



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

SEP 30 1996

Mr. Douglas E. Deeter, President  
Deeter Foundry Inc.  
5945 N. 70th Street  
P.O. Box 29708  
Lincoln, Nebraska 68529

Mr. Robert Cather  
Cather & Sons Construction Co.  
6400 N. 70th Street  
Lincoln, Nebraska 68507

RE: Signed Administrative Order on Consent Docket No. VII-96-F-0007

Dear Sirs:

Enclosed is a copy of the fully-executed Administrative Order on Consent (AOC) referenced above, which addresses the necessary removal activities at the Cather & Son's Construction site (Site) in Lincoln, Nebraska. Please note that, pursuant to Section XXIII (Effective Date and Termination) of the AOC, the effective date of the AOC is September 27, 1996, the day upon which the AOC was signed by the Regional Administrator's delegatee.

The Environmental Protection Agency appreciates your willingness to perform the necessary removal action, and looks forward to continuing to work with you toward completion of activities at the Site.

Sincerely,

Belinda L. Holmes  
Senior Assistant Regional Counsel

cc (with enclosure):

Edwin G. Warin, Esq.  
McGrath, North, Mullin & Kratz, P.C.  
One Central Park Plaza, Suite 1400  
222 South Fifteenth Street  
Omaha, NE 68102



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Jeff Weatherford, OSC  
SUPR



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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

IN THE MATTER OF:	)	
	)	ADMINISTRATIVE ORDER ON
	)	CONSENT FOR REMOVAL ACTION
Cather & Sons Construction	)	
Lincoln, Nebraska	)	
	)	Docket No. VII-96-F-0007
Cather & Sons Construction	)	
and	)	Proceeding Under Section 106(a) and
Deeter Foundry, Inc.,	)	Section 122(h) of the Comprehensive
	)	Environmental Response, Compensation and
	)	Liability Act, as amended, 42 U.S.C.
Respondents	)	§§ 9606(a) and 9622(h)

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is entered into voluntarily by the Environmental Protection Agency ("EPA") and by Respondents Deeter Foundry, Inc. ("Deeter") and Cather & Sons Construction ("Cather"). This Order provides for the performance of a removal action by Respondents and the reimbursement of response and oversight costs incurred by the United States in connection with the Cather & Sons Construction site, 6400 North 70th Street, Lincoln, Nebraska (the "Site"). A map depicting the Site is included as Appendix A to this Order. This Order requires the Respondents to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

2. This Administrative Order on Consent ("AOC" or "Order") is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9606(a) and 9622(h) ("CERCLA"), which authority has been delegated to the

Administrator of EPA by Executive Order No. 12580, January 23, 1987 (52 Fed. Reg. 2923), and further delegated to the Regional Administrator of EPA Region VII by EPA Delegation Nos. 14-14-C and 14-14-D, and further delegated to the Director, Superfund Division with the concurrence of the Regional Counsel or her designee by Regional Delegation Nos. R7-14-14-C and R7-14-14-D.

3. EPA has notified the State of Nebraska of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. Respondents' participation in this Order shall not constitute or be construed as an admission of liability or as agreement with the validity of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondents agree to comply with and be bound by the terms of this Order. Respondents further agree that they will not contest the basis or validity of this Order or its terms in any proceeding to enforce this Order.

## II. PARTIES BOUND

5. This Order applies to and is binding upon EPA, and upon Respondents and Respondents' heirs, successors and assigns. Any change in ownership or corporate status of either Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Order. Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one Respondent with any provision of this Order shall not excuse or justify noncompliance by the other Respondent.

6. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Both Respondents shall be responsible for any noncompliance with this Order.

### III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the document which is Appendix C to this Order, and which sets forth the basis for and scope of the removal actions to be carried out at the Cather & Sons Construction Site. The Action Memorandum is hereby incorporated into and made an enforceable part of this Order.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

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, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs and laboratory costs. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 1, 1996, to the date of entry of this Order.

f. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (I) paid by the United States in connection with the Site between April 1, 1996 and the effective date of this Order, or (ii) incurred prior to the effective date of this Order but paid after that date.

g. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The interest rate for the current fiscal year (ending September 30, 1996) is 5.85%.

h. "NDEQ" shall mean the Nebraska Department of Environmental Quality and any successor departments or agencies of the State.

i. "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, and any amendments thereto.

j. "Order" or "AOC" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.

k. "Owner Respondents" shall mean the Respondent Cather & Sons Construction Company.

l. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral and/or a lower case letter.

m. "Parties" shall mean the United States Environmental Protection Agency and the Respondents.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 1, 1996, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

o. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Removal Action, Set forth in Section VI below and/or Task 4 of the statement of work (SOW), which is Appendix B to this Order.

p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

q. "Removal Action" shall mean those activities to be undertaken by the Respondents to implement the Action Memorandum, which is Appendix C to this Order, in accordance with the SOW (Appendix B) and the final Removal Action Work Plan and any other plans approved by EPA

r. "Removal Action Work Plan" shall mean the document developed pursuant to Paragraph 19 of this Order and approved by EPA, and any amendments thereto.

