

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:) Docket No. V-W- '91-C-107
)
DOVER CHEMICAL CORPORATION) ADMINISTRATIVE ORDER BY
Davis and West Fifteenth Street) CONSENT
Dover, Ohio 44622) PURSUANT TO SECTION 106
) OF THE COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
Respondent.) COMPENSATION, AND
) LIABILITY ACT OF 1980
) as amended, 42 U.S.C.
) Section 9606(a)
)

PREAMBLE

The United States Environmental Protection Agency (U.S. EPA) and Dover Chemical Corporation (Dover or Respondent) have each agreed to the making and entry of this Order by Consent.

It is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a) and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986 Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-C and 14-14-D.

A copy of this Order will also be provided to the State of Ohio, which has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondent to undertake and complete emergency removal activities to abate conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at the Dover facility located at Davis and West Fifteenth Street, Dover, Ohio 44622 (the Site).

FINDINGS

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

1. The Site is owned by Dover and is located at Davis and West Fifteenth Street, adjoining the City of Dover, Tuscarawas County, Ohio. The Site is located in a light industrial/residential area, and covers approximately seventeen acres. It is situated northeast of and adjacent to Interstate 77. Dover operates a chemical manufacturing plant on the Site.
2. Residential areas within the city of Dover are located within approximately 1/4 mile of the Site.
3. The Site is an active facility, producing chlorinated organic chemical products. Past operations have included the refinement of raw chemical materials suspected to have been contaminated with polychlorinated dibenzodioxins and polychlorinated dibenzofurans (PCDDs and PCDFs). Prior to 1975, chlorinated organic chemicals were produced in a manner which could have resulted in the unintentional production of PCDDs and PCDFs.
4. The first manufacturing facilities on site were constructed before World War II. Dover was incorporated in 1951. In 1974, Ansul Industries acquired the facility, and in 1975 the facility was purchased by ICC Industries, Inc. Dover is currently a subsidiary of ICC Industries, Inc.
5. Wastes containing chlorinated organics were disposed of in an open pit on the southwest portion of the Site sometime prior to 1975. These wastes are known to have been contaminated with a mixture of chlorinated benzenes. These wastes are now believed to have been contaminated with PCDDs and PCDFs. Dover removed waste and contaminated soil from this portion of the Site in 1981 with the concurrence and under the oversight of the U.S. EPA. The presence of PCDDs and PCDFs in these materials was not suspected in 1981, and no testing for PCDDs and PCDFs was performed.
6. Pursuant to an Administrative Order by Consent, Dover has been conducting a Remedial Investigation and Feasibility Study (RI/FS). The RI/FS includes sampling and analysis for PCDDs and PCDFs. The results of soils analysis has indicated substantial PCDD and PCDF contamination in the soils on and adjoining the Site.
7. PCDDs and PCDFs are a family of 210 structurally related compounds. The PCDDs and PCDFs which have chlorines

substituted in the 2, 3, 7 and 8 positions (2,3,7,8-substituted congeners) pose a public health concern. The 2,3,7,8-substituted congeners are suspected human carcinogens, based upon studies which have shown some congeners to have caused cancer in laboratory animals.

8. Soil samples analyzed for PCDDs and PCDFs may be evaluated for purposes of estimating health effects using Toxicity Equivalency Factors (TEFs) published by the U.S. EPA. TEFs are a series of factors which are applied to the various 2,3,7,8-substituted congeners of dioxins and furans, which result in a combined equivalent concentration, or toxicity equivalent (TEQ). The TEQ is the concentration of 2,3,7,8-tetrachlorodibenzodioxin which is estimated to have the same carcinogenic potency as the mixture of congeners being evaluated.
9. Some soils on the site have been found to contain PCDDs and PCDFs in concentrations which result in a combined TEQ of over 20 parts per million (ppm).
10. Some soil samples collected from areas adjoining and near to the site have been found to contain PCDDs and PCDFs in concentrations which result in a combined TEQ of over 1 part per billion (ppb).
11. Soils contaminated with PCDDs and PCDFs are located in areas of the Site traversed by personnel and vehicles, which may have resulted in some of the soil being transported to areas off the Site. Site soils contaminated with PCDDs and PCDFs are also subject to transport off site by the wind.
12. Soil samples indicate that the PCDDs and PCDFs adsorb strongly to soils; therefore the primary medium for transport off site is dust which becomes wind borne or which is tracked to other areas by personnel or vehicles.
13. The U.S. EPA has determined that the clean up standards contained in the Work Plan Outline in Attachment 1 to this Order, are applicable to this Site for the purposes of this Order.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. Dover is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

3. Dover is a present owner and operator of the facility and, is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607.
4. Polychlorinated dibenzodioxins and polychlorinated dibenzofurans (PCDDs and PCDFs) are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).
5. The PCDDs and PCDFs present on and adjoining the Site constitute an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).
6. The actual or threatened release of PCDDs and PCDFs from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment.
7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment because of the following factors:

- a. actual or potential exposure to nearby populations, animals, or food chain from hazardous substances or pollutants or contaminants;

This factor is present at the Site due to the existence of PCDDs and PCDFs in the soils on and adjoining the Site at concentration levels greater than the concern levels for PCDDs and PCDFs adopted by the Center for Disease Control (CDC), U.S. EPA, and the Agency for Toxic Substances and Disease Registry. The contaminants are present at the ground surface and are available to nearby populations and animals through inhalation of contaminated dust particles and through ingestion of contaminated soils.

- b. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate and;

This factor is present at the Site due to the existence of PCDDs and PCDFs in the soils on and adjoining the Site at concentration levels greater than the concern levels for PCDDs and PCDFs adopted by the CDC, U.S. EPA, and the Agency for Toxic Substances and Disease Registry. Contaminants at the ground surface appear to have migrated off-site as a result of truck traffic on

and off the Site. Contaminated dust particles may also be transported off-site by the wind.

