POWER POLE
- • TOTAL LEAD HOTSPOT
- PCB HOTSPOT
- TOTAL LEAD & PCB HOTSPOT

TERRADON CORPORATION
P.O. Box 519
Nitro, West Virginia 25143
(304) 755-8291 FAX 755-2636

Project: RALEIGH JUNK COMPANY
TWIN CITY IRON & METAL
REVISED REMOVAL HOTSPOT LOCATIONS

Scale: NONE
Date: FEB. 1997
Dwg. No.: FIGURE 4



LEGEND

- SCRAP METAL PILES
- •10 SOIL SAMPLING POINTS
- SED#3 SEDIMENTATION SAMPLING POINTS
- POWER POLE

TERRADON	TERRADON CORPORATION P.O. Box 519 Nitro, West Virginia 25143 (304) 755-8291 FAX 755-2636
Project	RALEIGH JUNK COMPANY TWIN CITY IRON & METAL LOCATION OF GEOTEXTILE AND LIMESTONE CAP
Scale	NONE
Date	FEB. 1997
Dwg. No.	FIGURE

9504308

ENVIRONMENTAL COVENANT ATTACHMENT C

FEDERAL ON-SCENE COORDINATOR'S AFTER ACTION REPORT for TWIN CITY IRON & METAL SITE BRISTOL, WASHINGTON COUNTY, VIRGINIA October 28, 2009 to April 02, 2010

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
PHILADELPHIA, PENNSYLVANIA

Federal On-Scene Coordinator's Report
Twin City Iron & Metal Site

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FIGURES

ATTACHMENT

APPENDICES

ACRONYM LIST

Acronym	Definition
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
EPA	United States Environmental Protection Agency
ERRS	Emergency and Rapid Response Services
mg/kg	Milligrams per kilogram
NCP	National Contingency Plan
NIST	National Institute of Standards and Technology
OSC	U.S. EPA On-Scene Coordinator
PCBs	Polychlorinated biphenyls
pg/L	picograms per liter
PPE	Personal Protective Equipment
ppm	parts per million
PRP	Potentially Responsible Party
RBC	Risk-based Concentration
RCRA	Resource Conservation and Recovery Act
SSAO	Senior Site Administrative Officer
START	Superfund Technical Assessment and Response Team
TAL	Target Analyte List
TCLP	Toxicity Characteristic Leaching Procedure
TEQ	Toxicity Equivalent
TWA	Time Weighted Average (8-hr)
T&D	Transportation and Disposal
VDEQ	Virginia Department of Environmental Quality
XRF	X-Ray Fluorescence

Federal On-Scene Coordinator's Report
Twin City Iron & Metal Site

1.0 PURPOSE OF THE ON-SCENE COORDINATOR'S REPORT

The purpose of this report is to describe the situation and events surrounding the Removal Action conducted at the Twin City Iron & Metal Site (Site), located in Bristol, Washington County, Virginia. The U.S. Environmental Protection Agency (EPA) On-Scene Coordinator (OSC), Robert Kelly, initiated this Removal Action due to actual and threatened release of hazardous substances, lead and polychlorinated biphenyls (PCBs), from the Site, which if not addressed, presented an imminent and substantial endangerment to public health, welfare, or the environment. The initial assessment of the site revealed elevated levels of lead within the soils of the Site. Contaminated sediments were present in Beaver Creek, which formed the southwestern border of the Site.

The OSC determined that the Site met the criteria for a removal action under Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

Project # 663

Federal On-Scene Coordinator's Report
Twin City Iron & Metal Site

2.0 SUMMARY FACT SHEET

Site:	Twin City Iron & Metal Site
Location:	950 Fairview Street Bristol, Virginia 24201
Size:	Total area (approximately 12 acres)
Current Owner:	Mike Stramiello
Site Status:	Private property
Funding Approval Date:	September 15, 2009
Response Action Period:	October 28, 2009 to April 2, 2010
Project Description/ Response Activities:	The release of hazardous substances at the Site
Hazardous Substances:	lead, PCBs
Quantities Removed:	**Hazardous waste**: Total: 5569.74 tons, 235 trucks (EPA Hazardous Waste code D008)
EPA OSC:	Robert Kelly, Philadelphia, PA
START Contractor:	TechLaw, Inc., Wheeling, WV
ERRS Contractor:	Kemron Environmental Services (Kemron), Atlanta, GA
Disposal Location:	EQ, Detroit, MI
Project Ceiling:	$1,944,000
Project Costs:	$1,564,329

Robert F. Kelly

3.0 ROSTER OF AGENCIES, ORGANIZATIONS, AND INDIVIDUALS

The following table provides a list of federal, state, and local agencies and contractors involved in this removal action. The table also includes a brief description of duties involving this removal action.

TABLE 3-1 DESCRIPTION OF AGENCY ROLES

AGENCY	CONTACT	BRIEF DESCRIPTION OF DUTIES
U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103 (215) 814-3268	Robert Kelly	On-Scene Coordinator: Performed initial assessment. Coordinated all aspects of the project. Responsible for integrating various agencies and contractors and for the overall success of the project.
U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103 (215) 814-3251	Joanna McDonald	EPA Financial Administrative Officer (FAO). Managed and tracked all site costs.
Virginia Department Environmental Quality (VDEQ) SW Regional Office Abingdon, VA 24210 (276) 676-4800	Willard Keene	Coordinated with OSC to ensure all State applicable, relevant, and appropriate requirements (ARARS) were addressed. Also provided background history of site and coordinated with OSC to ensure all State issues and/or concerns were addressed.
Property Owner	Mike Stramiello	Owner of property.
TechLaw, Inc. EPA/START III - Western Area 2208 Warwood Ave. Wheeling, WV 26003 (304) 230-1230	Michelle Dallessandro	Member of EPA's START who provided oversight of removal activities, written and photographic documentation, air monitoring, field screening-XRF, multimedia sampling, and analytical services coordination.
Kemron Environmental Services, Inc. EPA ERRS Contractor 1359-A Ellsworth Industrial Boulevard Atlanta, GA 30318 (404) 516-3167	David P. Tiedman	Response Manager who coordinated or otherwise provided the overall labor, materials, and services to the OSC to remove, excavate and dispose of the contaminated soil, arrange for transportation and disposal of contaminated soil, and conduct backfill and restoration of excavated areas.

3.1 Organization of the Response

EPA OSC Kelly coordinated with state and local agencies throughout the duration of the project. OSC Kelly directed the daily activities of the Emergency and Rapid Response Services (ERRS) and Superfund Technical Assessment and Response Team (START) personnel during the removal activities at the Site. Site costs were tracked by Joanna McDonald, EPA Region III Senior Site Administrative Officer (SSAO).

