

Admin
file

04-105-12343(2)

**STATE OF KANSAS
DEPARTMENT OF HEALTH AND ENVIRONMENT**

In the Matter of:)	
)	
Environmental Contamination at the)	
Kansas Oxide Site)	
603 Sunshine Road,)	Case No. 10-E-0038 BER
Kansas City, Kansas)	
)	
Metals and Additives Corporation, Inc.)	
Respondent.)	
)	

CONSENT AGREEMENT AND FINAL ORDER

The Parties hereto, the Kansas Department of Health and Environment ('KDHE') and Metals and Additives Corporation, Inc, (also referred to herein as "Respondent"), an Indiana for-profit corporation no longer doing business in the State of Kansas, having agreed that settlement of this matter is in the best interests of all parties and the public, hereby represent and state the following:

1. Respondent agrees to undertake all actions required by the terms and conditions' of this Order.
2. This Order is a Final Order of the Secretary of the Kansas Department of Health and Environment ("Secretary") pursuant to the Kansas Administrative Procedures Act ("KAPA"). Respondent agrees that jurisdiction is proper and not to contest this Order, the authority of the Secretary to issue this Order or any action by KDHE to enforce the

terms of this Order.

3. Respondent does not admit nor deny any Finding of Fact or Conclusion of Law as set forth in this Order.
4. No change in the ownership or corporate status of Respondent shall alter its responsibilities under this Order.
5. Respondent shall provide a copy of this Order to any subsequent owners or successors before ownership rights are transferred. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants which are retained to conduct any work performed under this Order, within fourteen (14) days after the Effective Date of this Order or the date of retaining their services. Notwithstanding the terms of any contract, Respondent is, and shall remain, responsible for compliance with this Order and for ensuring that its contractors and agents comply with this Order.

DEFINITIONS

6. Terms used in this Order, if defined in state statutes or the associated regulations, shall have the meanings assigned to them in the statute or the regulations. To the extent not inconsistent with the meanings assigned to them in statute or regulation, the terms listed below if used in this Order, or in attached or incorporated documents shall have the following meanings.
 - a. "Day" shall mean a calendar day unless expressly stated to be a working day.
 - b. "RA" shall mean Removal Action. For purposes of this Order, RA shall not include groundwater treatment, removal, remediation or long term monitoring.

- c. "RAD" shall mean Removal Action Design. For purposes of this Order, RAD shall not include any design of groundwater treatment, removal, remediation or long term monitoring.
- d. "RSE" shall mean Removal Site Evaluation.
- e. "RSK Manual" shall mean the KDHE Risk-Based Standards for Kansas Manual 4th Version (June 2007) and subsequent updates. The manual describes the process for establishing chemical-specific and site-specific cleanup goals for soil, groundwater and indoor air, and provides reference to additional KDHE policies for cleanup goals involving surface water and sediment that are protective of human health and the environment.
- f. "Site" is defined as the Kansas Oxide facility at 603 Sunshine Road and the Central Solutions facility located at 3130 Brinkerhoff Road, but specifically excludes the building interiors and railroad property located to the west of the Kansas Oxide and Central Solutions facilities. The Site is shown in Exhibit 1.
- g. "Working day" shall mean a day other than a Saturday, Sunday or State of Kansas holiday. In computing any period of time under this Order where the last day would fall on a Saturday, Sunday or holiday recognized by the State of Kansas the period shall run until the end of the next working day.

JURISDICTION

- 7. KDHE is a duly authorized agency of the State of Kansas, created by act of the legislature, pursuant to K.S.A. 75-5601, *et seq.*

8. The Secretary of KDHE (also referred to herein as the "Secretary") has authority and responsibility to protect the public health and the environment; specifically, as it pertains to contamination and remediation of contamination of the waters and soils of the state, under the authority of K.S.A. 65-161 through K.S.A. 65-171z; relative to the safe and sanitary disposal of hazardous wastes, under the authority of K.S.A. 65-3430, *et seq.*; and, in matters involving hazardous substances and the hazardous substance cleanups, under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a, *et seq.*).
9. More specifically, the Secretary has authority, pursuant to K.S.A. 65-164(d), to order a person, company or corporation that has or is polluting the waters of the state to treat the sewage or other polluting material to prevent the future pollution of waters of the state.
10. The Secretary has the authority pursuant to K.S.A. 65-3453(a) (1) to determine that the cleanup of a site polluted by a hazardous substance is necessary to protect the public health or the environment.
11. The Secretary has the authority pursuant to K.S.A. 65-3453(a) (3) to issue cleanup orders to persons responsible for the health or environmental hazard created by a hazardous substance.

12. K.S.A. 65-3453(a) (4) authorizes the Secretary to recover moneys from persons responsible for the health or environmental hazard created by a hazardous substance.

FINDINGS OF FACT

13. **Site Description.** The Kansas Oxide facility is located on the southwest corner of the intersection of Sunshine and Brinkerhoff Roads with the address of 603 Sunshine Road in

the Fairfax District of Kansas City, Kansas. The legal description of the facility is the Southwest Quarter of Section 27, Township 10 South, Range 25 East, Wyandotte County, Kansas. The facility consists of a single building with two sections and an attached outbuilding. For purposes of this Order, the Site consists of the Kansas Oxide facility and the Central Solutions facility located at 3130 Brinkerhoff Road, but specifically excludes the building interiors and railroad property located to the west of the Kansas Oxide and Central Solutions facilities. The Site is shown in Exhibit 1.

14. **Business and Site Ownership Information.** The Kansas Oxide facility was occupied by Chloride Inc. prior to 1979. The Kansas Oxide facility was purchased by the Oxide and Chemical Corporation, a Kansas corporation, in March 1979 and leased back to Chloride Inc. for one year. The Kansas Oxide facility was operated by Oxide and Chemical Corporation, a Kansas corporation, beginning in 1980. In 1989, the shareholders of Oxide and Chemical Corporation, an Indiana corporation, the parent company of Oxide and Chemical Corporation, a Kansas corporation, sold their shares to Big River. On August 13, 1996, Big River sold to Omni Oxide, LLC all of the shares of stock of American Oxide Corporation, a wholly owned subsidiary which owned the assets of the Oxide and Chemical Corporation, an Indiana corporation. Omni Oxide ceased its operations at the Property in December 2003. On December 1, 2004, Metals and Additives Corporation, Inc. D/B/A Omni Oxide Corp. sold the Property to 603 Sunshine, LLC, an affiliate of Nigro Family Partnership and Jim Fulton.

