

IN THE MATTER OF: :
: :
Klotz Brothers Courtyard Site :
: :
Klotz Brothers, Inc. :
: :
RESPONDENT : Docket No. III-89-06-DC
: :
Proceeding Under Sections 106(a) and :
122(a) of the Comprehensive Environ- :
mental Response, Compensation, and :
Liability Act of 1980 (42 U.S.C. :
§§ 9606(a) and 9622(a)) as amended :
by the Superfund Amendments and :
Reauthorization Act of 1986, Pub. :
L. No. 99-499, 100 Stat. 1613 (1986). :

ADMINISTRATIVE ORDER BY CONSENT

The parties to this Administrative Order by Consent (Consent Order), Klotz Brothers, Inc., the United States Environmental Protection Agency (EPA) and the Virginia Department of Waste Management (VDWM), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9606(a), 9622(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, 100 Stat. 1613 (1986), delegated to the EPA by Executive Order No. 12,580, 52 Fed. Reg. 19 (1987), and further delegated to the Regional Administrators of EPA. This Order pertains to property located at the corner of Lewis Street and Middlebrook Avenue, Staunton, Augusta County, Virginia as described more fully in Section III(B) of this Order. The property will hereinafter be referred to as "the Site".

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objective of EPA, VDWM and the Respondent is to conduct removal actions, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23) to

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abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site.

III. FINDINGS OF FACT

A. The Respondent, Klotz Brothers, Incorporated, is a corporation organized and existing under the laws of the Commonwealth of Virginia.

B. The Klotz Brothers Courtyard Site (Site) consists of a courtyard and subsurface strata approximately 41 feet x 84 feet x 90 feet x 95 feet on property located at the corner of Lewis Street and Middlebrook Avenue, Staunton, Augusta County, Virginia. A brick office, a warehouse, and a covered warehouse are located on the property adjacent to the Site. The Site is identified as "Courtyard" on Attachment A.

C. The site was owned and operated by the Klotz family from 1899 to 1987 as a scrap metal dealer and hide processor.

D. Milton Klotz and his sister, Mildred Degan, own the Site and the buildings described in (B) above. They have owned this property since January 1, 1964.

E. Klotz Brothers, Inc. is owned and operated by Milton Klotz and his brother-in-law, Ralph Degan. Klotz Brothers, Inc. leases the Site and buildings described in (B) above from Milton Klotz and Mildred Degan and operated a scrap metal recycling business at that location from March 1964 to December 1987. Klotz Brothers, Inc. also conducted hide processing operations at this location beginning in March 1964, but discontinued such operations prior to December 1987.

F. On January 1, 1988, Klotz Brothers, Inc. sold its scrap metal recycling business to Staunton Metal Recycling, Inc., a Virginia corporation. Klotz Brothers, Inc. continues to lease the Site and the adjacent buildings. Staunton Metal Recycling, Inc. currently subleases the Site and adjacent buildings described in (B), above, from Klotz Brothers, Inc. to operate SMR Klotz, a scrap metal recycling business.

G. On June 19, 1986, Virginia's Bureau of Hazardous Waste Management (VHWM) investigated the Site in response to a call from the Staunton fire chief. During inspection of the courtyard, VHWM personnel observed drums filled with broken battery parts. There were also unbroken batteries strewn about the courtyard. Two holes were observed in the concrete floor of the storage building which directly overlies Lewis Creek.

H. After the June 19, 1986 inspection, Klotz Brothers, Inc. limed the courtyard and plugged the holes in the floor of the storage building in July 1986, as requested by the Virginia State

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Water Control Board.

I. A preliminary assessment of the Site was performed by the VDWM Superfund program on October 15, 1986.

J. A preliminary assessment of the Site performed for the Respondent on April 2, 1987, by Hatcher Incorporated, revealed levels of lead ranging from 60 ppm to 30,000 ppm throughout the Site.

K. A site investigation was performed by the VDWM on April 21, 1987, in accordance with the National Contingency Plan (NCP), 40 C.F.R. § 300.64. Sampling conducted during the investigation documented the presence of lead in the soils at the Site in concentrations ranging from 101 ppm to 39,600 ppm. The subsurface water at the Site exhibited a pH of 2 or less.