Willard Keene of the Virginia Department of Environmental Quality (VDEQ) was EPA's contact with the State of Virginia. VDEQ Keene conducted periodic visits to the Site. In addition, representatives from Fish and Wildlife visited the Site to inspect the condition of Beaver Creek during operations.

TechLaw was the prime contractor for the START contract who provided technical support, including air monitoring, field screening of soil for metals using a field portable X-Ray Fluorescence (XRF) instrument, multimedia sampling, laboratory services coordination, health and safety oversight, ERRS contractor monitoring, documentation of Site activities, and assisting the OSC with reporting of Site activities.

Kemron Environmental Services was the prime contractor for the ERRS contract who supplied the manpower and equipment necessary to excavate the lead and PCB-contaminated soil, arrange for transportation and disposal of contaminated soil, and conduct backfill and restoration of excavated areas.

4.0 RESOURCES COMMITTED

4.1 Initial Funding Request

OSC Kelly conducted a Site Evaluation at the Twin City Iron & Metal Site, located in Bristol, Washington County, Virginia in December, 2008. The OSC assessed the situation in accordance with the NCP, 40 Code of Federal Regulations (CFR) Part 300. Analytical data generated from onsite samples indicated that surface soil and sediment on the Site were significantly impacted with lead contamination. The OSC determined that the Site met the criteria of Section 300.415 of the NCP for initiating a time-critical Removal Action. As a result of the ongoing and/or threat of a release and Site conditions, immediate removal response action pursuant to Section 104 of CERCLA, as amended 42 U.S.C. Section 9604, was necessary at the Site. Pursuant to Delegation of Authority 14-2, the OSC obligated CERCLA funding in the amount of $1,944,000 on September 15, 2009, to initiate a removal action to secure the Site, remove hazardous material, and perform site restoration.

4.2 Estimated Total Cost Summary

Extramural Costs	Costs	Ceiling
ERRS - Cleanup Contractor (as of 11/1/08)	1,486,012	1,500,000
START	78,317	120,000
TOTAL Extramural Costs	1,564,329	1,620,000
Contingency		324,000
TOTAL Removal Action	1,564,329	1,944,000
PERCENT OF EXTRAMURAL CEILING EXPENDED:	80.4%	

5.0 SUMMARY OF INCIDENT

5.1 Site Location and Description

The Site is located along 950-1000 Fairview Street in Bristol, Virginia, as shown in Figure 1, "Site Location Map". The property is bordered by Beaver Creek to the west and south and by residential and commercial properties to the north and east. The Site consists of approximately 12 acres, including portions of Beaver Creek. Much of the Site is relatively flat and includes buildings currently undergoing demolition operations. Alongside Beaver Creek, the Site includes an area containing battery casings and other debris comprising a steeply sloped embankment. A sewer line has been installed in a narrow strip of land between the embankment and Beaver Creek.

5.2 Site Background

The Site was reportedly used as a city landfill in the late 1950's or 1960's. The property was subsequently purchased by and used by private parties in several tracts. In or around 1995, the Raleigh Junk Company, which operated at the Site, entered into a Consent Order for Removal Action with the EPA to excavate and properly dispose of, or treat in accordance with an EPA-approved plan, soils contaminated with lead in excess of 1,000 mg/kg as well as excavate and property dispose of, or treat in accordance with an EPA-approved plan, soils contaminated with PCBs in excess of 25 mg/kg. This Order was completed on February 10, 1997.

5.3 EPA Assessment (2008-2009)

In October of 2008, EPA was requested by VDEQ to evaluate the source of elevated concentrations of PCBs detected in Beaver Creek in the vicinity of the Site. While evaluating Site conditions with the owner, the OSC observed battery casings, transformer parts, and other debris comprising a steeply sloped embankment alongside the banks of Beaver Creek. The OSC observed battery casings and other debris upon the sewer easement at the base of the embankment, the banks of Beaver Creek, and within Beaver Creek.

On December 9, 2008, a sampling assessment was subsequently initiated to evaluate concentrations of hazardous substances in soil and sediment in this area of the Site and within the surface waters adjacent to the Site. The analysis of soil and sediment samples revealed elevated concentrations of PCBs and lead, which are hazardous substances as defined in Section 101 (14) of CERCLA, 42 U.S. C 9601 (14). Using a screening technology (XRF) which identifies the concentrations of certain inorganic hazardous substances in soil, lead was detected at concentrations over 10% in the exposed surface soils at the Site. Surface soil, sediment, and surface water samples were collected during this sampling event.

On July 30, 2009, the OSC conducted additional screening for lead in the Site soils with XRF equipment. This screening was used to determine the extent of contamination at the site. A total of 22 additional locations were screened and lead concentrations were determined in concentrations up to 1,977 ppm. The XRF screening results from both the December, 2008, and the July, 2009, sampling assessments are depicted in Figure 2, "Generalized Data over Site, XRF Results in PPM".

The validated analytical results from the December 9, 2008, sampling event confirmed concentrations of lead in soils up to 149,000 mg/kg, as depicted in Figure 3, "Validated Lead Data in Soil". Additionally, the analytical results indicate the presence of lead in the sediment of Beaver Creek up to 677 mg/kg, as depicted in Figure 4, "Validated Lead Data in Sediment/Water". PCBs concentrations up to approximately 2 mg/kg in the sediment of Beaver Creek and PCBs concentrations up to 66 mg/kg in the soil of the Site were verified by validated analytical data, and depicted in Figure 5, "Validated PCB data in Sediment" and Figure 6, "Validated PCB Data in Soil". The validated results for PCBs in the surface water of the Site are depicted in Figure 7, "Validated PCB Data in Water". The validated analytical results are included in Appendix 1, "Validated Analytical Results for Metals in Soil/Sediment, December 9, 2008", Appendix 2, "Validated Analytical Results for Metals in Water, Part 1, December 9, 2008", Appendix 3, "Validated Analytical Results for Metals in Water, Part 2, December 9, 2008", and Appendix 4, "Validated Analytical Results for PCBs in Water/Sediment/Soil, December 9, 2008".

5.4 EPA Removal Action (2009-2010)

EPA determined that conditions at the Site posed an imminent and substantial threat to public health, welfare, and the environment. Under Delegation of Authority 14-2 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the OSC initiated a Removal Action on September 15, 2009, initiating funds of $1,944,500 to prevent, minimize, stabilize or eliminate the release or threat of release.

A Responsible Party for the abandoned contamination at the Site could not be identified. The State of Virginia did not have the resources to perform a Removal Action at the Site. No other federal or state response mechanisms were currently available to perform the Removal Action.