15. Omni Oxide and its predecessors produced powdered lead oxide for battery components from 1980 to December 2003 at the Kansas Oxide facility. The lead oxide production process involved melting lead ingots in vessels known as "Barton" pots. In the Barton process the molten lead is stirred (reacted) with a strong draft of air circulating over the tops of the pots resulting in lead oxide formation (as dust). According to KDHE Bureau of Air and Radiation file information the resultant lead oxide dust (product) was blown into a cyclone and bag house from which the lead oxide dust was extracted and sold.
16. The Respondent, Metals and Additives Corporation, Inc., is an Indiana corporation with a current mailing address of 5901 Lakeside Boulevard, Indianapolis, IN 46728. On January 15, 2006, Metals and Additives forfeited its Kansas corporation status for failure to submit the required annual report. Metals and Additives is however a Foreign for Profit Corporation, incorporated in Indiana. The last resident agent listed with the Kansas Secretary of State was: Corporation Service Company, 200 SW 30th Street, Topeka, Kansas 66611.
17. According to a KDHE Responsible Party Identification Memorandum, dated August 26, 2009, the current owner of the former Kansas Oxide facility is identified as 603 Sunshine L.L.C., which is active and in good standing in the State of Kansas.
18. **Environmental Investigations.** An Environmental Assessment was conducted by Allied Environmental Services in 1993 on the adjacent property owned by Central Solutions, Inc. Results of this investigation indicated lead contamination at 590,000 milligram per kilogram (mg/kg) from a particulate sample collected from the roof of the Central

Solutions, Inc., building immediately adjacent to the exhaust fans from the Kansas Oxide facility. Central Solutions, Inc., was a commercial health care products distributor and has never used lead. KDHE Identified Site List information states, "Previous activities at the site [Central Solutions] began in 1958 as a packaging center for janitorial and sanitation supplies until 2004 when the property was leased to a printing company and then to a graphic service in 2005."

19. In 1998, the United States Environmental Protection Agency (EPA) conducted a Resource Conservation and Recovery Act (RCRA) compliance inspection of the Kansas Oxide facility. KDHE Bureau of Waste Management (BWM) file documentation identified Kansas Oxide as a generator of characteristic lead waste (D008).
20. Kansas Oxide was notified by KDHE BWM letter in April 11, 2001, that its generator status was incorrect and that the facility actually had generated more D008 waste than was previously documented. Several other violations were noted by KDHE BWM in the 2001 inspection including container management violations (marking, leaving containers open, etc.)

21. In March, 2004 Maxim Technologies, Inc. performed a Phase I Environmental Assessment, on behalf of Central Solutions, Inc. The two primary concerns identified in the Phase I investigation were airborne lead dust emissions from the Kansas Oxide facility, and volatile organic compounds (VOC) and polychlorinated biphenyl (PCB) releases from the southerly adjacent Unison/Union Carbide facility. The non-lead

releases from the Unison site are being addressed through respective KDHE and EPA programs.

22. In May, 2004 Baker Environmental, Inc., on behalf of Central Solutions, Inc., conducted additional roof and surface soil sampling and performed soil removal outside of KDHE oversight. A maximum lead concentration was identified in a wipe sample collected from the Central Solutions facility roof at nearly 66,000 micrograms per square foot. Lead was also identified in a dust sample collected from the interior of the facility near the ventilation intake for this same section of the facility roof at 3,682 micrograms per square foot. KDHE does not have cleanup standards established for lead particulate concentrations on environmental surfaces. A maximum lead concentration of 20,870 mg/kg was identified in surface soil. As established in the RSK Manual, the applicable KDHE Tier 2 levels for lead concentrations in soil are 400 mg/kg and 1,000 mg/kg, respectively.
23. As part of a limited soil removal at the Central Solutions facility in May 2008, Baker Environmental collected and analyzed surface soil samples, using the Toxicity Characteristic Leaching Procedure (TCLP) methodology. The lead concentration was found to be 23.01 mg/L, which exceeded the lead threshold of 5 mg/L, defining the lead contaminated soil as hazardous waster (D008).
24. KDHE completed an Integrated Assessment Report (IAR), dated July 2009, for the Site. Surface soil samples were collected at the Site within the right-of-way of the Kansas Oxide facility and adjacent to the Central Solutions, Inc., facility. A maximum total lead

concentration of 8,000 mg/kg was identified in surface soil, exceeding the RSK levels for both residential and nonresidential settings. The maximum TCLP lead concentration identified for this sampling effort is reported at 22 mg/L, also exceeding the TCLP lead threshold of 5 mg/L, thus defining lead as a characteristic hazardous waste (D0008).

25. In December 2009, KDHE collected thirteen surface soil samples from locations on/around the Kansas Oxide Facility. These samples were initially field screened using x-ray fluorescence technology. Field screening analytical results for all surface soil samples analyzed exceeds the RSK screening concentrations for lead in soil (direct contact) for residential and non-residential exposure scenarios. Five of these soil samples were submitted to the KDHE analytical laboratory for follow-up inorganic (metal) analyses. One of the five samples submitted for metals analysis, was also submitted for TCLP (toxic characteristic leaching procedure) analysis. All samples submitted to the KDHE laboratory had lead detections exceeding RSK and/or TCLP screening values. The maximum lead contamination noted at the Kansas Oxide facility for the December 2009 sampling event is for surface soil sample KO-SS13, collected immediately adjacent to one of the south facing ventilation ductwork. This sample has a reported total lead concentration of 300,000 part per million (ppm). The TCLP concentration for this sample is 860 ppm or 172 times the TCLP screening criteria.

26. **Threat to Public Health and Environment.** According to the ATSDR (Agency for Toxic Substances and Disease Registry) exposure to lead may cause severe brain and kidney damage, miscarriage, and death. The DHHS (United States Department of Health

and Human Services) has determined that lead and lead compounds are reasonably anticipated to be human carcinogens.

CONCLUSIONS OF LAW

27. Respondent is a "person", "company", "corporation", "institution" or "municipality" within the purview of, K.S.A. 65-164 through K.S.A. 65-171z and K.S.A. 65-3452a, *et seq.*
28. The Site constitutes a site within the meaning of K.S.A. 65-3453.
29. The presence of the contaminants identified in the soil at the Site constitutes "pollution" as defined by K.S.A. 65-171d.
30. Contaminants identified in the soil at the Site are "hazardous substances" as defined by K.S.A. 65-3452a.
31. The facts set forth above constitute:
 - a. The pollution of the land or waters of the state or the threat of pollution of the land or waters of the state in violation of K.S.A. 65-164(d);
 - b. A health or environmental hazard created by a hazardous substance requiring cleanup pursuant to K.S.A. 65-3453.
32. Respondent is a person responsible for the health or environmental hazard created by the hazardous substance(s) and is therefore responsible for costs incurred by KDHE pursuant to K.S.A. 65-3455.
33. The environmental contamination identified at the Site is causing or threatens to cause pollution of the soil and waters of the state, or is, or threatens to become, a hazard to

persons, public health or safety.

ORDER

34. The Secretary hereby orders and the Respondent agrees to conduct the activities identified and be bound by the terms set forth herein.
- a. All activity contemplated or performed pursuant to this Order shall be conducted subject to the approval of KDHE in accordance with the terms of this Order and consistent with the standards, specification and schedules approved by KDHE as contained in the exhibits to this Order.
 - b. Failure to comply with any of the terms and conditions of this Order or incorporated exhibits shall be considered a violation of this Order and may subject the Respondent to such administrative actions and penalty provisions as set forth in this Order or otherwise authorized by law.
 - c. All communications, notifications and requests required under this Order shall be made in writing. For the purposes of this Order, fax transmissions will be considered as being in writing; e-mail transmissions shall not be considered in writing.
 - d. Unless otherwise directed by KDHE, Respondent shall provide to KDHE one hard copy plus one electronic copy of each deliverable required pursuant to this Order.
 - e. All documents submitted to KDHE pursuant to this Order are subject to KDHE approval and shall be considered draft documents until accepted as final by

KDHE.

