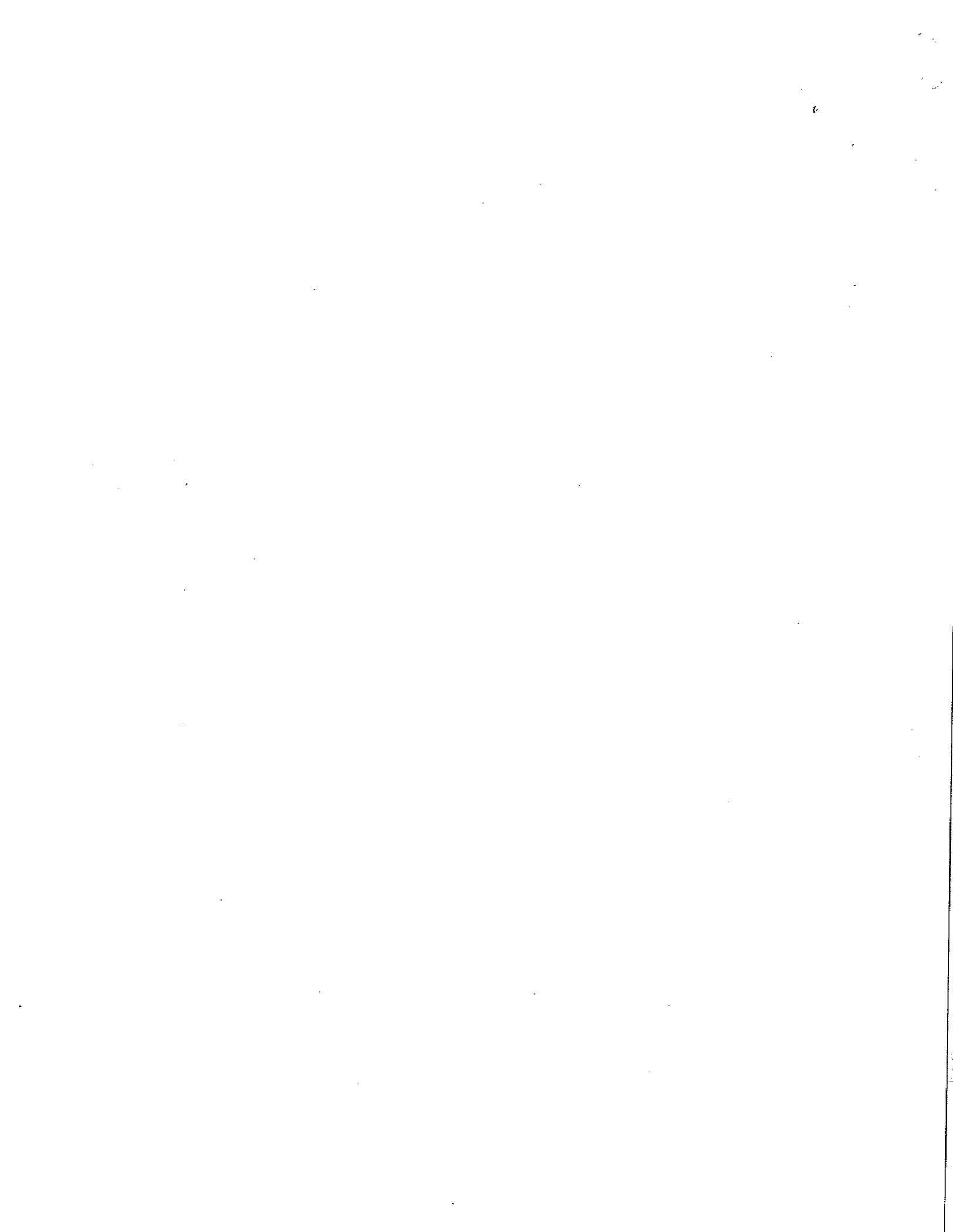


bcc: Docket Analyst, ORC (C-14J)  
Tom Turner, ORC (C-14J)  
Paul Atkociunas, (SE-5J)  
John Maritote (SE-5J)  
Kaushalya Khanna, EESS (SE-5J)  
Richard Hackley, PAAS (MF-10J)  
Joseph Poetter, U.S. EPA, MS-002, 26 W. Martin Luther King Drive, Cincinnati, OH 45268

Valincia Darby  
U.S. Department of the Interior  
Office of Environmental Policy and Compliance  
U.S. Custom House, Room 244  
200 Chestnut Street  
Philadelphia, PA 19106

Records Center (SMR-7J)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 06 2012

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

R-6J

Susan M. Franzetti, Esq.  
Nijman Franzetti LLP  
10 S. LaSalle Street, Suite 3600  
Chicago, Illinois 60603

Re: Baycote Metal Finishing Site, 1302 Industrial Drive, Mishawaka, St. Joseph County,  
Indiana – Unilateral Administrative Order No. V-W-12-C-993

Dear Ms. Franzetti:

Enclosed please find a Unilateral Administrative Order (UAO) for the Baycote Metal Finishing Site. The Management Company of Baycote LLC, TJAC LLC, and Mr. Joseph J. Hennessy are all named as Respondents. This UAO is issued by the U.S. Environmental Protection Agency under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601, *et seq.*

Please note that the UAO allows an opportunity for a conference if requested within 3 business days after issuance of the UAO. If no conference is requested, comments may be submitted within 7 business days of issuance of the UAO.