5.4.1 Narrative of Events

On September 15, 2009, an Approval of Funding for a Removal Action at the Site was signed for $1,944,000. OSC Kelly initiated the Removal Action with mobilization of the ERRS contractor to the Site. Mobilization occurred on October 28, 2009. ERRS mobilized heavy equipment to the Site and began construction of an access road. Under direction of the OSC, TechLaw (START) also mobilized to the Site, to provide support to the OSC via documentation, sample collection, and air monitoring activities.

By November 14, 2009, a Command Post was established on Site. Security was established at the Site, and visible fencing has been used to identify the Site boundaries to provide for safety of the public during non-working hours. ERRS removed vegetation and debris and installed access roads to implement response activities. ERRS installed temporary erosion and sedimentation controls with silt fencing along Beaver Creek to minimize the potential for migration of soil containing lead and PCBs. START and ERRS worked together to identify the contaminated areas of the Site that were discovered during prior assessment.

On December 7, 2009, ERRS began to remove contaminated soils and shaping of the slope. Excavation activities occurred on Site dependent upon Site conditions, directly resulting from recent weather. Excavation could only occur during or following non-rain/snow days, due to the extreme slopes of the Site. An excavator and an articulate dump were utilized to relocate the contaminated soils from the sloped, contaminated areas of the Site, to the stockpile areas. A great deal more battery casings and lead-contaminated soils were unearthed as originally anticipated. Excavation activities continued through February 25, 2009. Through use of portable XRF equipment and laboratory analysis, it was determined that high concentrations of lead contamination remained in the hillside. However, the total volume of battery casings and hazardous levels of

lead contamination was unknown and could not be determined. The OSC determined, on February 25, 2009, that excavation activities should cease and the OSC directed ERRS to cap the Site with a minimum of two feet of clean fill.

The OSC met with the property owner to discuss deed restrictions that would have to be applied to certain parcels of land due to the lead contamination being left in place. Under the direction of the OSC, ERRS placed orange hi-vis fencing and geo-tech liner over the known areas of remaining lead-contaminated soils.

ERRS procured the services of a disposal landfill for acceptance of D008 (lead-contaminated) soils/debris. ERRS conducted T&D of all excavated materials from the Site during the time period of February 3, 2010, to March 10, 2010. A total of 235 trucks were loaded with 5,570 tons of hazardous soils and transported the materials to Detroit, Michigan for disposal.

ERRS backfilled all excavated areas of the Site with a stockpile of "clean" fill material that was present on the Site. ERRS graded the Site to a 3:1 slope and hydroseeded the Site on March 27, 2010. ERRS, START, and EPA demobilized all equipment and supplies from the Site by April 2, 2010, at the completion of the Removal Action.

Photographs that depict the sequence of activities throughout the duration of the Removal Action are in Attachment 1, "Photographic Documentation".

5.4.2 Health and Safety: Air Monitoring and Sampling

During excavation and T&D activities, START utilized DataRAM 4000 instruments to detect the levels of particulates in the air. Three instruments were used to collect particulate data. The instruments were placed to the north, east, and south of the excavation area. An instrument was not required in a location to the west of the excavation area, due to the presence of Beaver Creek and a railroad track immediately to the west of the excavation area. The instruments were placed in locations from which air flow from the Site would reach human populations. This air monitoring was conducted in order to ensure that dusts that may have migrated off-Site during operations did not contain high levels of particulates. No levels of particulates exceeded 0.0394 mg/kg during all Site excavation and T&D operations.

In addition to stationary DataRAM 4000 instruments, a personal DataRAM was co-located with a laborer or operator in the immediate vicinity of excavation operations. The instrument was monitored on an hourly basis in order to determine if respiratory protection was required in the excavation areas. If the particulate levels exceeded 2.5 mg/kg, all personnel were instructed to don respiratory protection. The particulate levels did not exceed 2.5 mg/kg at any time during operations; the highest time-weighted average, over a minimum of eight hours of monitoring, was 0.067 mg/kg. However, as a precaution, any excavation in areas that contained known concentrations of lead greater than

20,000 ppm was conducted in Level C personal protective equipment (PPE). Collection of soil samples by START in any areas where exposed battery casings were prevalent was also conducted in Level C PPE.

To compliment air monitoring activities ERRS collected air samples from two laborers and two operators during an 8-hour period of operations in the hot zone on Site. Laboratory analysis determined that the highest concentration of lead in the workers' breathing zone was 0.0048 mg/m3. It was determined that respiratory protection was not required in the "hot zone". However, as previously stated, ERRS' workers utilized respiratory protection while excavation activities were conducted in high lead-contaminated areas and during T&D operations.

5.4.3 Chronology of Events

Week of November 3, 2009:

Upon arrival at the Site on November 5, 2009, ERRS made arrangements for command post placement and hook-up of utilities. ERRS installed silt fence along the base of the hillside, to the west of the area of contamination (AOC). ERRS also installed hi-vis fencing around the Site perimeter. ERRS constructed roads that surrounded the AOC. ERRS excavated soils that surrounded the sewer heads that were located adjacent to Beaver Creek, and placed markers on them. ERRS constructed the access road to the command trailers, placing stone along the roadway. ERRS secured the command trailers and made arrangements for utility hook-ups.

Week of November 10, 2009:

ERRS concentrated operations on removal of brush and vegetation from the areas of the Site that required excavation. ERRS placed hay bales at the base of the slope located adjacent to Beaver Creek to prevent runoff into the creek. ERRS removed large piles of coiled wire from projected excavation areas and stockpiled them for salvage. ERRS utilized a chipper on Site to minimize the volume of vegetation that was removed from the future excavation areas. ERRS utilized a water truck to minimize dust that emitted from these operations. START placed DataRAMs at the northern, eastern, and southwestern corners of the Site to monitor migrating dusts that may result from operations on the Site.

Week of November 17, 2009:

ERRS constructed staging areas for soils that would be excavated from the Site. ERRS secured all Site perimeters and equipment and demobilized for the Thanksgiving Holiday.

Week of November 30, 2009:

ERRS mobilized to the Site following the holiday break. ERRS constructed access roads through the center of the hillside in areas that required excavation. ERRS placed geo-textile liner along the access roads and covered them with stone. ERRS completed excavation of tree stumps and wire from the proposed excavation areas.

Week of December 7, 2009:

ERRS began excavation of the soils on Site that contained hazardous levels of lead, which were identified during the assessment phases of the project. ERRS excavated approximately 1,500 tons of battery debris and lead-contaminated soil from the southwestern slope of the Site. ERRS stockpiled all of the excavated soils in the designated staging areas and secured the stockpile of soil daily with poly covering. ERRS collected a composite soil sample from this stockpile and shipped it to a laboratory for analysis.