- f. Any documents, reports, plans, specifications, schedules and/or attachments required by this Order, upon acceptance by KDHE, shall be deemed incorporated into this Order by reference.

35. **Exhibits Incorporated.** The following documents are, or shall be, incorporated herein by reference:

- a. Exhibit 1: Site Location Map.
- b. Exhibit 2: RSE/RAD/RA Scope of Work (SOW).
- c. Exhibit 3A: RSE Work Plan (incorporated herein upon KDHE approval).
- d. Exhibit 3B: RAD Plan (incorporated herein upon KDHE approval).
- e. Exhibit 4: Project Deliverable and Milestone Schedule.
- f. Exhibit 4A: RSE Schedule (incorporated herein upon KDHE approval).
- g. Exhibit 4B: RAD Schedule (incorporated herein upon KDHE approval).
- h. Exhibit 5: Agency Decision Statement (incorporated herein upon KDHE final issuance).
- i. Exhibit 6: Field Activities Notification Form.
- j. Exhibit 7: Form of Invoice for Oversight Costs.

36. **KDHE Requested Modifications to Documents.** KDHE may ask the Respondent to make specific modifications to any document required by this Order. If the Respondent does not make modifications acceptable to KDHE, KDHE, at its discretion, may make

such modifications as it determines to be necessary. All costs incurred by KDHE in making such modifications shall be charged to the Respondent as oversight costs.

37. **Inadequate Performance – Notice of Disapproval.** In the event that KDHE finds that a document submitted or work performed pursuant to this Order is inadequate, it will issue a Notice of Disapproval to the Respondent. The Notice of Disapproval delineates the deficiencies in the document or work, describes the necessary modifications to address the deficiencies and provides an expected timeframe to correct the deficiencies. Failure to revise, correct, invoke Dispute Resolution or otherwise respond to the Notice of Disapproval shall be deemed a violation of this Order.
38. **Work Takeover – Notice.** If Respondent fails to revise, correct, invoke Dispute Resolution or otherwise respond to KDHE’s Notice of Disapproval in accordance with the schedule specified in the Notice of Disapproval, or if KDHE determines that Respondent 1) has ceased implementation of any portion of the work, 2) is seriously or repeatedly deficient or late in its performance of the work, or 3) is implementing the work in a manner which may cause an endangerment to human health or the environment, KDHE at its discretion may assume or arrange for a contractor or contractors to assume the performance of all or any portions of the work as KDHE determines necessary. If KDHE determines that such a work takeover is necessary, it will send Respondent a Notice of Work Takeover specifying a date upon which KDHE may assume or arrange for a contractor or contractors to assume the performance of all or any portions of the

work. In the event of work takeover, Respondent shall pay for all costs incurred by KDHE and any contractor who performs work pursuant to this paragraph.

39. **Task Specific Schedules.** All work plans required pursuant to this Order shall establish task specific dates and timeframes for related implementation, construction and reporting activities. Each schedule shall specifically include the Respondent's proposed milestone dates for start and completion of implementation as well as construction activities and submittal of a draft report. All requests for schedule extensions must be submitted in advance by Respondent to KDHE for approval.
40. **Kansas Licensure Requirement.** All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer or geologist licensed in the State of Kansas with expertise in environmental site investigations and remediation. Within thirty (30) days of the Effective Date of this Order, Respondent shall notify KDHE of the name, title, license number and qualification of the engineer or geologist, and of any contractors or subcontractors and their personnel to be used in carrying out the terms of this Order. Respondent shall notify KDHE of any changes of name, title, license number and qualifications of the engineer, geologist, contractors, subcontractors and their personnel within thirty (30) days of the occurrence of such change.

REQUIRED TASKS

41. **General Removal Provisions.**
- a. Within thirty (30) days of the Effective Date of this Order, Respondent shall submit a draft RSE Work Plan and RSE Schedule for the Site for KDHE approval

which are consistent with the RSE/RAD/RA SOW (Exhibit 2).

- b. KDHE will provide comments on the draft RSE Work Plan and RSE Schedule. Within thirty (30) days of receipt of KDHE's comments, Respondent shall submit for final approval a revised RSE Work Plan and RSE Schedule that addresses KDHE's comments. Upon KDHE approval, the RSE Work Plan shall become incorporated into and made part of this Order as Exhibit 3A and the RSE Schedule shall become incorporated into this Order as Exhibit 4A.
- c. Within thirty (30) days from date of KDHE approval of the RSE Work Plan and RSE Schedule, Respondent shall commence the implementation of the tasks detailed in the RSE Work Plan. The work shall be conducted in accordance with the standards and specifications contained in the RSE Work Plan, and the RSE Schedule.
- d. Respondent shall submit a draft RSE Report for KDHE approval pursuant to RSE Work Plan and RSE Schedule. The draft RSE Report is to be prepared consistent with the RSE/RAD/RA SOW (Exhibit 2) and is to specifically include a summary of the RSE work completed.
- e. Based on the KDHE-approved RSE Report, KDHE shall draft and issue an Agency Decision Statement, describing proposed removal action activities for the Site. Once final, the Agency Decision Statement shall become incorporated into this Order and made a part hereof as Exhibit 5.

- f. Within thirty (30) days of the final issuance of an Agency Decision Statement, Respondent shall submit a draft RAD Plan and RAD Schedule for KDHE approval consistent with the RSE/RAD/RA SOW (Exhibit 2). The RAD Plan and RAD Schedule shall not be deemed complete until approved by KDHE at which time the RAD Plan shall become incorporated into this Order and made a part hereof as Exhibit 3B and RAD Schedule shall be incorporated into this Order and made a part hereof as Exhibit 4B.
 - g. Respondent shall commence implementation of the tasks detailed in the RAD Plan and RAD Schedule within thirty (30) days from the date of KDHE approval. The work shall be conducted in accordance with the standards and specifications contained in the approved RAD Plan, and implemented within the approved RAD Schedule.
 - h. Respondent shall submit a draft and final RA Summary Report for KDHE approval pursuant to the RAD Plan and RAD Schedule, and consistent with the RSE/RAD/RA SOW (Exhibit 2)
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42. **Additional Tasks May Be Required.** In order to satisfy the objectives of this Order KDHE, in conducting its oversight activities, may determine that additional tasks, consistent with the purpose of this Order may be required on the Site that are in addition to those specified in the approved RSE Work Plan or RAD Plan or associated documents/reports. If such tasks are required, they shall be completed as specified by KDHE and within the time frames established by KDHE, provided however that any

additional tasks required under this Order shall be limited to the Site as defined by this Order.

43. **Wells Required by Order.** For any well installed by KDHE for investigation purposes prior to the Effective Date of this Order, Respondent shall propose in the draft RSE Work Plan which of those wells will be retained for purposes of this Order. The wells retained, upon KDHE approval, shall become the property of Respondent. For additional wells installed by Respondent, Respondent shall be responsible for such wells subject to obtaining access to the property and in accord with the provisions of this Order. Prior to termination of this Order, upon approval of KDHE, all wells for which Respondent is responsible shall be closed in compliance with KDHE regulations. Written notice shall be provided to the KDHE project coordinator as set forth in this Order unless otherwise approved by KDHE.