s. "Section" shall mean a portion of this Order identified by a roman numeral.

t. "Respondents" shall mean Cather and Sons Construction and Deeter Foundry, Inc.

u. "Site" shall mean the Cather and Sons Construction Superfund Site, encompassing approximately 37 acres comprised of two parcels (A and B), in the Southwest Quarter of Section 34, Township 11 North, Range 7 East, Lancaster County, Nebraska. The street address of the facility is 6400 70th Street in Lincoln, Nebraska. The Site is depicted generally on the map attached as Appendix A.

v. "State" shall mean the State of Nebraska.

w. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Removal Action Work Plan and the Removal Action as set forth in Appendix B to this Order and any modifications thereto made in accordance with the terms of this Order. The SOW is hereby incorporated into and made an enforceable part of this Order.

x. "Supervising Contractor" shall mean the principal contractor retained by the Respondents to supervise and direct the implementation of the Work under this Order.

y. "United States" shall mean the United States of America.

z. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and/or (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

aa. "Work" shall mean all activities Respondents are required to perform under this Order, except those required by Section XXV (Retention of Records).

#### IV. FINDINGS OF FACT

8. Respondent Deeter Foundry, Inc. ("Deeter") is a Nebraska corporation engaged in the business of manufacturing municipal gray iron castings. As a result of the manufacturing process, Deeter produces various waste materials. Specifically, Deeter produces slag, which is a waste product resulting from the process of melting metals, and foundry sand, which is used in the molding process and then discarded. Slag and foundry sand sometimes contain lead, arsenic and cadmium.

9. Respondent Cather & Sons Construction ("Cather") operates a construction company and asphalt batch plant. In the spring of 1994, Cather began construction on a new facility at 6400 70th Street in Lincoln, Nebraska. Cather accepted slag and/or foundry sand to use as construction fill material at the new facility, primarily in the northern portion of the property. Cather transported approximately 200 truckloads of material (approximately 2,000 cubic yards) from the Deeter facility to the Site to be used in this manner.

10. Land use around the Cather facility is mainly industrial and agricultural. The Cather facility is located approximately eight (8) miles from downtown Lincoln, near the intersection of 70th Street and U.S. Highway 6. Drainage from the Site is generally toward the Salt Creek, which is a perennial stream located approximately one-half (1/2) mile to the north of the facility. Salt Creek flows to the northeast and discharges to the Platte River, a tributary of the Missouri River. The Cather facility lies within the alluvial flood plain of Salt Creek.

11. In response to reports received by EPA that materials from Deeter had been transported to Cather to be used as fill, EPA personnel inspected the Site on December 20, 1994. Six samples of dark-colored material which appeared to be foundry sand were collected during

this visit. The EPA's analysis of the samples revealed lead at levels ranging from non-detectable amounts up to 2360 milligrams per kilogram (mg/kg), and leachate from the samples ranged from non-detectable amounts up to 19.1 milligrams per liter (mg/l) when analyzed using the Toxicity Characteristic Leaching Procedure (TCLP) used to identify characteristic hazardous wastes under the Resource Conservation and Recovery Act of 1980, as amended, 42 U.S.C. § 6901 et seq.

12. EPA personnel visited the Site again in July, 1995, in order to further delineate the area of contamination. However, at the time of the July, 1995 visit, the area previously sampled had been covered with gravel and foundry wastes had been placed in soil piles in the northeast corner of the facility. Because the original disposal area had been disturbed, samples were collected from this area as well as from the piles. These samples contained lead at concentrations ranging from 21.8 mg/kg up to 2,180 mg/kg and TCLP concentrations ranging from .109 mg/l up to 23.2 mg/l.

13. EPA classifies lead as a Class B2 carcinogen (probable human carcinogen). Lead can be toxic to humans and animals via ingestion and inhalation. Exposure to lead in sufficient quantities can cause premature births, low birth weight babies, decreased mental ability, decreased growth in children, decreased reaction time, weakness in fingers, wrists and ankles, increased blood pressure, anemia, kidney damage and reproductive system damage. Young children are the most sensitive population to the toxic effects of exposure to lead.

14. The principal direct contact hazards posed by the presence of lead-contaminated foundry wastes at the Site are exposure to employees, customers, and persons working at or visiting nearby businesses through inhalation and/or ingestion of dust containing lead; and

exposure to persons trespassing on the Site, particularly young children, through inhalation and/or ingestion of dust containing lead.

15. The Site is underlain by a shallow ground water aquifer. Because the TCLP results showed that the leachate from the foundry wastes was as much as four times higher than the level at which the leachate is considered hazardous (5 mg/l), the potential exists for migration of lead into the shallow ground water over time. There are several residences to the east and north of the Site that are outside of the City of Lincoln's water supply district and the potential for exposure through ingestion of the ground water is present if the Site remains unaddressed.