IV. CONCLUSIONS OF LAW

- A. The Klotz Brothers Courtyard Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. The Respondent, Klotz Brothers, Inc., is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. Lead is a listed priority pollutant pursuant to Section 307(a) of the Clean Water Act, 42 U.S.C. 1317(a). Corrosive wastes, which exhibit a pH of 2 or less or a pH of 12 or greater, are a characteristic hazardous waste as defined by Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6921.
- D. Lead and corrosive wastes are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- E. Lead has been disposed of at the Site and is currently present there. Corrosive wastes may have been disposed of at the Site.
- F. The presence of hazardous substances, primarily lead and corrosive wastes at the Site, and the past, present, and/or potential migration of such hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- G. The Respondent is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

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A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

VI. PARTIES BOUND

A. This Consent Order shall apply to and be binding upon the Respondent, EPA, VDWM, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent, EPA, VDWM or any combination thereof. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibility under this Consent Order.

B. In the event of any change in ownership or control of the Site, Respondent shall notify the EPA in writing at least 30 days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site, prior to any agreement for transfer.

C. The Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order.

VII. NOTICE TO THE STATE

Notice of issuance of this Order has been given to the Commonwealth of Virginia pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The Commonwealth joins in the Consent Order as a co-signator to this agreement.

VIII. WORK TO BE PERFORMED

A. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order.

B. The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300.

C. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Respondent shall commence performance of the following measures within the time periods specified.

D. As set forth more fully in the Scope of Work, which is attached to this Order as Attachment B and hereby incorporated

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by reference, Respondent shall perform the work required by this Order in two phases. In Phase I, Respondent shall conduct a Site investigation that includes sampling and laboratory analysis of soil, surface water, and groundwater to determine the extent of contamination at the Site. In Phase II, Respondent shall properly remove contamination from surface water and/or groundwater to levels described in Attachment B, if appropriate, based upon the results of the Site investigation performed in Phase I, and shall institute measures to prevent the future migration or leaching of contamination into surface water and groundwater.

E. Within fourteen (14) days of the effective date of this Consent Order, Respondent shall retain a qualified contractor to perform the necessary sampling actions which address the objectives of the Scope of Work. Prior to the initiation of site work, Respondent shall notify EPA in writing regarding the identity of the person or persons who will be primarily responsible for, and any contractor and/or subcontractor to be used in carrying out the terms of this Consent Order. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor within seven (7) days of notification if EPA believes they are not qualified to perform the response work. In the event of a disapproval, Respondent shall notify EPA within fifteen (15) days of the person, contractor, or subcontractor who will replace the one whom EPA disapproved.

F. Within fifteen (15) days of approval of the contractor by EPA, Respondent shall submit to EPA and VDWM a detailed Work Plan that complies with the requirements of Phase I in the aforementioned Scope of Work, complies with the sampling and analysis requirements found in EPA publication SW-846 and complies with the Quality Assurance/Quality Control and chain of custody procedures described in Section X of this Order.

G. EPA will consult with VDWM and shall approve or disapprove the Phase I Work Plan within seven (7) days of its receipt by EPA. In the event of disapproval, EPA shall specify the deficiencies of the Work Plan in writing. Within seven (7) calendar days of the receipt of disapproval by EPA, Respondent shall submit a revised Work Plan that responds to the specified deficiencies of the Phase I Work Plan. If the Respondent and EPA, in consultation with VDWM, can not agree upon the contents of the Work Plan, the dispute shall be resolved in accordance with Section XII of this Order.

H. Within 30 days of approval of the Phase I Work Plan by EPA, in accordance with paragraph (G) above, Respondent shall perform the sampling required by the plan in accordance with the requirements of this Order, and submit the results to EPA and VDWM.

I. Within 15 days of completion of the actions called for in Part VIII H, Respondent shall submit to EPA and VDWM a report detailing the results of the sampling done pursuant to Phase I

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and the protocol used to perform the sampling. The report shall also review the data, develop a series of cleanup alternatives, and identify a preferred cleanup alternative with a schedule of implementation in accordance with the requirements set forth in the Scope of Work Phase II and the NCP, 40 C.F.R. §§ 300.61 - 300.65.

J. Upon receipt of the report, EPA and VDWM shall review the cleanup option and the time schedule proposed by the Respondent. EPA, VDWM and the Respondent shall meet within fourteen (14) days of receipt of the report to discuss the cleanup alternatives, the Work Plan requirements of the selected option and the proposed time schedule of implementation.