- c. **weather conditions that may cause hazardous substances pollutants or contaminants to migrate or be released;**

This factor is present at the Site due to the existence of PCDDs and PCDFs in the soils on and adjoining the Site at concentration levels greater than the concern levels for PCDDs and PCDFs adopted by the CDC, U.S. EPA, and the Agency for Toxic Substances and Disease Registry which are available for wind-borne transportation. Contaminants at the ground surface are available for transportation off-site by the wind.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) and Section 122 of CERCLA, 42 U.S.C. Section 9606(a) and 9622, it is hereby ordered and agreed that Respondent(s) will undertake the following actions at the Site:

1. Within thirty (30) calendar days after Dover is notified of the effective date of this Order, Dover shall submit to U.S. EPA for approval a Work Plan for the expedited response activities ordered as set forth in Paragraph 4 below. The Work Plan shall be consistent with the Work Plan Outline contained in Attachment 1 to this Order. The Work Plan Outline is fully incorporated into this Order by reference. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by the U.S. EPA, which may approve, disapprove, require revisions or modify the Work Plan. Dover shall implement the Work Plan as finally approved by U.S. EPA, including any modifications. Once approved, the Work Plan becomes an enforceable part of this Order.
2. The Work Plan shall contain a Site safety and health plan, a schedule of the work to be performed, and addenda to the existing sampling plan and quality assurance project plans. The Site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.

3. Dover shall retain a contractor qualified to undertake and complete the requirements of this Order, and shall notify U.S. EPA of the name of such contractor within 10 days of the effective date of this Order. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Dover. In the event U.S. EPA disapproves of a selected contractor, Dover shall retain a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.
4. Within 10 calendar days after approval of the Work Plan by U.S. EPA, Dover shall implement the Work Plan as approved or modified by U.S. EPA. Failure of Dover to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require Dover to perform and complete within 6 months of the effective date of this Order at a minimum, the following activities:
 - (a) relocating, covering and containing all soils both on and off the Site which contain PCDD and PCDF concentrations above the applicable action levels in a manner which does not conflict with potential final Site remedies;
 - (b) the construction of roadways for vehicular traffic to minimize dust dispersion;
 - (c) restricting access to certain areas;
 - (d) the consolidation of contaminated soils to one area of the Site; and
 - (e) the preparation of a final report describing the actions taken.
5. All materials, if any, removed from the Site shall be disposed of or treated at a facility approved by the On-Scene Coordinator (OSC) or the Remedial Project Manager (RPM) and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 9601, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements as provided by Section 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3).
6. On or before the effective date of this Order, Dover shall designate a Project Coordinator. The U.S. EPA has designated Steve Renninger of the Emergency and Enforcement

Response Branch as the OSC and James Van der Kloot of the Remedial Response Branch as the RPM. The OSC, the RPM and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between Dover and U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the OSC, the RPM and the Project Coordinator. During implementation of the Work Plan, the OSC, the RPM and the Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.

7. It is the intent of Dover and U.S. EPA to conduct the work described in this Order without major disruption of Dover's ongoing facility operations, unless such disruption is necessary to avoid delay in performance of this Order. It is also the intent of Dover and U.S. EPA that the work under this Order and the ongoing work on the RI/FS be coordinated to minimize cost and delay. If work under this Order causes a delay in the work to be performed under the RI/FS Consent Order, then the time period for performance under the RI/FS Consent Order may be extended, as deemed necessary by the OSC or RPM to allow performance.
8. The U.S. EPA and Dover shall each have the right to change their respective designated OSC, RPM or Project Coordinator. U.S. EPA shall notify Dover, and Dover shall notify U.S. EPA, as early as possible before such a change is made. Notification may initially be verbal, but shall promptly be reduced to writing.
9. The U.S. EPA OSC and RPM shall have the authority vested in OSCs and RPMs by the NCP, 40 C.F.R. Part 300, as amended, 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 Dover at the Site.
10. No extensions to the time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.
11. All instructions by the U.S. EPA OSC, RPM or designated alternate shall be binding upon Dover as long as those instructions are not clearly inconsistent with the NCP.
12. To the extent that the Site or other areas where work under this Order is to be performed is owned by, or in possession

of, someone other than Dover, Dover shall attempt to obtain all necessary access agreements. In the event that after using its best efforts Dover is unable to obtain such agreements, Dover shall immediately notify U.S. EPA and U.S. EPA may then assist Dover in gaining access to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate. Dover shall reimburse U.S. EPA for all costs U.S. EPA incurs in assisting Dover to obtain access.

13. Dover shall provide access to the Site, and to other areas where Dover is able to obtain access from the owner, to U.S. EPA employees and U.S. EPA-authorized contractors, agents, and consultants at anytime, and shall permit such persons to be present and move freely in the area in order to conduct inspections, to take photographs and videotapes of the Site, to do cleanup/stabilization work, to take samples, to monitor the work under this Order, to inspect records, operating logs and contracts related the Site, and to conduct other activities which the U.S. EPA determines to be necessary. Dover shall permit U.S. EPA and/or its authorized representatives upon reasonable notice to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, which pertain to implementation of this Order, subject to Section 14 of this Order. All persons with access to the Site pursuant to this Order shall comply with their respective health and safety plans.
14. Dover may assert a confidentiality claim, if appropriate, under 40 C.F.R. Section 2.203(b) covering part or all of the information (except analytical data) requested under this Order and provided to U.S. EPA. Such an assertion shall be adequately substantiated when the assertion is made. Information determined to be confidential by U.S. EPA consistent with the requirements of Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7) will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to U.S. EPA, the information may be made available to the public by U.S. EPA without further notice to Dover or if U.S. EPA determines that the information is not entitled to the protection afforded in 40 C.F.R. Part 2, Subpart B, the information may be made available to the public in accordance with 40 C.F.R. Part 2.
15. The provisions of this Order and the directions of the RPM and OSC hereunder shall be binding on the agents, employees contractors and consultants acting under or for the Respondent or on its behalf, and shall be binding on the successors, and assigns of Dover.

Nothing herein shall be construed as restricting the inspection or access authority of U.S. EPA under this Order or under any applicable law or regulation.