44. **Sample Collection.** At the request of KDHE, Respondent shall provide or allow KDHE or its authorized representatives to take split samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, KDHE shall allow Respondent or its authorized representatives to take split or duplicate samples of all samples collected by KDHE under this Order. KDHE shall notify Respondent at least seven (7) days before conducting any sampling under this Order, provided, however, that if seven (7) days notice of sample collection activity is not possible, KDHE and Respondent shall give such advance notice to enable each party to have a representative present during said sample collection activity.

45. **Quality Assurance.**

- a. All samples analyzed pursuant to this Order shall be analyzed by a KDHE-approved laboratory using KDHE-approved laboratory methodologies.
- b. All sample collection and analysis shall be performed in compliance with the approved work plan(s), including scheduling of analyses, documentation of sample collection, handling and analysis.
- c. Laboratory analytical report forms shall be submitted to KDHE for all analytical work performed pursuant to this Order. Any deviation from the procedures and methods set forth in these documents must be approved by KDHE prior to use. Respondent shall notify KDHE within five (5) working days of notice or knowledge of a potential deviation from prescribed procedures or methods. Such notice shall provide information as to the nature of the deviation, if known, and outline a proposed investigation to determine whether the sample or results are representative or should not be considered valid. If the results cannot be validated by evaluation of the quality assurance/quality control procedures, historical data and/or laboratory protocol, Respondent will resample if directed to do so by KDHE. Respondent shall notify KDHE at least seven (7) days before conducting re-sampling.
- d. Respondent shall use the quality assurance, quality control, and chain of custody procedures specified in the quality assurance project plans which are part of the work plan(s), for all sample collection and analysis performed pursuant to this

Order, unless otherwise agreed to by KDHE.

- e. All contracts for field work shall provide that KDHE representatives are allowed access, for auditing and evaluation purposes, at reasonable times upon reasonable request, to all personnel utilized by Respondent for sample collection and analysis and other field work. Upon request by KDHE, the laboratories shall perform analysis of a reasonable number of known samples provided by KDHE to demonstrate the quality of the analytical data.

46. **Data/Document Availability.** Respondent shall make available to KDHE all results of sampling or tests, or other data generated by or on its behalf with respect to the implementation of this Order. Respondent shall report the results of such sampling or testing, or other data in accordance with the task specific work plans and schedules identified in this Order or as otherwise directed by KDHE. Upon completion of quality assurance and quality control assessment of the data, KDHE shall make available to Respondent results of sampling and tests, and other data obtained relative to this Order, unless it is otherwise prohibited by law.

47. **Progress Reporting.**

- a. Respondent shall provide KDHE with written progress reports, in accordance with the Project Deliverable and Milestone Schedule (Exhibit 4), commencing from the Effective Date of this Order and continuing until termination of this Order. At a minimum, these progress reports shall:
 - i. Describe the actions, progress and status of projects which have been

taken toward achieving compliance with this Order, as well as the actions which are scheduled for the next quarter;

- ii. Identify any requirements under this Order that were not timely completed and any problem areas and anticipated problem areas in complying with this Order;
 - iii. Include all results of sampling, tests, data, field notes, and conclusions drawn from data generated pursuant to the work plan(s); and
 - iv. Provide updated schedule(s) as requested by, and subject to, KDHE approval.
- b. The KDHE project coordinator may direct the Respondent to submit monitoring reports separate from or combined with quarterly progress reports.

48. **Access.**

- a. KDHE acknowledges that Respondent does not own or control any property within the Site. Respondent will not take any action which would restrict KDHE's ability to enter and freely move about all property at the Site for the purpose, among other things, of interviewing site personnel and contractors; inspecting records, operating logs, and contracts related to the activities set out in the work plan(s); reviewing the progress of Respondent in carrying out the terms of this Order; conducting such sampling and tests as KDHE deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted to KDHE by Respondent. Respondent

shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data that pertain to work undertaken pursuant to this Order.

- b. The parties acknowledge that work required by the Work Plan(s) must be done on property not owned or controlled by Respondent. Respondent shall use its best efforts to obtain access agreements from the present owner(s) of such property within thirty (30) days of the Effective Date of this Order. Any such access agreement shall be incorporated by reference into this Order. In the event that agreements for site access are not obtained within thirty (30) days of the Effective Date of this Order, Respondent shall notify KDHE regarding both the lack of and its failure to obtain such agreements within seven (7) days thereafter. In the event that KDHE obtains access for Respondent, all KDHE's direct costs shall be reimbursed by Respondent pursuant to this Order. Respondent shall not be responsible for reimbursing KDHE for any payment to the owners of the Site in order to secure access. Upon KDHE's obtaining access for Respondent,
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- Respondent shall undertake approved work on such property. KDHE shall not be responsible for any injury or damage to persons or property caused by the negligent or willful acts or omissions of Respondent, its officers, employees, agents, successors, assigns, contractors or any other person acting on Respondent's behalf in carrying out any activities pursuant to the terms of this Order.

49. **Field Activities Notification.** Respondent shall provide KDHE at least seven (7) days advance written notification before conducting any investigation and/or remediation, or other ancillary activities related to such measures, whether conducted pursuant to the Order or to a request, requirement or order from any other federal, state or local regulatory authority where the resultant data or information would be used in part or in full to satisfy requirements of the Order. Failure to provide advance written notification may result in KDHE rejection of the data obtained or work conducted by the Respondent. Advance written notification is to be accomplished by completing the KDHE-BER Remedial Section Field Activities Notification Form on the KDHE website for each activity as distinguished by separate field mobilizations. If website access is not available, Respondent may provide required written notification by completing the form (Exhibit 6) and submitting to the designated KDHE project coordinator.
50. **Record Preservation.** Respondent shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents which have not previously been provided to KDHE in its possession or in the possession of Respondent's employees, agents, consultants or contractors which relate in any way to this Order or to hazardous substance and hazardous waste management and disposal at the Site. During this period, Respondent shall make such records available to KDHE upon request for inspection or KDHE's retention, or shall provide copies of any such records to KDHE.

51. **Dispute Resolution.**

- a. If Respondent disagrees, in whole or in part, with any decision by KDHE pursuant to this Order, Respondent shall notify KDHE within thirty (30) days of receipt of the decision. The parties shall then have an additional thirty (30) working days to attempt to resolve the dispute. If an agreement is reached, the resolution shall be reduced to writing, signed by each Party and incorporated thereupon into this Order. If agreement is not reached, KDHE shall issue a final written decision on the dispute.
 - b. Respondent reserves its right to appeal any decision of the KDHE, which is not consistent with law or which is arbitrary or capricious concerning a dispute under this Order, to an administrative body with applicable jurisdiction and thereafter in compliance with the Kansas Administrative Procedures Act. The final decision or resolution of the applicable authority or court shall be incorporated as a part of this Order. For purposes of this Order, final order or decision shall mean an order or decision from which no appeal may be taken.
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- c. In the event that Respondent seeks dispute resolution concerning a date for performance of an act set out in the Work Plan, the date for performance of such act shall be extended for a period equal to the delay resulting from the invocation of the dispute resolution provision. However, such extension does not alter the schedule for performance of completion of other tasks required by this Order unless also specifically altered by the amendment of this Order.

