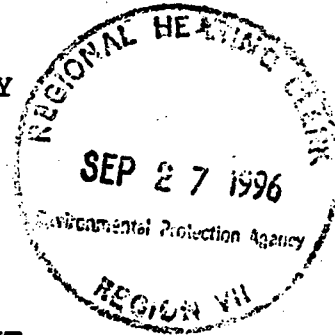


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101



IN THE MATTER OF: )  
DECORAH MANUFACTURED GAS )  
PLANT SITE, )  
The City of Decorah, Iowa )

ENRON CORP, )  
Respondent )

Proceedings under Section 106(a) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act of 1980 (CERCLA) )  
as amended by the Superfund )  
Amendments and Reauthorization )  
Act of 1986, (SARA), )  
42 U.S.C. Section 9606(a). )

ADMINISTRATIVE  
ORDER ON CONSENT

Docket No. VII-96-F-0023

Site:	<u>Decorah FMGP</u>
ID #:	<u>IAD984621318</u>
Break:	<u>10.6</u>
Other:	<u>9-25-96</u>

30323820



Superfund

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ATTACHMENTS

Attachment I: Maps of Location of Site

Attachment II: Presentation of results of sampling investigations

Attachment III: Statement of Work

Attachment IV: Statement of Commitment to Perform EE/CA

## I. Introduction

1. This Administrative Order on Consent (CONSENT ORDER), is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Enron Corp (Respondent). This CONSENT ORDER requires Respondent to perform work at the former Decorah Manufactured Gas Plant in Decorah, Iowa (Site), pursuant to the authority of 40 C.F.R. § 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This work includes a time-critical removal action to address contaminated soils at the Site, additional site characterization and, if requested by EPA and committed to by Respondent, the performance of an Engineering Analysis (EA) to identify, evaluate and recommend engineering alternatives to address removal of subsurface tar at the Site. This CONSENT ORDER also calls for Respondent to reimburse a portion of the past costs related to the Site and all oversight costs incurred by EPA in connection with this CONSENT ORDER.

## II. Jurisdiction

2. This CONSENT ORDER is issued by the Director, Superfund Division of Region VII of EPA to Respondent Enron Corp, pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Public Law 99-499, 42 U.S.C. §§ 9604, 9606, 9607 and 9622). This authority was delegated to the Administrator of EPA by

Executive Order 12580, 52 Fed. Reg. 2923 (dated January 23, 1987), and further delegated to the Regional Administrators by EPA Delegations Nos. 14-14-A and 14-14-C (dated April 16, 1984 and February 26, 1987, respectively). This authority was subsequently delegated to the Director, Superfund Division, by EPA Region VII Delegation No. R7-14-14C (dated January 1, 1995).

3. Respondent's participation in this CONSENT ORDER shall not constitute or be construed as an admission of liability or of EPA'S findings, conclusions of law and/or determinations, as set forth in this CONSENT ORDER. Respondent agrees to comply with and be bound by the terms of this CONSENT ORDER. Respondent consents to, and will not contest, EPA's authority or jurisdiction to issue or to enforce the terms of this CONSENT ORDER. Respondent further agrees not to contest the basis or validity of this CONSENT ORDER or any of its terms.

4. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a), the State of Iowa has previously been notified of this CONSENT ORDER and will be sent a copy of the executed CONSENT ORDER.

### III. Definitions

5. Unless otherwise expressly provided herein, terms used in this CONSENT ORDER that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this CONSENT ORDER or in the documents

attached to this CONSENT ORDER or incorporated by reference into this CONSENT ORDER, the following definitions shall apply:

- a. "Action memorandum" or "Action memo" shall mean the document prepared by EPA which documents the basis for its determination of the need for a time-critical removal action and EPA's decision of the appropriate removal action to address contaminated soils at the Site.
- b. "CONSENT ORDER" shall mean this Administrative Order on Consent and all attachments hereto. In the event of conflict between this CONSENT ORDER and any provision of any other agreement, order or writing, the terms and conditions of this CONSENT ORDER shall control.
- c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, federal or state holiday. In computing any period of time under this CONSENT ORDER, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the end of the next working day.
- d. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300 et seq., as amended.
- e. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA in connection with the oversight of

the work performed by Respondent under this CONSENT ORDER, after its effective date, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs; contractor costs; federal interagency agreement costs; compliance monitoring including the collection and analysis of split samples, Site visits, discussions regarding disputes that may arise as a result of this CONSENT ORDER, review and approval or disapproval of reports and costs of performing any of Respondent's tasks; costs incurred by EPA in the process of assisting Respondent to gain access as described in Section XIV (Access); other costs incurred in implementing, overseeing, or enforcing this CONSENT ORDER;

f. "Paragraph" shall mean a portion of this CONSENT ORDER identified by an Arabic numeral, a letter of the alphabet or a lower case Roman numeral.

g. "Parties" shall mean the United States and the Respondent.

h. "Past response costs" shall mean all costs, both direct and indirect, incurred by the United States in relation to the Site prior to the effective date of this CONSENT ORDER.

i. "RCRA" shall mean the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, 42 U.S.C. § 6901 et seq.



j. "Section" shall mean a portion of this CONSENT ORDER identified by a Roman numeral and includes one or more paragraphs, unless used to refer to a statutory or regulatory section.

k. "Site" shall mean the areal extent of contamination of releases of hazardous substances, pollutants and/or contaminants from the former Decorah Manufactured Gas Plant (DMGP), located on corners of Decorah Avenue and Sumner Street in the City of Decorah, County of Winneshiek, Iowa. The area of the former DMGP is approximately defined by the following legal description: All of block 9 in Park addition to the City of Decorah, Iowa.

l. "Statement of Work" or "SOW" shall mean the statement describing the Work to be implemented at the Site, as set forth in Attachment III to this CONSENT ORDER, and any and all substitutions, modifications or revisions that are subsequently made to the SOW, in accordance with terms of this CONSENT ORDER.

m. "United States" shall mean the United States of America, and any and all agencies and instrumentalities thereof.

n. "Work" shall mean all activities Respondent is required to perform under this CONSENT ORDER, including all activities required to be undertaken pursuant to the terms and conditions of this CONSENT ORDER and the SOW set forth in Attachment III.

#### IV. Statement of Purpose

6. By entering into this CONSENT ORDER, the mutual objectives of EPA and the Respondent for the former Decorah Manufactured Gas Plant (hereinafter referred to as "Site") in Decorah, Iowa, are inter alia, to set forth the terms and conditions under which Respondent will perform work at the Site, including a time critical removal action, additional site characterization and, if determined by EPA to be necessary by the results of the additional site characterization and agreed to by Respondent, an Engineering Analysis (EA). Respondent shall perform this work in accordance with the Statement of Work to this CONSENT ORDER, EPA's Action memorandum, the NCP, 40 C.F.R. Part 300, and applicable EPA guidance.

7. The purpose of the time-critical removal action is to remove and properly dispose of surface and subsurface soils at the Site contaminated by hazardous substances, pollutants or contaminants at levels exceeding the cleanup standards selected pursuant to the SOW. The scope and substance of the removal action to be performed by Respondent are set forth in Section IX of this CONSENT ORDER (Work to be Performed), EPA's Action Memorandum and the Statement of Work (SOW), set forth in Attachment III to this CONSENT ORDER.

8. If necessary, the purpose of the EA shall be to identify, evaluate and recommend engineering alternatives for the completion of the removal action of any subsurface tar. If, in response to a request from EPA, Respondent commits to perform the

EA, it shall represent this commitment by completing and returning Attachment IV to EPA. The EA shall identify, evaluate and recommend engineering alternatives designed to complete the removal of any subsurface tar contamination, prevent, mitigate, or otherwise respond to or remedy the release or threatened release of surface and subsurface hazardous substances, pollutants or contaminants at the Site. The scope and substance of the EA to be performed by Respondent are set forth in Section IX of this CONSENT ORDER (Work to be Performed) and in the Statement of Work (SOW), set forth in Attachment III to this CONSENT ORDER.

#### V. Applicability

9. This CONSENT ORDER shall be binding upon Respondent, its successors, assigns, subsidiaries, and upon all persons, agents, contractors and consultants acting under or for the Respondent in carrying out the actions required by this CONSENT ORDER.
10. Respondent shall provide a copy of this CONSENT ORDER to each contractor, subcontractor, laboratory, and consultant retained to conduct any portion of the work performed pursuant to this CONSENT ORDER prior to such contractor's, subcontractor's, laboratory's or consultant's initiation of work conducted under this CONSENT ORDER.
11. Any contract entered by the Respondent for the purpose of carrying out this CONSENT ORDER shall incorporate the

requirements of this CONSENT ORDER pertaining to the work to be performed or services or materials to be supplied.

12. No change in the ownership of the Site, or any portion thereof, shall alter Respondent's obligations under this Order.

13. In the event Respondent purchases the Site or any portion thereof, Respondent shall give notice of this CONSENT ORDER to any successor-in-interest prior to any subsequent transfer of ownership or operation of the Site, and shall provide EPA written notification of such transfer at least (30) days prior to such transfer.

#### VI. EPA's Findings of Fact

14. The Site is the location of the former Decorah Manufactured Gas Plant (DMGP). The DMGP was located on the corners of Decorah Ave. and Sumner Street in the City of Decorah, County of Winneshiek, Iowa, on a parcel of land defined by the following approximate legal description: All of block 9 in Park addition to the City of Decorah, Iowa.

15. Seven private residences and one multi-unit apartment building currently exist on or near the area of the parcel where the DMGP was previously located. An alley bisects the block on which these eight structures are located into east and west portions. Wold Park is located immediately to the northeast of the former location of the DMGP and contains recreational areas for children and picnic facilities. (For maps illustrating the

location of the former DMGP and current residences, See Attachment I).

16. From 1911 through 1951, the DMGP produced gas from coal using a carburetted water gas process. Residuals of the production of gas from coal and oil using this process are (1) spent iron oxide materials, and (2) tar sludges containing polynuclear aromatic hydrocarbons (PAH) constituents. During this period, reportedly tar wastes were disposed of in open pits at the Site. No other on-site structures are known to have existed for the storage or disposal of coal tar.