Following a heavy rain event, the water in Beaver Creek rose to high levels and had a high flow rate. START collected water samples from locations upstream, downstream, and adjacent to the contaminated soil to be analyzed for PCB congeners. In addition, START collected ten surface soil samples for XRF confirmatory analysis for concentrations of lead. The samples were collected from excavated areas on Site, along with an elevated area of the Site where the soil is under consideration for backfilling use.

Week of December 14, 2009:

ERRS conducted an initial excavation in the western slope of the Site where battery casings were observed. ERRS stockpiled these soils in a poly-lined staging area. Through in-situ XRF screening by START, it was estimated that the excavated soils contained five to ten percent lead. START conducted XRF screening following the initial excavation in this area and depicted the results in Figure 8, "XRF Sample Data, Slope Excavation". The OSC directed ERRS to continue excavation in this area.
ERRS received analytical results from the composite soil sampling event conducted in the stockpiles on Site. The TCLP sample contained 107 mg/L lead, which classified the stockpile as "hazardous". ERRS began to procure T&D services for the lead-contaminated soil.

EPA received analytical data from the December 10, 2009, surface soil sampling event that was conducted by START. The data verified that the remaining soils on Site contain lead at concentrations up to at least 59,000 mg/kg. The validated data is depicted in Figure 9, "Validated Data, Pre-Excavation Slope", to depict this data (see Appendix 6, "Validated Analytical Results for Metals in Soil, December 10, 2009").

Under the direction of the OSC, START collected 10 additional surface soil samples from the lower road that was constructed by ERRS. START was able to analyze only a portion of these surface soils with XRF equipment, due to wet Site conditions. START drafted Figure 10, "XRF Sample Data, Post-Excavation Lower Road", to depict this data. The collected corresponding surface soil samples were shipped on December 18, 2009.

Representatives of Fish and Wildlife, members of the City of Bristol, and Virginia Department of Environmental Quality visited the Site. The OSC gave each of them a tour of the Site and explained current activities.

Site operations were shut down for the holiday period and all personnel demobilized on December 18, 2009.

Week of January 10, 2010:

Site operations resumed on January 5, 2010, following a holiday break. Upon return to the Site, ERRS conducted snow removal in the command post area. ERRS segregated and secured the first area of "hazardous" stockpiled soil, which was estimated to be 1,700 yards. ERRS received 3 bids for T&D of this stockpile and began arrangements for T&D operations.

EPA received analytical data from the December 17, 2009, surface soil sampling event that was conducted by START (see Appendix 7, "Validated Analytical Results for Metals in Soil, December 16, 2009"). The data verified that the remaining soils on the surface of the lower road contained lead in concentrations ranging from 868 to 2,650 ppm. The validated data is depicted in Figure 11, "Validated Data, Post-Excavation Lower Road".

ERRS continued excavation along the southwestern slope of the Site. ERRS constructed an additional area for stockpiling of this excavated soil. START utilized XRF equipment to determine lead concentrations in the excavated soils ranging from 3,256 to 21,264 ppm. START analyzed the Site soils in-situ with the XRF following the excavation scrape in the southwestern area of the Site and depicted the data in Figure 12, "XRF Sample Data, Post-Excavation of Southwestern Slope, January 15, 2010".

Week of January 17, 2010

ERRS continued excavation along the western slope of the Site. XRF screening data showed concentrations of lead in these excavated soils up to 38,314 ppm. Respiratory protection was utilized in the hot zone areas as an additional precaution, due to the presence of high lead concentrations in these excavation areas. The XRF screening data is depicted in Figure 13, "XRF Sample Data, During Excavation of Slope, January, 2010".

ERRS collected a composite soil sample for TCLP metals analysis from stockpile 2. ERRS shipped this sample to a laboratory for analysis, which will determine if stockpile 2 will require disposal as "hazardous" waste.

ERRS began to stockpile fill material on Site, in preparation for construction of a cap over the remaining contaminated soils. ERRS are utilizing a large pile of fill material that was already present on the Site. ERRS collected a soil sample from this fill material to ensure that it could be used to construct the cap. ERRS analyzed the soil for metals, volatile and semi-volatile organics, and PCBs.

Week of January 24, 2010

ERRS continued excavation along the western slope of the Site. XRF screening data showed concentrations of lead in these excavated soils up to 57,895 ppm lead. Excavation was sloped towards the southern area of the contaminated hillside, moving away from Beaver Creek. A 5-foot concrete wall was unearthed. ERRS continued to unearth battery casings in this area and lead concentrations were determined up to 65,023 ppm. START continued to screen the areas beneath excavation to determine "clean" areas with lead concentrations below 1,000 ppm. START collected 10% of this soil for laboratory confirmatory analysis. The XRF data is depicted in Figure 14, "XRF Sample Data, Post-Excavation of Slope, January 29, 2010".

ERRS received analytical data from Stockpile #2. Lead TCLP was 48.9 mg/L; the soil remains "hazardous". ERRS estimated stockpile #2's volume at approximately 4,000 tons. ERRS received bids for T&D of Stockpile #1, and awarded the subcontract to the lowest bidder. Stockpile #1's volume is estimated at approximately 1,600 tons. ERRS anticipate T&D operations to begin during the week of February 1, 2010.

ERRS continued to stockpile fill material on Site, in preparation for construction of a cap over the remaining contaminated soils. ERRS are utilizing a large pile of fill material that was already present on the Site.

Week of February 1, 2010:

ERRS conducted snow removal at the Site to allow access for Site operations. ERRS excavated a test trench in the western slope of the Site in an attempt to determine a depth of contaminated soils. Battery casings were observed to extend to the bottom of the trench, which continued to cave in due to the consistency of the soils/materials. A final depth of excavation could not be determined. ERRS began preparations for T&D of the stockpiled soils and ensured that an access road was present for incoming trucks. T&D operations began on February 3, 2010, from the first stockpile of materials. A total of 30 trucks were loaded out for T&D to their designated landfill in Detroit, Michigan.

Week of February 8, 2010:

ERRS completed T&D operations on the first stockpile, which entailed load-out of 20 trucks. ERRS began T&D operations on the second stockpile, which included load-out of 60 trucks. ERRS demobilized from the Site for a short break.

Week of February 15, 2010:

ERRS mobilized to the Site following a break from Site operations. ERRS continued T&D operations from the second stockpile of soil. A total of 30 trucks were loaded out for T&D at the designated landfill.