16. A large portion of the surface soil at the Site is bare soil (without vegetation). There is the potential for migration of lead from the Site on windy days via dispersion of dust, and lead-contaminated soils could also be carried away from the Site with runoff from precipitation.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

17. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Cather & Sons Construction Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Lead is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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

d. Respondent Cather & Sons Construction is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). In addition, Respondent Cather & Sons Construction was the "owners" and/or "operators" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

e. Respondent Deeter Foundry, Inc. arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

f. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

g. The conditions present at the facility constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered are set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 C.F.R. Part 300 ("NCP").

h. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

i. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

## VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent(s) shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

### **18. Designation of Contractor, Project Coordinator, and On-Scene Coordinator:**

a. Respondents shall perform the removal action required by this Order themselves or retain a contractor to perform the removal action. Respondents shall notify EPA of Respondents' qualifications or the name and qualifications of the proposed contractor within fourteen (14) days after the effective date of this Order. Respondents shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform the removal action under this Order at least seven (7) days prior to commencement of such removal action. The EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondents, or of Respondents' proposal to perform the work themselves. If EPA disapproves of a selected contractor or the Respondents, Respondents shall retain a different contractor or notify EPA that Respondents will perform the work themselves and provide notice to EPA of the alternate selection and the name and qualifications of the alternate selection within ten (10) days following EPA's disapproval.

b. Within fourteen (14) days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions required by the Order. Respondents shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA. To the

greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. The EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of a selected Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within ten (10) days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by both Respondents.

c. The EPA has designated Mr. Jeffrey Weatherford of EPA's Region VII Superfund Division--Enforcement/Fund Lead Removal Branch as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at the following address:

Mr. Jeffrey Weatherford, OSC  
U.S. EPA Region VII--SUPR  
726 Minnesota Ave.  
Kansas City, Kansas 66101

Submissions may be made in writing and sent by facsimile, overnight mail or regular mail to the address above. Submissions shall be deemed delivered as of the date of receipt by EPA. The EPA and Respondents shall have the right, subject to paragraph 18.a. and b., to change their designated OSC or Project Coordinator. Respondents shall notify EPA, seven (7) days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

19. **Work to be performed:** Respondents shall perform, at a minimum, the following removal actions:

a. Respondents shall, within sixty (60) days after the effective date of this Order as set forth in Section XXIII (Effective Date and Termination) below, submit a Removal Action Work Plan (RAWP) including all items set forth in Tasks 1 and 4 of the SOW (Appendix B). The RAWP shall include a schedule for implementation of each item in the plan. The EPA will review and approve or disapprove of the RAWP in accordance with paragraph 19.f. below.

b. Also within sixty (60) days after the effective date of this Order, Respondents shall submit a Health and Safety Plan (HSP) and a Sampling and Analysis Plan (SAP) as set forth in Tasks 2 and 3 of the SOW (Appendix B). The HSP shall demonstrate how Respondents will comply with all regulatory requirements set forth in Task 2 of the SOW and shall ensure the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with the EPA guidance cited in Task 2 of the SOW. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. The SAP shall include a schedule for all activities set forth in Task 3 of the SOW, and shall demonstrate that all sampling and analysis activities will be carried out in accordance with the EPA guidance documents listed in Task 3 of the SOW. In addition, Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance, and shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Within thirty (30) days after final EPA approval or modification of the RAWP, HSP and SAP, Respondents shall begin implementation of the activities contained in these documents in accordance with the schedules set forth therein. Except as set forth in Section X

(Force Majeure) below, any failure to complete tasks in accordance with the schedules in any approved plan or submissions will be deemed a violation of this Order. Any modifications to any plan or submission after it has been given final approval by EPA must be approved in accordance with Section XIX (Modifications) below. Respondents shall notify EPA at least seven (7) days prior to performing any on-site work, including sampling activity, pursuant to the EPA-approved RAWP or SAP. Respondents shall not commence or undertake any removal action on-the site without prior EPA approval. Upon request by EPA, Respondents shall have its laboratory analyze samples submitted by EPA for quality-assurance monitoring, and shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing work under this Order. The EPA shall have the right to take any additional samples that it deems necessary.

d. Respondents shall submit written progress reports to EPA concerning actions undertaken pursuant to this Order beginning seven (7) days after initiation of on-site activities and concluding upon completion of all excavation and disposal activities, unless otherwise directed by the OSC. Such reports shall conform to the requirements set forth in Task 5 of the SOW, and shall be submitted according to the schedule set forth in Task 5 of the SOW.

e. Within ninety (90) days after completion of all removal actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with all requirements set forth in Task 5, item 2, of the SOW. The final report shall also

include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

f. The EPA may approve, disapprove, require revisions to, or modify any document, plan or submission required under this paragraph. If EPA requires revisions, Respondents shall submit a revised version of the submission within fourteen (14) days of receipt of EPA's notification of the required revisions. The EPA may, at its sole discretion, unilaterally modify a submission upon EPA's first review or after Respondents have revised and resubmitted a document. Once approved, modified by EPA, or approved with modifications, all submissions due under paragraph 19 shall be fully incorporated into and made an enforceable part of this Order.