K. If EPA determines that a second Work Plan is required, Respondent shall submit such Work Plan to EPA and VDWM within fifteen (15) days of the meeting. The second Work Plan shall be in accordance with the requirements set forth in the meeting described in (J) above.

L. EPA, after consultation with VDWM, shall approve or disapprove the Phase II Work Plan within seven (7) days of its receipt. In the event of disapproval, EPA shall specify the deficiencies of the Work Plan in writing. Within seven (7) days of the receipt of EPA's disapproval, Respondent shall submit a revised Work Plan that responds to the specified deficiencies of the Phase II Work Plan. If the Respondent and EPA/VDWM can not agree upon the contents of the Work Plan, the dispute shall be resolved in accordance with Section XII of this Order.

M. Within 7 days of approval of the Phase II Work Plan, Respondent shall initiate the tasks specified under the Work Plan according to the time schedule set forth in the approved Work Plan, and then shall proceed to complete the tasks pursuant to the time schedule.

N. Within thirty (30) days of completion of the work called for in the Phase II Work Plan, Respondent shall submit to EPA and VDWM a report stating that the actions set forth in the Phase II Work Plan have been completed and describing how the actions were carried out.

O. Upon receipt of the report described in paragraph N of this section, EPA shall consult with VDWM, shall perform a final review of the materials submitted, and determine whether the Respondent has complied with the terms of this Order, and shall advise Respondent within thirty (30) calendar days as to whether the report and work to be performed under this Section satisfied the requirements of this Order.

P. Respondent shall advise EPA's designated Project Coordinators of all sampling analysis or monitoring results within 72 hours

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of receiving the results.

Q. In the event that the Respondent fails or refuses to comply with any requirements of parts VIII A-M of this Order, EPA may undertake such measures in lieu of Respondent, and may take any other measures authorized by law which EPA determines may be necessary to protect public health, welfare, or the environment and seek reimbursement from Respondent and/or other parties for its costs.

IX. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA, and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators by certified mail.

B. EPA and the Respondent shall each have the right to change their respective Project Coordinator(s). Such a change shall be accomplished by notifying the other party in writing at least three (3) calendar days prior to the change.

C. The EPA-designated Project Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.65(b). The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

X. QUALITY ASSURANCE

The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-76-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/86, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan.

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XI. SITE ACCESS

A. EPA, VDWM, and/or their authorized representatives shall have the authority to enter and freely move about the Site and the adjacent building identified as "Brick Office and Warehouse" on Attachment "A", at all reasonable times for the purpose of, inter alia, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writing, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting any access, inspection, or enforcement authority of EPA under Federal law.

B. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by Respondent pursuant to the implementation of this Order. Respondent shall notify EPA not less than seventy-two (72) hours in advance of any sample collection activity.

XII. DISPUTE RESOLUTION

If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken or proposed pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) calendar days of receipt of such notification or action unless otherwise specified in this Order. EPA and the Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) calendar day period, EPA shall provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by its submission of any objections for dispute resolution under this Section.

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

A. For each week that the Respondent fails to comply with the requirements of this Consent Order at the time and in the manner set forth herein, the Respondents shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substances Superfund.

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Checks should be addressed to:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 371003M
Pittsburgh, PA 15251

Payment shall be made within five (5) calendar days of demand. A copy of the transmittal letter shall be sent to the EPA Project Coordinator.

B. Stipulated penalties shall accrue in the amount of \$500.00 each day for the first week, and \$1,000.00 each day for every week thereafter. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA by law for failure to comply with the requirements of this Consent Order. However, the amount of any non-performance penalty assessed by EPA and paid by the Respondents may be used to offset an equal amount of statutory penalties owed by the Respondents for the same event.

XIV. FORCE MAJEURE

A. The Respondent shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) business days after any such delay or anticipated delay and in writing no later than seven (7) calendar days after Respondent becomes aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

B. Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligation under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, the schedule affected by the delay may be extended for a period of time necessary to complete the delayed work on an expedited basis, but not longer than the delay directly resulting from such circumstances. Increased costs of performance of the terms

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of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

C. Failure of the Respondent to comply with the notice requirements of this paragraph shall constitute a waiver of the Respondent's right to invoke the benefits of this paragraph with respect to that event.

D. In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the reasonable control of the Respondent, the dispute shall be resolved in accordance with the provisions of the "Dispute Resolution" Section, Paragraph XII, of this Consent Order. The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid or minimize delay.

