

2010 JUL 30 A 9 39

MICHAEL L. HAUDENSCHILD  
CLERK

IN THE COURT OF COMMON PLEAS  
HARDIN COUNTY, OHIO

STATE OF OHIO, ex. rel.	:	
RICHARD CORDRAY	:	
OHIO ATTORNEY GENERAL	:	Case No. CVH 2006 1253
	:	
Plaintiff,	:	Judge: WILLIAM R. FINNEGAN
	:	(By Assignment)
v.	:	
	:	
KING-OHIO FORGE, INC., et al.,	:	
	:	
Defendants.	:	<u>CONSENT ORDER</u>
	:	

WHEREAS, the Complaint in the above-captioned matter having been filed herein, and the Plaintiff State of Ohio, by its Attorney General, Richard Cordray, ("State"), and Defendant, King-Ohio Forge, Inc. ("King-Ohio Forge") and Defendant, David B. King having consented to the entry of this Order;

THEREFORE, without trial or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. DEFINITIONS

- 1. As used in this Consent Order:
  - A. "Closure Plan" means a plan that meets the requirements of Ohio Administrative Code Sections 3745-55-11 through 3745-55-20.

1007430

- B. **“Consent Order”** means this Consent Order and Final Judgment Entry. In the event of conflict between this Consent Order and any other document, the Consent Order shall control.
- C. **“Defendant”** means King-Ohio Forge, Inc. unless otherwise specifically noted in this Consent Order.
- D. **“Director”** means Ohio’s Director of Environmental Protection.
- E. **“Effective Date”** means the date the Hardin County Court of Common Pleas enters this Consent Order.
- F. **“Facility”** refers to the facility where the alleged disposal of hazardous waste was conducted by Defendant, which is located at the following address: 820 Steiner Ave., Kenton, Hardin County, Ohio.
- G. **“Ohio EPA”** means the Ohio Environmental Protection Agency.
- H. **“Plaintiff”** means the State of Ohio by and through the Attorney General of Ohio.
- I. **“Property”** means 820 Steiner Ave., Kenton, Hardin County, Ohio.

## II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to Revised Code Chapter 3734 and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

### **III. PERSONS BOUND**

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, its agents, officers, directors, employees, assigns, successors in interest and any person acting in concert or participation with it to the extent provided by Rule 65(D) of the Ohio Rules of Civil Procedure. The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the Party or Parties whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

### **IV. SATISFACTION OF LAWSUIT, EFFECT OF CONSENT ORDER**

4. The State has alleged that King-Ohio Forge and David B. King have violated R.C. Chapters 3734 and the rules promulgated thereunder.

5. As of the effective date of this Consent Order, the claims in the State's Complaint against David B. King are dismissed with prejudice.

6. Except as otherwise provided in Section V of this Consent Order, King-Ohio Forge's compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint.

### **V. RESERVATION OF RIGHTS**

7. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

- A. Seek relief for claims or conditions not alleged in the Complaint;
- B. Seek relief for claims or conditions alleged in the Complaint that occur after the entry of this Consent Order;

- C. Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- D. Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9601, et seq. and/or Revised Code 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order.
- E. Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility that may present an imminent threat to the public health or welfare, or the environment.
- F. Nothing in this Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged in the Complaint, against any person, firm, trust, joint venture, partnership, corporation, association, or other entity not a signatory to this Consent Order in this cause of action.

## VI. CLOSURE AND OTHER INJUNCTIVE RELIEF

8. King-Ohio Forge has entered into an option to purchase agreement with a prospective purchaser, Tice Enterprises, Inc (“Tice”) for the sale of 820 Steiner Avenue, Kenton, Ohio (the “Property”). In consideration for obtaining title to the Property, Tice has agreed to complete a voluntary action at the Property under the Ohio EPA Voluntary Action Program (the “VAP”). In order to complete the voluntary action, Tice will need to perform closure of the areas at the Property that the State has alleged are subject to the hazardous waste closure requirements.

9. The areas at the Property that the State claims are subject to the hazardous waste closure requirements are all hazardous waste drum storage areas in Building 5 and Building 2 at the Facility as identified in the map that is attached hereto, and incorporated herein, as Exhibit I

10. If Tice takes title to the Property on or before December 31, 2010, the State hereby waives all claims against King-Ohio Forge for injunctive relief for the claims alleged within the Complaint, and, provided that King-Ohio Forge has complied with Section VII of this Consent Order, the State's claims against King-Ohio Forge shall be dismissed with prejudice.