Week of February 22, 2010:

ERRS continued T&D operations from the second stockpile of soil. A total of 30 trucks were loaded out for T&D at the designated landfill. ERRS continued to excavated Site soils from the western slope of the Site. Concentrations of lead in Site soils remained in the percent range, as determined by in-situ XRF analysis. ERRS stockpiled the excavated soils in the second stockpile, which ensured "hazardous" disposal of the newly excavated soils.

Week of March 1, 2010

ERRS conducted T&D of 51 trucks of the stockpiled hazardous soils. START conducted in-situ XRF sampling on the soils that remained in the T&D staging area, with lead concentrations ranging from 865 to 1,383 ppm. START shipped the final batch of 10 confirmatory soil samples for metals analysis. ERRS decontaminated the articulate dump. ERRS continued to backfill and grade the sloped areas of the Site.

Under the direction of the OSC, ERRS completed excavation activities on the Site. Additional subsurface lead-contaminated soils, up to 61,056 ppm, were discovered. The extent of this contamination is unknown. The contamination appears to extend into the hillside, in a direction away from the creek. The XRF data is depicted in Figure 15, "XRF Sample Data, Post-Excavation of Slope, March 1, 2010". START collected samples from approximately 20% of these locations and shipped the samples for laboratory analysis and confirmation.

EPA received the validated data from the January, 2010, surface soil collection events to confirm lead concentrations that remain in soils along the southwestern and western slopes of the Site. The validated data is depicted in Figure 16, "Validated Data, Post-Excavation Slope, January 15 and 28, 2010" (see Appendix 8, "Validated Analytical Results for Metals in Soil, January 15 and 28, 2010").

Week of March 8, 2010

ERRS completed backfilling the excavated areas of the Site and graded the Site to allow appropriate drainage of rain water into Beaver Creek. T&D of the hazardous soils (13 trucks) was completed on March 10, 2010. A total of 235 trucks, carrying a payload of 5,569 tons, transported the lead-contaminated soils to a landfill in Detroit, Michigan. ERRS restored the T&D staging area and removed the fencing and markers. START collected surface water samples from Beaver Creek at locations that coincided with the prior "high-water" sampling event (upstream from the Site, adjacent to the hot areas on Site, and downstream from the Site). START packaged and shipped the surface water samples for PCB Congeners analysis. All personnel demobilized from the Site for two weeks to allow warmer weather to approach to facilitate hydro seeding.

Week of March 15, 2010:

Validated analytical data was received from the final batch of surface soil samples (see Appendix 9, "Validated Analytical Results for Metals in Soil, March 1 and 5, 2010"). The validated data from the former lower haul road is depicted in Figure 17, "Validated Data, Post-Excavation Lower Haul Road, March 1, 2010". The validated data from the former T&D stockpile area is depicted in Figure 18, "Validated/XRF Data, Post-Excavation Former T&D Stockpile, March 5, 2010".

Week of March 22, 2010:

ERRS and START mobilized to the Site and made preparations for completion of the Removal Action. ERRS and START packed all equipment and supplies from the command trailers. ERRS began to decontaminate some of the heavy equipment on Site. ERRS hydroseeded the slope on March 27, 2010.

EPA received the validated laboratory results from the December, 2009, sampling event for PCB Congeners in the surface water of the Site. The Total Toxicity Equivalent (TEQ) of PCB Congeners in the downstream location was 0.00023 pg/L and 0.0005 pg/L in the upstream location. The validated laboratory results are in Appendix 5, "Validated Analytical Results for PCB Congeners in Water, December 9, 2009".

Week of March 29, 2010:

ERRS decontaminated and demobilized most of the heavy equipment from Site. ERRS arranged for discontinuation of all utilities in the command trailers. The command trailers were demobilized from the Site. All orange hi-vis fencing was removed from the Site. ERRS excavated the access road to the command trailers. ERRS demobilized the remaining heavy equipment from the Site. All personnel demobilized from the Site on April 2, 2010.

August 12, 2010:

EPA received the validated laboratory results from the March, 2010, sampling event for PCB Congeners in the surface water of the Site. The Total TEQ in the downstream location was 0.00087 pg/L, 0.00075 pg/L in the location adjacent to the area that the majority of the excavation activities occurred on Site, and 0.00069 pg/L in the upstream location. The validated laboratory results are in Appendix 10, "Validated Analytical Results for PCB Congeners in Water, March 10, 2010".

6.0 ON-SITE LEAD SCREENING AND ANALYTICAL SUMMARY FOR SOIL

6.1 X-Ray Fluorescence (XRF) Analysis of Lead in Soil

In order to obtain results of lead concentrations in Site soils at a fast rate and to help reduce costs associated with laboratory analysis of soil samples, the On-Scene Coordinator approved use of a portable Innov-X XRF unit. START utilized the XRF on Site in accordance with EPA Method 6200 (Reference 1, *Method 6200 Field Portable X-ray Fluorescence Spectrometry for the Determination of Elemental Concentrations in Soil and Sediment*):

- An energy calibration check (standardization) was conducted each time the XRF was turned on or restarted. Standardization is an automated procedure which involves collecting a spectrum on a known standard (Alloy 316) and which compares a variety of parameters to values stored when the instrument was calibrated at the factory. The value acquired during the standardization verified if the instrument was ready for use.
- An instrument blank was used to verify that no contamination exists in the spectrometer or on the probe window. The instrument blank used during this project was silicon dioxide. This instrument blank was analyzed prior to and following use of the instrument on Site. Lead was not detected in the instrument blank samples throughout the duration of the project.
- Calibration verification check samples were used to check the accuracy of the instrument. Check samples were analyzed prior to and following use of the instrument on Site. The calibration verification samples used for this site were National Institute of Standards and Technology (NIST) 2709 (18.9 ppm lead), NIST 2711 (1,162 ppm lead), and NIST 2710 (5,532 ppm). The measured value for lead was within ±20 percent (%D) of the true value for the calibration verification checks throughout the duration of the project.

In-situ XRF data was used to characterize lead concentrations in the Site soils during the assessment phase of the project. The XRF data was also used to aid the OSC in determination of the extent of excavation activities required during the Removal Action.