- d. However, in the event that it is determined that dispute resolution was not sought in good faith, administrative penalties may be assessed at the rate of \$1,000 per day for each day of delay caused by such invocation of the dispute resolution provisions.

ADDITIONAL PROVISIONS

52. **Other Claims and Parties.** Nothing in this Order shall constitute or be construed as a release for any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not named herein for any liability arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the facility or the Site.
53. **Other Applicable Laws.** All actions required to be taken pursuant to this Order shall be undertaken in accordance with all applicable local, state and federal laws and regulations.
54. **Project Coordinator.** Respondent shall, upon receipt of this Order, designate a project coordinator who shall be responsible for overseeing the implementation of this Order and shall provide said coordinator's name and contact information to KDHE. The KDHE project coordinator identified below will be KDHE's designated representative. To the maximum extent possible, all communications between Respondent and KDHE and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. The parties agree to provide at least seven (7) days written

notice prior to changing project coordinators. The absence of the KDHE project coordinator from the Site shall not be cause for the stoppage of work.

55. **Notification.** Unless otherwise specified, reports, notices or other submissions required under this Order shall be sent to the KDHE project coordinator:

John Cook
Bureau of Environmental Remediation/KDHE
Curtis State Office Building
1000 SW Jackson, Suite 410
Topeka, Kansas 66612-1367
Office: 785-296-8986

56. **Service of Process, Return Receipt Delivery.** The Parties may be served personally or by return receipt delivery to the addresses provided below. "Return Receipt Delivery" shall include service effected by United States Postal Service certified mail or priority mail, or commercial courier services, evidenced by a written or electronic receipt showing to whom it was delivered, the address where delivered, date of delivery, and the person or entity effecting delivery.

For the State of Kansas:

Office of Legal Services
1000 SW Jackson, Suite 560
Topeka, Kansas 66612-1368
785-296-5334

A copy of all documents served shall be sent to the KDHE project coordinator, also.

For the Respondent:

Mark S. McCaughey
Vice President – Technology and Environmental Services
Metals and Additives Corporation, Inc.

5929 Lakeside Boulevard
Indianapolis, Indiana 46278
781-642-1408
m.mccaughey@comcast.net

With a copy to:

Gerald L. Williams
Vice President and General Counsel
Metals and Additives Corporation, Inc.
5929 Lakeside Boulevard
Indianapolis, IN 46278
317-290-5000
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Fax: 866-232-8085
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and

Jessica E. Merrigan
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2345 Grand Boulevard
Suite 2200
Kansas City, MO 64108
816-460-5706
Fax: 816-292-2001
jmerrigan@lathropgage.com

57. Reimbursement of Costs.

- a. Respondent shall submit to KDHE the amount \$11,574.47 which constitutes reimbursement for past costs incurred by KDHE in connection with this Site through March 6, 2010. Such payment must be received by KDHE within thirty (30) days after the Effective Date of this Order.
- b. Reasonable and necessary costs incurred by KDHE and recoverable by law, from

March 7, 2010, until the end of the next calendar quarter shall be billed forty-five (45) days following the end of the calendar quarter. Thereafter, KDHE shall bill Respondent for all costs incurred by KDHE during each calendar quarter forty-five (45) days following the end the calendar quarter. Payment of the invoice is due upon receipt. Respondent shall remit a check for the full amount of those costs made payable to the Kansas Department of Health and Environment. Failure to pay the total balance due within thirty (30) days of issuance of the invoice shall be considered a violation of the Order. The form and substance of such invoices shall be substantially similar to the exemplar invoice found in Exhibit 7.

- c. Payment for all costs assessed to Respondent shall be made to:

Kansas Department of Health and Environment
Bureau of Environmental Remediation
Attn: Administration
1000 SW Jackson Street, Suite 410
Topeka, Kansas 66612-1367

- d. A copy of the check and transmittal letter shall be sent to the KDHE project coordinator specified herein.

-
58. **Mutual Agreement.** Each Party acknowledges that it has read all of the terms of this Order, has had an opportunity to consult with counsel of its own choosing or voluntarily waived such right and enters into this Order voluntarily and without duress.
59. **Covenant Not to Sue:** Based upon the completion of the Required Tasks under this Order, KDHE agrees and Covenants Not To Sue (Covenant) Respondent for environmental response, investigation, or remediation at the Site for the known

environmental contamination existing as of and prior to the Effective Date at the Site. Provided however that this Covenant is conditional upon the satisfactory performance by Respondent of its obligations under this Order including the Required Tasks. This Covenant does not relieve or waive any obligations of Respondent that it may have in the future which occur as a result of any activity on the part of Respondent. This Covenant extends only to the Respondent and does not extend to any other person or entity. This Covenant does not apply to any environmental contamination that may be found in groundwater or off-site, but related to the operations of Respondent at the Kansas Oxide facility.

60. **Waiver of Appeal and Review Rights.** Parties acknowledge that this Order, upon execution by the Secretary of KDHE, shall be a final agency order. With the exception of the Dispute Resolution provision above, Respondent voluntarily and knowingly waives any and all rights conferred upon it by the Kansas Administrative Procedure Act (KAPA), K.S.A. 77-501, *et seq.* Respondent voluntarily and knowingly waives the right to an appeal and review of this Order and matters leading up to the execution of this Order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Action, K.S.A. 77-601 *et seq.* KAPA authorizes KDHE to enter into an informal settlement of this matter without the necessity of proceeding to a formal hearing, K.S.A. 77-505.
61. **Joint Drafting.** This Order shall be deemed to have been jointly drafted by the Parties, and in construing and interpreting this Order, no provision shall be construed and

interpreted for or against either of the Parties because such provision or any other provision of the Order as a whole is purportedly prepared or requested by such Party.

62. **Choice of Law, Jurisdiction and Venue.** The laws of the State of Kansas shall govern the terms of this Order. In any judicial action to enforce provisions of this Order, jurisdiction and venue shall be proper in the District Court of Shawnee County, Kansas.
63. **Entire Agreement.** This Order contains the entire agreement between the Parties, and may only be modified in writing signed by the Parties or their duly appointed agents. All prior agreements and understandings between the Parties concerning the subject matter hereof are superseded by the terms of this Order.
64. **Successors and Assigns.** This Order shall be binding on and inure to the benefit of the Parties and their respective agents, employees, affiliates, successors and assigns. No change in the ownership or corporate status of Respondent shall alter its responsibilities under this Order. Successors or assigns, if required by KDHE, shall execute an amendment or other writing attesting to the assumption of the terms, conditions and performance of the Order. An assignment shall not relieve the Respondent from the obligations to carry out the terms and conditions of this Order in the event the assignee fails to do so.
65. **Authority.** Each Party has full knowledge of and has consented to this Order, and represents and warrants that each person who executes this Order on its behalf is duly

authorized to execute this Order on behalf of the respective Party and legally bind the Party represented to this Order.