20. Respondent Cather, as owner of the Site, shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice that the property is subject to this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent Cather agrees to require that its successor comply with the immediately preceding sentence and paragraph 21 (Access to Property and Information) below. The requirement to provide advance notice prior to conveyance of the property shall terminate upon termination of this Order as set forth in Section XXIII (Effective Date and Termination) below.

21. **Access to Property and Information:** Respondent Cather, as owner of the Site, shall provide access for all activities necessary to oversee, conduct and/or complete the removal activities set forth in the Action Memorandum (Appendix C to this Order). Such access shall be provided to EPA's and Deeter's employees, contractors, agents, consultants, designees and representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas to which Respondents have gained access in order to conduct actions which EPA determines to be necessary. Respondents shall provide access to EPA to all records and documentation within their custody or control related to the conditions at the Site and which have been or will be produced in connection with the actions conducted pursuant to this Order. Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

a. Where action under this Order is to be performed in an identified area which is not owned or under the control of one of the Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within sixty (60) days after the effective date of this Order, or the date upon which such area is identified by Respondents, whichever may be later, or as may otherwise be specified in writing by the OSC. If Respondents are unable to obtain access to any such area, then Respondents shall immediately notify EPA of that fact and shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in the Action Memorandum (Appendix C), using such means as EPA deems appropriate. Respondents shall

reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access.

**22. Record Retention, Documentation, and Availability of Information:** Respondents shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten (10) years following completion of the removal actions required by this Order. At the end of this ten-year period and at least thirty (30) days before any document or information is destroyed, Respondents shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

a. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondents. The EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondents.

**23. Off-Site Shipments:** All hazardous substances, pollutants or contaminants taken off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or

disposed of at a facility in compliance, as determined by EPA using the criteria set forth at 42 U.S.C. § 9621(d)(3), and the following rule: "Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions: Final Rule" 58 Fed. Reg. 49,200 (September 22, 1993) codified at 40 C.F.R. § 300.440. Regional Offices will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above rule.

**24. Compliance With Other Laws:** Respondents shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 C.F.R. § 300.415(I). In accordance with 40 C.F.R. § 300.415(I), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

**25. Emergency Response and Notification of Releases:** If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action, in accordance with all applicable provisions of this Order (including, but not limited to the Health and Safety Plan), in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in

the event of his unavailability, shall notify the Enforcement/Fund Lead Removal Branch, Superfund Division, Region VII, (913) 281-0991 of the incident or site conditions. If Respondents fail to respond, EPA may respond to the release or endangerment and reserves the right to pursue cost recovery.

26. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify EPA's OSC, the Region 7 Spill Line at (913) 281-0991, and the National Response Center at telephone number (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103 and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

#### VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

27. The OSC shall be responsible for overseeing the Respondents' implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### VIII. REIMBURSEMENT OF COSTS

28. Within thirty (30) days of receipt of a bill for Past Response Costs, Respondents shall pay, in the manner detailed below, all Past Response costs incurred and paid by the United States

with regard to the Site prior to September 1, 1996. In addition, within thirty (30) days of receipt of a bill for Future Response Costs from EPA, Respondents shall reimburse EPA for all Future Response Costs, not inconsistent with the NCP, incurred by the United States. Future response costs are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC, which are incurred. Future response costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between September 1, 1996, and the effective date of this AOC and all interest on the Past Response Costs incurred as set forth in paragraph 30 below.

29. On a periodic basis, EPA shall submit to Respondents a bill for future response costs that includes a Cost Summary. Respondents shall, within fourteen (14) days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

Mellon Bank, EPA Region VII Superfund  
FNMG Section, P.O. BOX 360748M  
Pittsburgh, Pennsylvania 15251

Respondents shall simultaneously transmit a copy of the check to:

Belinda Holmes  
U.S. EPA Region VII/CNSL  
726 Minnesota Ave.  
Kansas City, Kansas 66101

Payments shall be designated as "Response Costs - Cather & Sons Construction Site" and shall reference the payor's name and address, the EPA site identification number 07-WY, and the docket number of this Order.

30. In the event that the payment for past response costs is not made within thirty (30) days after the receipt of a bill for such costs or the payments for Future Response Costs are not made within thirty (30) days after the Respondents' receipt of a bill for such costs, Respondents shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Order. The interest on Future Response costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section.

31. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondents allege that EPA has made an accounting error, or if Respondents allege that a cost item is inconsistent 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, Respondents shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the OSC at the address in paragraph 19 above. Respondents shall ensure that the prevailing party or parties in the dispute receive the amount upon which they prevailed from the escrow funds plus interest within ten (10) days after the dispute is resolved.