17. From 1911 until approximately April 30, 1963, the DMGP was owned and operated by the Decorah Gas Company.

18. On April 30, 1963, the DMGP was sold by the Decorah Gas Company to the Northern Natural Gas Company. As partial consideration for the purchase of the DMGP from Decorah Gas Company, Northern Natural Gas assumed liabilities of the Decorah Gas Company per the terms of the purchase agreement.

19. On June 1, 1965, the property on which the DMGP was located was sold by Northern Natural Gas Company to Decorah Builders, Inc. At that time, the gas plant structures were demolished and the property was graded. Between June 1965 and 1967, residential units were constructed on the property by Decorah Builders.

20. In 1981, Northern Natural Gas changed its name to InterNorth, Inc., and in 1986, InterNorth, Inc. changed its name to Enron Corp.

21. Between March 28 and April 1, 1994, EPA conducted a Screening Site Inspection (SSI) of the area around the former DMGP. During the March/April 1994 inspection, EPA took both soil and groundwater samples from the area around the former DMGP. The results of the March/April 1994 sampling demonstrated elevated concentrations (in comparison to background concentrations) of Volatile Organic Compounds (VOCs), Polycyclic Aromatic Hydrocarbon compounds (PAHs), metals and inorganic compounds (For presentation of results of the March/April 1994 sampling, See Attachment II).

22. Based on the results of the SSI, in November 1994, EPA conducted a Removal Investigation (RI) to determine the extent of contamination in surface and subsurface soils resulting from operations of the DMGP. Approximately 250 surface soil and subsurface samples (using a geoprobe) were taken from the area of the location of the former DMGP and the surrounding areas, including Wold Park. Except for several samples, the results of samples taken from within Wold Park demonstrate concentrations below the removal criteria indicated in the SOW. Four interior air samples (from residences onsite) and four soil gas samples were also taken.

23. The maximum levels of contamination found during the November 1994 soil sampling investigations are summarized in Table 1 below. These results demonstrate the presence of surface soils contaminated with PAHs, and subsurface soils and groundwater contaminated by constituents commonly found in tar

residuals (Henceforth, the areal extent of contamination caused by releases from the DMGP will be referred to as the "Site").

24. The November, 1994 subsurface sampling indicated the possible presence of subsurface tar in an area in the southeast corner of the former DMGP beneath two residential structures (Lots 2 and 3). The EPA's field personnel estimated that the subsurface tar exists at a depth of 8 feet, is located in an area approximately 75 feet across and at some points is up to five feet thick (See Attachment II).

**TABLE 1:  
SURFACE SOIL SAMPLING RESULTS**

<u>CONTAMINANT:</u>	<u>MAXIMUM CONCENTRATION (ppb (1))</u>
NAPHTHALENE	4,200
ACENAPHTHYLENE	7,300
ACENAPHTHENE	1,800
ANTHRACENE	2,700
ANTHRACENE, DIBENZO (A,H)	N/A
ANTHRACENE, DIBENZO	730
ANTHRACENE, BENZO	460
ANTHRACENE, BENZO (A)	38,000
CYANIDE (MG/KG)	5.14
CHRYSENE	41,000
FLUORANTHENE	58,000
FLUORANTHENE, BENZO	190
FLUORENE	94,000
FLUORANTHENE, BENZO (B)	22,000
FLUORANTHENE, BENZO (K)	26,000
PERYLENE, BENZO	27,000
PHENANTHRENE	77,000
PYRENE, BENZO (A)	33,000
PYRENE, INDENO	20,000
PYRENE	12,000

(1) Parts per billion

25. In November, 1994 EPA conducted a round of indoor air monitoring which demonstrated concentrations of toluene,

o-xylene, m- and p-xylene and ethyl benzene within one residence. These results were evaluated by the Agency for Toxic Substances and Disease Registry (ATSDR) in the health consultation for the Site. As stated in the ATSDR consultation, the composition of the VOCs detected by the November 1994 indoor air monitoring suggested a non-Site related source.

26. In May 1995, EPA conducted a second round of interior air sampling at the Site and installed five groundwater monitoring wells. The results of the May 1995 indoor air monitoring failed to detect concentrations in excess of typical indoor air concentrations or at levels that would pose a health concern.

27. ATSDR's consultation states that exposure to the concentrations of PAHs in soils within the residential areas of the Site pose a long term health threat. The ATSDR health consultation also concludes that high concentrations of PAHs in subsurface soil and VOCs in soil gas could pose a health risk to residents and remedial workers, if uncovered during excavation. ATSDR has advised EPA, based on available data, that removal of contaminated soil at the Site to a depth of two feet will mitigate excess risks to human health or the environment.

28. A resident of a home constructed on the Site has stated a tar like material was unearthed when his basement was dug. One or two residents living within the Site have also observed "diesel" like smells when doing any deep excavation on their property and a "creosote" like smell in the area of the Site following rains.



29. The bedrock hydrogeology in the vicinity of the Site is comprised of, in descending order, a shallow upper aquifer (Galena), interspersed confining layers (Decorah, Platteville and Glenwood formations), and an unconfined lower aquifer (St. Peter Sandstone). The unconfined upper alluvial aquifer is composed of interbedded sand, silts and gravels. The alluvial aquifer serves as a source of groundwater for domestic wells and municipal and industrial wells. The seasonal high water table is at a depth of four feet in the shallow alluvial aquifer. Both surface water and groundwater from the Site drain towards the southeast and the Upper Iowa River, although not enough is known to evaluate the likelihood of impact on the river. In the vicinity of the site, the Upper Iowa River is used for fishing and other recreational purposes.

30. The entire population within a four-mile radius of the Site relies on groundwater for its water supply. Approximately 1/4 mile southeast of the Site, two wells draw groundwater for industrial purposes. The City of Decorah, with an estimated population of 10,000, receives its drinking water supply from three wells drawing from the alluvial aquifer, approximately one mile west of the Site, and, the village of Freeport, with an estimated population of 505, receives its water supply from a well drawing from the lower aquifer, approximately 1.6 miles southeast from the Site. Additionally, a total of 54 private wells, serving an estimated 139 residents, exist within four miles of the Site. To date, contamination from the Site has not been detected in the drinking water systems described above.

31. The results of groundwater samples taken in August 1995 demonstrate the presence of PAHs and VOCs in the shallow aquifer. Levels of contamination detected were as follows: benzene (non-detect to 210 ppb), naphthalene (non-detect to 1,800 ppb), xylene (non-detect to 130 ppb), and ethyl benzene (non-detect to 380 ppb).

32. The hazardous substances, pollutants and/or contaminants released at the Site (including but not limited to Benzo(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, dibenzo(a,h)anthracene, benzene, ethylbenzene, toluene, and xylenes) may cause harmful human health effects and/or are suspected or potential carcinogens (Benzene is a known carcinogen).

#### VII. EPA's Conclusions of Law

33. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

34. Respondent is a prior "owner" and/or "operator" of the Site, as these terms are defined in Section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

35. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

36. Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a person who at the time of disposal of any hazardous substances owned or operated a facility at which such hazardous substances were disposed of.

37. Benzo(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, dibenzo(a,h)anthracene, benzene, ethylbenzene, toluene, and xylenes are each a hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

38. The presence of the hazardous substances described above in surface and subsurface soils at the Site demonstrates that a "release" of hazardous substances into the environment has occurred, as defined by Sections 101(8) and 101(22) of CERCLA, 42 U.S.C. §§ 9601(8) and 9601(22). Further, an ongoing threat of releases and migration of hazardous substances is posed by current conditions at the Site, particularly the presence contaminated surface soils and possible subsurface deposits of tar wastes at the Site.

#### VIII. EPA's Determinations

39. Based upon EPA's foregoing findings of fact and conclusions of law, the Director of EPA Region VII's Superfund Division has determined that:

- a. The conditions present at the Site may constitute an imminent and substantial endangerment to public health,

welfare, or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a);

b. EPA is authorized to act pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to issue such orders as may be necessary to protect public health and the environment;

c) The actions required by this CONSENT ORDER are necessary to protect the public health and welfare and the environment; and

d) The work ordered and agreed to by Respondent under the terms of this CONSENT ORDER is in the public interest and if carried out in conformance with the requirements of this CONSENT ORDER will be consistent with the National Contingency Plan, 40 C.F.R. Part 300, et seq.

#### IX. Work to Be Performed

40. Based upon EPA's foregoing Findings of Fact, Conclusions of Law and Determinations, Respondent is hereby ordered and agrees to perform the work described hereafter:

41. Within thirty (30) days of the effective date of this CONSENT ORDER, Respondent shall submit a Removal Action Workplan (RAW) to EPA for review and approval, comment and/or modification and approval. The RAW shall describe the work necessary to remove and dispose of contaminated surface soils and subsurface tar at the Site and shall be prepared in accordance with Task I of the SOW.

42. EPA may approve, approve with comments, disapprove, and/or require modifications to the RAW, in accordance with Section XI of this CONSENT ORDER (Submissions Requiring EPA Approval). Once approved, or approved with modifications, the RAW and all requirements and schedules contained therein shall become a part of and fully enforceable under this CONSENT ORDER.

43. Immediately upon receipt of EPA approval of the RAW, Respondent shall implement the approved RAW in accordance with the requirements and schedules contained therein and Task II of the SOW.

44. Respondent shall notify EPA at least five (5) working days prior to initiating on-site work required by the approved RAW. Respondent shall not commence or undertake any work at the Site that is described by this CONSENT ORDER without prior EPA approval of the Workplan designed to implement the Work.

45. Upon preliminary completion of the investigation of subsurface tar at the Site, in accordance with Task II of the SOW, Respondent shall submit a Sampling Report to EPA for review and approval that contains all data and results from the subsurface investigation required by the approved RAW and a recommendation on a lot by lot basis of what portions of the Site, if any, contain subsurface tar that requires an engineering analysis before commencing on-site removal activity.

46. Based on the approved Sampling Report and considering the factors set forth in the SOW, EPA will determine and notify Respondent of what, if any, specific areas of the Site contain

subsurface tar that requires an engineering analysis prior to beginning on-site removal activity and are appropriate for consideration for an engineered removal action. Following performance of an EA, EPA will select the appropriate engineered removal action to address any subsurface tar in these portions of the Site, as described below.

47. Within thirty (30) days of receipt of notice from EPA, in accordance with the terms of the approved RAW and Task II of the SOW, Respondent shall proceed to complete the removal of all surface soil contamination and subsurface tar in those specified areas of the Site that have not been identified by EPA as requiring an EA.

