

CONSENT AGREEMENT

This Consent Agreement (the "Consent Agreement") is made and entered into this 25th day of April 1991, by and among the State of Nevada, Division of Environmental Protection (the "Division"), and Chemstar, Inc., Kerr-McGee Chemical Corporation, Montrose Chemical Corporation of California, Inc., Pioneer Chlor Alkali Company, Inc., Stauffer Management Company, Inc. and Titanium Metals Corporation (collectively the "Companies," or individually a "Company"). The Companies and the Division are referred to collectively herein as the "Parties."

WHEREAS, the Division is designated as the state water pollution control agency for Nevada and is empowered to administer and enforce the Nevada Water Pollution Control Law ("NWPCL"), Nevada Revised Statutes ("NRS") sections 445.131 to 445.354, inclusive;

WHEREAS, the Division is designated as the state agency for the regulation of hazardous waste and is empowered to administer and enforce the Nevada Hazardous Waste Disposal Law ("NHWDL"), NRS sections 459.400 to 459.600, inclusive;

WHEREAS, the Division through the Clark County Health District is designated as the state agency for the regulation of air pollution and is empowered to administer and enforce the Nevada Air Pollution Control Law ("NAPCL") NRS sections 445.401 to 445.710, inclusive;

WHEREAS, the Division has communicated to the Companies its intention to assess environmental conditions resulting from past and present industrial operations and waste disposal activities at or associated with the Basic Management, Inc. Industrial Complex located in Clark County, Nevada, including the individual company sites within the Complex. The present boundaries of property owned or leased by BMI (or by any Company adjacent to such property) are identified in the map attached hereto as Appendix A. The areas on which industrial activities are historically believed to have occurred are identified in the map attached hereto as Appendix B.;

WHEREAS, the Companies desire to cooperate fully with the Division to assess such environmental conditions at the BMI Complex and the Individual Company Sites;

WHEREAS, the Companies and the Division have agreed to enter into this Consent Agreement to effectuate a mutually satisfactory and prompt environmental conditions assessment of the BMI Complex, the Individual Company Sites, common disposal areas in the BMI Complex, and any Off-Site Waste Management Areas (as defined herein);

WHEREAS, the Division and the Companies have agreed to enter into this Consent Agreement regarding the first phase of a phased approach to the assessment and remediation, if necessary, of environmental conditions at or associated with the BMI Complex which shall consist of the first and may consist of one or more

subsequent phases: Phase 1 - development of a Phase 1 Report (as defined herein) detailing information regarding the BMI Complex, the Individual Company Sites, and any Off-Site Waste Management Areas; Phase 2 - if determined by the Division to be necessary to protect human health or the environment, performance of environmental investigations to fill in any data gaps identified by the Phase 1 Report; Phase 3 - if determined by the Division to be necessary to protect human health or the environment, identification and implementation of appropriate remedial measures to address environmental conditions identified in Phases 1 and 2;

WHEREAS, the Companies and the Division have agreed to the proposed time schedule for Phase 1 which is attached hereto as Appendix C and incorporated herein by this reference; and

WHEREAS, the Division recognizes the interdependence and contingency of the above phases and the need to develop further information, and the possibility that more or fewer entities than are participating in Phase 1 may be appropriate for participation in all or portions of subsequent phases.

NOW, THEREFORE, in consideration of and in exchange for the mutual undertakings and covenants herein, and intending to be legally bound hereby, the Division and the Companies agree as follows:

1. Definitions. In this Consent Agreement, the following terms shall have the meanings specified, unless the

context clearly requires otherwise in any specific instance.

- (a) "BMI Complex" means the BMI Industrial Complex located in Clark County, Nevada, including the Individual Company Sites. The approximate boundaries of the BMI Complex as of March 21, 1991 are shown on the map attached hereto as Appendix A.
- (b) "BMI" means Basic Management, Inc.
- (c) "Individual Company Site" means any site within the BMI Complex that is presently or was formerly individually owned, leased or operated by a Company.
- (d) "BMI Common Area" means any area within the current boundaries of the BMI Complex that are not included in an Individual Company Site.
- (e) "Off-Site Waste Management Area" means any site, unit, conveyance (e.g., ditch) or area adjacent or in proximity to the BMI Complex, and not otherwise included in whole in any Individual Company Site or BMI Common Area, with respect to which it is known currently by any Company or it is determined on the basis of information developed by, or otherwise identified and disclosed to, any Company during the effective dates of this Consent Agreement that such site, unit, conveyance or area

is presently or was formerly used for the treatment, storage, disposal or other management of any waste generated at the BMI Complex by any entity, whether or not such entity is a party to this Consent Agreement.

- (f) The terms "solid waste," "hazardous waste" and "hazardous constituent" shall have the meanings provided in the NHWDL, and the Nevada Hazardous Waste Management Regulations, Nevada Administrative Code ("NAC") sections 444.8500 to 444.9335, inclusive.
- (g) The term "hazardous substance" shall have the meaning provided in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. section 9601.
- (h) The term "regulated substance" shall have the meaning provided in section 9001 of the Solid Waste Disposal Act, 42 U.S.C. section 6991.
- (i) The terms "pollutant" and "contaminant" shall have the meanings provided in the NWPCL and Nevada Water Pollution Control Regulations, NAC sections 445.070 to 445.167, inclusive.
- (j) The term "air pollutant" shall have the meaning provided in section 302(g) of the federal Clean Air Act, 42 U.S.C. section 7602(g).