## IX. DISPUTE RESOLUTION

32. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order. If the Respondents object to any EPA action taken pursuant to this Order, including billings for Future Response Costs, the Respondents shall notify EPA in writing of their objections within seven (7) days of such action, unless the objections have been informally resolved. The EPA and Respondents shall, within ten (10) days from EPA's receipt of the Respondents' written objections, attempt to resolve the dispute through formal negotiations. The negotiation period may be extended at the sole discretion of EPA. The EPA's decision regarding an extension of the negotiation period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review. Any agreement reached by the parties pursuant to this Section shall be in writing, signed by both parties, and shall upon the signature by both parties be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, the dispute will be submitted to EPA Region VII's Regional Judicial Officer (RJO). The RJO will issue a written decision on the dispute to the Respondents. The decision of the RJO shall be incorporated into and become an enforceable element of this Order upon Respondents' receipt of the decision regarding the dispute. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section.

33. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review.

## X. FORCE MAJEURE

34. Respondents agree to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from a cause or causes beyond the control of Respondents or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

35. Respondents shall notify EPA orally within twenty-four (24) hours after the event, and in writing within three (3) days after Respondents become or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondents shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall waive any claim of force majeure by the Respondents.

36. If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

## XI. STIPULATED AND STATUTORY PENALTIES

37. For each day, or portion thereof, that Respondents fail to perform, fully, any requirement set forth in Section VI. or VIII. of this Order, or any portion of the Statement of Work incorporated herein in accordance with the schedule established pursuant to this Order, Respondents shall be liable as follows:

1-7 days	\$ 500 per day
8-14 days	1,000 per day
15-30 days	1,500 per day
over 30 days	2,000 per day

38. Upon receipt of written demand by EPA, Respondents shall make payment to EPA within fourteen (14) days. Interest shall accrue on late payments as of the date the payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

39. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the work required under this Order.

40. Violation of any provision of this Order may subject Respondents to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. Section 9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3). Should Respondents violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C.

Section 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606.

## XII. RESERVATION OF RIGHTS

41. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. The EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondents.

## XIII. OTHER CLAIMS

42. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

43. Except as expressly provided in Section XIV (Covenant Not To Sue) nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the

Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

44. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

45. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

#### XIV. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XXIII (Effective Date and Termination), EPA covenants not to sue Respondents or their officers, directors, shareholders or employees for judicial imposition of damages or civil penalties or to take administrative action against Respondents or their officers, directors, shareholders or employees for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

46. Except as otherwise specifically provided in this Order, in consideration and upon Respondents' payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondents and their officers, directors, shareholders, or employees under Section 107(a) of CERCLA for recovery of past and

future response costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VIII (Reimbursement of Costs).

47. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Order. These covenants not to sue extend only to the Respondents and their officers, directors, shareholders and employees, and do not extend to any other person.

#### XV. CONTRIBUTION PROTECTION

48. With regard to claims for contribution against Respondents for matters addressed in this Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4).

49. Nothing in this Order precludes the United States or the Respondents from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

#### XVI. INDEMNIFICATION

50. Respondents agree to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondents, Respondents' officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or

arrangement between (any one or more of) Respondents, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondents agree to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding paragraph.

51. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

## XVII. INSURANCE

52. At least seven (7) days prior to commencing any on-site work under this Order, the Respondents shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, the Respondents shall provide EPA with certificates of such insurance. If the Respondents demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## XVIII. MODIFICATIONS

53. Modifications to any plan or schedule or to the Statement of Work may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing either within ten (10) days or, if sooner, the day immediately preceding the day on which Respondents' obligation to perform any act to which the modification applies would otherwise be required under this Order; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

54. If Respondents seek permission to deviate from any approved Work Plan or schedule or from the Statement of Work, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

55. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve the Respondents of their obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## XIX. ADDITIONAL REMOVAL ACTION

56. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment and to carry out the objectives set forth in the Action Memorandum (Appendix C), EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within sixty (60) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a Work Plan for the additional

removal actions. The Work Plan shall conform to the requirements of paragraph 19 of this Order. Upon EPA's approval of the plan pursuant to paragraph 19, Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XVIII (Modifications).

## XX. NOTICE OF COMPLETION

57. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including record retention pursuant to paragraph 22, EPA will provide notice to the Respondents. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. The Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Order.

## XXI. PUBLIC COMMENT

58. Final acceptance by EPA of Section VIII (Reimbursement of Costs) of this Order shall be subject to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), which requires EPA to publish notice of the proposed settlement in the Federal Register, to provide persons who are not parties to the proposed settlement an opportunity to comment, solely, on the cost recovery

component of the settlement, and to consider comments filed in determining whether to consent to the proposed settlement. After consideration of any comments submitted during the thirty (30) day public comment period held pursuant to Section 122(i) of CERCLA, EPA may withhold consent to all or part of Section VIII of this Order if comments received disclose facts or considerations which indicate that Section VIII of this Order is inappropriate, improper or inadequate. Otherwise, Section VIII shall become effective when EPA issues notice to Respondents that the former is not withdrawing from this Section of the Order.