6.2 Validated Analytical Data for Lead in Soil

START collected soil samples at a rate of approximately one per twenty in-situ soil screening sample locations. The results are summarized in the following table, which includes both the validated laboratory result and the soil screening XRF results, along with their locations depicted on maps and the associated data validation package:

Table 6.2
Summary of Soil Sample and Associated Maps and Validated Data

Sample Location	Sample Collection Date	Purpose of Sample Collection	Validated Laboratory Result (mg/kg lead)	Soil Screening Result (mg/kg lead)	Associated Figure Numbers (XRF Screening/Validated Laboratory Results)*	Associated Attachment (Validated Laboratory Results)**
SS01	12/10/09	Pre-Excavation, Slope	48,700	17,831	8/9	6
SS02	12/10/09	Pre-Excavation, Slope	56,700	>10%	8/9	6
SS03	12/10/09	Pre-Excavation, Slope	24,100	21,084	8/9	6
SS04	12/10/09	Pre-Excavation, Slope	20,500	11,558	8/9	6
SS05	12/10/09	Pre-Excavation, Slope	33,900	31,790	8/9	6
SS06	12/10/09	Pre-Excavation, Slope	62,700	25,938	8/9	6
SS07	12/10/09	Pre-Excavation, Slope	16,600	25,007	8/9	6
SS08	12/10/09	Pre-Excavation, Slope	437	423	8/9	6
SS09	12/10/09	Pre-Excavation, Slope	19.7	29	8/9	6

Sample Location	Sample Collection Date	Purpose of Sample Collection	Validated Laboratory Result (mg/kg lead)	Soil Screening Result (mg/kg lead)	Associated Figure Numbers (XRF Screening/Validated Laboratory Results)*	Associated Attachment (Validated Laboratory Results)**
SS10	12/10/09	Pre-Excavation, Slope	16.7	29	8/9	6
SS11	12/16/09	Post-Excavation, Lower Road	1,540	1,302	10/11	7
SS12	12/16/09	Post-Excavation, Lower Road	1,050	817	10/11	7
SS13	12/16/09	Post-Excavation, Lower Road	1,770	1,164	10/11	7
SS14	12/16/09	Post-Excavation, Lower Road	1,990	643	10/11	7
SS15	12/16/09	Post-Excavation, Lower Road	868	No Data, Wet Soil	10/11	7
SS16	12/16/09	Post-Excavation, Lower Road	1,130	No Data, Wet Soil	10/11	7
SS17	12/16/09	Post-Excavation, Lower Road	2,270	No Data, Wet Soil	10/11	7
SS18	12/16/09	Post-Excavation, Lower Road	2,020	No Data, Wet Soil	10/11	7
SS19	12/16/09	Post-Excavation, Lower Road	2,650	No Data, Wet Soil	10/11	7
SS20	12/16/09	Post-Excavation, Lower Road	1,250	No Data, Wet Soil	10/11	7
SS21	1/15/10	Post-Excavation, Slope	79,400	38,314	12/16	8

Sample Location	Sample Collection Date	Purpose of Sample Collection	Validated Laboratory Result (mg/kg lead)	Soil Screening Result (mg/kg lead)	Associated Figure Numbers (XRF Screening/Validated Laboratory Results)*	Associated Attachment (Validated Laboratory Results)**
SS22	1/15/10	Post-Excavation, Slope	59,500	10,968	12/16	8
SS23	1/15/10	Post-Excavation, Slope	23,700	16,032	13/16	8
SS24	1/15/10	Post-Excavation, Slope	447	966	13/16	8
SS25	1/15/10	Post-Excavation, Slope	193	487	12/16	8
SS26	1/15/10	Post-Excavation, Slope	733	859	13/16	8
SS27	1/15/10	Post-Excavation, Slope	730	1,361	13/16	8
SS28	1/15/10	Post-Excavation, Slope	11,000	2,638	13/16	8
SS29	1/15/10	Post-Excavation, Slope	3,480	1,272	12/16	8
SS30	1/28/10	Post-Excavation, Slope	70.2	2,164	13/16	8
SS31	3/1/10	Post-Excavation, Lower Haul Road	381	283	17/18	9
SS32	3/1/10	Post-Excavation, Lower Haul Road	287	227	17/18	9
SS33	3/1/10	Post-Excavation, Lower Haul Road	638	802	17/18	9

Sample Location	Sample Collection Date	Purpose of Sample Collection	Validated Laboratory Result (mg/kg lead)	Soil Screening Result (mg/kg lead)	Associated Figure Numbers (XRF Screening/Validated Laboratory Results)*	Associated Attachment (Validated Laboratory Results)**
SS34	3/1/10	Post-Excavation, Lower Haul Road	1,260	347	17/18	9
SS35	3/1/10	Post-Excavation, Lower Haul Road	848	1,128	17/18	9
SS36	3/5/10	Post-T&D	1,540	1,383	19	9
SS37	3/5/10	Post-T&D	1,010	960	19	9
SS38	3/5/10	Post-T&D	1,490	992	19	9
SS39	3/5/10	Post-T&D	1,220	865	19	9
SS40	3/5/10	Post-T&D	1,190	1,313	19	9

7.0 Toxicity Characteristic Leachate Procedure (TCLP)

ERRS excavated Site soils and transported them using an articulate dump to two separate stockpiles in a T&D staging area. ERRS collected a composite soil sample from each of the two piles and shipped them to a laboratory for TCLP analysis of PCBs and Resource Conservation and Recovery Act (RCRA) metals. The analytical results for lead verified that the stockpiled soils required T&D as "hazardous" (result > 5 mg/L). The analytical results are shown in the following table:

Table 7.0
TCLP Analytical Data

Stockpile (Sample ID)	Collection Date	RCRA metals (mg/L)	Aroclor-1254 (ug/kg)
One (SP001)	December 10, 2009	107 (lead)	3140
Two (SP002)	January 12, 2010	48.9 (lead)	2600

8.0 TRANSPORTATION AND DISPOSAL (T&D)

Following review of the TCLP data for lead in soil, the OSC designated the contaminated soil on Site as "hazardous" (Disposal Code D0008). The transportation company used was US Bulk, from Erie, Pennsylvania. The designated landfill used for disposal was EQ Detroit, in Detroit, Michigan. A total of 235 trucks were used to transport 5,569.74 tons of hazardous soils off Site for disposal. The EPA generator ID number issued by the Virginia Department of Environmental Quality (VA DEQ) was VAD000010248. The following table summarizes the number of trucks used for T&D, the dates of transport off-Site, designated manifest numbers, and corresponding payloads:

Table 8.0
T&D Log

Truck Number	Date	Manifest Number	Weight (tons)
001	02/03/10	007194254 JJK	25.73
002	02/03/10	007194255 JJK	22.89
003	02/03/10	007194256 JJK	22.93
004	02/03/10	007194257 JJK	24.73
005	02/03/10	007194258 JJK	23.67
006	02/03/10	007194259 JJK	22.12
007	02/03/10	007194260 JJK	22.68
008	02/03/10	007194261 JJK	20.24
009	02/03/10	007194262 JJK	23.86
010	02/03/10	007194263 JJK	24.8
011	02/04/10	007194155 JJK	22.88
012	02/04/10	007194156 JJK	22.9
013	02/04/10	007194157 JJK	21.6
014	02/04/10	007194158 JJK	23.54
015	02/04/10	007194159 JJK	22.88
016	02/04/10	007194160 JJK	22.93
017	02/04/10	007194161 JJK	23.61
018	02/04/10	007194162 JJK	24.39
019	02/04/10	007194163 JJK	22.92
020	02/04/10	007194164 JJK	22.93
021	02/04/10	007194165 JJK	23.23
022	02/04/10	007194166 JJK	24.1
023	02/04/10	007194167 JJK	22.15
024	02/04/10	007194168 JJK	22.01
025	02/04/10	007194169 JJK	23.52
026	02/04/10	007194170 JJK	24.41
027	02/04/10	007194171 JJK	31.39
028	02/04/10	007194172 JJK	26.81
029	02/04/10	007194173 JJK	24.17
030	02/04/10	007194174 JJK	29.69
031	02/08/10	007194175 JJK	24.11
032	02/08/10	007194176 JJK	23.32
033	02/08/10	007194177 JJK	23.05
034	02/08/10	007194178 JJK	24.06
035	02/08/10	007194179 JJK	23.41
036	02/08/10	007194180 JJK	22.16
037	02/08/10	007194181 JJK	22.33

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Truck Number	Date	Manifest Number	Weight (tons)
038	02/08/10	007194182 JJK	22.57
039	02/08/10	007194183 JJK	23.98
040	02/08/10	007194184 JJK	22.29
041	02/08/10	007194185 JJK	24.24
042	02/08/10	007194186 JJK	26
043	02/08/10	007194187 JJK	23.43
044	02/08/10	007194188 JJK	22.45
045	02/08/10	007194189 JJK	22.63
046	02/08/10	007194190 JJK	22.62
047	02/08/10	007194191 JJK	20.25
048	02/08/10	007194192 JJK	24
049	02/08/10	007194193 JJK	23.62
050	02/08/10	007194194 JJK	23.32
051	02/10/10	007194195 JJK	22.49
052	02/10/10	007194196 JJK	23.84
053	02/10/10	007194197 JJK	22.78
054	02/10/10	007194198 JJK	23.57
055	02/10/10	007194199 JJK	23.99
056	02/10/10	007194200 JJK	24.5
057	02/10/10	007194201 JJK	22.32
058	02/10/10	007194202 JJK	24.64
059	02/10/10	007194203 JJK	22.97
060	02/10/10	007194204 JJK	25.55
061	02/10/10	007194205 JJK	22.33
062	02/10/10	007194206 JJK	21.95
063	02/10/10	007194207 JJK	24.58
064	02/10/10	007194208 JJK	23.96
065	02/10/10	007194209 JJK	22.91
066	02/10/10	007194210 JJK	27.56
067	02/10/10	007194211 JJK	26.34
068	02/10/10	007194212 JJK	20.91
069	02/10/10	007194213 JJK	21.96
070	02/10/10	007194214 JJK	25.23
071	02/11/10	007194215 JJK	23.29
072	02/11/10	007194216 JJK	22.03
073	02/11/10	007194217 JJK	25.63
074	02/11/10	007194218 JJK	22.77
075	02/11/10	007194219 JJK	23.2
076	02/11/10	007194220 JJK	21.55
077	02/11/10	007194221 JJK	21.73
078	02/11/10	007194222 JJK	23.85

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Truck Number	Date	Manifest Number	Weight (tons)
079	02/11/10	007194223 JJK	23.43
080	02/11/10	007194224 JJK	23.19
081	02/11/10	007194225 JJK	25.61
082	02/11/10	007194226 JJK	24.09
083	02/11/10	007194227 JJK	23.44
084	02/11/10	007194228 JJK	19.72
085	02/11/10	007194229 JJK	22.08
086	02/11/10	007194230 JJK	21.7
087	02/11/10	007194231 JJK	25.04
088	02/11/10	007194232 JJK	31.15
089	02/11/10	007194233 JJK	25.06
090	02/11/10	007194234 JJK	22.79
091	02/12/10	007194235 JJK	22.61
092	02/12/10	007194236 JJK	23.37
093	02/12/10	007194237 JJK	29.91
094	02/12/10	007194238 JJK	24.98
095	02/12/10	007194239 JJK	28.93
096	02/12/10	007194240 JJK	28.02
097	02/12/10	007194241 JJK	24.52
098	02/12/10	007194242 JJK	25.2
099	02/12/10	007194243 JJK	23.65
100	02/12/10	007194244 JJK	22.22
101	02/12/10	007194245 JJK	24.12
102	02/12/10	007194246 JJK	23.35
103	02/12/10	007194247 JJK	23.59
104	02/12/10	007194248 JJK	28.41
105	02/12/10	007194249 JJK	26.8
106	02/12/10	007194250 JJK	29.44
107	02/12/10	007194251 JJK	26.45
108	02/12/10	007194252 JJK	30.73
109	02/12/10	007194253 JJK	23.97
110	02/12/10	007194043 JJK	24.77
111	02/18/10	007194044 JJK	21.04
112	02/18/10	007194045 JJK	23.08
113	02/18/10	007194046 JJK	25.34
114	02/18/10	007194047 JJK	23.37
115	02/18/10	007194048 JJK	22.86
116	02/18/10	007194049 JJK	23.01
117	02/18/10	007194050 JJK	24.31
118	02/18/10	007194051 JJK	23.48
119	02/18/10	007194052 JJK	23.57

Federal On-Scene Coordinator's Report
Twin City Iron & Metal Site

Truck Number	Date	Manifest Number	Weight (tons)
120	02/18/10	007194053 JJK	24.14
121	02/19/10	007194054 JJK	22.73
122	02/19/10	007194055 JJK	22.8
123	02/19/10	007194056 JJK	22.82
124	02/19/10	007194057 JJK	23.93
125	02/19/10	007194058 JJK	22.34
126	02/19/10	007194059 JJK	22.98
127	02/19/10	007194060 JJK	21.31
128	02/19/10	007194061 JJK	23.37
129	02/19/10	007194062 JJK	27.52
130	02/19/10	007194063 JJK	23.62
131	02/23/10	007194164 JJK	23.36
132	02/23/10	007194165 JJK	21.35
133	02/23/10	007194166 JJK	22.35
134	02/23/10	007194167 JJK	20.96
135	02/23/10	007194168 JJK	22.02
136	02/23/10	007194169 JJK	23.57
137	02/23/10	007194170 JJK	24.32
138	02/23/10	007194171 JJK	22.06
139	02/23/10	007194172 JJK	23.68
140	02/24/10	007194173 JJK	23.6
141	02/24/10	007194174 JJK	22.27
142	02/24/10	007194175 JJK	22.75
143	02/24/10	007194176 JJK	23.78
144	02/24/10	007194177 JJK	23.24
145	02/24/10	007194178 JJK	27.39
146	02/24/10	007194179 JJK	21.91
147	02/24/10	007194181 JJK	22.85
148	02/24/10	007194183 JJK	23.54
149	02/24/10	007194185 JJK	24.45
150	02/24/10	007194187 JJK	23.23
151	02/25/10	007194189 JJK	22.42
152	02/25/10	007194191 JJK	21.99
153	02/25/10	007194193 JJK	21.52
154	02/25/10	007194195 JJK	24.05
155	02/25/10	007194197 JJK	20.8
156	02/25/10	007194199 JJK	23.09
157	02/25/10	007194101 JJK	23.26
158	02/25/10	007194103 JJK	21.7
159	02/25/10	007194105 JJK	22.92
160	02/25/10	007194107 JJK	23.48