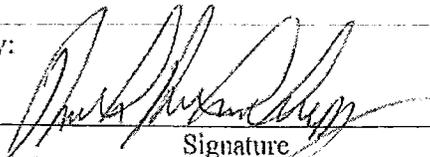
- 66. **Amendment.** This Order may be amended by mutual consent of KDHE and Respondent, and any such amendment shall be in writing.
- 67. **Effective Date.** This Order and any amendment thereto shall become effective as of the date the Order or any amendment thereto is executed by the Secretary of KDHE.
- 68. **Termination.** The provisions of this Order shall terminate upon Respondent's receipt of written notice from KDHE that Respondent has demonstrated that the terms of this Order, including any additional tasks which KDHE has determined to be necessary, have been satisfactorily completed.

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

METALS AND ADDITIVES CORPORATION, INC.

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT

By:



Signature
MARK MCCAUGHY

Name (Typed or Printed)
VICE PRESIDENT

Title
6/15/10

Date

By:



Roderick L. Bremby
Secretary

7/6/2010

Date

LIST OF EXHIBITS

SITE LOCATOR MAP	1
SCOPE(S) OF WORK	---
RSE/RAD/RA SCOPE OF WORK	2
WORK PLAN(S) APPROVED BY KDHE¹	---
RSE WORK PLAN	3A
RAD PLAN	3B
PROJECT DELIVERABLE AND MILESTONE SCHEDULE(S)	4
RSE SCHEDULE ¹	4A
RAD SCHEDULE ¹	4B
AGENCY DECISION STATEMENT¹	5
FIELD ACTIVITIES NOTIFICATION FORM	6
FORM OF INVOICE FOR OVERSIGHT COSTS	7

¹ To be attached as exhibits upon KDHE approval.



Map Prepared by KDHE

Area Map

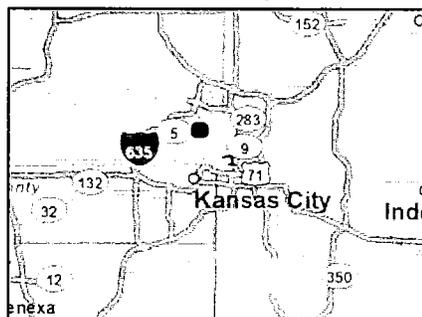


EXHIBIT 1
SITE LOCATOR MAP

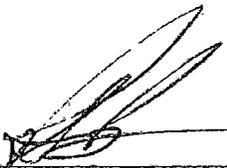
Kansas Oxide
Kansas City, KS

 Facility Location

Project Manager: JKC Drawn By: JMC/JKC

BUREAU OF ENVIRONMENTAL REMEDIATION/REMEDIAL SECTION
POLICY and SCOPE OF WORK
REMOVAL SITE EVALUATION (RSE)/REMOVAL ACTION
DESIGN (RAD)/REMOVAL ACTION (RA)

BER POLICY # BER-RS-031 (Revised)
DATE: November 2008
PAGES: 8

Remedial Section Chief: 

Date: 11/21/08

Bureau Manager: 

Date: 11/21/08

ORIGINATOR

Originator: Rick Bean

Date: 1995

REVISIONS

Reviser: Rob Elder and Randy Brown

Date of Revision: 1996

Reviser: E. Jean Underwood

Date of Revision: November 2008

BUREAU OF ENVIRONMENTAL REMEDIATION/REMEDIAL SECTION
POLICY and SCOPE OF WORK
**REMOVAL SITE EVALUATION (RSE)/REMOVAL ACTION
DESIGN (RAD)/REMOVAL ACTION (RA)**

INTRODUCTION

This Kansas Department of Health and Environment—Bureau of Environmental Remediation (KDHE—BER) Remedial Section policy and scope of work establishes a management strategy and general framework for implementation of removal action activities at sites under various state cleanup programs. There are several such programs within the Remedial Section responsible for direction and/or oversight of investigation and cleanup of sites throughout Kansas. This policy and scope of work has been developed to promote consistency across Remedial Section programs for which removal action implementation may be appropriate. Where site issues posed are relatively uncomplicated yet must be addressed expeditiously, the U.S. Environmental Protection Agency (EPA) can approach the problem by exercising their removal action authority. On occasion, when dealing with an orphan site or a recalcitrant/reluctant potentially responsible party, KDHE—BER has been able to refer certain sites to EPA to avail ourselves to federal removal action authority. This typically results in sites (or portions of sites) being addressed in a more timely manner with the added benefit of work being accomplished at lesser cost to the State of Kansas. KDHE—BER also applies the more streamlined RSE/RAD/RA approach to presumptive remedy-type sites which have similar characteristics (e.g., former smelter sites) to facilitate overall program efficiency.

DEFINITION AND GENERAL FRAMEWORK

The National Oil and Hazardous Substances Contingency Plan (NCP) has defined a removal action as the *cleanup or removal of released hazardous substances from the environment; such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.* Within the EPA universe, removal actions are categorized as emergency, time-critical or non-time-critical, dependent upon the circumstances posed, urgency and threat of release or potential release, and timeframe in which the action must be initiated.

For more complex removal actions implemented under the auspices of the KDHE—BER Remedial Section, or as requested by the implementing party, a goal will be to achieve general NCP consistency to the extent practicable. Individual programs within the KDHE—BER Remedial Section may have other unique or possibly less rigorous requirements associated with a removal action. Therefore, it is incumbent upon each KDHE—BER project manager to have a clear understanding of all program-specific guidelines, policies and regulatory requirements that may have bearing on removal action implementation at a particular site. On a final introductory note, this policy and scope of work was written using more familiar, universally recognized

terminology from the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) realm and is not intended to supplant other analogous Remedial Section program elements. Any removal action or presumptive remedy would be expected to comply with all applicable or relevant and appropriate requirements (ARARs) and to be considered (TBC) guidance identified to that point in time consistent with BER Policy #BER-RS-015.

EXAMPLES AND APPLICABILITY

In determining the appropriateness of any removal action, the following factors, as identified in the NCP (300.415), are to be considered:

- Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances, pollutants or contaminants;
- Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- Hazardous substances in drums, barrels, tanks or other bulk storage containers that may pose a threat of release;
- High levels of hazardous substances, pollutants or contaminants in soils largely at or near the surface that may migrate;
- Weather conditions that may cause migration or release of hazardous substances, pollutants or contaminants;
- Threat of fire or explosion;
- Availability of other appropriate mitigative response mechanisms; and,
- Other situations or factors that may pose threats to public health, welfare or the environment.

There are numerous types of removal actions, or combinations thereof, to be considered by KDHE—BER for a given site including, but not limited to, the following:

- Fences, warning signs or other access control measures;
- Run-off or run-on surface drainage controls;
- Lagoon closure or stabilization of existing retention structures (e.g., berms or dikes);
- Consolidation and capping of contaminated soil or sludge within the area of contamination (AOC);
- Excavation, consolidation or removal of highly contaminated soils from drainage features or other areas;
- Removal of drums, barrels, tanks or other bulk containers;
- Residential yard removal;
- Containment, treatment or disposal of hazardous materials; and,
- Provision of alternate water supply or point-of-use treatment.