XV. RESERVATION OF RIGHTS

A. Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and imposition of statutory penalties. The Commonwealth of Virginia expressly reserves its right to proceed in a separate action under the Waste Management Act.

B. The Respondent does not admit liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Nevertheless, Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order and to incur the costs necessary to comply with such requirements.

C. As provided by this Consent Order, EPA expressly reserves its right to disapprove of work performed by the Respondent and reserves its right to request that Respondent perform response actions in addition to those required by this Order or to modify the Scope of Work, if it determines that such actions are necessary.

D. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake such actions and to seek reimbursement from Respondent or any other party under 42 U.S.C. § 9607. In addition, EPA reserves the right to undertake any removal and/or remedial actions at any time that such actions are appropriate under the NCP, 40 C.F.R. Part 300, and to seek reimbursement from Respondent and/or other parties for any costs incurred.

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XVI. OTHER CLAIMS

A. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

B. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

C. For purposes of costs incurred under this Consent Order only, the Respondent expressly waives any claim to reimbursement it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

XVII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

A. The effective date of this Consent Order shall be the date on which it is signed by EPA.

B. This Consent Order may be amended by mutual agreement of EPA, in consultation with VDWM, and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the requirements of this Order may be made by mutual agreement of the Project Coordinators. Such modifications shall be made by exchange of letters by the Project Coordinators and shall have as an effective date, the date on which the letter from EPA's Project Coordinator is signed.

C. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII, "Delay in Performance/and Stipulated Penalties", above.

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D. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order may be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order.

E. Failure of EPA to respond within the timeframes specified in this Order shall not be interpreted as EPA's approval of any document submitted or notice provided by Respondent.

XIX. REIMBURSEMENT OF COSTS

A. Following the termination of removal activities at the Site, EPA shall submit to the Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this site. Response costs shall consist of all costs incurred by EPA, its agents or contractors for the removal and/or stabilization of hazardous substances at the site. Oversight costs shall consist of all costs incurred by EPA, its agents or contractors in connection with EPA's oversight of work performed by the Respondent pursuant to the terms of this Consent Order. Oversight costs include, but are not limited to, time and travel costs of EPA personnel, contractor costs, compliance monitoring, including the analysis of split samples, inspection of Respondent's response activities, review of reports, and indirect costs. Within sixty (60) days from the date upon which Respondent receives the accounting from EPA, or as otherwise agreed to by EPA, the Respondent shall reimburse EPA for all response and oversight costs incurred at the Site. Within thirty (30) days of receipt of EPA's accounting, Respondent shall contact EPA to make arrangements for repayment of those costs.

B. At the termination of removal activities at the Site, VDWM shall submit to the Respondent an accounting of all response and oversight costs incurred by VDWM with respect to this Site. Response costs shall consist of all costs incurred by VDWM, its agents or contractors for the removal and/or stabilization of hazardous substances at the Site. Oversight costs shall consist of all costs incurred by VDWM, its agents or contractors in connection with VDWM's oversight of work performed by the Respondent pursuant to the terms of this Consent Order. Oversight costs include, but are not limited to, time and travel costs of VDWM personnel, contractor costs, compliance monitoring, including the analysis of split samples, inspection of Respondent's response activities, review of reports, and indirect costs. Within sixty (60) days from the date upon which Respondent receives the accounting from VDWM, or as otherwise agreed to by VDWM, the Respondent shall reimburse VDWM for all response and oversight costs incurred at the Site. Within thirty (30) days

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of receipt of VDWM's accounting, Respondent shall contact VDWM to make arrangements for repayment of those costs.

C. Where possible, EPA and VDWM will make reasonable efforts to minimize duplicative response actions.

XX. COVENANT NOT TO SUE

EPA and VDWM agree not to sue or take any administrative action against the Respondent, its assigns, and successors in interest, for the work required under the terms of this Consent Order or for oversight costs incurred by EPA or VDWM with respect to this Order so long as the terms herein and any modifications made pursuant to this Order are being fully complied with including the requirements of Section XIX of this Order, and except for any proceeding to enforce its terms or collect any applicable cost or penalties. Nothing herein shall be interpreted to limit the rights reserved by EPA and VDWM under Sections IX and XV of this Order. Nothing herein shall be deemed to grant any rights to persons not a party to this Order and EPA and VDWM reserve all rights against such persons.

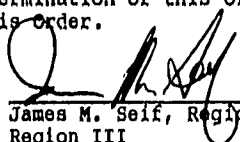
XXI. MISCELLANEOUS

Except as otherwise provided in this Order, the term "days" shall mean calendar days.