#### XXII. SEVERABILITY

59. If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### XXIII. EFFECTIVE DATE AND TERMINATION

60. Subject to the provisions of Section XXI (Public Comment) above, this Order shall be effective on the date that the Order is signed by the Regional Administrator's delegatee.

61. This Order shall terminate upon Respondents receipt of written Notice of Completion from EPA that Respondents have satisfactorily completed all actions required under this Order.

In the matter of Cather & Sons Construction  
Lincoln, Nebraska, Docket No. VII-96-F-0007

The undersigned representative of Respondent Cather & Sons Construction certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

Agreed this 26 day of Sept., 1996.

By Robert H Cather

Title PRES.

In the matter of Cather & Sons Construction  
Lincoln, Nebraska, Docket No. VII-96-F-0007

The undersigned representative of Respondent Deeter Foundry, Inc. certifies that he/she is fully authorized to enter into the terms and conditions of this Order and to bind the party he/she represents to this document.

Agreed this 26 day of Sept, 1996.

By  \_\_\_\_\_  
Title President \_\_\_\_\_

In the matter of Cather & Sons Construction  
Lincoln, Nebraska. Docket No. VII-96-F-0007

It is so ORDERED and Agreed this 27 day of September, 1996.

BY: \_\_\_\_\_

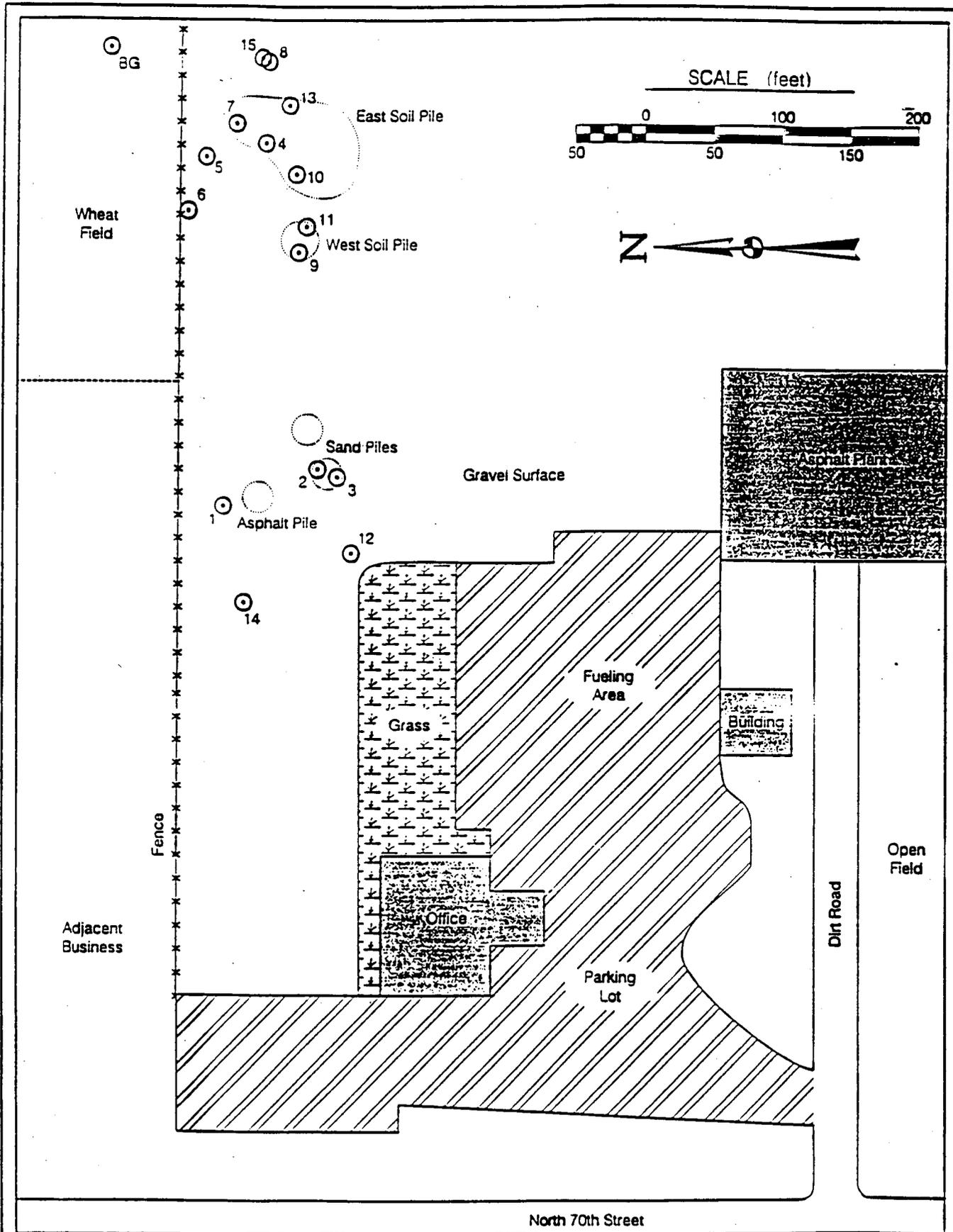
*Michael J. Sanderson*  
Michael J. Sanderson  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region VII