16. This Order shall be effective on the date of signature by the Director, Waste Management Division.
17. On or before the tenth of each month, Dover shall provide a written monthly progress report to the RPM and OSC regarding the actions and activities undertaken under this Order. At a minimum, these progress reports shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by Dover and shall describe all significant work items planned for the next month.
18. Dover agrees that all records, files, or other documents related to activities performed or undertaken pursuant to this Order shall be preserved pursuant to Section XXIII of the Administrative Order by Consent Re: Investigation and Feasibility Study entered into by Dover, U.S. EPA and Ohio Environmental Protection Agency (OEPA), Docket No. V-W-88-C-121, and effective September 2, 1988 (RI/FS Consent Order).
19. Dover shall pay all costs of the United States related to this Order which are not inconsistent with the NCP and which are not subject to payment or deferral under the RI/FS Consent Order. The United States shall submit an itemized cost statement entitled "Annotated SPUR Report" to Dover annually or, if sooner, not less than 60 days after submission of the Final Report provided for in Paragraph 26 of this Order. Payments shall be made within 60 days of Respondents' receipt of the cost statement. Payments shall be made to the EPA Hazardous Substances Superfund delivered to the U.S. EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, in the form of a check payable to "EPA Hazardous Substances Superfund." The face of the check should note that the payment is for the Dover Chemical Corp. site, Superfund Site Identification Number B5. A copy of the check(s) submitted must be sent simultaneously to the U.S. EPA representatives indicated in paragraph 20 below.
20. Any notice, document, information, report, plan, approval, disapproval or other written correspondence required to be submitted from one party to another under the Order shall be deemed submitted either when hand delivered, the date it is delivered by express mail, the date it is received by facsimile, or as of the date of receipt by certified mail, return receipt requested.

Submissions to Dover shall be submitted to:

1. David L. Rankin
Manager, Government Regulations
Dover Chemical Corp.
15th and Davis Street
Dover, Ohio 44622

Submissions to the U.S. EPA shall be submitted to:

Steve Renninger
U.S. EPA
25089 Center Ridge Road
Westlake, OH 44145

and

James Van der Kloot
U.S. EPA, 5HS-11
230 South Dearborn St.
Chicago, IL 60604

21. If any provision of this Order is deemed invalid or unenforceable, the balance of this Order shall remain in full force and effect.

PENALTIES FOR NONCOMPLIANCE

22. Subject to the provisions of this Order, for each day the Respondent fails to submit reports, or fails to perform actions required under this Order, in accordance with the schedule contained in this Order and in the Work Plan approved by U.S. EPA. U.S. EPA will assess a stipulated penalty and it shall accrue in amounts as follows:
 - a. For failure to commence and perform work, or submit monthly written Progress Reports, or the Final Report, described in this Order or in the Work Plan at Attachment 1: Seventy-five dollars (\$75.00) per day for the first one (1) to seven (7) business days of delay; and One Hundred and Fifty dollars (\$150.00) per day for the next eight (8) to fourteen (14) business days of delay, and Four Hundred dollars (\$400.00) per day for each business day of delay thereafter;
 - b. For failure to comply with provisions of this Order after notice by U.S. EPA of non-compliance: Five Hundred dollars (\$500.00) per day for the first one (1) to seven (7) business days of delay, and One Thousand dollars (\$1,000.00) per day thereafter to a maximum of three times

the total costs incurred for the response as completed by U.S. EPA.

23. The payment of stipulated penalties demanded pursuant to Section 21 above, does not preclude U.S. EPA from pursuing any other remedies or sanctions which may be available to it by reason of Respondent's failure to comply with any of the requirements of this Order, nor shall payment of said penalties relieve Respondent of the responsibilities to comply with this Order.
24. All penalties which accrue pursuant to the requirements of this Section of the Order shall be paid within twenty (20) calendar days of written demand by U.S. EPA. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amount of overdue stipulated penalties at a rate established by the United States Treasury. Stipulated penalties shall accrue, but need not be paid during any dispute resolution concerning the particular penalty at issue. Should U.S. EPA prevail upon resolution, Dover shall pay only such penalties as the resolution requires.
25. All penalties shall be paid by check, which references the Site Identification No. B5, to the Treasurer of the United States of America and shall be remitted to:

EPA - Region V
Attention Superfund Accounting
P.O.Box 70753
Chicago, Illinois 60673

TERMINATION AND SATISFACTION

26. Dover shall submit a final report summarizing the actions taken to comply with this Consent Order. The report shall contain, at a minimum: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Consent Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Consent Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Consent Order and discussion of how all problems were resolved, 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 destination of those materials, and a

presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within 30 days of completion of the work required by the U.S. EPA.

27. The provisions of this Order shall be deemed satisfied upon payment by Dover of all sums due under the terms of this Order and upon Dover's receipt of written notice from U.S. EPA that the Dover has demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks consistent with this Order which U.S. EPA has determined to be necessary, have been completed.

INDEMNIFICATION

28. Dover agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from, or on account of, acts or omissions of Dover, its officers, employees, receivers, trustees, agents, successors or assigns, in carrying out the activities pursuant to this Order. The United States Government shall not be held as a party to any contract entered into by Dover in carrying out activities under this Order.

RESERVATION OF RIGHTS

29. This Order is not intended for the benefit of any third party and may not be enforced by any third party.
30. The U.S. EPA and Dover reserve all rights, claims, demands, and defenses, including defenses and denials of and to all determinations and findings, that they may have as to each other except as otherwise provided in this Order pursuant to any available legal authority. Further, Dover shall retain any rights, including any rights of appeal, which it would have had under a unilateral administrative order, except as otherwise provided in this Order. Nothing in this Order, however, shall expand Dover's ability to obtain pre-enforcement review of U.S. EPA actions. Notwithstand-

ing any reservation of rights, Dover agrees to comply with the terms and conditions of this Order and consents to the jurisdiction of the U.S. EPA to enter into and enforce this Order.