If you have any questions regarding the enclosed UAO, feel free to contact Tom Turner, Associate Regional Counsel, at (312) 886-6613 or Paul Atkociunas, On-Scene Coordinator, at (312) 886-7502.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Karl".

Richard C. Karl, Director  
Superfund Division

Enclosure

cc: Mr. Thomas W. Easterly, Commissioner  
Indiana Department of Environmental Management  
100 North Senate Avenue - MC 50-01  
Indianapolis, Indiana 46204-2251

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 5

IN THE MATTER OF: )

Baycote Metal Finishing Site )  
1302 Industrial Drive )  
Mishawaka, St. Joseph County, Indiana )

Respondents: )

TJAC LLC )  
(dba Baycote Metal Finishing) )

MANAGEMENT COMPANY OF )  
BAYCOTE LLC )

Mr. Joseph J. Hennessy )  
1211 Maple Street )  
Western Springs, Illinois )

Docket No. **V-W-12-C-993**

ADMINISTRATIVE ORDER  
PURSUANT TO SECTION 106(a)  
OF THE COMPREHENSIVE  
ENVIRONMENTAL RESPONSE,  
COMPENSATION, AND  
LIABILITY ACT OF 1980,  
AS AMENDED,  
42 U.S.C. § 9606(a)

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 1302 Industrial Drive (St. Joseph County), Mishawaka, Indiana (the Baycote Metal Finishing Site or the Site). This Order requires the Respondents to conduct removal activities 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.

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

**II. PARTIES BOUND**

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter

such 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 or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

### III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

- a. The Site is located at 1302 Industrial Drive, Mishawaka (St. Joseph County), Indiana. (Map of Site attached as Attachment A).
- b. The Site is a closed electroplating and steel anodizing facility that is comprised of an asphalt parking area and a building occupying approximately 1.5 acres. The Site is located in a mixed industrial and residential use area. The Site is bordered by industrial properties on all sides, but there are also residential properties located approximately 700 feet west of the Site property. The Site still contains residual chemicals and chemical by-products (in disarray) associated with the prior business activities. The Site facility is only somewhat secured, and has a roof section partially compromised and collapsing on an interior section. U.S. EPA has also noted evidence of trespassing at the Site.
- c. The Site is currently owned by Potentially Responsible Party TJAC LLC.
- d. Seven churches and two schools are within approximately one mile to the Site. The St. Joseph River (which terminates in Lake Michigan) is located approximately 0.85 mile from the Site.
- e. On or about, August 25, 1982, Baycote Metal Finishing, Inc., informed U.S. EPA that they moved their operations to 1302 Industrial Drive, Mishawaka, Indiana 46544. In 1998, Baycote Metal Finishing, Inc. informed the Indiana Department of Environmental Management (IDEM) that the facility was a large quantity generator of hazardous waste.
- f. On or about December 23, 2003, the facility was acquired by TJAC LLC (TJAC) with the Management Company of Baycote, LLC listed as the operator. According to IDEM reports, in 2004 Baycote Metal Finishing, Inc. generated 252.7 short tons of RQ, Environmentally Hazardous Substance (EPA Hazardous Waste Codes F006, D007); 11,583 pounds of RQ, Waste Chromic Acid (EPA Hazardous Waste Code D002); and 25,760 pounds of RQ, Zinc Cyanide Solution (EPA Hazardous Waste Codes F007, D002, D003, D008 and F008). According to IDEM reports, the Baycote Metal Finishing, Inc. was a large quantity generator of hazardous waste in 2006 and 2007.