(k) The term "release" shall have the meaning provided in the Nevada Pollutant Release Notification Rules, NAC section 445.238.

2. Environmental Conditions Assessments and Report.

(a)(i) The Companies jointly shall perform the Phase 1 environmental conditions assessment, as described more fully herein, of all BMI Common Areas and all Off-Site Waste Management Areas. In the event of the insolvency, inability or refusal of any one or more of the Companies to undertake and complete this environmental conditions assessment, the remaining Companies agree to complete the assessment to the maximum extent practicable under the circumstances. Nothing in this Consent Agreement, however, shall be construed to require any Company to take any action or assume any liability respecting the Individual Company Site of another Company.

(ii) Each Company shall perform a Phase 1 environmental conditions assessment of its Individual Company Site as described more fully herein.

(b)(i) Except as provided in Section 2(b)(ii) hereof, each Phase 1 environmental conditions assessment shall be performed in the scope

and pursuant to the methodologies prescribed by "RCRA Facility Assessment Guidance" (EPA 530/SW-86-053, October, 1986) (the "RFA Guidance"), and shall develop and evaluate the information as specified therein.

Notwithstanding any provisions to the contrary in the RFA Guidance, each Phase 1 environmental conditions assessment also shall address releases permitted or required to be permitted under environmental programs other than the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq. ("RCRA"), contamination resulting from permitted discharges, and groundwater releases from RCRA "regulated units."

Nothing in this Consent Agreement shall be construed as an admission by any Company or as a determination by the Division that any Individual Company Site, BMI Common Area or Off-Site Waste Management Area either is or should be, or is not or should not be, regulated under RCRA, including without limitation, the use of the RFA Guidance for any purpose hereunder.

- (ii) With respect to the environmental conditions assessments required by Sections 2(a)(i) and

2(a)(ii) of this Consent Agreement, the Companies jointly and each Company individually, respectively, may elect to prepare and submit to the Division for approval, in accordance with Appendix C hereof, an environmental conditions assessment work plan (a "Work Plan") for use in lieu of the RFA Guidance. Each Work Plan shall be developed by a consultant or a qualified professional engineer or technical expert (who shall not be an attorney engaged in the practice of law) required by Section 2(e) of this Consent Agreement. Each Work Plan shall contain a schedule and a detailed description of the activities to be performed, which activities shall be sufficient in scope and methodological approach to develop the information required by Sections 2(b)(i) and 2(c) hereof. The schedule included in each Work Plan shall be developed to integrate with the schedule set forth in Appendix C hereof so as to provide for the staged preparation and approval by the Division of each component of the Phase 1 Report in draft and final form by the dates provided in Appendix C. Each Work Plan

approved by the Division shall be deemed incorporated into this Consent Agreement and the Companies or Company shall complete the tasks outlined in the Work Plan according to the schedule set forth therein.

(c) With respect to the relevant site or area, during each Phase 1 environmental conditions assessment, the Companies or each Company, as applicable, shall use their or its best efforts to determine, identify, evaluate or otherwise collect documentary information regarding:

- (i) all past and present industrial processes conducted and the solid wastes, hazardous wastes and air pollutants generated by such industrial processes;
- (ii) all known or suspected, active or inactive, solid waste or hazardous waste treatment, storage, disposal or management units or areas, together with information regarding the specific types, volumes and sources of waste placed in such units or areas, regardless of whether such units or areas were active on or after November 19, 1980;
- (iii) all known or suspected releases or spills (whether or not ongoing and irrespective of the date of occurrence) of any hazardous substance, regulated substance, hazardous constituent, pollutant or

contaminant into the environment (as "environment" is defined in section 101(8) of CERCLA, 42 U.S.C. section 9601(8)), which, had any such release or spill occurred on or after the effective date of this Consent Agreement, would trigger the notification or reporting requirements of section 311 of the federal Clean Water Act, 33 U.S.C. section 1321, section 103 of CERCLA, 42 U.S.C. section 9603, sections 304 or 313 of the federal Emergency Planning and Community Right-To-Know Act, 42 U.S.C. sections 11004 or 11023; or regulations promulgated pursuant to section 9003 of RCRA, 42 U.S.C. section 6991b;

- (iv) where reportable quantities have not been established by the laws cited in Section 2(c) (iii), all known or suspected releases or spills, whether or not ongoing and irrespective of the date of occurrence, of a greater than de minimis quantity (as determined by the Division) of such hazardous substance, regulated substance, hazardous constituent, pollutant or contaminant into the environment with respect to which any documentation exists in the control or possession of the Companies or Company, as applicable, or is otherwise identified during the Phase 1 environmental conditions assessments required by

this Consent Agreement. A de minimis quantity determination with respect to a specific substance shall be made by the Division within 10 days following the submittal of a written request for such a determination.

- (v) all current and prior owners or operators of all or any portion of the relevant site or area, all corporate successors to such entities, and the specific dates of such ownership, operation and corporate succession;
- (vi) all records, data, findings, studies, investigation or inspection reports, or any other indications that the soil, surface water, groundwater or air at or in the vicinity of the BMI Complex, any Individual Company Site, any BMI Common Area or any Off-Site Waste Management Area is, was, or may be contaminated with any hazardous substance, regulated substance, hazardous constituent, pollutant or contaminant as a result of any industrial or waste management operations associated with the BMI Complex; and
- (vii) all measures which have been, or are being, undertaken to monitor, characterize, prevent or mitigate the release into the environment from the relevant site or area of any hazardous substance, regulated substance, hazardous constituent,

pollutant or contaminant, including associated design, construction, operation and maintenance information.