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

9/27/96

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

9/27/96



<p>TDD: T07-9507-501                  PAN: ENE0227SAA                  Prepared by TATM L.J.Baer                  August 1995</p>	<p><b>EXPLANATION</b></p> <p>⊙ 14 Sample Location and Designation (Point Number)</p>	<p><b>Cather &amp; Sons Construction Co.                  Lincoln, Nebraska</b></p>
<p>Source: Site Plan, September 1994; and TATM Field Notes July 1995.</p>		

Figure 2: SITE MAP

APPENDIX B

Statement of Work  
Cather & Son's Construction Company Site  
Lincoln, Nebraska

Task 1 - Removal Action Work Plan

1. Respondents shall develop a Removal Action Work Plan ("RAWP") that describes in detail methods and procedures used in conducting this removal action. The RAWP shall include, at a minimum, the following information:
  - a. Brief background of the Site, including the physical location.
  - b. Method(s) of characterizing the waste for off-site disposal. Respondents shall devise a representative sampling scheme that details how the waste will be sampled to determine the hazard classification of the waste (i.e. Hazardous Waste or Special Waste). Respondents may refer to EPA guidance "Removal Program Representative Sampling Guidance, Volume 1: Soil and Volume 4: Waste."
  - c. Method(s) of waste and soil removal, loading, and transportation. Respondents shall describe the general method of how the waste and soil will be excavated and loaded for transportation to its final destination.
  - d. This plan shall also include a statement that all selected waste disposal facilities shall comply with the CERCLA Off-Site Rule.
  - e. The RAWP shall include as attachments the Sampling and Analysis Plan ("SAP") and Health and Safety Plan ("HASP") described in Tasks 2 and 4 of this statement of work.
2. The RAWP shall contain a timeline identifying, at a minimum, dates of the following:
  - a. Expected mobilization date
  - b. Expected time duration of removal activities
  - c. Expected demobilization date
  - d. Submission of weekly reports
  - f. Submission of final removal report

## Task 2 - Health and Safety Plan

1. Respondent shall prepare a **Health and Safety Plan** in accordance with 40 C.F.R. Part 300.150 and all applicable Occupational Safety and Health Act (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. This plan should also include an emergency response plan that details procedures to be followed should an accident and/or a release of hazardous substances occur at the Site. This plan should also include a provision to notify EPA's project coordinator in addition to regulatory notifications.

## Task 3 - Sampling and Analysis

1. Prepare a Sampling and Analysis Plan (SAP) that describes the approximate number, type, and location of samples and the type(s) of analyses (including provisions for split samples provided to EPA, its contractors, or the State of Nebraska as appropriate). No less than seven (7) days notice must be given to EPA prior to collecting samples. This plan shall also include a list of laboratories that will be used for analysis and describe the general sampling scheme and method(s) used in characterizing the materials on-site for the purpose of making a waste determination. The sampling method shall be statistically valid so that the results from sample analysis are representative of the material being sampled.
2. All sample collection and analysis shall be performed in compliance with EPA approved methods, including timing of analysis and documentation of sample collection, handling and analysis. Respondents should refer to, at a minimum, the following guidance documents when preparing the SAP:
  - Compendium of ERT Field Analytical Procedures-Office of Emergency and Remedial Response, publication 9360.4-04, May 1992.
  - Compendium of ERT Air Sampling Procedures - Office of Emergency and Remedial Response, publication 9360.4-05, May 1992.
  - Compendium of ERT Waste Sampling Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/008, January 1991.

- 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.
  - Removal Program Representative Sampling Guidance, Volume 1: Soil - Office of Emergency and Remedial Response, publication 9360.4-10, November 1991.
  - Compendium of ERT Soil Sampling and Surface Geophysics Procedures - Office of Solid Waste and Emergency Response, EPA/540/P-91/006, January 1991.
3. All samples shall be analyzed by a laboratory that participates in a quality assurance/quality control program equivalent to that specified in the document entitled "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis" (July 1988).

#### Task 4 - Removal Action

1. This action proposes to excavate, treat, and transport for off-site disposal, foundry waste and contaminated soil. The action also proposes to further define the extent of hazardous substance contamination in the northeast portion of the site.
2. This action proposes to excavate and remove for proper disposal all waste and soils that exceed the EPA established action levels for this site. All waste and soil shall be removed in lifts, the depth of which shall be decided by respondents. The resulting excavations will be sampled until it is determined that all waste and soil remaining meets the cleanup criteria as defined in (3) & (4) below.
3. All waste and contaminated soils that exceed the the Toxicity Characteristic Leaching Procedure (TCLP) level of 5 milligrams per liter (mg/l), as described in 40 C.F.R. Part 261.24, must be treated prior to land disposal. The treatment process will not be considered successful until all waste does not exceed the 5 mg/l level as measured by representative samples of the treated waste.
4. In addition to the criteria in (3) above, all material that exceeds a total lead level of 1000 parts per million (ppm), shall be included in this removal action. The action will not be considered complete until all materials that exceed 1000 ppm total lead and 5 mg/l as stated in (3) above are addressed, as measured by representative samples of the material.