As circumstances dictate, the expectation is that each program, through whatever agreement or enforcement mechanism might be available (e.g., administrative order, consent agreement, voluntary agreement, etc.), will contemplate the need for possible removal action measures at a site. Often times, a removal action is the stand-alone response or presumptive remedy action

taken at a site; however, there are instances where a removal action is implemented to address a single issue and subsequent remedial action is performed to comprehensively address all site risks posed.

RSE/RAD/RA OBJECTIVES

A removal action is generally intended for less complex circumstances resulting in more focused characterization and presumptive/streamlined response action implementation, thereby precluding unnecessary treatability study or pilot testing activities. Minimal design effort with emphasis on "off-the-shelf" system components would be typical. Implementation of a removal action under this RSE/RAD/RA policy and scope of work is intended to be a flexible process in which elements can be waived or modified at the discretion of the KDHE—BER project manager to ensure appropriate action is taken in as expeditious and cost-effective a manner as possible. Depending on site-specific circumstances, KDHE—BER may determine the need for additional tasks, including submittal of associated planning and reporting documents, to be conducted concurrently with RSE/RAD/RA activities.

The primary objectives of the RSE/RAD/RA are described as follows:

- 1) Determine the full extent of contamination for all contaminants of concern (COCs) and evaluate the threat to human health and/or the environment;
- 2) Assess the migration of and the chemical/physical properties of the contaminants;
- 3) Collect the data necessary to select an appropriate removal action;
- 4) Gather a sufficient amount of data to support the design parameters of the proposed removal action;
- 5) Evaluate the feasibility, effectiveness and cost of at least two (2) viable removal actions based on the findings of the RSE in comparison with the "no action" alternative;
- 6) Recommend and justify a specific removal action for the site consistent with long-term goals;
- 7) Determine the health and environmental effects of the removal action;
- 8) Establish performance monitoring criteria for the removal action;
- 9) Provide adequate documentation to support the removal action as being consistent with long-term goals for the site; and,
- 10) Implement the removal action to successfully abate, prevent, minimize, stabilize, mitigate or eliminate the release or threat of release.

RSE/RAD/RA PROCESS

This policy and scope of work outlines the activities to be completed as part of the RSE/RAD/RA process. At the discretion of the KDHE—BER project manager, and with the approval of KDHE—BER management, some of the steps in the process may be combined or eliminated to best serve project needs.

STEP 1 RSE Work Plan—An RSE Work Plan must be prepared and submitted to KDHE—BER for review and approval before any removal action activities commence, unless otherwise requested or approved by KDHE—BER. The RSE Work Plan shall minimally include the following project- or site-specific elements: 1) site assessment/evaluation plan (field sampling plan-equivalent); 2) quality assurance project plan; 3) health and safety plan; and, 4) preliminary screening of potential removal actions, particularly for presumptive remedy-type sites. An RSE implementation schedule must be included in the RSE Work Plan.

The RSE portion of the work plan shall at a minimum include a review of available information and documented findings; a description of the physical site characteristics (e.g., geology, hydrogeology, surface hydrology, land use, etc.); a detailed description of the type(s) of contaminants involved, release characteristics and contaminated media; evaluation or investigation objectives; and, detailed procedures for determining the nature and extent of contamination and evaluating all exposure pathways of concern. A screening level risk assessment appropriate for determining the risk and removal goals for the site may be required at the discretion of the KDHE—BER project manager. RSE requirements may be modified or waived by the KDHE—BER project manager if adequate site information is already available to satisfy the stated RSE objectives listed above.

The preliminary screening of potential removal actions should provide a brief description of possible removal action(s), general response action(s) or presumptive remedy to address threats to human health and the environment. At this stage, it would be appropriate to contemplate the need for and timing of establishment of environmental use controls. In addition, the work plan should present preliminary removal action objectives; ARARs; and, cleanup standards or cleanup goals (e.g., Tier 2 screening levels in the *Risk-Based Standards for Kansas RSK Manual*).

STEP 2 RSE Report—The RSE Report shall present the results of the RSE and shall evaluate at least two possible removal action alternatives in comparison to the "no action" alternative in the following format:

- 1) Summary of site assessment/evaluation work completed (as applicable);
- 2) Description of COCs, including a discussion and summary of data collected (with appropriate quality assurance/quality control (QA/QC) and data validation information);
- 3) An evaluation of possible exposure pathways including areal extent of all COCs;
- 4) Removal action goals and appropriate cleanup levels;

- 5) Detailed rationale for any presumptive remedy and/or a description of at least two potential removal action alternatives and a "no action" alternative for the site, including an evaluation of the effectiveness of the removal action alternatives in terms of the long-term objectives and reduction of risk to health and the environment;
- 6) A comparison and justification of the costs of each removal action;
- 7) A consideration of appropriate regulations, ARARs, etc. pertinent to each removal action alternative evaluated;
- 8) Recommendation of appropriate removal action giving adequate supporting rationale for its selection based on the above-defined criteria; and,
- 9) Establishment of adequate post-removal confirmation sampling and/or monitoring to assess removal action performance.

STEP 3 RAD Plan—After KDHE issuance of a decision statement or Corrective Action Decision (CAD), a RAD Plan presenting the preferred removal alternative will be submitted to KDHE for review and approval according to the KDHE-approved schedule.

This RAD Plan may vary in detail depending on the requirements of the participating Remedial Section program. The RA package will include, at a minimum, a summary of available site information and available investigation results; a detailed description of the proposed removal action or presumptive remedy; justification and benefit of implementation including removal action objectives; depending on the complexity of the removal action, complete design specifications and drawing/schematics, including any relevant figures and/or site system engineering layouts (e.g., process flow diagram, piping and instrumentation diagram, etc.) and engineering design basis; cost estimate; and, a detailed working schedule presented graphically in the form of a milestone chart (e.g., Gantt chart) to show the duration and interdependencies of the various activities. Depending on the complexity of the proposed removal action and requirements of the specific Remedial Section program, the RAD Plan may need to address operation and maintenance (O&M) as well as performance monitoring needs. Please refer to BER Policy #BER-RS-023 (Section 1.4), for a discussion of typical performance monitoring elements, and to Attachment A, as an example outline of a RAD Plan. Attachment A is not intended to be prescriptive in nature, rather a model from which to work. The exact elements and content of any RAD Plan will be determined by the KDHE—BER project manager dependent upon the overall complexity of the anticipated removal action while being consistent with the specific requirements of the respective Remedial Section program.

STEP 4 RA Implementation—Pursuant to the KDHE decision statement or CAD, the RA will be implemented in accordance with the KDHE-approved RAD Plan. Emergency or time-critical removal actions may occur before a decision statement or CAD is issued; however, public involvement activities may be warranted. Ultimately, KDHE—BER will determine whether or not the actions taken are deemed complete or fully operational and functional.

STEP 5 RA Summary Report—An RA Summary Report shall be submitted after completion of the removal action or presumptive remedy activities. The RA Summary Report shall include a final summary of removal action activities and an evaluation of the post-removal action confirmation sampling relative to removal action goals. The KDHE—BER project manager will determine the appropriate form or content of the RA Summary Report. If the removal action or presumptive remedy continues as an on-going effort, then the implementing party must submit a monitoring/progress report at a frequency specified in the KDHE—approved Performance Monitoring Plan.