(d) If during the course of collecting the information required hereunder non-documentary information relating to Section (c)(i)-(vii) or information in documents relating to Section (c)(i)-(vii) indicating the need for further clarification is discovered, the information shall be included in the Phase I Report or, if a Company desires not to include the information in the Report or is in doubt as to whether or not the information should be included in the report, the Company shall request the Division to make a determination in writing of whether or not the information should be included in or excluded from the Report.

(e) Each Phase 1 environmental conditions assessment required under this Consent Agreement shall be performed, and the Phase 1 Report required by Section 2(f) hereof shall be prepared, under the direction, coordination, and supervision of a professional environmental consultant (hereinafter the "consultant") with expertise in hazardous waste site evaluation; provided, however, that each Company may elect to use a consultant or a qualified professional engineer or technical expert (who shall not be an

attorney engaged in the practice of law) to undertake the Phase 1 environmental conditions assessment of its Individual Company Site and prepare the associated component of the Phase 1 Report. The Companies or Company shall submit to the Division for its review and approval the name and qualifications of each proposed consultant, qualified professional engineer or technical expert in accordance with the Schedule set forth in Appendix C hereof. Each consultant, qualified professional engineer or technical expert performing any work under this Consent Agreement must be approved by the Division pursuant to Appendix C hereof.

(f) The information developed during each of the Phase 1 environmental conditions assessments shall be assembled and analyzed in a report (the "Phase 1 Report"). The Phase 1 Report shall be prepared in accordance with a format approved in advance by the Division. The final Phase 1 Report must be approved by the Division.

(g) The environmental conditions assessments and the preparation of the Phase 1 Report shall be undertaken and completed in accordance with the Schedule agreed to by the Division and set forth in Appendix C, or as otherwise specified in an approved Work Plan, subject to an automatic a day-for-day extension of the due date for each uncompleted task as set forth

respectively therein in the event of the untimely completion by the Division of any assigned task specified respectively therein. Any such day-for-day extension shall be documented promptly upon its accrual by the Division in writing in a Notice of Extension, which Notice shall be transmitted to the Companies and shall thereupon be incorporated into this Consent Agreement.

(h) Nothing in this Consent Agreement shall require any Company to produce, disclose or otherwise identify any information, documents, records or other materials that are privileged as provided in NRS ch. 49, NRS 445.311 and NRS 459.555. Should any Company elect to assert any applicable privilege with respect to all or part of any information, record, document or other materials otherwise required to be disclosed or submitted under this Consent Agreement, the Company shall designate the specific privilege asserted, shall adequately establish the basis for the privilege, and shall identify the specific portion of the information, record, document or other materials that is alleged to be privileged.

3. Necessary Additional Work. Should the Division determine on the basis of the information set forth in the Phase 1 Report that further or additional investigation and/or characterization of environmental

conditions associated with all or any portion of any BMI Common Area, Individual Company Site, or Off-Site Waste Management Area is required, the Division shall notify in writing each Company of the work, if any, required to be performed by such Company, and shall provide an accompanying statement of the reasons and determinations based upon applicable statutes or regulations. The Companies requested to perform additional work shall negotiate in good faith with the Division to determine the timing and scope of such work. Nothing in this Consent Agreement shall prohibit any Company from contesting such determination pursuant to the dispute resolution provisions set forth in Section 11 of this Consent Agreement. Nothing in this Consent Agreement shall prohibit the Division from taking any action authorized by law with respect to any Company or all or any portion of any BMI Common Area, Individual Company Site, or Off-Site Waste Management Area based on the results of the environmental conditions assessments required by this Consent Agreement or the Phase 1 Report.

4. Parties Bound. This Consent Agreement shall apply to and be binding upon the Division, each Company named herein, and their respective successors and assigns in interest. No transfer of property or change in corporate interests or status shall operate to

terminate or in any way alter each Company's responsibilities to the Division under this Consent Agreement, without the Division's prior written consent thereto.

5. Authority of Signatories. Each of the undersigned signatories to this Consent Agreement hereto certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and may legally bind the party to this Consent Agreement so represented by him. For purposes of this Consent Agreement, the masculine gender shall include the feminine gender.
6. Sampling Activities. Any Company performing sampling activities pursuant to this Consent Agreement shall first provide to the Division for its review and approval a description of the procedures for quality control and quality assurance, and a description of the sampling and analytical procedures and protocols which are proposed to be used. The Companies shall notify the Division at least five (5) days before engaging in any field activities, such as sampling. At the request of the Division, the Companies shall allow the Division or its authorized representative to observe such field activities and to take (or be provided) split samples of all samples collected by the Companies under this Consent Agreement. The Companies shall submit to the Division the results of any sampling and/or other data

generated by, or on behalf of, the Companies under this Consent Agreement. The Division and/or their authorized representatives shall be allowed reasonable access to the BMI Complex (and all facilities located thereon), including each Individual Company Site and BMI Common Area, during the effective dates of this Consent Agreement for purposes of verifying, documenting, observing or otherwise monitoring the progress of the Companies in carrying out the terms of this Consent Agreement.