31. Nothing herein is intended to release, discharge, limit or in any way affect any claim, cause of action or demand in law or equity which the Parties may have against any persons, firm, trust, joint venture, partnership, corporation, or other entity not a party to this Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, disposal, release or threat of release of any material, hazardous substance, hazardous waste, contaminant or pollutant at, to or from the Site. The Parties to this Order hereby expressly reserve all rights, claims, demands and causes of action they may have against any and all other persons and entities who are not parties to this Order.
32. Nothing herein shall be construed: 1) to prevent U.S. EPA from exercising its right to disapprove of work performed by Dover Chemical; 2) to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this order; 3) to prevent U.S. EPA from taking other legal or equitable action not inconsistent with the Covenant Not To Sue in paragraphs 44 through 46 of this Order; 4) to prevent U.S. EPA from requiring Dover in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law; or 5) to prevent U.S. EPA from undertaking response actions at the Site.

FORCE MAJEURE

33. Dover shall cause all work to be performed within the time limits set forth herein and in the Work Plan, unless performance is delayed by events which constitute "force majeure". For purposes of this Order, "force majeure" shall mean an event arising from causes entirely beyond the control of Dover and its contractors which delays or prevents the performance of any obligation required by this Order. Increases in costs, financial difficulty, and normal inclement weather are examples of events that are not considered to be beyond the control of Dover.
34. Dover shall notify the OSC or the RPM in writing no later than ten (10) days after the beginning of a delay caused by an event which Dover contends constitutes force majeure. Such notification shall describe the anticipated length of delay, the cause of delay, the measures taken and to be taken by the Respondent to minimize the delay, and a

timetable by which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay. If U.S. EPA determines a delay is or was attributable to a force majeure, the time period for performance under this Order shall be extended as deemed necessary by the OSC or RPM to allow performance. Dover's failure to comply with the notice requirements of this Section shall constitute a waiver of its rights under this Section as to the specified force majeure event.

DISPUTE RESOLUTION

35. The Parties to this Order shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order or any work required hereunder.
36. In the event that any dispute arising under this Order is not resolved expeditiously through informal means, any Party desiring dispute resolution under this Section shall give prompt written notice to the other Party to the Order.
37. Within ten (10) days of the service of notice of dispute pursuant to Section 37 above, the party who gave notice shall serve on the other party to this Order a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). The opposing party shall serve its Statement of Position, including supporting documentation, no later than ten (10) days after receipt of the complaining party's statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work, they shall be shortened upon and in accordance with notice by U.S. EPA.
38. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to the preceding paragraphs.
39. Upon review of the administrative record, the Director of the Waste Management Division, U.S. EPA, Region V, shall issue a final decision and order resolving the dispute. Respondent's rights of appeal of this decision, if any such

rights exist, shall include any and all rights that would have been available under a unilateral administrative order.

40. Nothing in this Section shall be interpreted to limit the authority vested in the OSC and the RPM under the NCP, 40 C.F.R. Part 300, as described in Paragraph 9 of this Order.

NON-ADMISSION

41. The consent of Dover to the terms of this Order shall not constitute or be construed as an admission of liability or of U.S. EPA's findings or determinations contained in this Order in any proceeding other than a proceeding to enforce the terms of this Order. Neither shall the payments referred to in Section 19 constitute a fine or penalty of any kind.

CERCLA FUNDING

42. Dover waives any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA for, or arising out of, any activity performed or expenses incurred pursuant to this Order.
43. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

COVENANT NOT TO SUE

44. Upon termination and satisfaction of this Order pursuant to its terms, for and in consideration of the complete and timely performance by Dover of the obligations agreed to in this Order, U.S. EPA hereby covenants not to sue Dover for judicial imposition of damages or civil penalties for any failure to perform obligations agreed to in this Order except as otherwise reserved herein.
45. Performance of the terms of this Order resolves and satisfies the liability of Dover to U.S. EPA solely for matters addressed herein. U.S. EPA recognizes that, pursuant to Section 113 of CERCLA, Dover, upon having resolved their liability with the U.S. EPA for the matters expressly covered by this Order, shall not be liable for claims for contribution regarding matters addressed in this Order. Performance of the activities required by this order shall not interfere with the timely completion of the

ongoing RI/FS. Nothing in this Order precludes Dover from asserting any claims, causes of action or demands against potentially responsible parties (PRPs) who are not parties to this Order for indemnification, contribution, or cost recovery.

46. In consideration of the actions to be performed by Dover under this Order, the U.S. EPA covenants not to sue Dover, its successors or assigns for any and all claims which are available to the U.S. as against Dover under Sections 106 and 107 of CERCLA concerning all matters at the Site expressly and solely covered by this Order.

SUBSEQUENT AMENDMENT

47. This Order may be amended by mutual agreement of U.S. EPA and Dover. Any amendment of this Order shall be in writing, signed by U.S. EPA and Dover and shall have as the effective date, that date on which such amendment, signed by U.S. EPA, is received by Dover.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its employees, officers, contractors, successors and assigns, to this document.

Agreed this 25 day of June, ~~1989~~¹⁹⁹¹.

By C. Joseph Felt

The above being agreed and consented to, it is so ORDERED

this 12th day of July, 1989⁹¹.

By W. E. Mann (Acting)
 David Ullrich, Director
 Waste Management Division
 U.S. Environmental Protection Agency
 Region V, Complainant

ATTACHMENT A

DOVER CHEMICAL CORPORATION INTERIM SOIL REMEDIATION WORK PLAN OUTLINE

1.0 INTRODUCTION

1.1 BACKGROUND

- Summary of Current Status Report and September 1990 Sampling Results.
- The measures to be taken as part of this interim action are temporary measures designed to reduce contact with PCDD/PCDF-contaminated soils.
- The planned interim measures currently include various isolation techniques which can be rapidly and effectively implemented. In order to categorize the site with regard to these interim actions, the current U.S. EPA Missouri PCDD/PCDF standards were considered. These PCDD/PCDF standards are currently defined as follows:

"Residential Standard"

1 ppb TEF equivalent in the surface soils. If surface soil concentrations exceed 1 ppb, this standard will be achieved by: (1) excavation of the initial layer of soil until a residual concentration of 1 ppb is reached, up to a maximum depth of one foot; (2) if the concentration is greater than 1 ppb at the 1-foot depth, then excavation of the soil until a concentration of 10 ppb is reached at a depth of 1 foot or greater. No excavation will continue beyond 4 feet total depth or once bedrock is encountered.