PUBLIC INVOLVEMENT

Public involvement activities must be performed as required by KDHE—BER. An NCP-consistent Community Involvement Plan may be necessary at certain sites and will be implemented upon the discretion of the KDHE—BER project manager. Note that public involvement requirements may vary for the various Remedial Section programs.

KDHE DECISION DOCUMENT

Minimally, KDHE will make available for public comment a draft removal action or presumptive remedy decision statement. The removal action decision statement would be finalized with consideration of public comment received. Alternatively, depending on the complexities posed at the site, KDHE may opt to proceed with a formal CAD. A draft CAD would be made available for public comment and the CAD finalized with consideration of public comment regarding the removal action or presumptive remedy.

REFERENCES

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq. as amended by the Superfund Amendments and Reauthorization Act)

National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300)

EPA/540-R-93-057 (August 1993) entitled "Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA"

U.S. EPA OSWER Directive 9360.0-32FS (December 1993) entitled "Conducting Non-Time-Critical Removal Actions Under CERCLA"

U.S. EPA Memorandum from Stephen Luftig and Barry Breen (February 14, 2000) entitled "Use of Non-Time Critical Removal Authority in Superfund Response Actions"

KDHE—BER *Risk-Based Standards for Kansas RSK Manual - 4th Version* (June 2007 as revised)

Attachment A
RAD Plan
Example Outline

- I. Site Background
- II. Previous Investigations and Summary of Results
- III. Description of Proposed Removal Action or Presumptive Remedy
- IV. Removal Action Objectives
- V. Removal Action or Presumptive Remedy Design
 - a. Design Basis
 - b. Design Specifications
 - c. Drawings/Schematics
 - d. Cost Estimate
 - e. Detailed Working Schedule (to be periodically updated)

APPENDICES

- Appendix A – Quality Assurance Project Plan (or reference existing document)
 - Appendix B – Health and Safety Plan (or reference existing document)
 - Appendix C – Operations and Maintenance Plan (as necessary)
 - Appendix D – Performance Monitoring Plan (as necessary)
-

Exhibit 6

KDHE-BER Remedial Section Field Activities Notification Form

This field notification form is only applicable to sites managed by the Remedial Section and is not intended for use by other programs such as the Underground Storage Tank Program. If internet access is unavailable to provide the advance written notification via our website (<http://www.kdheks.gov/remedial/index.htm>), please complete this form and fax to 785-296-7030. If you have any problems completing this form, please call 785-296-1673.

Note: If you are amending or canceling a previous notification, please enter the exact ID number (if known).

- I want to submit a new notification.
- I want to amend a previous notification. (Enter ID number if known) _____
- I want to cancel a previous notification. (Enter ID number if known) _____

(*denotes required fields)

*Project Name: _____
*KDHE Project Manager: _____

Location of work:

*County: _____
City (or nearest city): _____

Anticipated dates and duration of work:

*Start Date (mm/dd/yy): _____
*Duration of work (days): _____
 Check this box if work is expected to occur on any weekend or holiday days.

Primary Field Contact:

*Name: _____
*Affiliation/Company: _____
*Primary Phone Number: _____ Alternate Phone Number: _____
Email Address: _____

Alternate Contact:

*Name: _____
*Affiliation/Company: _____
*Primary Phone Number: _____ Alternate Phone Number: _____
Email Address: _____

***Brief Description of Work to be Performed:**

**Form of Invoice for Oversight Costs
(Payroll and Expense Detail Entries are for Example Purposes Only)**

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Period: XX/XX/XX through XX/XX/XX

Date: XX/XX/XX

Payment Due in 30 days

This invoice is for oversight costs for the State Cooperative Program. Please make check payable to the Bureau of Environmental Remediation and enclose a copy of the invoice with payment to ensure your account is credited appropriately. Questions regarding this invoice should be directed to Linda Benson at (785) 291-3248 or l.benson@kdheks.gov.

Bill To: XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

Remit To: KDHE/Bureau of Environmental Remediation
Attn: Linda Benson
1000 SW Jackson Street, Suite 410
Topeka, KS 66612-1367

Project Name: XXXXXXXXXXXXXXXXXXXX
Consent Order: XX-E-XXXX Cost Acct: XXX

Payroll Details:

Title:	Program Consultant 1
Total Hours:	x.xx
Title:	Administrative Assistant
Total Hours:	x.xx
Title:	Administrative Specialist
Total Hours:	x.xx
Title:	Prof Geologist IV
Total Hours:	x.xx
Title:	Environmental Scientist II
Total Hours:	x.xx
Title:	Prof Environmental Eng II
Total Hours:	x.xx

Expense Details:

Type of Expense:	Lab Analysis
Vendor Name:	XXXX
Amount:	\$xxx.xx
Type of Expense:	Field Supplies
Vendor Name:	XXXX
Amount:	\$x.xx
Type of Expense:	Travel (SCP)
Vendor Name:	XXXX
Amount:	\$xx.xx

Payroll Costs: \$xxx.xx
Other Costs: \$xxx.xx
Internal Costs: \$xxx.xx

TOTAL DUE: \$x,xxx.xx

Please Note: The Kansas Department of Health and Environment's (KDHE) internal office expenses which are administrative costs, computer use, rent, utilities and other support services are included with this invoice. This amount equals 40% of the payroll and other costs totals, except for contractual, field supplies, KDHE equipment use, and lab analysis, which are computed at 12.5%.

THIS IS AN INVOICE

KDHE now accepts DiscoverCard. A 2.5% convenience fee will be assessed on all DiscoverCard transactions. If paying by DiscoverCard, contact Teresa Hattan at (785)296-8049 or thattan@kdhe.state.ks.us for details.



LEGAL SERVICES

In the Matter of:
Environmental Contamination at the
Kansas Oxide Site
603 Sunshine Road, Kansas City, Kansas

Metals and Additives Corporation, Inc.
Respondent

Case No. 10-E-0038 BER

Date: June 28, 2010

RAD/RA

Name	Signature	Date	
John Cook Project Manager	<i>John Cook</i>	<i>6/28/10</i>	<i>Order</i>
Deanna Ross Unit Manager	<i>Deanna Ross</i>	<i>6/20/10</i>	
Rick Bean Section Chief	<i>RB</i>	<i>7/1/10</i>	
Gary Blackburn Bureau Director	<i>Gary Blackburn</i>	<i>7/1/10</i>	
Paul G. Marx Attorney	<i>Paul Marx</i>	<i>7/2/10</i>	
Yvonne Anderson General Counsel	<i>Y Anderson</i>	<i>7/2/10</i>	
John Mitchell Director of Environment	<i>John Mitchell</i>	<i>7/2/10</i>	
Secretary Bremby Secretary	<i>Secretary Bremby</i>	<i>7/6/10</i>	

RECEIVED

JUL - 6 2010

OFFICE OF THE SECRETARY

Received

JUL 02 2010

DIRECTOR OF ENVIRONMENT
DEPT. OF HEALTH & ENVIRONMENT

Please return to Legal Services.