7. Force Majeure and Excusable Delay. (a) Except as provided in Section 2(g) hereof, the Companies shall perform the requirements of this Consent Agreement within the time limits prescribed, unless the performance is prevented or delayed by events which constitute a force majeure. The Companies shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the reasonable control of the Companies which could not be overcome by due diligence and which delays or prevents performance by a date required by this Consent Agreement (including but not limited to, acts of God, delays caused by the Division, labor disputes, fire, flood, windstorm, explosion, riot, war, sabotage, delays in receiving permits or other necessary approvals from any public

agency, or the insolvency, inability or refusal of any one or more of the Companies to undertake or complete work necessary to fulfill the joint obligations of the Companies under this Consent Agreement). Such events do not include (i) increased costs of performance or changed economic circumstances, or (ii) normal precipitation events.

(b) The Companies shall notify the Division in writing within fifteen (15) days after they become aware of circumstances which the Companies know or should know constitute a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply in a timely manner with the notice provision of this Section 7(b) shall constitute a waiver of the Companies' right to assert a force majeure.

(c) The Division shall notify the Companies in writing of its force majeure determination within fifteen (15) days after receipt of the notice from the Companies. If the Division determines that the delay has been or will be caused by circumstances constituting a force majeure, the due date for each uncompleted task set forth in the Schedule attached as

Appendix C hereto or the relevant Work Plan, as applicable, shall be extended for a period equal to the delay resulting from such circumstances. In the event that the Division and the Companies cannot agree that any delay or failure has been or will be caused by circumstances constituting a force majeure, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section 11 of this Consent Agreement.

(d) The Companies shall at all times use their best efforts to anticipate and minimize or avoid any delay or prevention of the timely and complete performance of their obligations pursuant to this Consent Agreement.

8. Stipulated Penalties. (a) Unless excused by the provisions of Section 7, if any Company fails to perform any task by the relevant date provided in Appendix C or an applicable Work Plan, the Division may assess against the Company the following stipulated penalties:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st - 14th day	\$100
15th - 30th day	\$500
31st day - thereafter	\$1,000

Failure to meet joint deadlines or obligations of the Companies by the relevant date provided in Appendix C or an applicable Work Plan may result in the assessment of the specified penalty against each of the Companies. At the Division's option and discretion, the Division may waive accrued stipulated penalties if the Company cures the noncompliance within ten (10) days after the missed deadline.

(b) The stipulated penalties set forth above shall be in addition to any other remedies or sanctions which may be available to the Division by reason of the Company's failure to comply with the requirements of this Consent Agreement.

(c) All penalties shall begin to accrue on the date that performance is due or a violation occurs, and shall continue to accrue through the final day or correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties as to the same or different Companies for separate violations of this Consent Agreement. All penalties owed to the Division under this section shall be due within 30 days of receipt of a notification of noncompliance, which notification shall indicate the amount of penalties due.

(d) In the event the Companies dispute the Division's right to the stated amount of penalties in

any specific instance, the dispute shall be resolved in accordance with the dispute resolution provisions set forth in Section 11 of this Consent Agreement.

Stipulated penalties shall accrue during the time period of the dispute resolution process (including administrative and judicial review, if sought), except that accrual of such penalties shall be suspended during any period of time in excess of the 10-day period set forth in Section 11(a) hereof that is incurred by the Division to provide to the Companies its decision regarding the dispute. If the dispute ultimately is resolved in the Companies' favor, no stipulated penalties shall be due and, if paid, shall be refunded.

9. Covenant Not to Sue. The Division covenants not to sue the Companies or any Company for oversight costs incurred by the Division and not subject to reimbursement pursuant to Section 10 hereof. In the event the Division assumes the work required under this Consent Agreement or issues an order to the Companies or to any company to complete such work, the Division covenants not to sue the Companies or any company for any stipulated penalties accruing after the date of such assumption or issuance.
10. Division Oversight Costs. Within 15 days after the effective date of this Consent Agreement, the Companies

shall pay into the Nevada Fund for the Management of Hazardous Waste the sum of \$65,000. These funds shall be used by the Division only for the monitoring, oversight and management of Phase 1 of this Consent Agreement. The Division shall maintain records of its expenditures chargeable against this sum and shall reimburse any unexpended balance of such sum to the Companies upon the completion of the Phase 1 Report.

11. Dispute Resolution. (a) If any Company disagrees, in whole or in part, with any Division determination, disapproval or modification or other decision or directive made by the Division pursuant to this Consent Agreement, the Company shall notify the Division in writing of its objections and the basis therefor within ten (10) days of receipt of written notice of the Division's action. The notice shall briefly set forth the specific points of the dispute, the position the Company is maintaining should be adopted as consistent with the requirements of this Consent Agreement, the basis for the Company's position, and any matters which it considers necessary for the Division's reconsideration. Within ten (10) days following receipt of such written notice, the Division shall provide to the Company its decision on reconsideration. If any Company disagrees with the Division's decision upon reconsideration, such Company may pursue the

dispute as a "contested case" pursuant to the Nevada Administrative Procedure Act, NRS section 233B.010 et seq. (excluding NRS 233B.130-233B.150) and NAC 445.980-445.995. The decision of the State Environmental Commission ("Commission") shall be final and unappealable. Stipulated penalties, if due in accordance with Section 8, shall not accrue after the date of the oral decision of the Commission.

(b) With respect to any determination by the Division under Section 3 hereof, or the Division's disapproval of the Phase 1 Report under Section 2(f) hereof, if any Company disagrees with the Division's decision upon reconsideration, such Company may pursue the dispute before the Commission as a "contested case" pursuant to the Nevada Administrative Procedure Act, NRS section 233B.010 et seq., and shall be entitled to both administrative and judicial review as provided therein. If dispute resolution is invoked under this Paragraph 11(b), the maximum stipulated penalties assessable against any Company pursuant to Section 8 hereof respecting such dispute shall be \$100,000, except that with respect to Chemstar and Montrose the maximum penalty shall not exceed \$50,000 against either Company. Such limitation shall not apply if the dispute resolution is invoked in bad faith.