Excavated areas would be backfilled with clean fill material to original grade.

"Industrial Standard"

20 ppb TEF equivalent in the surface soils.

The Residential Standard was developed by USEPA to be applied in uncontrolled residential areas readily accessible to the public. The interim remedies detailed herein are intended to minimize transport of and contact with soils which have concentrations above the Residential Standard. Soils in traffic areas will be isolated by placement of coatings or pavement, and fencing will be used to prevent unnecessary contact and minimize migration in inactive areas.

1.2 OBJECTIVES

- Potential public contact with soils over 1 ppb equivalent concentration in off-site public access areas will be minimized. Soil above 1 ppb in off-site road shoulders will be covered with an asphalt emulsion to prevent contact.
- Measures to prevent migration (i.e., paving and maintenance) will be used in on-site areas with the potential for vehicle traffic or regular contact.
- Access to the remaining on-site areas which are not covered by paving or a building and which contain TEF equivalent concentrations over 1 ppb will be limited to reduce the frequency of contact and the potential for migration.
- Area H, the highest concentration area, will be isolated to prevent vehicle traffic, regular contact and potential migration by wind. Most of the area will be paved with 2-3 inches of asphalt, including soil consolidation areas. Areas containing underground lines will be paved with a thinner "chip and seal" asphalt paving.
- Any soils which require excavation will be moved to Area H after the area has been paved and curbed. The soil will be covered with a spray emulsion and a tarp to prevent migration.

1.3 GENERAL DESCRIPTION OF THE INTERIM MANAGEMENT PROGRAM

Summary of soil treatment management program detailed in sections following.

1.4 FACILITY EXPANSION PLAN

Dover Chemical facility expansion will be described relative to areas on-site which must be addressed in this plan. Figure 1 is a preliminary sketch of the proposed soils remediation program integrated with the facility expansion plan. More detailed plans will be presented in the complete work plan. Approval must be obtained from U.S. EPA and Ohio EPA for all facility expansion proposals which involve covering or disturbance of soils or wastes.

If, for any reason, Dover does not construct the planned facilities, the areas which are proposed to be covered with buildings in Figure 1 will be treated as Non-Roadway Traffic Areas per Section 2.5 below.

Any soils excavated during construction of the proposed facilities which exceed 1 ppb equivalent concentration will be moved to Area H and covered.

2.0 INTERIM SOIL MANAGEMENT PROGRAM CONCEPT

2.1 OFF-SITE ROAD SHOULDERS

Off-site roadways of Davis and 15th Streets.

2.1.1 The areas to be addressed will be determined based on existing data. Contaminated road shoulders will be sprayed with an asphalt emulsion or covered with chip and seal paving immediately upon commencement of the expedited response activities. Further action on these soils is inappropriate until expedited response activities have been implemented in other areas to prevent recontamination.

2.1.2 After interim actions in all other areas described below are completed, Dover Chemical and the Agencies will confer to determine whether additional action is warranted as an interim remedy for the road shoulders or whether further action should be taken as part of the final remedy. At a minimum, asphalt emulsion or chip and seal paving will be re-applied as needed for maintenance purposes as determined by the OSC or RPM. Such additional remedies are not included in this Work Plan Outline.

2.2 HIGHWAY RIGHT-OF-WAY

Addresses areas along the Dover fence line and adjacent areas.

2.2.1 Request permission from Ohio DOT to install fencing and geotextile cover.

2.2.2 If granted, place temporary geotextile fabric in Area U and anchor.

2.2.3 Install chain-link fence (or fence allowed by Ohio DOT) around those portions of Areas U, X, and AA that exceed the residential standard.

2.2.4 Ensure geotextile and fencing integrity, and repair, as necessary.

2.3 UNPAVED ROADWAYS

On-site roadways (see Figure 1) which are in Areas C, D, and I, the road between Dover Chemical and Invincible Vacuum and the area outside the gate to 15th Street (including parking areas) will be addressed as follows:

- Soils will be contained under a low permeability, sloped paving material. The choice of paving materials will depend upon use. Areas not subject to high vehicle stress will simply be covered with a 1 to 2 inch asphalt chip and seal paving material. This material can be readily maintained by thinner reapplication and can also be easily removed, if necessary.
- For high vehicle stress areas a more durable paving will be used. Soil will be excavated only as needed to make a smooth transition to existing roadways. Any excavated

soil will be consolidated in Area H. The soil will be covered with either asphalt or concrete at Dover's discretion. Paving will be routinely inspected and maintained.

2.4 ON-SITE AREA H

Control further dispersal from Area H by limiting all access.

2.4.1 Control wind dispersal by covering the area with 2 to 3 inches of asphalt or chip and seal, with curbing to redirect runoff.

2.4.2 Backfill soil from proposed building construction excavation, then spray soil with asphalt emulsion. Cover soil/emulsion with tarp extending over the curb.

2.4.3 Complete installation of chain-link fence around Area H.

2.4.4 Provide for regular inspection and repair of all Area H containment measures.

2.5 NON-ROADWAY TRAFFIC AREAS

- All other active areas of the plant (including Areas E, F, and G and south of Building 27 in the production plant) will be addressed by covering either using asphalt or chip and seal, as described for the roadways above, or by buildings constructed according to current expansion plans proposed by Dover Chemical. If Dover fails to construct these buildings, the areas for which buildings are proposed will be covered as described for roadways above.
- According to Dover's plans, Area E will include a new concrete storage pad and a new warehouse expansion. Remaining areas will be asphalt covered.

2.6 ON-SITE GRASSY AREAS

- Areas A, M, J, Q and P and any other on-site grassy areas which contain surface soil concentrations above 1 ppb TEF equivalent and which will not be treated as described above, will be clearly segregated and marked to reduce access.
- All on-site soil or grassy areas with surface soil concentrations below 1 ppb will also be segregated to prevent regular vehicle access which might introduce contaminants from other areas.

2.6.1 Hydroseed

All soil areas not currently under established grass cover will be hydroseed to establish grass cover.

2.6.2 Snow Fence

All grassy areas will be surrounded by snow fence, perimeter fence or equivalent to prevent regular access by vehicles or personnel.