48. If, following performance of an EA, EPA determines that the further removal of subsurface tar is not required, within thirty (30) days of receipt of notice from EPA, Respondent shall complete the removal of any remaining areas of contaminated surface soil, in accordance with the terms of the approved RAW and Task II of the SOW.

49. Upon preliminary completion of the surface soil removal and subsurface tar removal required by the approved RAW within specified areas of the Site, in accordance with Task II of the SOW, Respondent shall contact EPA for the purpose of scheduling and conducting prefinal and final site inspection(s) with EPA for the purpose of confirming that all work required by the RAW within these areas has been completed.

50. Within thirty (30) days of prefinal inspection(s) for a specified area of the Site, in accordance with Task II of the SOW, Respondent shall submit to EPA a Prefinal Inspection Report that will document all unfinished items necessary to complete the work required by the RAW in these areas and shall outline the actions required to resolve all identified items and shall propose a schedule to complete these items.

51. Upon completion of any outstanding removal action work identified in a Prefinal Inspection Report, in accordance with Task II of the SOW, Respondent shall notify EPA for the purpose of scheduling a final site inspection. The final inspection shall consist of a walk-through inspection by EPA and Respondent of the specified area of the Site and shall utilize the Prefinal Inspection Report(s) as a checklist to confirm that the work required by the RAW has been completed by Respondent.

52. Within thirty (30) days of confirmation, in conformance with engineering practice, that the requirements of the RAW for specified areas of the Site have been satisfied, EPA shall provide Respondent a written certification of completion of the Removal Action for those areas.

53. Within ten (10) days of Respondent's receipt of a request from EPA to perform an EA designed to identify, evaluate and recommend engineering alternatives to accomplish the removal of the surface soil contamination and subsurface tar that EPA has determined will take an engineering analysis before initiating on-site activity, Respondent shall complete, sign and return to

EPA the form set forth as Attachment IV to this CONSENT ORDER and thereby unequivocally state whether or not it shall perform an EA. If Respondent thereby commits to perform an EA, all aspects of this CONSENT ORDER related to the performance of the EA shall be fully enforceable against Respondent and Respondent shall perform an engineering analysis of removal alternatives in accordance with the terms of this CONSENT ORDER and Task III of the SOW. In the event Respondent fails to return Attachment IV to EPA within ten (10) days of its receipt of EPA's notice, or declines to perform the EA, EPA may immediately proceed to conduct the EA or to take other response actions.

54. Within one-hundred twenty (120) days of EPA's receipt of Attachment IV stating Respondent's commitment to perform an EA, Respondent shall submit to EPA for review and approval an EA Report that details the results of the EA and that is prepared in accordance with Task III of the SOW. EPA may approve, approve with comments, disapprove, and/or require modifications to the EA Report, in accordance with Section XI of this CONSENT ORDER (Submissions Requiring EPA Approval).

55. Respondent shall submit to EPA, with the submittal of the EA Report, all documentation developed by or for Respondent while performing the time-critical removal action and all documentation used during the EA to identify, evaluate and recommend engineered alternative removal actions to address surface soil contamination and subsurface tar. This documentation may be used by EPA in preparing the Administrative Record for the engineered removal



alternative selected by EPA for the Site. Documentation developed during the EA that Respondent shall submit to EPA shall include, but is not limited to, copies of plans, task memoranda, documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, risk evaluations conducted by Respondent, and other reports. Respondent shall additionally submit any correspondence between Respondent and state, local, or other federal (non-EPA) authorities concerning selection of the removal action.

X. Administrative Record, Final Decision Document

56. EPA retains the responsibility for release to the public of the approved EA Report. EPA will, in accordance with the applicable factors set in CERCLA and the NCP, select the engineered removal alternative that EPA determines is appropriate for the Site. EPA will document the basis for its selection of the removal alternative chosen to address remaining surface soil contamination and/or subsurface tar within a Removal Decision Document. EPA retains responsibility for the preparation, and the release to the public of the administrative record and the Decision Document for the removal action selected by EPA for this Site. A copy of EPA's Removal Decision Document will be provided to Respondent.

XI. Submissions Requiring EPA Approval

57. After review of any Workplan or Report, or other item which is required to be submitted for approval pursuant to this CONSENT ORDER, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission with modifications; (c) disapprove, in whole or in part, the submission, directing the Respondent to resubmit the document after modification to address EPA's comments; (d) disapprove the submission and after at least ten (10) days notice to Respondent, assume responsibility for performing all or any part of the response activities; or (e) any combination of the above.

58. In the event of approval, or approval with modifications, by EPA of a submission by Respondent, Respondent shall proceed to take any action required by the Workplan, Report, or other item, as approved by EPA.

59. In the event Respondent receives a notice of disapproval of a required submittal, Respondent shall correct the noticed deficiencies and resubmit the corrected version within the following time frames:

a. Respondent shall resubmit the corrected RAW within ten (10) days of receipt of EPA's notice of disapproval, or as mutually agreed by the parties; and

b. Respondent shall resubmit the corrected EA Report and/or other required submittals within thirty (30) days of receipt of EPA's notice of disapproval, or as mutually agreed in writing by the parties.

60. Notwithstanding the receipt of a notice of disapproval, Respondent shall, at the direction of EPA, proceed to take any action required by any non-deficient portion of a submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XXIV (Stipulated Penalties). EPA will consider Respondent's good faith efforts to implement non-deficient portions of a submittal when making its determination whether to assess stipulated penalties.

61. In the event that a resubmitted RAW, EA Report or other item, or portion thereof, is disapproved or modified by EPA due to a material defect, Respondent may, in EPA's direction, be deemed to have failed to submit such plan, report, or other item in a timely and adequate manner, unless Respondent invokes the procedures of Section XXIII (Dispute Resolution), and EPA's action is overturned pursuant to the Section.

62. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Work, and the accrual and payment of any stipulated penalties during dispute resolution.

63. All Workplans, Reports, or other items required to be submitted to EPA under this Consent Order shall, upon approval by EPA, be enforceable under this Consent Order. In the event EPA approves a portion of an item required to be submitted to EPA under this Consent Order, the approved portion shall be enforceable under this Consent Order.

XII. Contractors/Project Coordinators/Submittals

64. Within ten (10) days after the effective date of this CONSENT ORDER, Respondent shall designate a Project Coordinator and shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. Respondent's Project Coordinator shall be in charge of the administration of all the actions required of Respondent by the CONSENT ORDER. Respondent's Project Coordinator shall be present at the Site or readily available by telephone during Site Work.

65. EPA has designated Mr. Kevin Larson as its Project Coordinator. EPA's Project Coordinator shall have the authority lawfully vested by the NCP in a Remedial Project Manager and On-Scene Coordinator.

66. All verbal notices and written documents, including, but not limited to written notices, reports, plans, and schedules, requested or required to be submitted to EPA pursuant to this CONSENT ORDER shall be directed to:

Mr. Kevin Larson, OSC  
Enforcement-Fund Lead Removal Branch  
U.S. Environmental Protection Agency  
726 Minnesota Avenue  
Kansas City, Kansas 66101

EPA and Respondent shall direct all written submissions required by this CONSENT ORDER by certified, registered mail or national overnight mail service, to each other's respective Project Coordinators.

67. For purposes of complying with a submission deadline, a submission shall be deemed delivered on the date indicated on the

postmark, or the certificate of service prepared by the sender. Response deadlines, however, shall be calculated from the date of actual receipt.

68. EPA and Respondent shall have the right to change their designated Project Coordinators and contractors. Verbal notice of such change shall be provided to the other parties within twenty-four (24) hours of such change and written notice shall follow within five (5) days of such change.

69. EPA retains the right to disapprove of any, or all, of the contractors, subcontractors or Project Coordinators proposed in Workplans or subsequently selected by Respondent, pursuant to Section XI (Submissions Requiring EPA Approval). If EPA disapproves of a proposed or selected contractor, subcontractor, or Project Coordinator, Respondent shall propose or retain a different person, and shall notify EPA of that person's name, address, telephone number, and qualifications within fifteen (15) days following EPA's disapproval.

#### XIII. Periodic Reports and Meetings

70. Respondent shall make presentations at and participate in meetings at the request of EPA during the initiation, conduct, and completion of the work to be performed under this CONSENT ORDER. In addition to discussion of the technical aspects of the work, topics may include anticipated problems or new issues.

71. Respondent shall provide to EPA monthly written progress reports by the tenth (10th) day of each calendar month following

the effective date of this CONSENT ORDER until Respondent's receipt of EPA's Certificate of Completion of the removal action, in accordance with Task VI of the SOW.

#### XIV. Access

72. At all reasonable times, EPA and its authorized representatives may enter and freely move about all property at the Site and off-site areas where work required hereunder is being performed for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor(s) pursuant to this CONSENT ORDER; reviewing the progress of Respondent in carrying out the terms of this CONSENT ORDER; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data and other writings related to the work undertaken in carrying out this Order. Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential or privileged by Respondent. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. EPA shall be solely responsible for assuring compliance by its personnel and

consultants with EPA's health and safety requirements during inspections.

73. Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege. If possible without waiving privilege claims, Respondent shall redact and provide all requested non-privileged portions of documents that may be subject to a partial claim of privilege.

74. If the Site, or any off-Site area to which access is needed to carry out the terms of this CONSENT ORDER, is owned in whole or in part by a party other than Respondent, Respondent shall obtain, or use its best efforts to obtain, site access agreements from the owner(s) of such property within fifteen (15) days of approval of any Workplans for which site access is required. Such agreements shall provide access for EPA, its contractors and oversight officials, the State of Iowa and its contractors, and Respondent and its authorized representatives. Such agreements shall specify that Respondent is not EPA's representative with respect to any liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. "Best efforts" as used in this Section shall include, but not be limited to, offers of

consideration in exchange for access if necessary to conduct the work required by the approved RAW.

75. If access agreements are not obtained within the time period referenced above, Respondent shall immediately notify EPA of its failure to obtain access and shall provide documentation to EPA of its "best efforts" to obtain access. Additionally, Respondent shall perform all other activities not requiring access to such off-site property and, if EPA performs the work, Respondent shall reimburse EPA for all costs incurred in performing such activities. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

76. In the event that Respondent cannot obtain access agreements, EPA may obtain access for Respondent. Respondent also shall reimburse EPA for all costs incurred by the United States in obtaining access to such off-site property, in accordance with Section XXV (Cost Reimbursement).