- g. The facility contains an asphalt parking area and a building measuring approximately 250 by 250 feet. During its operating phase, the Site facility conducted electroplating and anodized steel casting using zinc, cadmium, and chrome for automotive, recreational vehicle, and trailer manufactures. After closure of the facility, many materials involved with the operations were left on Site.
- h. The Site has a history of non-compliance with the State regulations. On October 20, 2009, the IDEM and the (then) owner of the Site, TJAC LLC (TJAC), entered into an Agreed Order to resolve IDEM documented violations through timely removal of all wastes at the Site. TJAC began voluntary removal of on-site waste; however, the removal was not completed. According to 2009-2010 IDEM records, approximately 50,799 gallons of hazardous wastes currently remain on Site. As of February 24, 2012, the Site property owner of record is still TJAC. Mr. Joseph J. Hennessy's (Hennessy) February 2012 response to U.S. EPA's CERCLA 104(e) information request response indicates that TJAC was administratively dissolved in approximately 2011.
- i. On November 21, 2011, the St. Joseph County Health Department (SJCHD) referred the Site to U.S. EPA to determine if the Site warrants a time critical removal action. In November 2011, Hennessy personally signed an access agreement with U.S. EPA.
- j. U.S. EPA's On-Scene Coordinator (OSC) and SJCHD conducted a Site visit on November 21, 2011. During the visit, U.S. EPA documented the presence of numerous tanks, drums, containers, and spilled material on the floor. The OSC also observed containers labeled as acid, chromate, nitrate, hexavalent chrome and cyanide. The Site was in disrepair, with a portion of the roof collapsed inside the facility. On December 12 and 13, 2011, U.S. EPA and its contractor conducted Site Assessment and sampling activities. During the Site Assessment, U.S. EPA documented the presence of 332 drums, totes, plating vats, pits, tanks, small containers, and spill material. Some of the drums were in poor condition and open. Incompatible materials were stored next to each other. Several drums were corroded and leaking onto the floor. Containers sampled or inspected during the Site Assessment contained various materials, including the following: zinc cyanide solution, chloride zinc acid, yellow chromate, acid copper bath, black hexavalent chromate postdip, sulfuric acid, hydrochloric acid, and unlabeled and unidentified materials. In addition, the collapsed roof in the Wastewater Treatment Room and large amounts of standing water on the floor of the Line 4-7 Room was observed. U.S. EPA collected 11 investigative liquid samples and 4 investigative solid waste samples. These samples were from drums, plating vats, small containers and spilled material. The samples were submitted for analysis of parameters, such as: the presence of corrosivity, metals, toxicity characteristic leaching procedure (TCLP) metals, total cyanide, reactive cyanide, volatile organic compounds, semi-volatile compounds, ignitibility, total hexavalent chromium, and polychlorinated biphenyls.
- k. U.S. EPA's sampling results for the Site revealed the presence of characteristically hazardous wastes for corrosivity (pH less than or equal to 2 standard units (SU) or greater

than or equal to 12.5 SUs), the presence of characteristically hazardous wastes for toxicity (D006-TCLP for cadmium and D007-TCLP for Chromium), and the presence of characteristically hazardous wastes for ignitibility (flashpoint below 140 degree Fahrenheit (°F)).

- l. On November 29, 2011, U.S. EPA issued a General Notice Letter of Potential Liability to Mr. Joseph J. Hennessy, as a Potentially Responsible Party (PRP). U.S. EPA received a response from PRP Hennessy in December 2011. Based upon PRP Hennessy's responses and initial conversations with the U.S. EPA enforcement team, Hennessy was an operator of the facility (as defined at CERCLA Section 107(a)), and was the principal owner of TJAC. PRP Hennessy has also indicated that hazardous substance removal actions at the Site are being addressed through another entity that he owns, controls or directs named INDDR.
- m. U.S. EPA has determined that the Baycote Metal Finishing Superfund Site presents the threat of release of hazardous substances into the environment.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The Baycote Metal Finishing Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Cyanide, Chromium/Hexavalent Chromium, and Cadmium are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent TJAC LLC is the present "owner" of the Baycote Metal Finishing Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondents TJAC LLC, the Management Company of Baycote LLC, and Joseph J. Hennessy are persons who at the time of disposal of any hazardous substances owned or operated the Baycote Metal Finishing Site. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 CFR Part 300. These factors include, but are not limited to, the following:

a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of cyanide, chromium/hexavalent chromium, and cadmium. The Site is located in an industrial and residential area. During the Site Assessment, it was noted that the Site borders industrial properties to the north, east, and south and Industrial Drive and industrial properties to the west. Residential properties are also located nearby, approximately 700 feet to the west. Seven churches and two schools are located within approximately 1 mile of the Site. The St. Joseph River, a major surface water body that terminates in Lake Michigan, is located 0.85 mile northwest of the Site. Also during the Site Assessment, it was noted that the Site is fenced on the north, east, and south sides but not along the west side next to Industrial Drive. Access to the Site building appears to be somewhat restricted. However, a section of the Site roof in the Wastewater Treatment Room had collapsed, exposing the room and its contents to weather. Water has flooded the floor in the Line 4-7 Room. Abandoned and unknown waste in vats, pits, tanks, drums and containers was located throughout the building. Many vats, pits, tanks and containers were open with contents exposed. Animal prints were observed in material piles on the building floor. Several drums were corroded and leaking onto the floor. Evidence of previous spills was noted in the Solids Room and Line 4-7 Room. Based on these conditions, nearby populations and the environment could be exposed to potentially hazardous materials if contaminants migrate off-Site.