2.7 ERECT FACILITY FENCING

Control site access including Invincible Vacuum Property

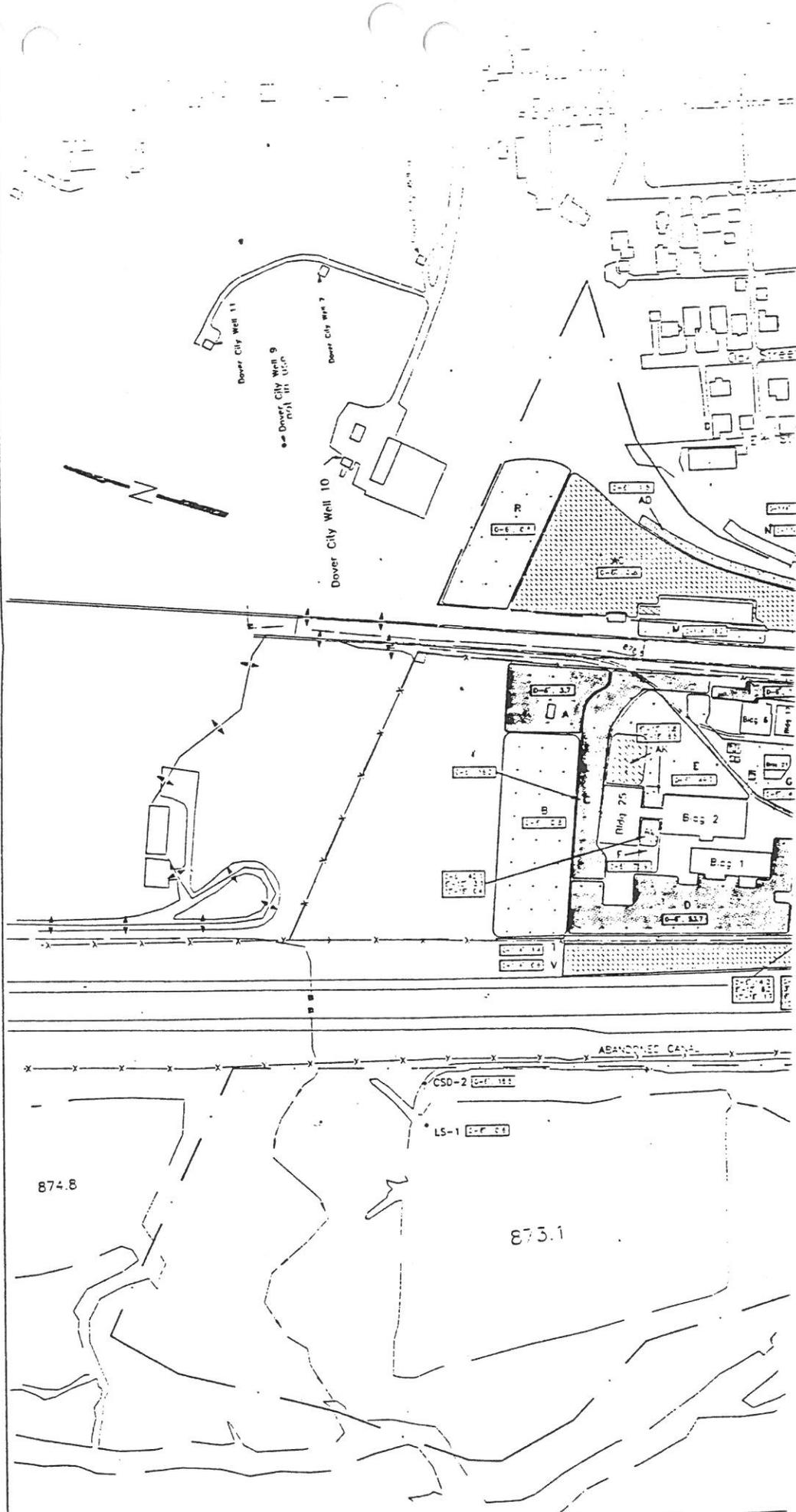
2.6.1 Fence Location

2.6.2 Fence Design and Construction

3.0 POST-INTERIM MANAGEMENT PROGRESS MONITORING

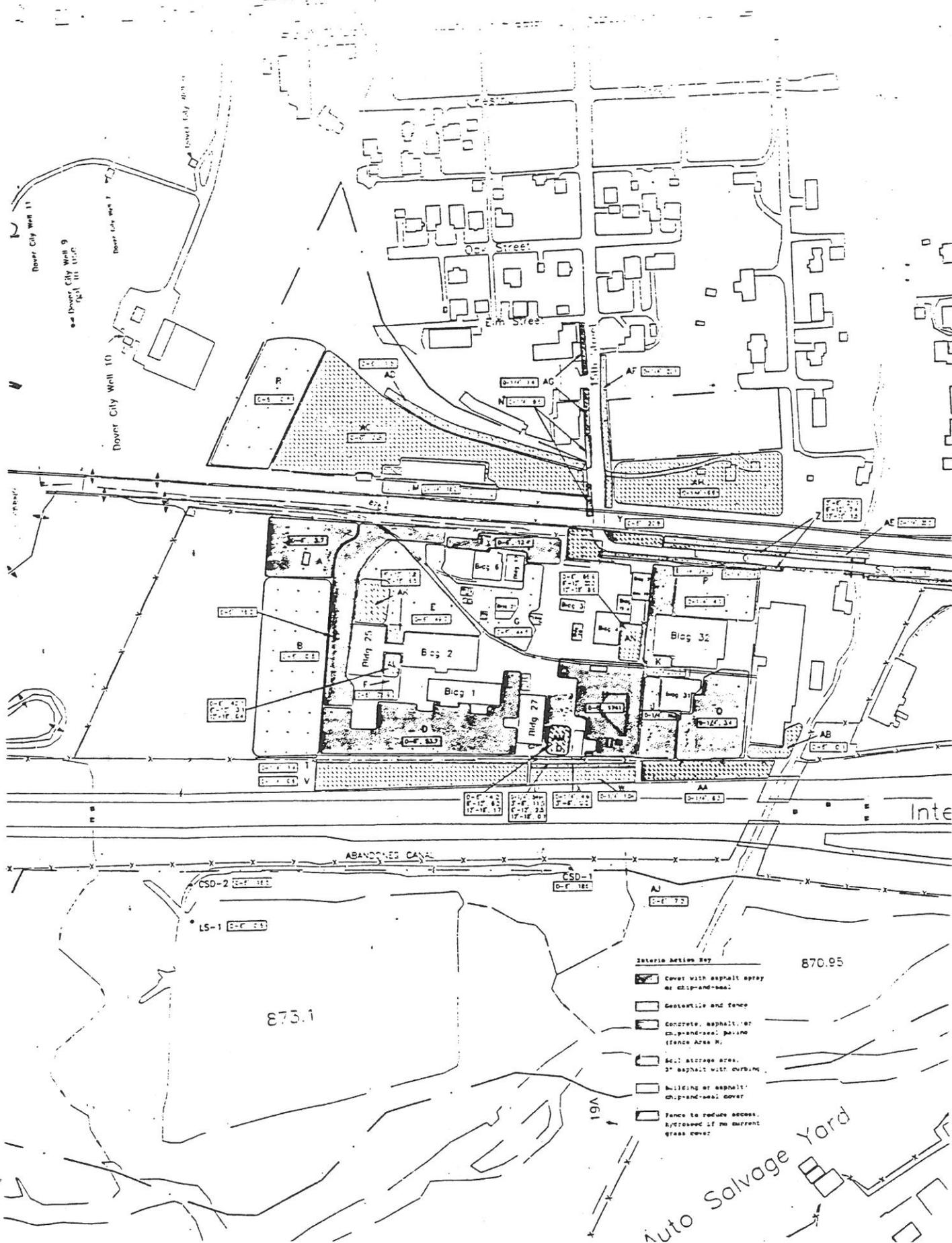
Determine interim measure effectiveness by collecting outdoor dust sample and analyze for concentration of PCDD/PCDF in dust.