77. Nothing herein shall be construed as restricting the inspection or access authority of EPA under federal law.

#### XV. Confidential Business Information

78. Respondent may assert a business confidentiality claim covering part or all of the information submitted pursuant to the terms of this CONSENT ORDER in the manner set out in 40 C.F.R. § 2.203(b). The information covered by such a claim will be disclosed by EPA only to the extent, and by the means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B (1986). If



no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Respondent.

#### XVI. Additional Work

79. When new information indicates that additional work related to the releases giving rise to EPA's finding of imminent and substantial endangerment is necessary to accomplish the purposes of this CONSENT ORDER, as described in Section IV (Statement of Purpose), above, EPA may determine that sampling, analysis, reporting or removal tasks in addition to those specifically set forth herein are necessary. If EPA so determines, it will advise Respondent in writing of the nature of the additional tasks and the basis for EPA's determination. Respondent shall undertake, perform and complete all such additional tasks and provide such documents and reports required by EPA in addition to those provided for herein. The additional work shall be completed in accordance with the standards, specifications, and schedules determined or approved by EPA. In the event Respondent invokes the provisions of Section XXIII (Dispute Resolution) with respect to EPA's determination as to the need for or scope of additional work, stipulated penalties (Section XXIV) shall not accrue during the dispute resolution process.

#### XVII. EPA Oversight

80. EPA may designate an On-Scene Coordinator (OSC) that shall have the authority vested in an On-Scene Coordinator by the NCP at 40 C.F.R. § 300.120. This includes the authority to halt, conduct or direct any activities required by this CONSENT ORDER and/or any response actions or portions thereof when conditions present an imminent and substantial endangerment to the public health or welfare or the environment or when necessary to assure that such activities or actions are consistent with the National Contingency Plan. The OSC, or any person designated by the OSC, shall have the right to move freely about the Site at all times when work is being carried out pursuant to this CONSENT ORDER and the SOW set forth in Attachment III. In the event an OSC is not appointed, EPA's Project Coordinator or his designee shall be vested with the oversight authority described above.

#### XVIII. Other Applicable Laws

81. All actions required pursuant to this CONSENT ORDER shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all work required pursuant to this CONSENT ORDER shall, to the extent practicable, as determined by EPA, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental,

state environmental, or facility siting laws. All ARARs shall be identified in the RAW and EA.

82. Any hazardous substances, pollutants or contaminants removed off-site pursuant to this CONSENT ORDER for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 C.F.R. § 300.440, promulgated pursuant to 42 U.S.C. § 9621(d)(3).

#### XIX. Force Majeure

83. Respondent shall perform the requirements of this CONSENT ORDER within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes not foreseeable and beyond the control of Respondent, and its consultants and contractors, which could not be overcome by due diligence and which delays or prevents performance by a date required by this CONSENT ORDER or the SOW. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits if a timely application is not submitted. Such events may include delays as a result of acts or omissions of the owners of property constituting the Site.

84. Respondent shall notify EPA in writing ten (10) days after it becomes aware of events which Respondent knows or should know

constitute a force majeure. Such notice shall include an estimate of the anticipated length of delay, including any necessary demobilization and remobilization, a description of the cause of the delay and the measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondent's right to assert a force majeure.

85. If EPA determines that a delay has been or will be caused by a force majeure, the time for performance for that element of work may be extended, upon written approval of EPA, for, a period equal to the delay resulting from such circumstances. Such an extension does not alter the schedule for performance or completion of other work required by this CONSENT ORDER unless specifically provided by EPA in its written approval.

#### XX. Record Preservation

86. Respondent shall preserve, during the pendency of this CONSENT ORDER and for a minimum of seven (7) years after its termination, all records, including but not limited to sampling results, draft and final documents and submissions (except for work papers), in its possession or in the possession of its divisions, employees, agents, accountants, or contractors which relate in any way to the work performed pursuant to this CONSENT

ORDER, notwithstanding any internal document retention policy to the contrary.

XXI. Subsequent Modification or Amendment

87. This CONSENT ORDER may be amended or modified by mutual agreement of EPA and Respondent. Such amendments or modifications shall be in writing, signed by Respondent and EPA, and shall become effective on the date on which a fully executed copy thereof is filed with the Regional Hearing Clerk, EPA Region VII.

88. No informal advice, guidance, suggestion or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of the obligation to obtain such formal approval as may be required by this CONSENT ORDER, and to comply with all requirements of this CONSENT ORDER, unless or until this CONSENT ORDER may be formally modified.

XXII. Reservation of rights

89. Except as provided in Section XXVII, EPA reserves the right to take any enforcement or cost recovery action pursuant to CERCLA and/or any available legal authority, including the right to seek injunctive relief, response costs, monetary penalties and/or punitive damages for any violations of law or this CONSENT ORDER.

90. EPA expressly reserves all rights and defenses that it may have, including the right to order Respondent, not under this CONSENT ORDER, to perform tasks in addition to those required herein. In addition, EPA reserves the right to undertake any response action at any time.

91. Nothing in this CONSENT ORDER shall constitute or be construed as a release or waiver by EPA or Respondent of any claim, defense, cause of action, or demand in law or equity against any party not a signatory to this document for any liability arising out of, or in any way relating to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants at the site.

92. 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).

93. In entering this CONSENT ORDER, Respondent waives any right it may have to seek reimbursement from EPA under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2).

94. If any judicial or administrative authority issues an order that invalidates any provision of this CONSENT ORDER, or finds that Respondent has sufficient cause not to comply with one or more provisions of this CONSENT ORDER, then Respondent shall remain bound to comply with all other provisions of this CONSENT ORDER.

### XXIII. Dispute Resolution

95. If Respondent disagrees, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this CONSENT ORDER, Respondent shall notify EPA in writing of its objections and the bases for such objections, within ten (10) working days of receipt of EPA's disapproval, decision, or directive. Such notice shall set forth the specific points of the dispute, the position Respondent maintains should be adopted in accordance with the requirements of this CONSENT ORDER, the factual and legal bases for Respondent's position, and all matters Respondent considers necessary for EPA's determination.

96. EPA and Respondent shall then have ten (10) working days from EPA's receipt of Respondent's objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by each party, and incorporated into this CONSENT ORDER.

97. If the parties are unable to reach agreement within this ten (10) working-day period, the matter shall be referred to the EPA's Region VII Superfund Division Director. The Superfund Division Director shall then decide the matter and provide a written statement of his or her decision to both parties, which shall be incorporated into this CONSENT ORDER.

98. Notwithstanding any other provision of this CONSENT ORDER, no action or decision by EPA, including without limitation, decisions of the Superfund Division Director pursuant to this CONSENT ORDER, shall constitute final EPA action giving rise to

any rights to judicial review prior to EPA's initiation of judicial action to compel Respondent's compliance with the requirements of this CONSENT ORDER.

XXIV. Stipulated Penalties for Noncompliance

99. In the event Respondent fails to comply with any requirement of this CONSENT ORDER, EPA may, in its discretion, assess stipulated penalties as set forth below. If assessed by EPA, Respondent shall pay stipulated penalties as set forth below. EPA determinations that Respondent has failed to comply with a requirement of this Consent Order are subject to dispute resolution (Section XXIII). However, EPA determinations as to whether to assess stipulated penalties for such a failure to comply are not subject to the dispute resolution provisions of this Consent Order. Compliance by Respondent shall include completion of any activity required by this CONSENT ORDER, any Workplan, or design approved under this CONSENT ORDER or compliance with any other requirement of this CONSENT ORDER in an acceptable manner and within the time schedules specified and set forth in and approved under this CONSENT ORDER.

- a. For failure to submit Progress Reports: Fifty Dollars (\$50.00) per day for the first through the fourteenth days of noncompliance and Two Hundred and Fifty (\$250.00) per day for the fifteenth day and each succeeding day of noncompliance thereafter;



b. For failure to comply with any due date for submission of any Workplan or Report: Three Hundred Dollars (\$300.00) per day for the first through fourteenth days of noncompliance and Six Hundred Dollars (\$600.00) per day for the fifteenth day and each succeeding day of noncompliance thereafter;

c. For failure to perform any work according to the schedule set forth in this CONSENT ORDER, the SOW, or according to the schedules set forth within any Workplan or Report approved pursuant to the terms of this CONSENT ORDER: Five Hundred Dollars (\$500.00) per day for the first through fourteenth days of noncompliance and One Thousand (\$1,000.00) per day for the fifteenth day and each succeeding day of noncompliance thereafter;

100. All penalties for noncompliance shall begin to accrue on the date that performance is due and shall continue to accrue through the final day of correction of the noncompliance.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this CONSENT ORDER.

101. All penalties owed to EPA under this Section shall be due within ten (10) days of notice from EPA that Respondent is in noncompliance with this CONSENT ORDER and that stipulated penalties have been assessed. Interest shall begin to accrue on the unpaid balance at the end of this thirty (30) day period. Stipulated penalties shall not be assessed for failure to timely pay assessed stipulated penalties.

102. All penalties shall be paid by certified or cashier's check made payable to the Hazardous Substance Response Trust Fund and remitted to:

EPA - Region VII  
Attn: Superfund Accounting  
Post Office Box 360748M  
Pittsburgh, Pennsylvania 15251

All payments shall reference the Site, Respondent's name and address, and the EPA docket number of this action. A copy of the transmittal of payment shall be sent to the EPA contact specified herein.

103. The stipulated penalties set forth in this Section shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CONSENT ORDER, nor shall payment of stipulated penalties relieve Respondent of the responsibility to comply with this CONSENT ORDER.

104. The invocation of the dispute resolution process under Section XXIII (Dispute Resolution), or a claim of force majeure under Section XIX (Force Majeure), shall not stay the accrual of stipulated penalties, or extend or postpone any deadline or obligation of Respondent, including the obligation to pay stipulated penalties under this CONSENT ORDER with respect to a disputed issue unless EPA otherwise agrees in writing.