Analytical results from the Site Assessment indicate that hazardous substances as defined by CERCLA § 101(14), are present at the Site and represent an actual or potential threat to nearby human populations. These include toxic, ignitable, corrosive, and reactive materials. Analytical results from liquid sample BMF-WL02-121211 documented reactive cyanide and total cyanide at concentrations of 8,000 and 15,000 milligrams per liter (mg/L), respectively. The analytical results from liquid sample BMF-WL05-121211 documented reactive cyanide and total cyanide at concentrations of 140 and 30,000 mg/L, respectively. Analytical results from solid samples BMF-WS-02-121211, BMF-WS-03-121211, and BMF-WS-04-121211 documented chromium concentrations of 20,000, 420, and 300 mg/L, respectively. Analytical results from solid sample BMF-WS01-121211 documented a cadmium concentration of 83 mg/L. Analytical results from liquid samples BMF-WL04-121211, BMF-WL07-121211, BMF-WL10-121211, and solid sample BMF-WS02-121211 documented pH values of less than 2.

### Cyanide

Exposure to small amounts of cyanide can be deadly regardless of the route of exposure. The severity of the harmful effects depends in part on the form of cyanide. Exposure to high levels of cyanide for a short time harms the brain and heart and can even cause coma and death. Cyanide produces toxic effects at levels of 0.05 milligrams of cyanide per deciliter of blood (mg/dL) or higher, and deaths have occurred at levels of 0.3 mg/dL and higher. Individuals who have inhaled 546 parts per million (ppm) of hydrogen cyanide have died after a 10-minute exposure; 110 ppm of hydrogen cyanide was life-threatening after a 1-hour exposure. Ingestion of small amounts of cyanide compounds in a short time may result in death unless antidote therapy is given quickly. Some of the first indications

of cyanide poisoning are rapid, deep breathing and shortness of breath, followed by convulsions (seizures) and loss of consciousness. These symptoms can occur rapidly, depending on the amount eaten. The health effects of large amounts of cyanide are similar, whether ingested or inhaled; cyanide uptake into the body through the skin is slower than these other types of exposure. Skin contact with hydrogen cyanide or cyanide salts can irritate and produce sores. Workers who inhaled hydrogen cyanide as low as 6-10 ppm over a period of time developed breathing difficulties, chest pain, vomiting, blood changes, headaches, and enlargement of the thyroid gland. [Agency for Toxic Substances and Disease Registry (ATSDR), 2006]

#### Chromium / Hexavalent Chromium

Inhalation of high levels of chromium (VI) can cause irritation to the lining of the nose, nose ulcers, runny nose, and breathing problems, such as asthma, cough, shortness of breath, or wheezing. Chromium (VI) is more toxic to humans and therefore causes these effects at much lower concentrations compared to chromium (III). The main health problems seen in animals following ingestion of chromium (VI) compounds are irritation and ulcers in the stomach and small intestine and anemia. The Department of Health and Human Services (DHHS), the International Agency for Research on Cancer (IARC), and the U.S. EPA have determined that chromium (VI) compounds are known human carcinogens. Inhalation of chromium (VI) has been shown to cause lung cancer in both humans and animals. An increase in stomach tumors was observed in humans and animals exposed to chromium (VI) in drinking water. (ATSDR, 2008)

#### Cadmium

Breathing high levels of cadmium can severely damage the lungs. Eating food or drinking water with very high levels severely irritates the stomach, leading to vomiting and diarrhea. Long-term exposure to lower levels of cadmium in air, food, or water leads to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile bones. A few studies in animals indicate that younger animals absorb more cadmium than adults. Animal studies also indicate that the young are more susceptible than adults to a loss of bone and decreased bone strength from exposure to cadmium. (ATSDR, 2008).

b. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of over 332 drums, totes, vats, and miscellaneous containers and several spill areas. During the Site Assessment, some drums were in poor condition and open, and incompatible materials were observed stored next to each other. Several drums were corroded and leaking onto the floor. Containers identified during the Site Assessment contain various materials, including the following: zinc cyanide solution, chloride zinc acid, yellow chromate, acid copper bath, black hexavalent chromate postdip, sulfuric acid, hydrochloric acid, and unlabeled and unidentified materials.