XXII. TERMINATION AND SATISFACTION

A. The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed.

B. Termination of this Order shall not affect Sections XVI or XX of this Order.

BY: 
James M. Seif, Regional Administrator
Region III
U.S. Environmental Protection Agency

DATE: 11/30/88

BY: 
Cynthia V. Bailey, Executive Director
Virginia Department of Waste Management

DATE: 11/11/88

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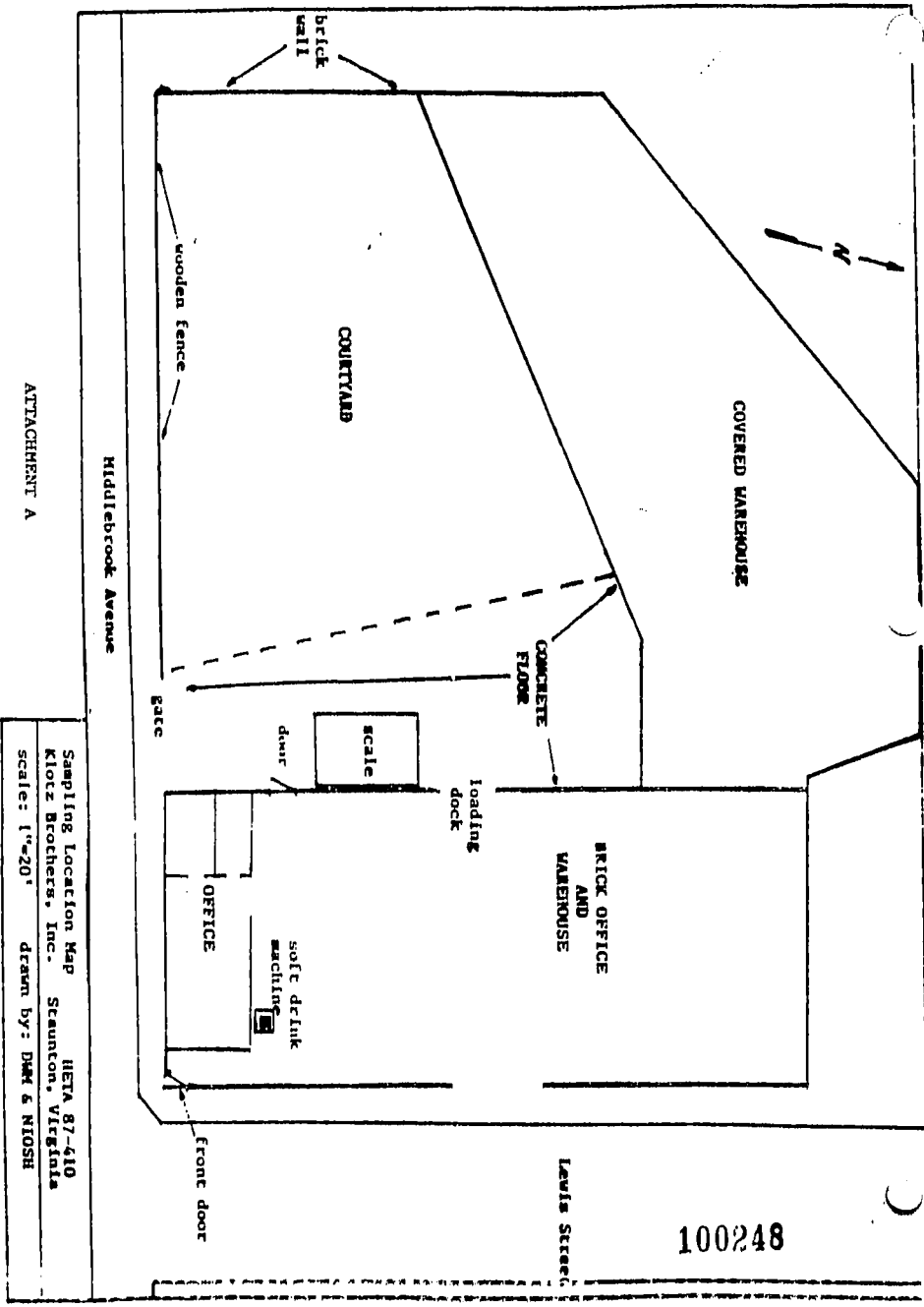
BY: Ralph Degen
Ralph Degen, President
Klotz Brothers, Inc.