Stipulated penalties shall continue to accrue during the dispute resolution process for all matters unrelated to the contested matters at issue in the dispute resolution process. If EPA prevails in a matter subject to dispute, EPA will consider

evidence of Respondent's good faith invocation of dispute resolution when making the determination whether to assess stipulated penalties. The EPA agrees that stipulated penalties will not be assessed (i) if a property owner's acts or omissions delay implementation of the work or (ii) if a property owner's concerns about the work require additional evaluation or removal action, provided that the work giving rise to an owner's concerns is not inconsistent with the RAW or any modification to the RAW.

105. Respondent is advised that, under Section 106(b) of CERCLA, 42 U.S.C. §9606(b), Respondent's willful violation or failure or refusal to comply with any provision of this CONSENT ORDER may subject Respondent to a civil penalty. Further, under Section 107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3), Respondent's failure to comply with any portion of this CONSENT ORDER, without sufficient cause, may subject Respondent to punitive damages in an amount up to three (3) times the amount of any costs incurred by the government as a result of Respondent's non-compliance. However, EPA shall be precluded from seeking other judicial or administrative penalties for days 1 through 45 for a violation of this CONSENT ORDER for which stipulated penalties are provided, unless Respondent fails or refuses to pay penalties assessed pursuant to this Section, in which case EPA may seek the maximum allowable judicial or administrative penalties.

#### XXV. Cost Reimbursement

106. Consistent with the NCP, Respondent shall reimburse the United States for \$75,000 in past response costs related to investigations of the Site and the preparation of this CONSENT ORDER, and all oversight costs incurred by the United States in relation to the Work to be performed pursuant to this CONSENT ORDER.

107. Within sixty (60) days of the effective date of this CONSENT ORDER, EPA will send Respondent a bill requiring payment of \$75,000 in past response costs. Thereafter, EPA will bill Respondent for oversight costs under this CONSENT ORDER on a periodic basis. The above agreement for payment of past response costs does not constitute a compromise of EPA's right to seek payment for all unpaid response costs, past and future, incurred by EPA in relation to the Site. EPA explicitly reserves the right to demand and seek additional payment by Respondent of any unpaid response costs incurred by EPA for the Site in excess of those paid by Respondent pursuant to this CONSENT ORDER.

108. Respondent shall pay the \$75,000 in the billing for past response costs issued pursuant to Paragraph 107, above, within thirty (30) days of receipt of the billings. Thereafter, Respondent shall pay within thirty (30) days of receipt of each billing for oversight costs from EPA.

109. Respondent shall, in accordance with the schedule for payment set forth in Paragraph 108, above, remit a cashier's or

certified check for the amount of those costs made payable to the "Hazardous Substances Superfund", to the following address:

Mellon Bank  
Attn: Superfund Accounting  
EPA Region VII  
(Comptroller Branch)  
P.O. Box 360748M  
Pittsburgh, PA 15251

Respondent shall simultaneously transmit a copy of the check, as well as any transmittal letter to EPA's Project Coordinator, EPA Region VII, 726 Minnesota Avenue, Kansas City Kansas 66101.

Payments shall be appropriately designated as "Past/Oversight costs - Decorah Coal Gas Manufacturing Plant Site" and shall reference the payor's name and address, the EPA Site identification number ("IAD984621318"), and the docket number of this CONSENT ORDER.

110. Interest, at a rate established pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and by 4 C.F.R. § 102.13, shall accrue on the unpaid balance of any oversight costs for which EPA has billed Respondent, commencing on the thirty-first (31st) day after Respondent's receipt of the billing for the same, notwithstanding any dispute or objection to any portion of the costs.

111. Respondent may dispute, in accordance with Section XXIII (Dispute Resolution), all or part of a bill submitted under this CONSENT ORDER. Any such dispute shall be limited to accounting errors or inconsistencies with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before

payment is due, Respondent, on or before the due date, shall pay (a) the full amount of the uncontested costs into the Hazardous Substances Superfund account specified in Paragraph 109, above, and (b) the full amount of all contested costs into an interest bearing escrow bank account established by Respondent.

Respondent shall simultaneously transmit a copy of each check to EPA's Project Coordinator. If EPA prevails in the dispute, Respondent shall transfer to EPA the amount determined due to EPA from the escrowed funds, with interest, within ten (10) days after the dispute is resolved.

XXVI. Indemnification and Contribution Protection

112. Neither the United States nor any agency or agents or employees thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, its officers, directors, employees, agents, servants, receivers, trustees, successors, or assignees, or of any persons, including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this CONSENT ORDER, nor shall the United States or any agency or agents or employees thereof be represented to be a party to any contract entered into by the Respondent in carrying out activities pursuant to this CONSENT ORDER.

113. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents and employees from any and all claims or causes of action arising

from or on account of wrongful or negligent acts or omissions of Respondent or its officers, employees, receivers, trustees, agents, contractors, subcontractors or assigns, in carrying out any activities pursuant to this CONSENT ORDER. Such indemnification by Respondent shall include any wrongful or negligent acts or omissions related to work conducted by Respondent under the terms of this CONSENT ORDER on property not owned or controlled by Respondent. EPA is not and shall not be represented to be a party to any contract entered into by Respondent to carry out activities pursuant to this CONSENT ORDER.

114. With regard to claims for contribution against Respondent for matters addressed in this CONSENT ORDER, the Parties agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Matters addressed by this CONSENT ORDER are defined as work performed and monies spent or paid by Respondent pursuant to the terms of the CONSENT ORDER. Nothing in this CONSENT ORDER precludes EPA or Respondent from asserting any claims, causes of action or demands against any persons not parties to this CONSENT ORDER for indemnification, contribution, or cost recovery.

#### XXVII. Covenants not to Sue

115. Except as otherwise specifically provided in this CONSENT ORDER, upon issuance of the EPA notice described in Section

XXVIII (Satisfaction and Completion), EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform the matters addressed by, and agreed to, in this CONSENT ORDER, except as otherwise reserved herein.

116. Except as otherwise specifically provided in this CONSENT ORDER, in consideration and upon Respondent's payment of the response costs specified in Section XXV (Cost Reimbursement) of this CONSENT ORDER, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA for the amount of past response costs and Oversight Costs incurred by the United States in connection with the Site and this CONSENT ORDER, and paid by Respondent pursuant to this CONSENT ORDER. This covenant not to sue shall take effect as of, and upon the receipt by EPA of the payments required by Section XXV (Cost Reimbursement) of this CONSENT ORDER.

117. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this CONSENT ORDER. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XXVIII. Satisfaction and Completion

118. The requirements of this CONSENT ORDER shall be deemed satisfied upon written notice from EPA that the Respondent has



demonstrated, to the satisfaction of EPA, that all of the work required by this CONSENT ORDER have been completed.

XXIX. Effective date

119. The effective date of this CONSENT ORDER shall be the date on which Respondent receives a fully executed copy thereof.

IT IS SO ORDERED.

**For Respondent, Enron Corporation**

BY: James V. Denarik, Jr.

DATE: September 9, 1996

Name: James V. Denarik, Jr.

Title: Senior Vice President & General Counsel

**For the United States Environmental Protection Agency**

BY: David Carol For

DATE: 9/25/96

Howard C. Bunch  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency

BY: Michael J. Sanderson

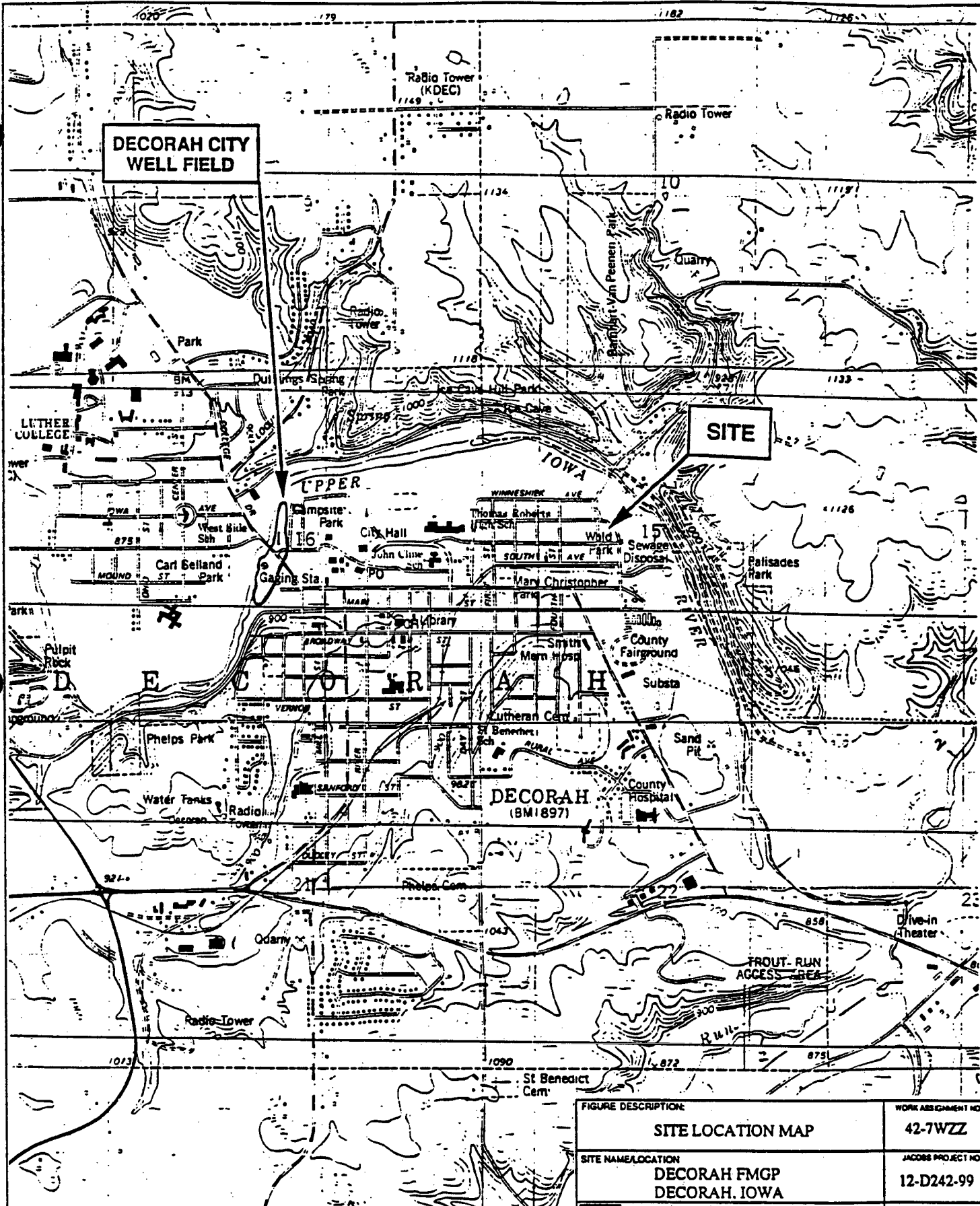
DATE: 9/25/96

Michael J. Sanderson  
Director  
Superfund Division  
Region VII  
United States Environmental Protection Agency

The representative of Respondent who has signed the signature page certifies that he/she is fully authorized to enter into the terms and conditions of this CONSENT ORDER and to bind the Respondent to the terms of this CONSENT ORDER.