A release of any of these hazardous materials from the Site is possible because of the

potential for trespassing, the deteriorated condition of some containers, and impacts from storm water on the physical structure of the Site facility. Trespassers could cause a direct release of contaminants and subsequent dispersion of airborne contamination. Some Site containers were open with the contents exposed, and in poor condition. During the Site Assessment, a collapsed roof in the Wastewater Treatment Room was observed, along with large amounts of standing water on the floor of the Line 4-7 Room. Public areas near the Site could be exposed to potentially hazardous materials if contaminants migrate off-Site. Laboratory results documented that sampled materials were characteristic for hazardous waste, including toxic, ignitable, corrosive, and reactive waste streams. Many of the vats, pits, tanks, drums and containers were in deteriorating condition and open to the atmosphere. There is a very high potential of a release of hazardous substances from compromised drums, and other bulk storage containers.

c. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the existence of the variable and unpredictable weather patterns in the geographic locale of the Site. Mishawaka, Indiana receives an average yearly precipitation of 36.59 inches. The average temperatures range from 11 to 86 °F. The Site ground surface is relatively flat. During the Site Assessment, no storm or sanitary sewers or drainage ditches were observed on or around the Site. However, the collapsed roof in the Wastewater Treatment Room and large amounts of standing water on the floor of the Line 4-7 Room were observed. In addition, some drums and containers were in poor condition and open, with visible evidence of past spills. Due to the structural condition of the building and presence of containers in poor condition or open, a weather-related release or migration of hazardous materials is possible.

d. Threat of fire or explosion; this factor is present at the Site due to the existence of analytical results from the Site Assessment indicating that one sample had a flashpoint less than 32 °F, which meets the definition of a characteristic hazardous waste for ignitability. Therefore, the potential for a fire/explosion exists. Residential properties are located approximately 700 feet to the west of the Site. If a fire or explosion event occurs, contaminants could become airborne and may affect the nearby population.

e. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because on November 21, 2011, SJCHD referred the Site to U.S. EPA.

7. 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).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP and CERCLA.

## V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondents perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify U.S. EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondents shall perform the removal actions themselves or retain a contractor to implement the removal actions. Respondents shall notify U.S. EPA of Respondents' qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. Respondents shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondents or any of the contractors and/or subcontractors retained by the Respondents. If U.S. EPA disapproves a selected contractor, Respondents shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

The contractor retained by the Respondents must demonstrate compliance with American National Standards Institute/American Society for Quality Control (ANSI/ASQC) E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by U.S. EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional quality assurance personnel to the Site file.

Within 5 business 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 and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If U.S. EPA disapproves a selected Project Coordinator, Respondents shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by all Respondents.

The U.S. EPA has designated Mr. Paul Atkociunas of Emergency Response Branch 2, Region 5,

as its On-Scene Coordinator (OSC). Respondents shall direct all submissions required by this Order to the OSC at U.S. EPA, Region 5, 77 W. Jackson Blvd., Superfund Division, SE-5J, Chicago, Illinois 60604-3590 by certified or express mail. Respondents shall also send a copy of all submissions to Tom Turner, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

### 3. Work to Be Performed

Respondents shall perform, at a minimum, the following response activities:

- a. Develop and implement a Site Health and Safety Plan and Site Security Plan;
- b. Develop and implement a Site Work Plan, a Sampling Plan, Air Monitoring Plan and a Site Emergency Contingency Plan;
- c. Inventory and perform hazard categorization on substances contained in vats, pits, drums, and other containers;
- d. Perform sampling and analysis to determine disposal options;
- e. Consolidate and package hazardous substances, pollutants, and contaminants for transportation and off-site disposal;
- f. Dismantle and decontaminate process equipment and building components associated with the plating areas, as necessary;
- g. Transport and dispose of all characterized or identified hazardous substances, pollutants, or contaminants to a RCRA/CERCLA-approved disposal facility in accordance with U.S. EPA Off-Site Rule (40 CFR § 300.440); and
- h. Take any other response actions to address any release or threatened release of a hazardous substance, pollutant and contaminant that the U.S. EPA OSC determines may pose an imminent and substantial endangerment to the public health or the environment.

#### 3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order. The Work Plan shall include a Quality Assurance Project Plan (QAPP). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17; [the QAPP format can be found at <http://www.epa.gov/fedfac/documents/qualityassurance.htm>];
- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006;

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of notification. Respondents shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondents shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondents shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

### 3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondents shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)

(EPA/240/B-01/002, March 2001, Reissued May 2006),” or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondents shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents or their contractors or agents while performing work under this Order. Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

### 3.4 Reporting

Respondents shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns any portion of the Site, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

### 3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation

generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

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 this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Indiana representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractor, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondents are required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed 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 U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR § 300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR § 300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities 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 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/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to U.S. EPA within 7 business 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. Respondents shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

**VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the 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 response action undertaken by U.S. EPA or Respondents at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