(c) In the event the Division disapproves the Phase 1 Report, as set forth in Milestone 26 of Appendix C hereto or any applicable Work Plan, based on the Report concerning the BMI Common Areas or any Off-Site Waste Management Areas, any Company electing not to invoke the dispute resolution provision of Section 11(b) or to join in any Company's invocation of the dispute resolution provision may stipulate to the Division's determination in writing, which shall include a waiver of any appeal rights from such determination, and shall be bound by the Division's determination or the final resolution obtained through the dispute resolution process. No stipulated penalty shall accrue under this Consent Agreement against any Company so electing.

12. Governing Law. The provisions of this Consent Agreement shall be governed by Nevada law.
13. Project Coordinators and Notifications. (a) Within seven (7) days following the effective date of this Consent Agreement, the Division and the Companies, as a group, shall each designate a Project Coordinator, if different from the individuals identified in this Section 13. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement. A successor Project Coordinator shall be designated immediately in the event of any

vacancy and all Parties promptly shall be informed in writing thereof.

(b) All communications between the Companies and the Division, including all draft or final reports, correspondence, approvals, disapprovals, notices or other submissions relating to or required under this Consent Agreement shall be in writing and shall be sent to the respective Project Coordinators:

Division BMI Project Coordinator

Adele Alderson
Environmental Engineer
Waste Management Bureau
Division of Environmental Protection
123 West Nye Lane
Carson City, NV 89710

Companies Project Coordinator

Alan J. Gaddy
Kerr-McGee Chemical Corp.
P.O. Box 55
Henderson, NV 89015

Any notice or communication relating to this Consent Agreement from the Division to any Company shall be deemed received by such Company upon receipt by the Companies Project Coordinator.

14. Indemnification of the State of Nevada. The Companies agree to indemnify, defend, save and hold harmless the State of Nevada, its agencies, departments, political subdivisions, agents and employees, from any and all claims or causes of action arising from or on account of acts or omissions of any of their respective agents,

independent contractors, receivers, trustees and assigns in carrying out activities required by this Consent Agreement.

15. Nonadmission of Liability. The Division agrees that the Companies have entered into this Consent Agreement without admitting or denying any liability or factual allegations with respect to any matters arising out of or relating to environmental conditions at the BMI Complex, the Individual Company Sites, the BMI Common Areas, or any Off-Site Waste Management Areas, and without any part of this Consent Agreement constituting an admission of liability or fault with respect to any allegation or matter which could be used against the Companies in any legal, equitable, or administrative proceeding.
16. Confidential Business Information. All information developed during all phases of the investigations will be deemed public information upon submittal to the Division unless a Company requests in writing at the time of submittal that specific information be treated as confidential business information in accordance with NRS section 459.555 or 445.311 and the Division grants the request. Pending such determination, the Division shall treat such information as confidential. Any assertion of confidentiality shall be adequately substantiated by the Company when the request is made.

No claim of confidentiality or privilege shall be asserted by any Company with respect to (i) all or any portion of any draft or final sampling plan or Work Plan submitted under this Consent agreement, or (ii) any hydrogeological, chemical, physical, engineering or other scientific or analytical tests or data concerning environmental conditions at or associated with the BMI Complex or any Off-Site Waste Management Area.

17. Record Preservation. The Companies shall preserve for a minimum of ten (10) years following the termination of this Consent Agreement all records and documents which they have in their possession, including documents and records in the possession of their divisions, officers, directors, employees, agents, contractors, successors and assigns, which relate in any way to this Consent Agreement. After the expiration of such 10-year period, the Companies shall notify the Division, or its successor, forty-five (45) days prior to the destruction of such records or documents and shall provide the Division with the opportunity to take possession of such materials.

18. Subsequent Modification. (a) This Consent Agreement may be modified or amended only upon mutual consent of the Companies and the Division. Any such amendment or modification shall be in writing, shall be signed by all Parties, shall have as its effective date the date

on which it is signed by the Division, and shall be incorporated into this Consent Agreement.

(b) No informal advice, guidance, suggestions, or comments by the Division regarding any matter associated with this Consent Agreement shall be construed as relieving any Company of its obligation to obtain written approval regarding any submittal, if and when required by this Consent Agreement.

19. Computation of Time. For purposes of computing due dates set forth in this Consent Agreement, including Appendix C or any approved Work Plan, the effective date of this Consent Agreement, or the day of the act, event, or default from which the designated period of time begins to run, shall be designated as Day 0 (zero). Calendar days shall be utilized in computing due dates. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal State or federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

20. Use of the Terms "Companies" and "Company." Whenever the context of this Consent Agreement shall clearly so require, the singular term "Company" shall include the plural term "Companies" and the plural term "Companies" shall include the singular term "Company."

21. Effective Date. The effective date of this Consent Agreement shall be the date on which it is signed by the Division. This Consent Agreement may be executed in separate counterparts.
22. Termination and Satisfaction. Except for sections 14 and 17, the provisions of this Consent Agreement shall be deemed satisfied upon the receipt by each Company of written notice from the Division that the Company has fulfilled its individual and joint obligations under this Consent Agreement.

IN WITNESS WHEREOF, the Division and the Companies execute this Consent Agreement by their duly authorized representatives on this 25th day of April 1991.