Attachment I:

Maps of Location of Site

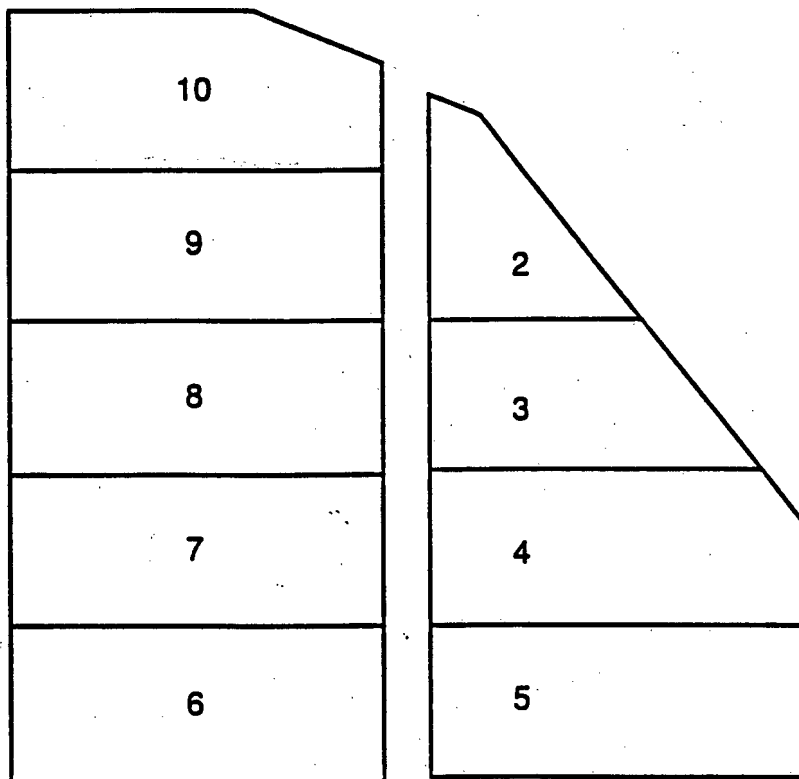


Source: U.S.G.S. Topographic Map, 1981

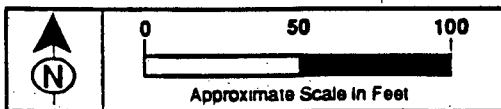


FIGURE DESCRIPTION:		WORK ASSIGNMENT NO
SITE LOCATION MAP		42-7WZZ
SITE NAME/LOCATION		JACOBS PROJECT NO
DECORAH FMGP DECORAH, IOWA		12-D242-99
<b>JE</b> JACOBS ENGINEERING GROUP INC.		<b>ARCS</b>
DRAWN BY: MD	DATE: 01/08/93	FIGURE NO.
CHECKED BY: KS	DATE: 01/08/93	1



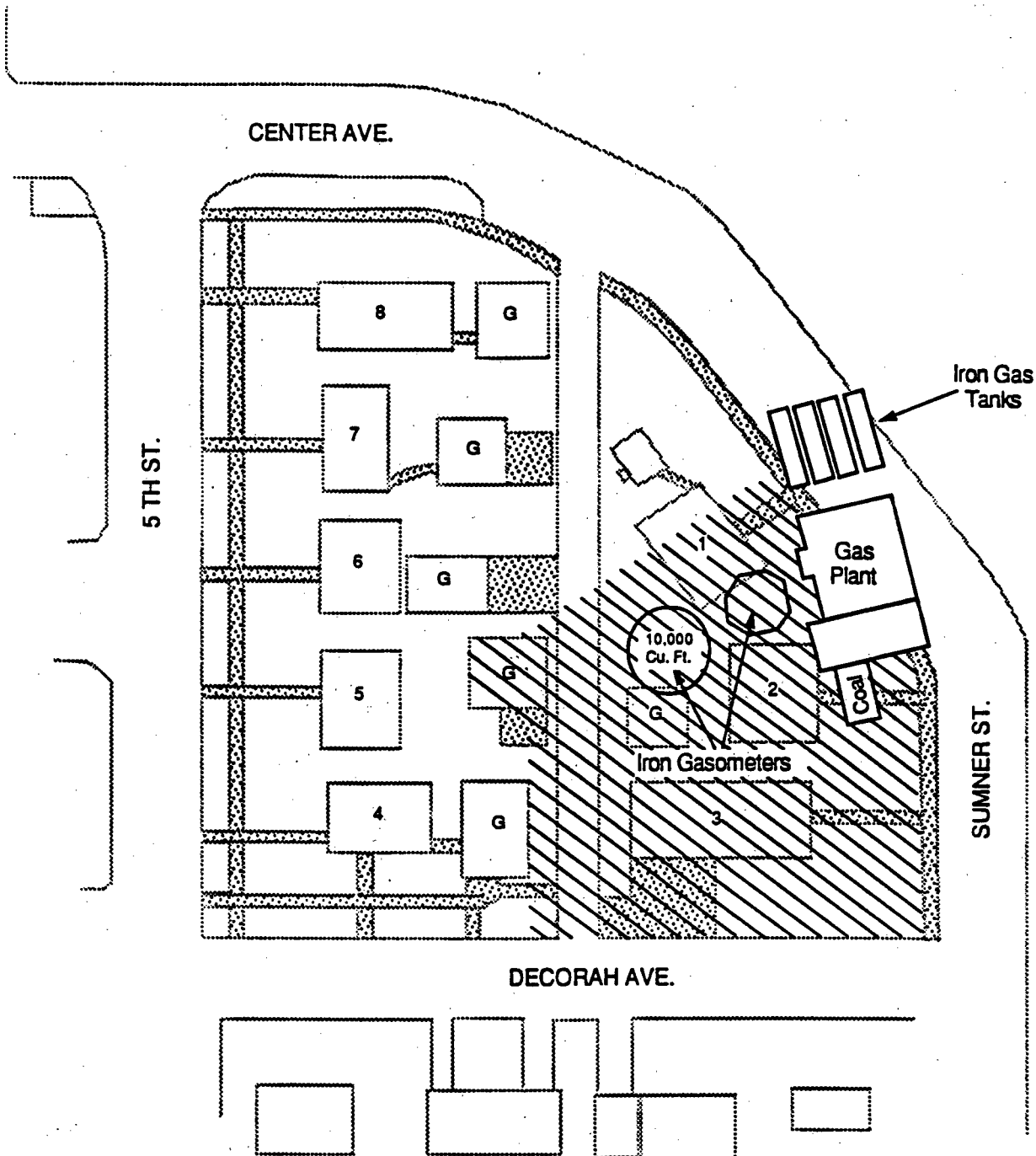






Source: Sanborn Fire Insurance Map



D242-99-005 DEC

FIGURE DESCRIPTION: <b>OWNERSHIP PLAT MAP</b>		WORK ASSIGNMENT NO. <b>42-7WZZ</b>
SITE NAME/LOCATION DECORAH FMGP DECORAH, IOWA		JACOBS PROJECT NO. 12-D242-99
<b>JE</b> JACOBS ENGINEERING GROUP INC.		<b>ARCS</b>
DRAWN BY: MD	DATE: 01/11/94	FIGURE NO. <b>3</b>
CHECKED BY: KS	DATE: 01/11/94	



-  Alleged Disposal Areas
-  Approximate Locations of Decorah Gas Company Facilities
-  Current Site Features
-  Concrete

Source: Sanborn Fire Insurance Map

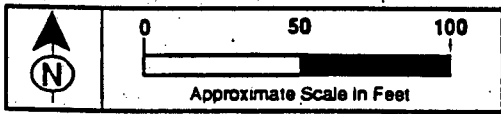


FIGURE DESCRIPTION: <b>HISTORICAL SITE MAP</b>		WORK ASSIGNMENT NO <b>42-7WZZ</b>
SITE NAME/LOCATION <b>DECORAH FMGP DECORAH, IOWA</b>		JACOBS PROJECT NO <b>12-D242-99</b>
<b>JE JACOBS ENGINEERING GROUP INC.</b>		<b>ARCS</b>
DRAWN BY: <b>MD</b>	DATE: <b>01/11/94</b>	FIGURE NO. <b>4</b>
CHECKED BY: <b>KS</b>	DATE: <b>01/11/94</b>	

Attachment II:

Presentation of results of sampling investigations

Attachment III:  
Statement of Work



STATEMENT OF WORK  
FOR THE REMOVAL ACTION AND  
ENGINEERING ANALYSIS  
AT THE  
DECORAH MANUFACTURED GAS PLANT SITE  
DECORAH, IOWA

PURPOSE

1. The purpose of this Statement of Work (SOW) for the Decorah Manufactured Gas Plant (Site) is to define the tasks, standards and guidelines which shall be followed by the Respondent to (1) conduct a time critical removal action to remove and properly dispose of contaminated surface soil from the Site, (2) to conduct additional site characterization to investigate the extent of subsurface tar deposits, and if determined by EPA to be necessary to (3) develop an Engineering Analysis (EA) to evaluate and recommend alternatives to address subsurface tar deposits at the Site. In accomplishing the above purposes, the Respondent shall comply with the provisions of the corresponding Administrative Order on Consent (Consent Order) between the United States Environmental Protection Agency (EPA) and Enron Corp (Respondent), this SOW, CERCLA, the National Contingency Plan (NCP) and EPA guidance (including, but not limited to the guidance documents referenced in this SOW). The schedule and statement of work to be performed under the Consent Order is set forth hereinafter.