## **VII. PENALTIES FOR NONCOMPLIANCE**

Violation of any provision of this Order may subject Respondents to civil penalties of up to \$37,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. 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. § 9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **VIII. REIMBURSEMENT OF COSTS**

Respondents shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order. U.S. EPA may submit to Respondents on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondents shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
Post Office Box 979076  
St. Louis, Missouri 63197-9000

Respondents shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs – Baycote Metal Finishing Site" and shall reference the payers' name and address, the U.S. EPA site identification number (#C5B2), and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

## **IX. RESERVATION OF RIGHTS**

Nothing herein shall limit the power and authority of U.S. 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 U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

#### **X. OTHER CLAIMS**

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as 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 activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

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) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

#### **XI. MODIFICATIONS**

Modifications to any plan or schedule 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 within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondents seek permission to deviate from any approved plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations 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.

#### **XII. NOTICE OF COMPLETION**

After submission of the Final Report, Respondents may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA

will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan 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 U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

### **XIII. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondents may contact Tom Turner, Associate Regional Counsel, at (312) 886-6613 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

### **XIV. OPPORTUNITY TO CONFER**

Within 3 business days after issuance of this Order, Respondents may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Tom Turner, Associate Regional Counsel, at (312) 886-6613. Written submittals shall be directed as specified in Section V.2 of this Order.

### **XV. SEVERABILITY**

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 by the court's order.

XVI. EFFECTIVE DATE

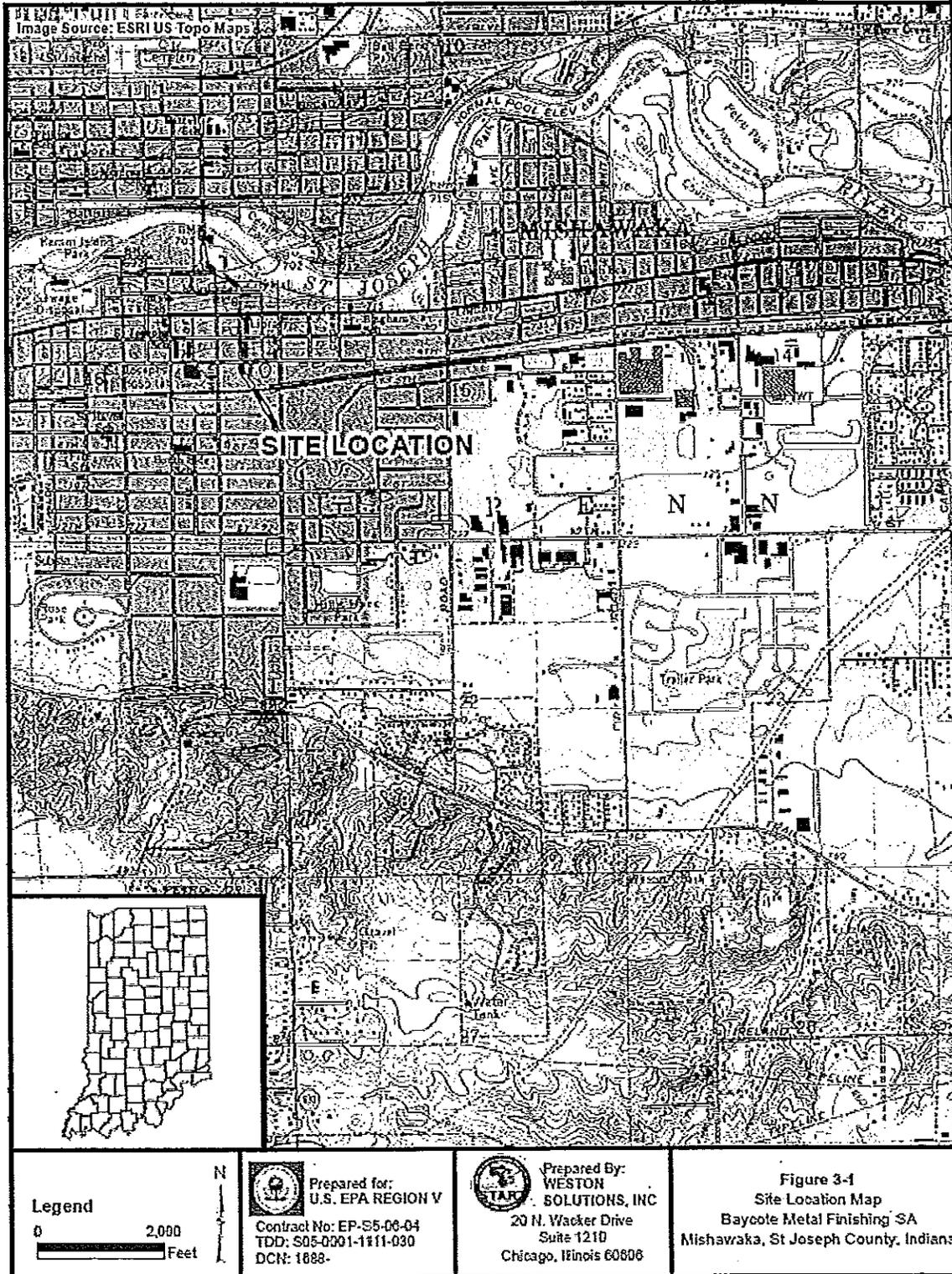
This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference. Within thirty (30) days after the effective date of this Order and every one (1) month thereafter until notice of completion of work under Section XII, the Respondents shall demonstrate to U.S. EPA that they meet one of the financial assurance mechanisms specified in 40 C.F.R. § 264.143 for the sufficient estimated costs of work to be performed by the Respondents under this Order.