4.0 ENGINEERING DESIGN



874.8

875.1



- Interior Action Key**
- Cover with asphalt spray or asphalt-sand:
 - Gravel and fence
 - Concrete, asphalt or asphalt-sand: no fence Area W
 - S: storage area, 3" asphalt with curbing
 - Building or asphalt asphalt-sand: cover
 - Fence to reduce access, increased if no current grass cover

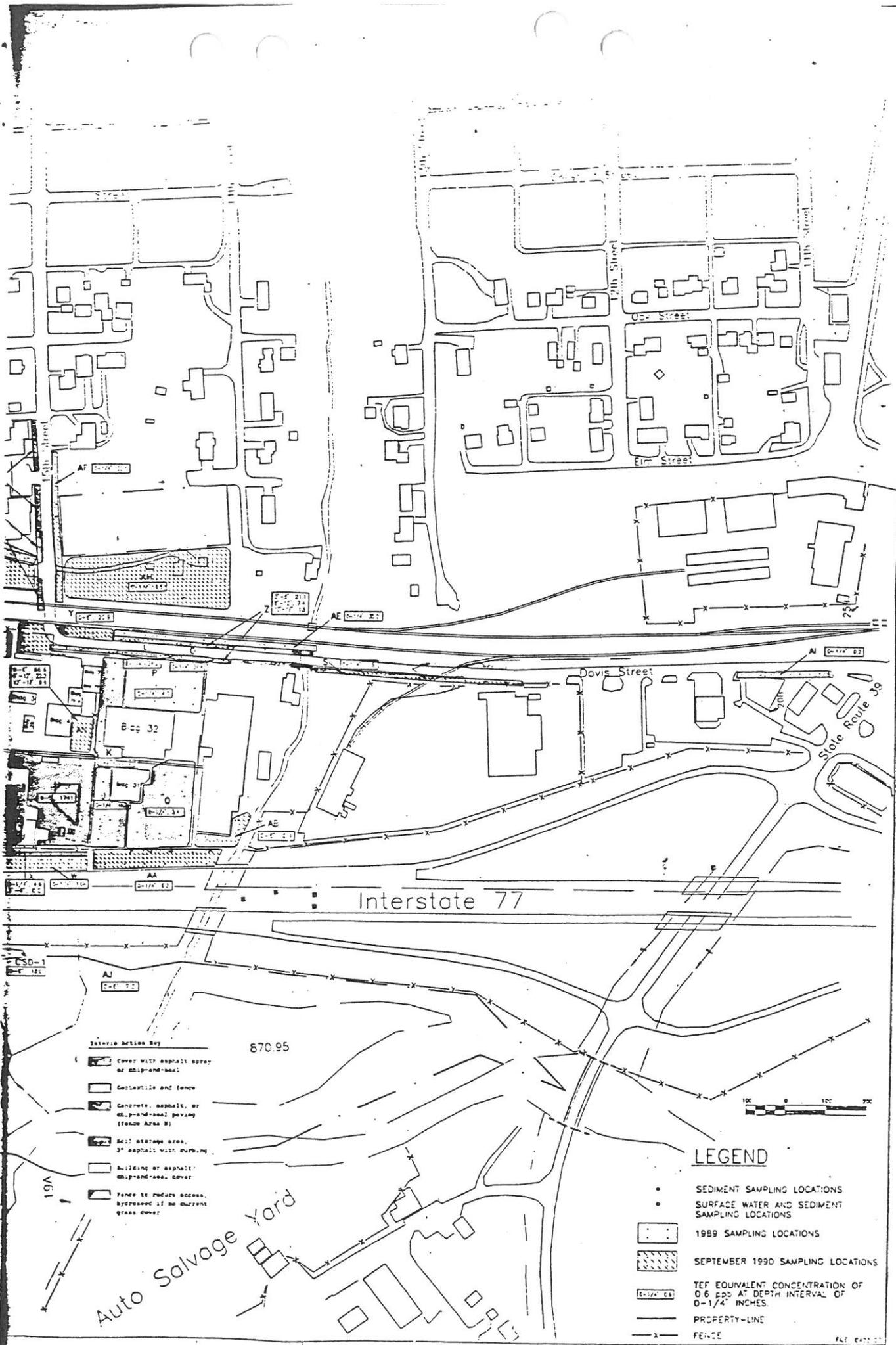
CSD-2 [C-F 182]
LS-1 [C-F 23]