2. The Consent Order specifies that Respondent may commit to perform an Engineering Analysis (EA) to evaluate and recommend alternative responses to address subsurface tar deposits at the Site. If Respondent commits to perform the EA, it shall do so in accordance with the terms of the Consent Order and the SOW set forth below. The EA Report will be submitted to EPA for review after which EPA will select its preferred removal action for tar deposits found at the Site. EPA will document its choice in a Removal Decision Document.

WORK TO BE PERFORMED

3. Respondent shall perform the tasks set forth below in designing and implementing the work required for the Site. Additionally, Respondent shall insure the design and implementation of EPA's chosen remedy meets or exceeds the performance standards, specifications and applicable or relevant and appropriate requirements (ARARs) set forth below. The work required shall consist of the following four tasks:

TASK I: Preparation of Removal Action Workplan (RAW)

TASK II: Performance of Removal Action

TASK III: EA Development

TASK IV: Reports

TASK I: Removal Action Workplan:

4. Within thirty (30) days of the effective date of the Consent Order, Respondent shall prepare and submit to EPA for review and approval, a Removal Action Workplan (RAW) that shall describe the proposed tasks and schedules associated with excavation, processing and offsite disposal of soils exceeding EPA's cleanup levels for the Site. The RAW shall be prepared to require the response action to be performed in accordance with standards set forth in Task II, below, and shall include the following information:

A. A clear and concise description of roles, relationships and assignment of responsibilities among the Respondent, Project Coordinator, Quality Assurance Officer, Construction Supervisor and Construction Personnel;

B. A proposed schedule for the removal action that will require commencement of onsite activity within seven (7) days of EPA's final approval of the RAW including its sampling and analysis plan and completion of the removal action within sixty (60) days of commencement of onsite activities; if EPA's approval is delayed to an extent that reseeding and/or sodding of the residential yards is infeasible due to seasonal change to winter in Decorah, then the schedule and/or proposed work shall be revised such that the residents will not have to endure periods of more than two weeks with barren yards.

C. A detailed description of site preparation activities, including establishment of security and control, definition of clearing and grubbing limits, establishment of work and support areas, and definition of decontamination areas;

D. Figure 1 to this SOW is a map defining areas to be excavated on the west side of the Site and in Wold Park, based upon EPA's soil cleanup action levels;

E. A proposed design of an air monitoring program to be used during site excavation and material handling activities;

F. A description of proposed sampling and analytical procedures, including field screening and laboratory methods, to be conducted on soil samples collected during excavation activities;

G. Description of the methods proposed to be used to control odors, fugitive dust and/or volatilization of PAHs from excavation at the Site;

H. A description of the method of transportation for all contaminated materials, manifesting requirements in accordance with federal and state Department of Transportation (DOT) regulations, and material quantity accounting procedures. In addition, Respondent shall provide written notice prior to any out-of-state shipment of waste material;

I. A detailed description of the sampling and quality assurance/quality control (QA/QC) measures to be taken during the during sampling activities;

J. A description of Site restoration requirements after completion of removal action. This description shall include all work necessary to restore property, to the extent practicable, to its original pre-removal condition, including but not limited to the placement of clean fill, replacement of plants, flower beds, trees, reseeding or sodding of grass areas, and the replacement of driveways, walkways and other structures; and

K. A plan for identifying and complying with applicable permitting requirements and environmental statutes.

5. As components of the Removal Action Workplan, Respondent shall develop and submit the following project plans to support field activities:

A. Sampling and Analysis Plan (SAP); and

B. Health and Safety Plan (HSP).

6. The Sampling and Analysis Plan (SAP) shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs to characterize the site. The methodology for identifying subsurface tar deposits shall be visual observation of the sampled materials and not laboratory analysis. No field activities shall take place until EPA has reviewed and approved the SAP. The SAP shall consist of two parts:

A. A Field Sampling Plan (FSP) which describes the estimated number, type, and location of samples to be collected at the site to further define the extent of contamination or to confirm when certain actions have achieved the desired results, or to conduct tests on the material for treatability. Respondent shall include provisions for split samples provided to EPA, its contractors, or the State of Iowa as appropriate. No less

than five (5) working days notice must be given to EPA prior to collecting samples. The plan shall also include the types of analyses to be conducted for each sample, detection limits, and a brief rationale for collecting the sample and performing the analysis. Such sampling shall include a visual evaluation for the presence or absence of tar deposits as defined in Paragraph 10.D below.

B. A Quality Assurance Project Plan (QAPP), which describes policy, organization, and functional activities and the data quality objectives and measures necessary to achieve adequate data for use in planning and documenting the removal action. The QAPP shall be written in accordance with a category III project as described in "EPA Requirements for Quality Assurance Project Plans For Environmental Data Operations," U.S. EPA, EPA QA/R5, August 1994. Respondent shall assume that the existing EPA data is adequate for use in preparing the EA. In the event that Respondent finds the data, or portions of it not suitable for such purposes, Respondent shall notify EPA immediately. If EPA concurs that the data is of poor quality and cannot be used for preparing the EA, a suitable extension of time will be granted for Respondent to collect and evaluate replacement data.

7. The FSP shall require that all sample collection and analysis be performed in compliance with EPA approved methods, including timing of analysis and documentation of sample collection, handling, and analysis. Any proposed sampling scheme shall be capable of producing representative and statistically valid samples, and generally conform to the following EPA guidance documents:

A. Compendium of ERT Field Analytical Procedures - Office of Emergency and Remedial Response, Publication 9360.4-04, May 1992.

B. Compendium of ERT Waste Sampling Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/008, January 1991.

C. QA/QC Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures - Office of Emergency and Remedial Response, EPA/540/G-90/004, April 1990.

D. Removal Program Representative Sampling Guidance, Volume 1: Soil - Office of Emergency and Remedial Response, publication 9360.4-10, November 1991.

E. Compendium Of ERT Soil Sampling and Surface Geophysics Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/006, January 1991.

8. The FSP shall require that all samples shall be analyzed by a laboratory that participates in a quality assurance/quality control program equivalent to that specified in, "USEPA Contract Laboratory Program Statement of Work for Analysis," Exhibit E, EPA SOW No. 788, July 1988.

9. The Health and Safety Plan, shall be prepared in accordance with 40 C.F.R. Part 300.150 and all applicable OSHA requirements at 29 C.F.R. 1910. In addition to the requirements addressed in these regulations, this plan shall generally follow the guidelines established in EPA's "Standard Operating Safety Guides," Office of Emergency and Remedial Response, publication 9285.1-03, June 1992.

**Task II: Performance of Removal Action**

10. The Removal Action shall be conducted in accordance with the following performance standards, as set forth in the approved RAW:

A. Respondent shall remove surface soils in Wold Park and on the properties on the west side of the alley dividing the area of block 9 in Park addition to the City of Decorah, Iowa which have been found to exceed the removal criteria for surface soils set forth in Paragraph B below. The surface soils to be removed shall consist of the areas indicated on Figure 1 to a depth of two (2) feet. Additionally, if discovered, Respondent shall remove all visually observed tar deposits to the depth of the groundwater during this phase of the removal action, except where such removal is inconsistent with the factors listed in Paragraph 10.E below. In such case, the EA will incorporate evaluation of these tar deposits along with those on the east side as described in Paragraph 10.E below. If such removal is performed, the schedule will be revised as necessary to accommodate the unanticipated work.

B. EPA's removal criteria for surface soil removal is 1.0 mg/kg benzo(a)pyrene (B(a)P) equivalents. Benzo(a)pyrene equivalents shall be calculated by multiplying each carcinogenic PAH compound by the following potency factors:

<u>Compound</u>	<u>Potency Factor</u>
Benzo(a)anthracene	0.1
Chrysene	0.001
Benzo(b)fluoranthene	0.1
Benzo(k)fluoranthene	0.01
Benzo(a)pyrene	1.0
Indeno(1,2,3cd)pyrene	0.1
Dibenzo(a,h)anthracene	1.0

The total benzo(a)pyrene equivalents is the sum of each of the concentrations of carcinogenic PAH compounds multiplied by the appropriate potency factor. Where the concentration of a compound is below detection limits, a value of zero shall be used for that compound in the calculation of B(a)P equivalents.

C. If Respondent chooses to determine the horizontal area and depth limit for surface soil removal by its own sampling, it shall sample for analytes that shall include those contaminants listed in Paragraph B, above. Respondent shall submit a proposal for this determination and shall be included in the Respondent's proposed RAW for EPA's review and approval.

D. Concurrent with the surface soil removal on the west side of the alley, Respondent shall perform a subsurface investigation of the east side of block 9 in Park addition in a manner sufficient (soil borings) to determine the vertical and horizontal extent of subsurface tar deposits based upon visual observations. The definition of "visual tar deposits" is portions of the subsurface matrix greater than one-(1) cubic foot in volume which are characterized by visible tar-like stains (black/dark brown), contain a noticeable tar-like odor when held at a distance of six (6) inches from the nose and show visible sheens on the surface of a water mixture made up of equal volumes of the matrix and water. At the limits of subsurface tar deposits determined by the above criteria and investigation, Respondent shall take a representative set of samples for laboratory analysis to determine whether constituents have migrated from the tar deposits. Upon preliminary completion of the subsurface investigation, Respondent shall provide a Sampling Report to EPA for review and approval that contains all data and results from the subsurface investigation and a recommendation, on a lot by lot basis, of what portions of the Site, if any, contain tar deposits that require an engineering analysis before commencing on-site removal activity.

E. Based on the approved Sampling Report, EPA will determine and notify Respondent of what, if any, specific areas of the Site contain surface contamination and subsurface tar deposits that require an engineering analysis prior to beginning on-site removal activity and are appropriate for evaluation by an EA. In determining what areas of the Site are appropriate for evaluation by an EA, EPA shall in its sole discretion consider, but not be limited to, the following factors:

- (1) the B(a)P equivalence concentration exceeds 1 mg/kg;

- (2) the soil beneath two (2) feet is free of visible tar deposits;
- (3) the need to evacuate/relocate residents during the removal;
- (4) the removal would not compromise the integrity of any nearby structures;
- (5) the soil is not covered by any paved streets or driveways, sidewalks, buildings or similar structures; and,
- (6) any individual property could be addressed in its entirety with such a removal so that no further future excavation on the property could reasonably be expected.