IT IS SO ORDERED

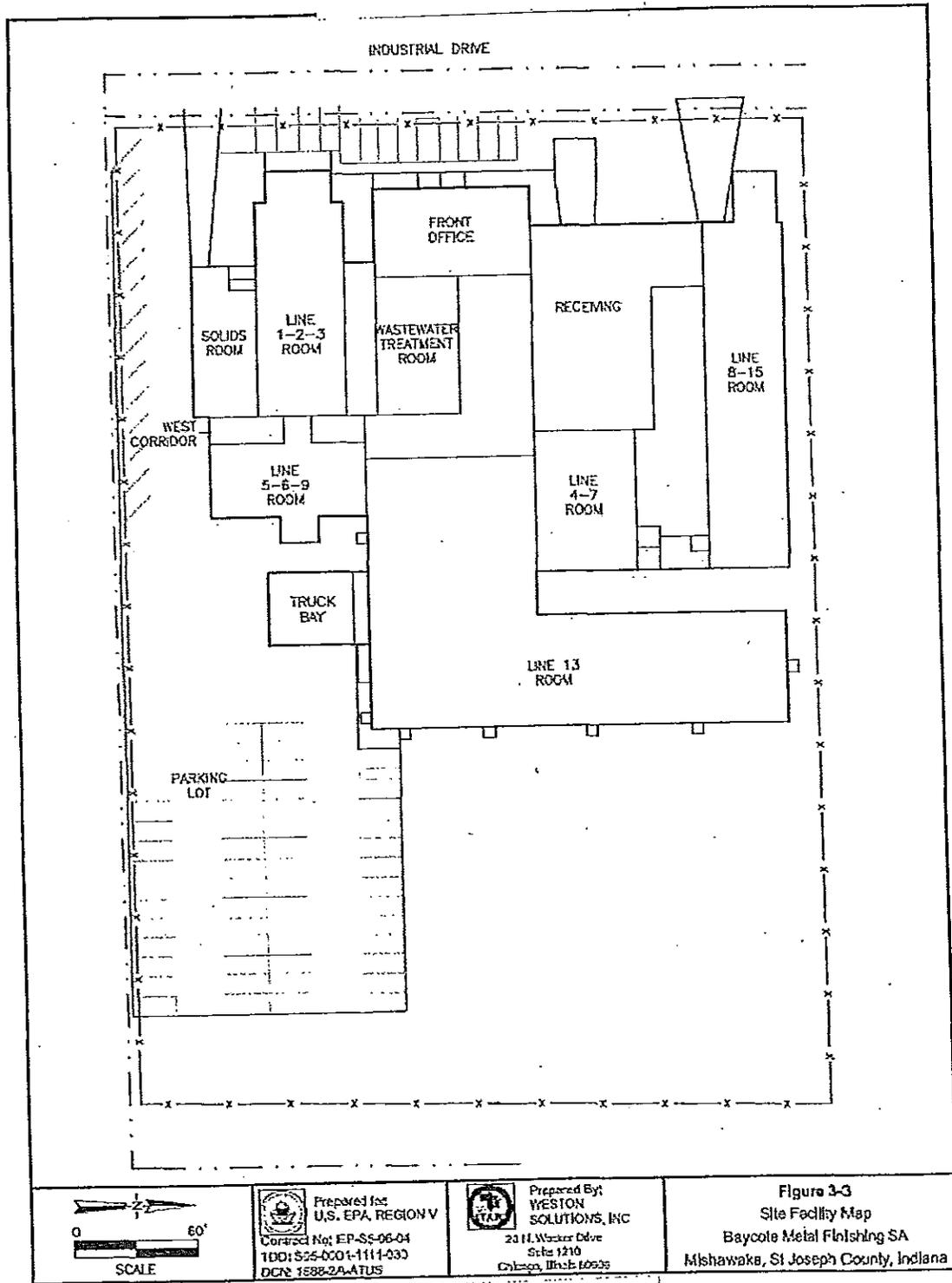
BY: Richard C. Karl  
Richard C. Karl, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