Federal On-Scene Coordinator's Report
Twin City Iron & Metal Site

Truck Number	Date	Manifest Number	Weight (tons)
161	02/26/10	007194109 JJK	24.05
162	02/26/10	007194111 JJK	22.07
163	02/26/10	007194113 JJK	20.87
164	02/26/10	007194115 JJK	25.08
165	02/26/10	007194117 JJK	23.55
166	02/26/10	007194119 JJK	23.56
167	02/26/10	007194121 JJK	22.36
168	02/26/10	007194123 JJK	23.63
169	02/26/10	007194125 JJK	22.41
170	02/26/10	007194127 JJK	26.51
171	02/26/10	007194129 JJK	23.3
172	03/01/10	007194131 JJK	22.18
173	03/01/10	007194133 JJK	22.93
174	03/01/10	007194135 JJK	22.62
175	03/01/10	007194137 JJK	23.43
176	03/01/10	007194139 JJK	23.32
177	03/01/10	007194141 JJK	22.53
178	03/01/10	007194143 JJK	22.05
179	03/01/10	007194145 JJK	23.21
180	03/01/10	007194147 JJK	24.06
181	03/01/10	007194149 JJK	21.17
182	03/01/10	007194151 JJK	24.52
183	03/01/10	007194153 JJK	20.6
184	03/01/10	007194082 JJK	23.77
185	03/01/10	007194084 JJK	22.54
186	03/01/10	007194086 JJK	22.2
187	03/01/10	007194080 JJK	23.15
188	03/02/10	007194501 JJK	23.96
189	03/02/10	007194502 JJK	22.65
190	03/02/10	007194503 JJK	22.28
191	03/02/10	007194504 JJK	26.14
192	03/02/10	007194505 JJK	23.47
193	03/02/10	007194506 JJK	24.35
194	03/02/10	007194507 JJK	25.77
195	03/02/10	007194508 JJK	23.27
196	03/02/10	007194509 JJK	22.95
197	03/02/10	007194510 JJK	24.59
198	03/02/10	007194511 JJK	24.13
199	03/02/10	007194512 JJK	22.76
200	03/02/10	007194513 JJK	23.95
201	03/02/10	007194514 JJK	22.77

Truck Number	Date	Manifest Number	Weight (tons)
202	03/02/10	007194515 JJK	21
203	03/02/10	007194516 JJK	24.76
204	03/03/10	007194517 JJK	24.54
205	03/03/10	007194518 JJK	27.88
206	03/03/10	007194519 JJK	22.75
207	03/03/10	007194520 JJK	24.4
208	03/03/10	007194521 JJK	24.13
209	03/03/10	007194522 JJK	22.36
210	03/03/10	007194523 JJK	23.88
211	03/03/10	007194524 JJK	23.14
212	03/03/10	007194525 JJK	22.35
213	03/04/10	007194526 JJK	23.6
214	03/04/10	007194972 JJK	22.31
215	03/04/10	007194973 JJK	23.38
216	03/04/10	007194974 JJK	24.34
217	03/04/10	007194975 JJK	23.84
218	03/04/10	007194976 JJK	24.08
219	03/04/10	007194977 JJK	31.21
220	03/04/10	007194978 JJK	31.99
221	03/04/10	007194979 JJK	28.94
222	03/04/10	007194980 JJK	21.35
223	03/08/10	007194981 JJK	21.57
224	03/08/10	007194982 JJK	22.9
225	03/08/10	007194983 JJK	23.28
226	03/08/10	007194984 JJK	22.44
227	03/08/10	007194985 JJK	23.69
228	03/08/10	007194986 JJK	25.87
229	03/08/10	007194987 JJK	23.14
230	03/09/10	007194988 JJK	29.51
231	03/09/10	007194989 JJK	21.47
232	03/09/10	007194990 JJK	20.39
233	03/10/10	007194991 JJK	23.35
234	03/10/10	007194992 JJK	22.31
235	03/10/10	007194993 JJK	22.6
		Total Trucks 235	**5569.74**

9.0 RECOMMENDATIONS

The current property owner has informed EPA that he intends to construct a housing development on the property. This would entail heavy construction and utility installations. Due to the presence of elevated concentrations of lead that remain in the

Site soils, EPA has recommended that no intensive excavation or building activities should occur on the portion of the property where this Removal Action occurred. The backfill cover on the Site varies from two to seven feet, at a 3:1 slope, and will not support excavation activities at those depths. Detrimental results may occur if the cap is breached, which may include migration of lead contaminants into Beaver Creek, and/or failure or collapse of the cap. EPA recommended that the deed restriction be implemented by the City of Bristol, Virginia.

10.0 REFERENCES

1. EPA (U.S. Environmental Protection Agency). 2007. *Method 6200 Field Portable X-ray Fluorescence Spectrometry for the Determination of Elemental Concentrations in Soil and Sediment*.

ENVIRONMENTAL COVENANT ATTACHMENT D


Twin Cities Iron and Metals Site
PARCEL 1B
PARCEL 6
PARCEL 7B
Capped Area
PARCEL 7A
PARCEL 1A
Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

CONSENT DECREE APPENDIX C:
DECLARATION OF MICHAEL COSOLA
United States v. Michael Cosola

Appendix C
Declaration of Michael Cosola

I, Michael Cosola, hereby declare as follows:

1. I am the owner of the property in Bristol, Virginia designated by Bristol Tax Parcel numbers 29-9-1A, 29-9-7A, 29-9-6, 29-9-7B and 29-9-1B (the "Property").

2. Title to the Property is free and clear of all liens and encumbrances, with the exception of outstanding real estate taxes owed on the Property.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on the 8th day of January, 2017.

Michael Cosola