DATE: 9/30/88

BY: Milton Klotz
Milton Klotz, President
Klotz Brothers, Inc.

DATE: 9/30/88

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ATTACHMENT A

Sampling Location Map HETA 87-410
 Klotz Brothers, Inc. Staunton, Virginia
 scales: 1"=20' drawn by: DMK & NIOSH

If the page filmed in this frame is not as readable or legible as this label, it is due to substandard color or condition of the original page.

ATTACHMENT B

SCOPE OF WORK
KLOTZ BROTHERS COURTYARD SITE

The objectives of the sampling investigation and subsequent removal action are to further determine the extent to which lead contamination exists at the Klotz Brothers Courtyard Site, to determine potential avenues of migration and to mitigate such migration from continuing in order to reduce the threat to the public health, welfare, or the environment. The investigation phase of this action will attempt to quantify lead levels in surface and sub-surface soils of the courtyard, in the local groundwater and in Lewis Creek.

Pursuant to the sampling and investigation phase of this Consent Order, Klotz Brothers, Inc. shall:

PHASE I

- A. Employ a registered engineering consultant with expertise in environmental response operations and hydrogeology;
- B. Have the engineering consultant conduct a background review to collect and evaluate the available information with respect to local and regional hydrogeology. The purpose of this review is to determine the location of groundwater in the area;
- C. Research and prepare a map, from public documents, which depicts the location of all private wells within a one-mile radius of the site. Upon preparation of this map, EPA will consult with VDWM, and will determine which wells will be sampled for lead content. This decision will be based on the location and proximity of the wells to the site;
- D. Submit to EPA and VDWM a sampling plan for the collection and analyses of soil samples at various depths. These samples are to be analyzed for total lead and EP Toxicity lead. EP Toxicity is defined in 40 C.F.R. §261.24.
- E. Include sampling of Lewis Creek upstream of the Klotz Brothers, Inc. downstream of the Site and downstream of the confluence of Lewis Creek and Payton Creek. The plan should include analysis for total lead content and pH of filtered and unfiltered water samples.
- F. Submit to EPA and VDWM a plan for the installation of piezometer(s) at the site to determine the depth to the aquifer, the relevant physical/chemical properties of the confining layer relative to the lead present, the vertical and horizontal components of flow in the uppermost aquifer beneath the site and the hydraulic conductivity of the uppermost aquifer. The information

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ATTACHMENT B

gathered from this subsurface investigation will be used to determine the nature of the groundwater beneath the site. Water samples should be obtained from the first water bearing zone encountered by the piezometer(s). Samples should be analyzed for total lead content and pH of filtered and unfiltered samples.

PHASE II

Klotz Brothers, Inc. shall implement response measures at the Site. The nature of the work to be performed will depend upon the results of the above sample investigation, indicating whether the lead found at the site has the potential to migrate from the site or leach into groundwater. If lead levels are found to be 50 ppb or greater in water or have EP Tox lead levels of greater than 5 ppm in soils, then Klotz Brothers, Inc. shall:

Prepare a plan for approval by EPA, in consultation with VDWM, which institutes such measures which will demonstrably remove lead from the stream and groundwater to a level not greater than 50 ppb. Additionally, Klotz Brothers, Inc. will also institute such measures that prevent further migration or leaching into the stream or aquifer.

If it is determined from the sample analyses that lead levels in water are less than 50 ppb and EP Tox levels are less than 5 ppm, Klotz Brothers, Inc. will develop a plan to be approved by EPA in consultation with VDWM to install protective measures such that any future migration or leaching will be prevented.

If it is determined from the sample analyses that the stream or groundwater at the Site has exhibited a pH of 2 or less or a pH of 12 or greater, Klotz Brothers, Inc. will develop a plan to be approved by EPA in consultation with VDWM to institute measures to treat the stream or groundwater to a pH level between 6 and 8.

Prior to the initiation of work at the site, the Respondent shall submit to EPA and VDWM a site specific safety plan detailing, among other things, levels of protective clothing worn by workers onsite, respiratory protection, decontamination procedures, and measures taken to limit access to work areas by non-essential personnel. Upon selection of stabilization method to be implemented at the site, the site safety plan shall be updated to include those details relevant to the additional work to be performed. These site safety plans shall be based on the requirements of 29 C.F.R. Part 1910.

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