DATE: 4-6-12

# SITE LOCATION MAP



ATTACHMENT A-1



ATTACHMENT A-2

BAYCOTE METAL FINISHING SUPERFUND SITE  
LIABILITY FILE INDEX

- I. November 21, 2011 Referral Letter (Requesting U.S. EPA Assistance) of St. Joseph County Health Department for Baycote Metal Finishing Superfund Site, Mishawaka, IN
- II. February 20, 2012 Site Assessment Report for Baycote Metal Finishing Superfund Site
- III. December 2011 Response of PRP Joseph J. Hennessy to USEPA November 29, 2011 CERCLA General Notice Letter – on behalf of Hennessy, and TJAC LLC.
- IV. February 14, 2012 Response of PRPs Joseph J. Hennessy, and TJAC LLC to USEPA December 19, 2011 CERCLA 104(e) Information Request.
- V. January 23, 2004 Letter of Mr. Peter J. Kubasek of Management Company Baycote, LLC on behalf of TJAC LLC (d/b/a Baycote Metal Finishing).

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REMOVAL ACTION

ADMINISTRATIVE RECORD  
FOR  
BAYCOTE METAL FINISHING SITE  
MISHAWAKA, ST. JOSEPH COUNTY, INDIANA

ORIGINAL  
FEBRUARY 23, 2012

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	07/00/06	ATSDR	File	ToxFAQs Sheet for Cyanide CAS# 74-90-8, 143-33-9, 151-50-8, 592-01-8, 544-92-3, 544-92-3, 506-61-6, 460-19-5, 506-77-4 (SDMS ID: 374377)	2
2	09/00/08	ATSDR	File	ToxFAQs Sheet for Chromium CAS# 7440-47-3 (SDMS ID: 374381)	2
3	09/00/08	ATSDR	File	ToxFAQs Sheet for Cadmium CAS# 7440-43-9 (SDMS ID: 374380)	2
4	10/21/09	Kizer, B., IDEM	Hennessy, J., Baycote Metal Finishing	Letter re: Adoption of Agreed Order, Commissioner, IDEM v. TJAC LLC, d.b.a. Baycote Metal Finishing Case No. 2008-18035-H w/Attached Order (SDMS ID: 430017)	14
5	02/15/10	Howard, J., IDEM	Smith, B., Baycote Metal Finishing	Letter re: Summary Letter for February 4, 2010 Inspection of Baycote Metal Finishing Facility w/Attached Report (SDMS ID: 430018)	34
6	11/21/11	Nelson, M., St. Joseph County Health Dept.	Gebien, C., U.S. EPA	Letter re: Request for U.S. EPA Assistance with Unsecured Hazardous Waste at the Abandoned Baycote Facility (SDMS ID: 430019)	2
7	01/25/12	Atkociunas, P., U.S. EPA	Hauer, G., IDEM	Letter re: Request for IDEM to Identify any ARARs for the Baycote Metal Finishing Site (SDMS ID: 430020)	2
8	02/20/12	Weston Solutions, Inc.	U.S. EPA	Site Assessment Report for the Baycote Metal Finishing Site (SDMS ID 430026)	193

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
9	02/23/12	Atkociunas, P., U.S. EPA	Karl, R., U.S. EPA	Action Memorandum: Request for Approval and Funding for a Time-Critical Removal Action at the Baycote Metal Finishing Site (PORTIONS OF THIS DO- CUMENT HAVE BEEN REDACTED SDMS ID: 430016)	31

UPDATE #1  
APRIL 2012

1	04/12/04	Hansen, M., IDEM	Petkovich, J., Baycote Metal Finishing, Inc.	Letter re: Acknowledge- ment of Receipt of Updated Information from Baycote Metal Finishing, Inc. w/Attachments	
2	09/30/05	IDEM	File	2004 Annual Manifest Report for Baycote Metal Finishing, Inc.	
3	03/01/07	IDEM	File	Hazardous Waste Handler Identification Form: ID Form w/Attached Annual Manifest Summary Report for 2006	



United States  
Environmental Protection  
Agency  
Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

*Khanna (SG-SJ)*

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Nijman Franzetti LLP  
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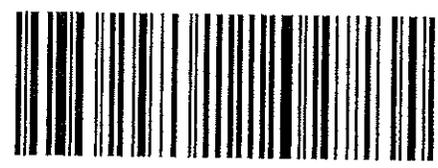
TIAC LLC  
 MANAGEMENT COMPANY OF BAYCOTE LLC  
 Mr. Joseph J. Hennessy  
 c/o: Susan M. Franzetti, Esq.  
 Nijman Franzetti LLP  
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