THE STATE OF NEVADA

DIVISION OF ENVIRONMENTAL PROTECTION

By: *L.H. Dodgion*
Name: L.H. Dodgion
Title: Administrator

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By: _____
Name:
Title:

CHEMSTAR, INC.

By: *Chemstar*
Name: *C David Johnson*
Title: *Sr. Vice Pres.*

PIONEER CHLOR ALKALI COMPANY, INC.

By: _____
Name:
Title:

KERR-MCGEE CHEMICAL CORPORATION

By: _____
Name:
Title:

STAUFFER MANAGEMENT COMPANY, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Division and the Companies execute this Consent Agreement by their duly authorized representatives on this ____ day of April 1991.

THE STATE OF NEVADA

DIVISION OF ENVIRONMENTAL PROTECTION

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By: _____

By: _____

Name:

Name:

Title:

Title:

CHEMSTAR, INC.

PIONEER CHLOR ALKALI COMPANY, INC.

By: _____

By: _____

Name:

Name:

Title:

Title:

KERR-MCGEE CHEMICAL CORPORATION

STAUFFER MANAGEMENT COMPANY, INC.

6/19 By: George B. Rice

By: _____

Name: GEORGE B. RICE

Name:

Title: Sr. Vice President

Title:

IN WITNESS WHEREOF, the Division and the Companies execute this Consent Agreement by their duly authorized representatives on this 1st day of April 1991.

THE STATE OF NEVADA

DIVISION OF ENVIRONMENTAL PROTECTION

By: _____

Name:

Title:

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By: Frank Bachman

Name: Frank Bachman

Title: Vice President

CHEMSTAR, INC.

By: _____

Name:

Title:

PIONEER CHLOR ALKALI COMPANY, INC.

By: _____

Name:

Title:

KERR-MCGEE CHEMICAL CORPORATION

By: _____

Name:

Title:

STAUFFER MANAGEMENT COMPANY, INC.

By: _____

Name:

Title:

IN WITNESS WHEREOF, the Division and the Companies execute this Consent Agreement by their duly authorized representatives on this ____ day of April 1991.

THE STATE OF NEVADA

DIVISION OF ENVIRONMENTAL PROTECTION

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By: _____

By: _____

Name:

Name:

Title:

Title:

CHEMSTAR, INC.

PIONEER CHLOR ALKALI COMPANY, INC.

By: _____

By: Verrill M. Norwood Jr.

Name:

Name: VERRILL M. NORWOOD JR

Title:

Title: VICE PRESIDENT

ENVIRONMENTAL AFFAIRS

KERR-MCGEE CHEMICAL CORPORATION

STAUFFER MANAGEMENT COMPANY, INC.

By: _____

By: _____

Name:

Name:

Title:

Title:

IN WITNESS WHEREOF, the Division and the Companies execute this Consent Agreement by their duly authorized representatives on this ____ day of April 1991.

THE STATE OF NEVADA

DIVISION OF ENVIRONMENTAL PROTECTION

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By: _____

By: _____

Name:

Name:

Title:

Title:

CHEMSTAR, INC.

PIONEER CHLOR ALKALI COMPANY, INC.

By: _____

By: _____

Name:

Name:

Title:

Title:

KERR-MCGEE CHEMICAL CORPORATION

STAUFFER MANAGEMENT COMPANY, INC.

By: _____

By: J. Kent Riegel

Name:

Name: J. Kent Riegel

Title:

Title: Vice President

TITANIUM METALS CORPORATION

By: Robert E. Musgraves

Name: ROBERT E. MUSGRAVES

Title: VICE PRESIDENT & GENERAL
COUNSEL

APPROVED AS TO FORM ONLY this 10th day of April 1991

ATTORNEY GENERAL
Frankie Sue Del Pappa



Brian Chally, Deputy Attorney General

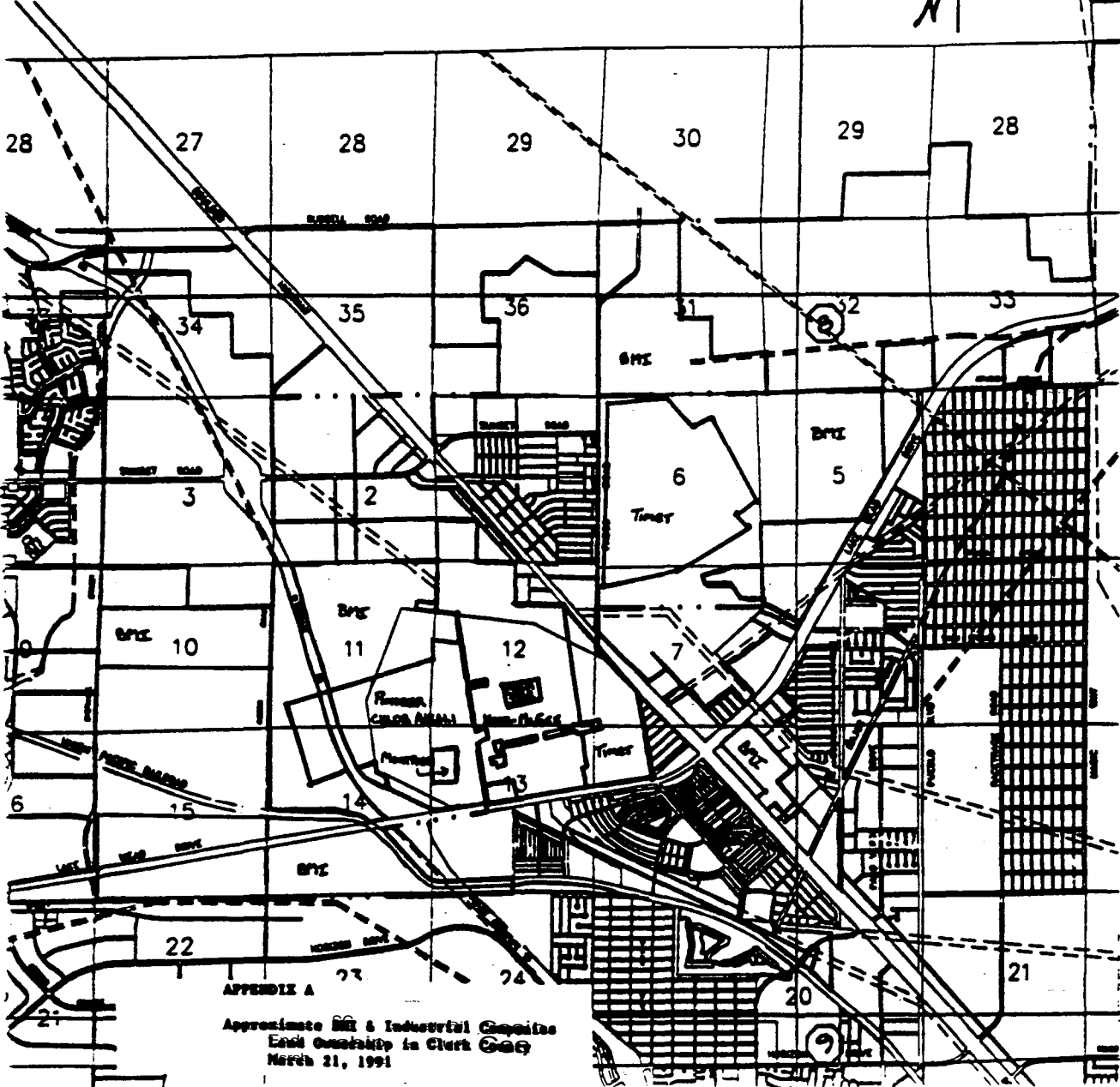
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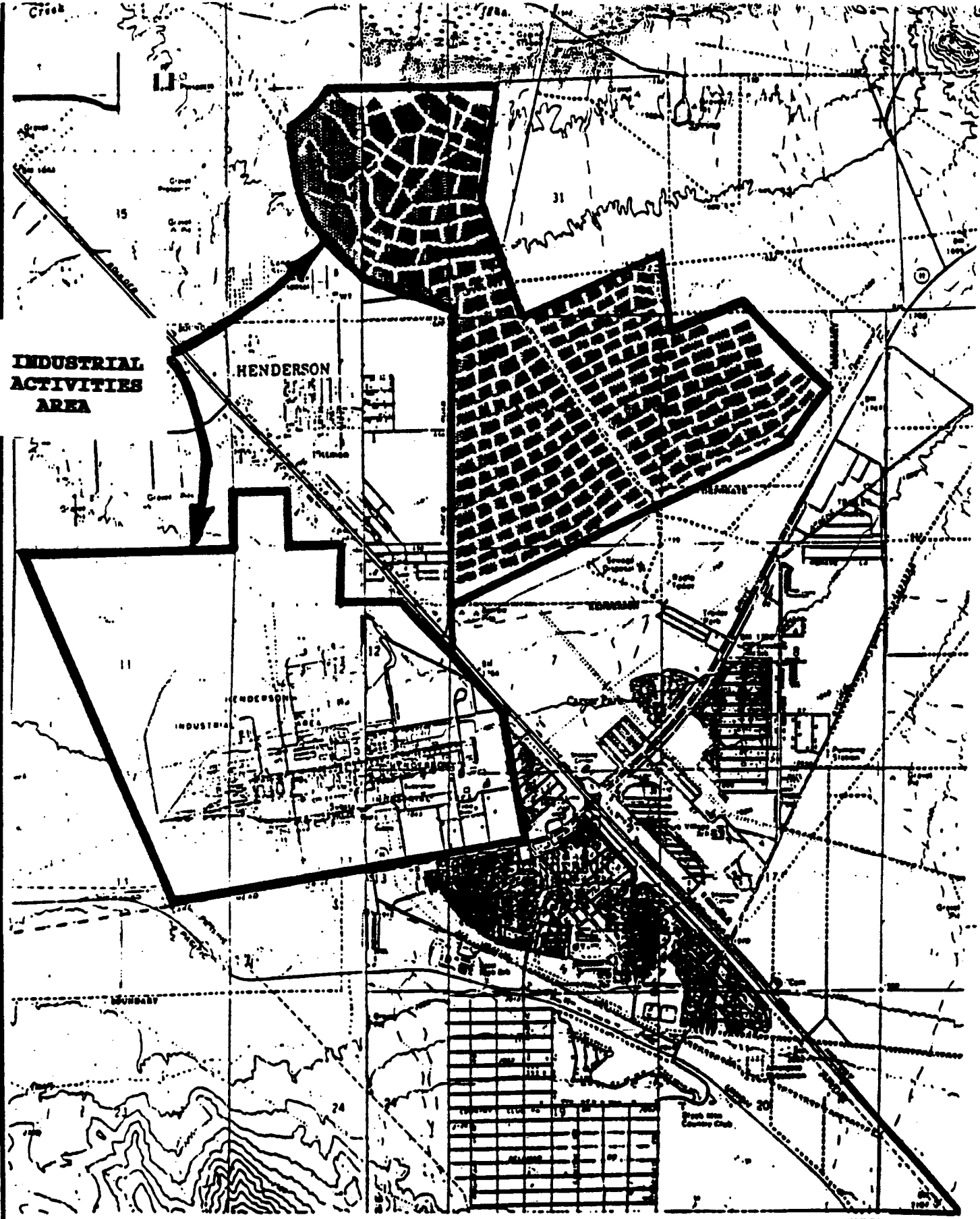
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OF HENDERSON