5. During excavation, stockpiling, or any other such handling of contaminated soil, respondent shall provide dust control measures to prevent off-site migration of significant quantities of hazardous substances and contaminated dust. If water is used as a dust control measure, then appropriate care must be taken to assure that water does not run off-site or from contaminated areas to clean areas.
6. Any material stockpiled at the site must be stockpiled in a known contaminated area. The stockpiled material must be completely covered with plastic sheeting at all times when loading or stockpiling activities are not being conducted. Care must be taken to assure that no clean areas are contaminated as a result of transporting soil from the excavation to the stockpile.
7. Loading and transportation of materials from this site shall be in accordance with federal, state, and/or local rules and regulations governing the mode of transport to be used. Extreme care shall be taken to load and cover materials so that no release occurs during normal transport. If a release of materials does occur during transport, respondents shall take immediate action to control and/or mitigate the release and to notify the appropriate regulatory authorities. In addition, respondents shall notify the EPA Project Coordinator.
8. Disposal of materials shall be at a disposal facility that is approved by the EPA Project Coordinator and is in compliance with the CERCLA off-site rule. All waste materials whether hazardous or non-hazardous shall be tracked and documented from point of origin (the Site) to point of ultimate disposal.
9. All site derived wastes shall be managed and disposed of as either hazardous waste, special waste, and/or solid waste in accordance with the Rules and Regulations of the State of Nebraska and/or the state where the material is to be disposed. If that state has no such rules and regulations, federal rules will apply.
10. Respondents shall comply with all Applicable Relevant and Appropriate Requirements (ARARs) as identified in the Action Memorandum for this site, to the extent practicable considering the exigencies of the situation. EPA will make the determination as to whether compliance with ARARs is practicable. Respondents and their representatives shall comply with all local, State, and Federal rules and regulations when conducting activities off-site.

## Task 5 - Activity Reporting

1. Respondents shall prepare a weekly report starting on the date that on-site activities begin and concluding when all hazardous substances have been permanently disposed of. This report should provide, at a minimum, a detailed account of activities for the previous week. This report shall be due to EPA no later than forty-eight (48) hours after the reporting week has ended.

The weekly 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. Generally the weekly report shall include the following:

- a. Actions which have been taken to comply with the Consent Order during that week;
  - b. Results of sampling and tests and all other raw data received by Respondent;
  - c. Work planned for the week with scheduling related to such work and the overall project schedule;
  - d. Problems encountered and any anticipated problems, any actual delays and solutions developed and implemented to address any actual or anticipated problems or delays.
2. Respondents shall prepare a Final Report that summarizes all activities conducted at the Site during this removal action. This report shall be due to EPA no later than ninety (90) days after completion of restoration. This report shall also include, at a minimum, the following:
    - a. Copies of all hazardous waste manifests or other appropriate shipping papers that describe the origin and destination, amount and description of all waste materials being transported off-site. These shipping papers must also identify the transporter, the date the materials were shipped, and the date the materials were received by the ultimate disposal facility. All shipping papers must be signed by the generator (Respondents), the transporter, and the disposal facility.
    - b. Copies of all results of chemical or physical analyses conducted during this removal action, including the results of any field screening or other "on-site" analyses.

c. Copies of any and all sampling documentation including field sheets and chain-of-custody sheets.

d. Copies of any and all pertinent photographs taken during removal activities.

Deliverable	Due date
Removal Action Workplan Health and Safety Plan Sampling and Analysis Plan	Within 60 days of the effective date of this Order
Weekly Report	Beginning on the date that on-site activities begin and concluding when all hazardous substances have been properly disposed.
Final Report	Within 90 days of completion of site restoration.



APPENDIX C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
25 FUNSTON ROAD  
KANSAS CITY, KANSAS 66115

APR 25 1996

MEMORANDUM

SUBJECT: Request for a Removal Action at the Cather & Sons  
Construction Company Site in Lincoln, Lancaster County,  
Nebraska

**ENFORCEMENT ACTION MEMORANDUM**

FROM: Jeffrey G. Weatherford, P.E. *JG Weatherford*  
Superfund Division

THRU: *[Signature]* Michael Sanderson  
Director  
Superfund Division

TO: Dennis Grams, P.E.  
Regional Administrator

Site ID: WY

Category of Removal: Time-critical

Nationally Significant/Precedent Setting: No

I. PURPOSE

The purpose of this action memorandum is to request and document approval of the proposed removal action described herein for the Cather & Sons Construction Company site in Lincoln, Nebraska (the "Site"). Although this document is an Enforcement Action Memorandum, if the Potential Responsible Party (PRP) fails to promptly or properly conduct this removal action, approval may be requested to conduct this removal action utilizing Superfund by an addendum to this memorandum.