F. Within thirty (30) days of receipt of notice by EPA and in accordance with the requirements set forth in Paragraphs 10.A-10.C. above, Respondent shall conduct surface and subsurface soil removals for those remaining areas of the Site that are determined by EPA not to require an EA prior to commencing on-site activity. Additionally, if after the performance of an EA, EPA determines that no further removal of subsurface coal tar/contamination is required, within thirty (30) days of receipt of notice from EPA, Respondent shall conduct a surface soil removal in accordance with the requirements of Paragraph 10.A-10.C, above.

G. Respondent shall implement soil excavation and removal and other cleanup techniques that minimize the release of odors and or contaminants via airborne emissions and or surface runoff.

H. Respondent shall monitor the ambient air during excavation and soil loading activities. Ambient air monitoring during excavation and removal shall be designed and implemented to determine compliance with National Primary and Secondary Ambient Air Quality Standards and/or levels protective human health as determined by EPA. If these standards are exceeded, Respondent shall utilize containment, chemical dust suppressants and/or water during excavation and removal activities to reduce the generation of airborne emissions to below the air quality standards or health based levels.

I. If on-site or off-site storage of contaminated materials is necessary at any time during the removal activity, such material must be stored in such a manner as to prevent migration of contaminants.

J. Respondent will characterize and dispose of excavated materials in accordance with the applicable federal and state laws and regulations.

11. Upon EPA approval of the RAW, Respondent shall construct and implement the Removal Action in accordance with the approved designs, schedules and plans contained therein. Respondent shall document completion of the Removal Action in accordance with the following procedures.

A. Prefinal Inspection and Report: Upon preliminary completion of the removal action within a specified area of the Site, Respondent shall contact EPA for the purpose of scheduling and conducting a prefinal site inspection with EPA. The prefinal inspection shall consist of a walk-through inspection of the specified area. The purpose of the prefinal inspection will be to determine whether the removal action has been completed for the specified area consistent with the approved RAW.

i. Within five (5) days of a prefinal inspection, Respondent shall submit to EPA, for review and approval, a Prefinal Inspection Report that will document all unfinished removal action work discovered during the prefinal inspection.

ii. Within each Prefinal Inspection Report, Respondent shall outline the actions required to resolve all outstanding removal action work and shall propose a schedule to complete these items.

iii. Within each Prefinal Inspection Report, Respondent shall also certify that all other removal work has been completed in a manner sufficient to meet the requirements of the approved RAW.

iv. Respondent shall provide a copy of each Prefinal Inspection Report to all property owners on whose property access was required to complete the portion of the removal described in the report.

B. Final Inspection: Upon completion of any outstanding removal action work for a specified area of the Site, Respondent shall notify EPA for the purpose of scheduling a final site inspection.

i. The final inspection shall consist of a walk-through inspection by EPA and Respondent of the specified area of the Site.

ii. The Prefinal Inspection Report for the specified area of the Site will be used as a checklist with the



final inspection focusing on the outstanding removal work items identified in the prefinal inspection.

C. **Certification of Completion:** Upon confirmation that the purpose, intent and requirements of the RAW have been satisfied, in conformance with engineering practice, EPA shall provide Respondent a written certification of completion of the Removal Action.

**TASK III: Engineering Analysis (EA) Development**

12. After EPA approval of the Sampling Report (Task II, Paragraph 10.D), and in accordance with the Consent Order, if EPA determines that areas on the east side of the Site contain subsurface tar deposits which require an Engineering Analysis (EA) prior to continuation of on-site removal activities, and EPA requests Respondent to perform the EA, Respondent may elect to perform the EA in accordance with this SOW and Consent Order. Within ten (10) days of Respondent's receipt of a request from EPA to perform an EA designed to identify, evaluate and recommend engineering alternatives to accomplish the removal of the surface soils and subsurface tar deposits before initiating on-site activity, Respondent shall complete, sign and return to EPA the form set forth as Attachment IV to the Consent Order and hereby unequivocally state whether or not it shall perform an EA.

13. If Respondent commits to perform the EA, it shall do so in accordance with CERCLA, the National Contingency Plan (NCP), EPA guidance, the Consent Order and the requirements of this SOW as set forth below.

14. The EA shall analyze alternatives that may be used to satisfy the removal action goal, taking into account cost and implementability. Respondent shall use the Preliminary Assessment and Screening Site Inspection conducted and prepared for EPA by Jacobs Engineering, previous sampling conducted by EPA Region 7, and any additional sampling by Respondent as the basis for proposing and evaluating potential removal alternatives.

15. Within ninety (90) days of EPA's receipt of Attachment IV stating Respondent's commitment to perform an EA, Respondent shall develop and submit to EPA for review and approval an EA Report. At a minimum, the EA Report shall include the following information.

A. **Site Characterization:** A summary of the information developed in the additional site characterization performed as a part of this SOW;

B. **Analysis of Engineering Alternatives for Tar-Deposit Removal:** The removal action goal shall be excavation of the

tar deposits found in the additional characterization in accordance with the factors listed below. The analysis will identify one or more alternatives for removing the subsurface tar deposits to satisfy this goal. Information provided on each alternative will include:

- i. a technical description of the alternative including a site map delineating the proposed excavation areas;
- ii. supplemental drawings, as necessary, to provide conceptual details about the alternative;
- iii. a narrative description of the alternative;
- iv. an evaluation of the alternative's potential for compromising the structural integrity of any of the buildings, streets, sidewalks and utility lines in the vicinity of tar-deposit removal;
- v. a description of any buildings or structures that would have to be demolished to complete the alternative;
- vi. a discussion of the schedule for the alternative describing the estimated time periods required to complete it;
- vii. a discussion as to whether and, if so, the estimated time period that residents would need to be relocated; and
- viii. a discussion of the potential exposure of humans and the environment which might occur during implementation of the alternative.

C. Based on the above information, the analysis will compare and contrast the alternatives, if more than one is identified, on the following characteristics:

- i. Technical feasibility: constructability, operation and maintenance, timeliness and reliability;
- ii. Administrative Feasibility: permitting requirements, land acquisition, easements, coordination with relevant government organizations and residents, potential impacts on adjacent properties and public acceptance; and
- iii. Availability of Goods and Services: available technologies and personnel.

D. **Cost Analysis:** For each removal alternative evaluated, Respondent shall estimate direct capital costs, indirect capital costs, annual operation and maintenance costs, and present worth costs, and, if appropriate, conduct a sensitivity analysis to changes in the cost components for each removal alternative evaluated.

E. **Proposed Removal Alternative:** Within the EA Report, Respondent shall recommend a removal alternative, based on the results of the comparative analysis set forth above.

17. Following Respondent's submittal of the EA report, EPA will develop a Removal Decision Document (Decision Document) that will propose a preferred removal alternative for the Site. A copy of the Removal Decision Document will be sent to Respondent.

#### TASK VI: REPORTS

18. Respondent shall prepare the workplans and reports set forth in Task I through Task II to accomplish the design, construction, operation and maintenance, and monitoring of the Removal Action. In addition, the Respondent shall provide the following documentation:

A. **Monthly Progress Reports:** Respondent shall provide the EPA with signed, monthly progress reports by the 10th day of the each calendar month following the effective date of the Order. The monthly progress reports shall be of similar content as a Pollution Report (POLREP) as described in "Superfund Removal Procedures, Removal Response Reporting: POLREPS and OSC Reports", U.S. EPA, Office of Solid Waste and Emergency Response, Publication 9360.3-03, June 1994. At a minimum, the monthly progress reports shall include the following information:

- i. Summary of actions which have been taken to comply with the Consent Order during the month;
- ii. Copies of results of sampling and tests and all other raw data received by Respondents;
- iii. Description of work planned for the month with scheduling related to such work and the overall project schedule for the EA;
- iv. A summary of problems encountered and any anticipated problems, any actual delays and solutions developed and implemented to address any actual or anticipated problems or delays; and

v. Summaries of all contacts with representatives of the local community, public interest groups, state and federal governments during the reporting period.

III. SCHEDULE OF SOW SUBMISSION  
DUE DATES AND ACTIVITY IMPLEMENTATION DATES

TASKS I AND II - Design and Implementation Removal Action

· Submit Removal Action Workplan - within 30 days after the effective date of the Consent Order.

· Implement Removal Action (Wold Park/West side) and subsurface investigation of Site (East side) within seven (7) days of EPA approval of the Removal Action Workplan.

· Implement Removal Action for other specified areas of Site within thirty (30) days of receipt of notice from EPA.

TASK III - EA Development

· Within ten (10) days of receipt of EPA request to perform an EA, return Attachment IV to the Consent Order and state whether Respondent commits to perform the EA.

· Submit EA Report - within ninety (90) days after EPA's receipt of Attachment IV stating Respondent's commitment to perform a EA.

TASK IV - Reports

· Submit monthly Progress Reports - tenth (10) day of each month following effective date of Consent Order until receipt of EPA approval of EA Report.

Attachment IV:

**ENRON CORP'S  
STATEMENT OF COMMITMENT WHETHER TO PERFORM EA**

1. In accordance with the requirements of the foregoing CONSENT ORDER (Docket No. VII-96-F-0023) and having received a request from the United States Environmental Protection Agency (EPA) to perform an Engineering Assessment (EA) for portions of the Decorah Manufactured Gas Plant Site (Site), Enron Corp (Respondent) hereby unequivocally declines to perform the requested EA.

**For Respondent, Enron Corp**

BY: \_\_\_\_\_  
Name:  
Title

DATE: \_\_\_\_\_

2. In accordance with the requirements of the foregoing CONSENT ORDER and having received a request from the United States Environmental Protection Agency (EPA) to perform an Engineering Assessment (EA) for portions of the Decorah Manufactured Gas Plant Site (Site), Enron Corp (Respondent) hereby unequivocally commits to perform the requested EA. By making this commitment, all aspects of the CONSENT ORDER related to the performance of the EA shall be fully enforceable against Respondent and Respondent shall conduct an EA of removal alternatives in accordance with the terms of the CONSENT ORDER and Task III of the SOW (Attachment III).

**For Respondent, Enron Corp**

BY: \_\_\_\_\_  
Name:  
Title:

DATE: \_\_\_\_\_