11. If Tice does not take title to the Property on or before December 31, 2010, or by a later date agreed to in writing by the State and King-Ohio Forge, then King-Ohio Forge shall submit the draft closure plan that is attached hereto as Exhibit II to the Ohio EPA for review and approval no later than January 20, 2011, or by a later date agreed to in writing by the State and King Ohio Forge. If the Ohio EPA approves of the closure plan submitted by King-Ohio Forge under this paragraph, or a version that is substantially similar to the closure plan attached as Exhibit II, then King-Ohio Forge shall implement the approved closure plan. If Ohio EPA denies the closure plan submitted by King-Ohio Forge, or issues an approval with conditions that substantially change the closure plan, then King-Ohio Forge shall not be required to implement a closure plan without a further order of the Court, and Ohio EPA shall reserve all rights to seek injunctive relief against King-Ohio Forge for the claims in the State's Complaint.

12. Nothing in this Consent Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon any private or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3734.

## VI. SUBMITTAL OF DOCUMENTS

13. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio Environmental Protection Agency  
Division of Hazardous Waste Management  
50 West Town Street, Suite 700  
Columbus, OH 43215  
Attn: Harry Sarvis, Manager

Ohio Environmental Protection Agency  
Northwest District Office  
347 North Dunbridge Rd.  
Bowling Green, OH 43402  
Attn: John Pasquarette, Manager, Division of Hazardous Waste Management

## VII. CIVIL PENALTY

14. Defendant is ordered and enjoined to pay to the State of Ohio a total civil penalty in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00).

15. King-Ohio Forge shall pay the civil penalty required under this Consent Order by certified check or money order in the amount of Twelve Thousand Five Hundred Dollars (\$12,500.00) c/o Karen Pierson, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43215, a cashier's or certified check in that amount payable to the order of "Treasurer, State of Ohio" within thirty (30) days of the effective date of this Consent Order and shall include a reference to "A.G. EAGO No. 243349". This civil penalty shall be deposited into the Hazardous Waste Clean-up Fund created by Revised Code 3734.28.

## VIII. STIPULATED PENALTIES

16. In the event that Defendant fails to comply with any requirement or deadline contained in this Consent Order or any requirement or deadline contained in any document approved in accordance with this Consent Order, the Defendant is liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

- A. For each day of each failure to comply with a requirement or deadline of this Consent Order, up to and including thirty (30) days, one hundred dollars (\$100) per day for each requirement or deadline not met.
- B. For each failure to comply with a requirement or deadline of this Consent Order, from thirty-one (31) to sixty (60) days, two hundred and fifty dollars (\$250) per day for each requirement or deadline not met.
- C. For each day of each failure to comply with a requirement or deadline of this Consent Order, over sixty (60) days, five hundred dollars (\$500) per day for each requirement or deadline not met.

17. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering a certified check or money order in the manner stated in Section VII.

18. The payment of stipulated penalties and the acceptance of such stipulated penalties by Plaintiff pursuant to this Article shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to Revised Code Chapter 3734, including civil penalties under Revised Code 3734.13, or to otherwise seek judicial enforcement of this Consent Order, for the same violation for which a stipulated penalty was paid or for other violations.

**X. RETENTION OF JURISDICTION**

19. This Court shall retain jurisdiction of this action for the purpose of enforcing this Consent Order or in resolving any conflicts concerning the interpretation of this Consent Order.

**XI. COSTS**

20. Defendant shall pay the court costs of this action.

**XII. EFFECTIVE DATE**

21. This Consent Order shall become effective upon the date of its entry by the Court.

**XIII. AUTHORITY TO ENTER INTO THE CONSENT ORDER**

22. Each of the undersigned representatives of the Parties represents and warrants that he or she has been duly authorized to sign this document and so bind the respective party to all terms and conditions thereof.

**IT IS SO ORDERED:**

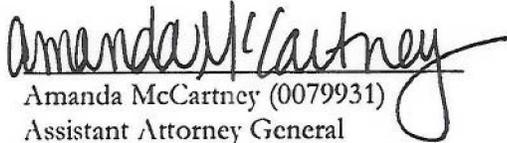
William R. Finnegan  
JUDGE FINNEGAN  
HARDIN COUNTY  
COURT OF COMMON PLEAS  
SITTING BY ASSIGNMENT

July 27, 2010  
DATE

[SIGNATURE PAGE FOLLOWS]

APPROVED BY:

**RICHARD CORDRAY**  
**OHIO ATTORNEY GENERAL**



Amanda McCartney (0079931)  
Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-2766  
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Amanda.Sturm@ohioattorneygeneral.gov

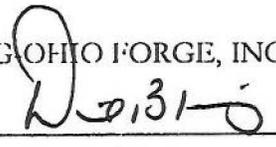
*Attorney for Plaintiff State of Ohio*



Terrence S. Finn (0039391)  
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*Attorney for Defendants*