APPENDIX A

Approximate BVI & Industrial Composites
 Each Ownership in Clark Co. KY
 March 21, 1991



**INDUSTRIAL
ACTIVITIES
AREA**

HENDERSON

HENDERSON
INDUSTRIAL AREA

	BY	DATE	PIONEER Chlor Alkali Company, Inc. HENDERSON, NEVADA	SCALE
DRAWN				DRAWING NUMBER
CHECKED			Appendix B: Industrial Activities Area	
APPROVED				

APPENDIX C

SCHEDULE FOR

PHASE 1 BMI ASSESSMENT

<u>TASK</u>	<u>DESCRIPTION</u>	<u>MILESTONE OR DUE DATE</u>
1	Effective Date of Consent Agreement.	Day 0 (zero)
2	The Companies shall submit to the Division a list of professional environmental consultants (together with appropriate information regarding the qualifications of each nominated consultant) from which the Companies propose to retain the consultant required by Section 2(e) of this Consent Agreement.	Day 10
3	Each Company electing to retain its own consultant, qualified professional engineer or technical expert to undertake the Phase 1 environmental conditions assessment of its Individual Company Site shall submit to the Division a list of such entities or persons (together with appropriate information regarding the qualifications of each nominated entity or person) from which the Companies propose to retain the consultant, qualified professional engineer or technical expert required by Section 2(e) of this Consent Agreement.	Day 10
4	The Division will notify the Companies or Company, as appropriate, of its approval of any or all of the nominated environmental consultants, qualified professional engineers or technical experts.	Day 15
5	The Companies and each Company electing to prepare a Work Plan pursuant to Section 2(b)(ii) of this	Day 25

Consent Agreement shall submit a draft Work Plan to the Division for its review and approval.

- 6 The Division will notify the Companies or Company, as appropriate, of its approval or disapproval of the relevant Work Plan. Day 35
- 7 The Division will provide to the Companies copies of, or access to, all relevant records and materials in its possession. Day 40
- 8 The Companies shall submit to the Division a proposed format for the Phase 1 Report. Day 55
- 9 The Division will provide to the Companies its comments regarding the proposed format for the Phase 1 Report. Day 62
- 10 Each Company shall submit to the Division its component of the draft Phase 1 Report documenting the results of the Preliminary Review of its Individual Company Site. Day 130
- 11 Division shall conduct a Visual Site Inspection, and data verification, if necessary. Day 150
- 12 The Division will provide to each Company its comments regarding the draft Phase 1 Report and Visual Site Inspection. Day 180
- 13 The Companies shall submit to the Division the Phase 1 Report for common areas documenting the results of the Preliminary Review of the BMI Common Areas and all identified Off-Site Waste Management Areas. This will also incorporate results of the Visual Site Inspection. Day 210
- 14 Each Company shall submit to the Division a revised draft of its Phase 1 Report to address the Division's comments. This will also incorporate results of the Visual Site Inspection. Day 210
- 15 Division will provide to the Companies its comments on the Phase 1 Report for Day 220

the common areas.

- | | | |
|----|---|---------|
| 16 | The Companies shall submit to the Division revised Phase 1 Report for the common areas and all identified off-site waste management areas to incorporate Division comments. | Day 250 |
| 17 | The Division will notify each Company and/or the Companies of its determination whether a Company or Companies Sampling is necessary to satisfy Phase 1. ¹ | Day 250 |
| 18 | The Company and/or Companies shall submit to the Division a proposed sampling plan. | Day 280 |
| 19 | The Division will provide to the Company and/or Companies its comments regarding the proposed Sampling Plan. | Day 290 |
| 20 | Each Company shall submit to the Division its component of the draft Phase 1 Report revised to incorporate the results of the sampling conducted with respect to its Individual Company Site. | Day 350 |
| 21 | The Division will provide to each Company its comments regarding the draft Phase 1 Reports which have incorporated the results of the sampling. | Day 360 |
| 22 | The Companies shall submit to the Division revised components of the draft Phase 1 Report for the common areas to incorporate the results of the sampling conducted with respect to the BMI Common Areas and Off-Site Waste Management Areas. | Day 365 |
| 23 | The Division will provide to the Companies its comments regarding the revised draft Phase 1 Report for the common areas. | Day 375 |
| 24 | Each Company shall submit a final draft | Day 380 |

¹ In the event that the Division determines sampling is not necessary with respect to all Individual Company Sites, BMI Common Areas and identified Off-Site Waste Management Areas, the Companies shall submit a final Phase I Report on Day 290. In such instance, the Division will notify the Companies of its approval or disapproval of the Phase I Report on Day 310.

Phase 1 Report for the individual company sites revised to address the Division's comments.

- 25 The Companies shall submit a final Phase 1 Report for the common areas, revised to address the Division's comments. Day 395
- 26 The Division shall notify the Companies of its approval or disapproval of the Phase 1 Reports for the individual Company site and common areas. Day 415