CSD-1 [C-F 182]
AJ [C-F 72]

873.1

870.95

161



- Interim Action Bay**
- Cover with asphalt spray or chip-and-seal
 - Curbside and fence
 - Concrete, asphalt, or chip-and-seal paving (fence Area B)
 - Seal storage area, 3" asphalt with curbing
 - Building or asphalt chip-and-seal cover
 - Fence to reduce access, hydroseed if no current grass cover

LEGEND

- SEDIMENT SAMPLING LOCATIONS
- SURFACE WATER AND SEDIMENT SAMPLING LOCATIONS
- 1989 SAMPLING LOCATIONS
- SEPTEMBER 1990 SAMPLING LOCATIONS
- TEF EQUIVALENT CONCENTRATION OF 0.6 PPS AT DEPTH INTERVAL OF 0-1/4" INCHES
- PROPERTY-LINE
- FENCE



1961

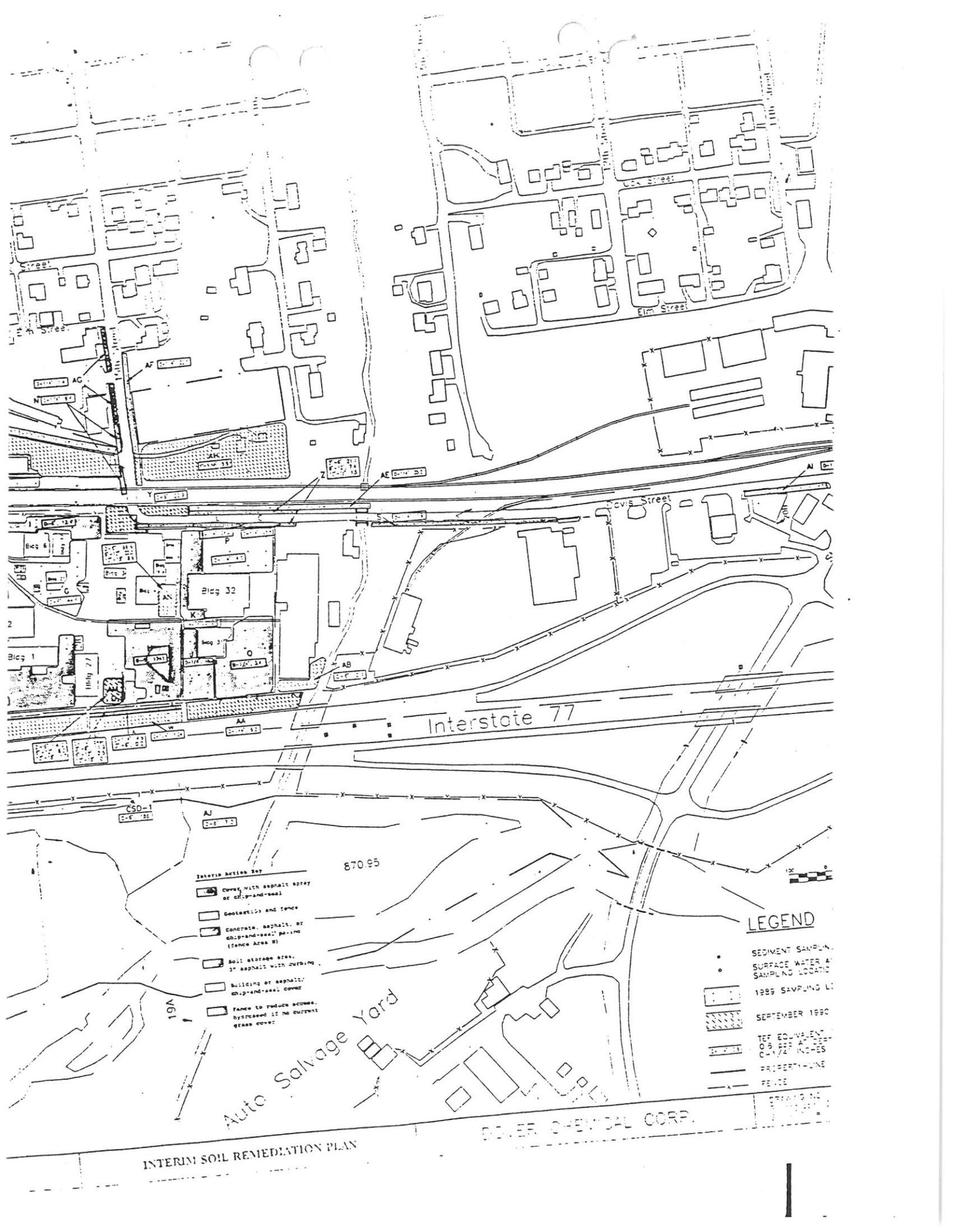
Auto Salvage Yard

870.95

Interstate 77

Davis Street

State Route 39



INTERIM SOIL REMEDIATION PLAN

- Interim Action Set**
- Cover with asphalt spray or chip-and-seal
 - Construct fence and fence
 - Concrete, asphalt, or chip-and-seal paving (fence Area II)
 - Soil storage area, 3" asphalt with curbing
 - Building or asphalt chip-and-seal cover
 - Fence to reduce access, hydroseed if no current grass cover

LEGEND

- SEDIMENT SAMPLING SURFACE WATER AND SAMPLING LOCATIONS
- 1985 SAMPLING LOCATIONS
- SEPTEMBER 1990 TEF EQUIVALENT OR 100 FT A DEPTH 0.5-1.0 FT DEPTHS
- PROPERTY LINE
- FENCE

DOVER CHEMICAL CORP.

670.95

19N

Auto Salvage Yard

Interstate 77

Covis Street

Elm Street

Oak Street

Blg 32

Blg 6

Blg 1

Blg 77

Blg 3

Blg 132

Blg 133

Blg 134

Blg 135

Blg 136

Blg 137

Blg 138

Blg 139

Blg 140

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