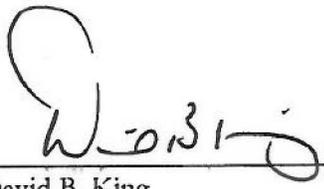
KING OHIO FORGE, INC

By: 

Print Name: DAVID B. KING

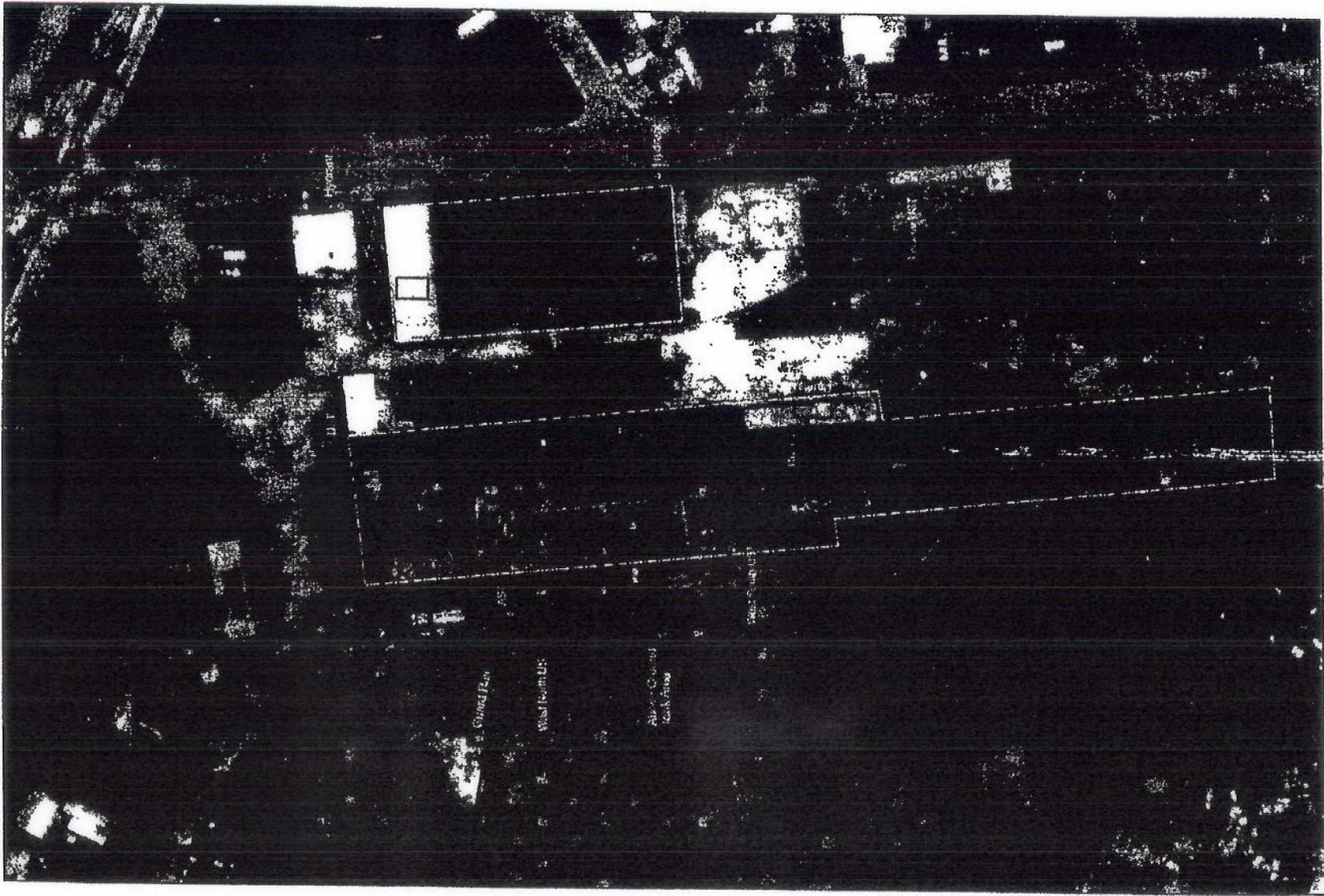
Title: AGENT

Sign: \_\_\_\_\_



David B. King

EXHIBIT I



**Figure 1**  
**King Ohio Forge**  
**Site Map**

Current\* Dam Storage Area  
Trenches  
Pits  
Closure Areas



Legend

EXHIBIT II

**\*\*DRAFT\*\***

**RCRA CLOSURE PLAN FOR  
FORMER HAZARDOUS WASTE STORAGE AREAS**

**KING-FORGE OHIO PROPERTY  
820 STEINER AVENUE  
KENTON, OH**

**USEPA ID: OHD004558383  
KERAMIDA PROJECT NO. 13935**



260 Northland Blvd., Suite 114  
Cincinnati, Ohio 45246  
(513) 769-9057 • Fax (513) 772-5727  
1-800-508-8034

[keramida@keramida.com](mailto:keramida@keramida.com) • [www.keramida.com](http://www.keramida.com)

July 14, 2010

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- 1 Site Vicinity Map**
- 2 Site Plan**
- 3 Phase II Soil and Groundwater Sample Locations in RCRA Closure Areas**

**ATTACHMENTS**

- 1 Closure Area Map**
- 2 Phase II Laboratory Reports**

## **1.0 INTRODUCTION**

KERAMIDA Inc. (KERAMIDA) has prepared this Closure Plan for several hazardous waste container storage areas located in Building 2 and Building 5 at the King-Ohio Forge facility at 820 Steiner Avenue in Kenton, Ohio (Site). These Resource Conservation and Recovery Act (RCRA) units are the subject of a pending enforcement action against King-Ohio Forge that resulted from the illegal storage of hazardous waste in violation of R.C. §3734.02(E)&(F).

Tice Enterprises, Inc. has partnered with the City of Kenton to apply for funding through the Clean Ohio Revitalization Fund (CORF) so that the property can be redeveloped for commercial/industrial use. This Closure Plan is intended to provide assurance to the Ohio EPA Division of Hazardous Waste Management (DHWM) that the RCRA units and any associated impacts will be addressed during closure. The performance requirements set forth in this Closure Plan are applicable only to the boundaries of the RCRA units. The performance requirements in this plan are based on telephone discussions with Ms. Kelly Smith of the DHWM Enforcement Unit on July 6 and July 9, 2010, a telephone discussion with Mr. Michael Allen of the Engineering & Remediation Assistance Unit on July 9, 2010, and a July 12, 2010 e-mail from Mr. Michael Allen. This Closure Plan will be implemented concurrent with the schedule of the Site-wide cleanup to be conducted under the CORF.

The Site USEPA ID number will be reactivated. After implementation of the plan, a closure report complete with disposal documentation and analytical results will be prepared and submitted to DHWM for approval. The approved closure report will be included the VAP remediation completion report.

## **2.0 SITE DESCRIPTION**

The Property consists of four parcels. The Hardin County Auditor identifies the parcels as Parcels 06150049, 06150050, 06150051, and 06150053. The shape of the Property is generally triangular and totals 8.65 acres. A map of the Property location is provided as Figure 1, and the Site boundary is depicted Figure 2.

The Property was last occupied by King-Ohio Forge, Inc. The Property is bound to the north by railroad tracks, beyond which is the Kenton Lube Plant. The Property is bound to the east by Steiner Avenue, beyond which are residential properties. The Property is bound to the west and south by residential properties. The Property is generally flat.

The RCRA units consist of five former hazardous waste container storage areas. Two of the areas were inside Building 2; one on the north wall and one on the west wall. Three of the areas were inside Building 5; two on the east wall in both the northern and southern portions of the building, and one in the approximate center of the building. The center area is defined as the area inside the wall that divides the north and south portion of the building on the north, the approximately four (4) foot tall concrete barrier to the south, the corrugated building's outside wall to the east, and the wall of Building 5 to the west. Their locations are depicted on the map prepared by the DHWM provided in Attachment 1. The areas are outlined in green and designated as drum storage areas.

According to DHWM records and KERAMIDA's inspection, the northern storage area in Building 2 has a competent concrete floor. It is not certain if the storage area along the west wall of Building 2 has a competent concrete floor. The two storage areas on the east wall in both the northern and southern portions of Building 5 do not appear to have competent concrete floors. It is not certain if the storage area in the center of Building 5 has a competent concrete floor.

### **3.0 CONTAMINANTS OF CONCERN (COC)**

DHWM testing requirements for the closure areas include the eight RCRA metals, volatile organic compounds (VOCs), and the herbicide 2,4-D. To investigate whether other COCs might be appropriate for the closure areas, recent Phase II soil and groundwater sampling and analysis conducted in the closure areas included VOCs, semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), herbicides, light and heavy total petroleum hydrocarbons (TPH), and VAP metals. A summary of the results of the Phase II sampling and analysis in the storage areas is provided in the following section.

### **4.0 SUMMARY OF PHASE II RESULTS**

#### **Soil Results**

Phase II soil sampling generally included a sample from 0 to 2 feet below ground surface (bgs) and a sample from the 2 to 8 foot interval bgs. In borings advanced to bedrock, a third soil sample was collected just above bedrock. The soil sample selected from the 2 to 8 foot depth was the interval likeliest to be indicative of contamination based on field observations such as staining or odors or vapor screening results. If no samples from the 2 to 8 foot interval exhibited evidence of impact, a composite sample from the interval was collected.

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The locations of soil samples collected from the closure areas are depicted in Figure 3. The following table summarizes the COCs detected in soil in the storage areas. The laboratory reports are provided in Attachment 2.

COC	Storage Area
Acetone	Building 2 west storage area
1,2-dichloroethane	Building 2 west storage area, Building 5 central storage area
Methylene chloride	Building 2 west storage area, Building 2 north storage area
TPH-Gasoline Range	Building 5 central storage area
TPH-Diesel Range	All areas
TPH-Extended Range	All areas
VAP metals	All areas

None of the detected COCs exceeded VAP commercial/industrial direct contact soil standards, or construction/excavation worker direct contact soil standards, or soil saturation levels. A complete discussion of the Phase II findings is provided in the Phase II Investigation Report.

**Groundwater Results**

One-inch diameter pre-packed PVC wells were installed in each of the storage areas. The wells were constructed with 15 feet of 0.010-inch factory slotted screen, sand pack to approximately 1 foot above the top of the screen, a bentonite seal, and grout to near the ground surface. Groundwater samples were collected from the wells using low-flow methods and analyzed for the same COCs as the soil samples.

The locations of groundwater samples collected from the closure areas are depicted in Figure 3. COCs were not detected in groundwater above Federal Maximum Contaminant Levels (MCLs).

**Concrete Results**

A concrete chip sample was collected from the Building 2 north storage area and analyzed for PCBs. The sample was collected in a stained area and consisted of a composite of the upper one inch of concrete. PCB Aroclor 1260 was detected at 0.19 mg/kg. No other PCBs were detected. The laboratory reports are provided in Attachment 2.

**5.0 CLOSURE PERFORMANCE STANDARD**

The following sections describe the performance standard for each RCRA unit and is based on the April 7, 2010 DHWM letter.

Test Procedures for Waste

In general, all material/debris that is removed from the concrete pads will be containerized and representatively sampled and analyzed using TCLP test methods for the eight RCRA metals (Method #6010C), VOCs (Method #8260B), and the herbicide 2,4-D (Method 8151A), for purposes of disposal. Based on these analytical results, this material/debris will be disposed of in accordance with the applicable Ohio Administrative Code regulations. Similarly, all wash waters will be collected, and upon completion of the removal, representatively sampled to insure proper disposal in accordance with Ohio Administrative Code regulations.

Based on the results of the Phase II soil and groundwater sampling and analysis, no additional test methods are proposed.

Closure Procedures

- All concrete pad debris will be removed by dry brushing and containerized, tested, and disposed as described above.
- The pads will be pressure washed once with water. The wash water will be containerized, tested and disposed as described above.
- Once the concrete pads are removed, the underneath of the concrete will be dry-brushed to remove any soil or debris and the concrete will be crushed and left on-site as construction/demolition debris. No soil removal will be conducted.
- Three samples of the soil beneath each pad will be collected and analyzed for VOCs, RCRA metals, and herbicide 2,4-D. The samples will be collected from locations where contamination is most likely to be present based on field conditions. The data will be compared to risk-based standards for commercial and industrial exposure. The Property is zoned and intended to be redeveloped as commercial or industrial. Rather than complete a full site-specific risk assessment, existing risk-based exposure standards that have been developed and accepted by a regulatory agency will be proposed. In this case, the Ohio VAP commercial/industrial (C/I) land use standards will be used as ARARs.
- In the event soil analytical results exceed C/I standards, a contingency plan will be implemented to remove, characterize, and dispose of the contaminated soil.
- With the exception of arsenic, the Phase II soil data in the closure areas and across the property were below residential risk-based GCNs. A background determination for arsenic in soil will be conducted using the Phase II soil data, which showed arsenic soil concentrations were within normal background levels. The determination will also

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demonstrate that arsenic is not a chemical of concern based on historic Site operations.

Additional background soil testing for arsenic would be performed if needed.

- Phase II groundwater data in the closure areas were below Federal MCLs.

**TX Report**

(FRI) JUL 30 2010 10:23

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PAGES : 19page

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HARDIN COUNTY  
COMMON PLEAS COURT

2010 JUL 30 A 9 39

CARRIE L. HAUDENSCHILD  
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