

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT
89 KINGS HIGHWAY
DOVER, DELAWARE 19901



SOLID & HAZARDOUS WASTE
MANAGEMENT BRANCH

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Michael E. Kozikowski
New Castle Recorder MISC

Tax Parcel No.: **2300300009**

Prepared By: Department of Natural Resources and
Environmental Control

Return To: Nancy C. Marker,
Program Manager II
DNREC-SHWMB
89 Kings Highway
Dover, DE 19901

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Johnson Controls Battery Group, Inc. and the Delaware Department of Natural Resources and Environmental Control ("DNREC") pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act, for the purpose of subjecting certain Property to land use restrictions as set forth herein.

WITNESSETH

WHEREAS, Johnson Controls Battery Group, Inc. ("Owner") is the owner of certain real estate located at 700 North Broad Street, Middletown in New Castle County, Delaware, as described below ("Property"); and

WHEREAS, the United States Environmental Protection Agency ("EPA") and DNREC have investigated a release of hazardous substances on the Property resulting from failure of air pollution control equipment on March 8 and 9, 1983 which caused the release of approximately 75 pounds of lead dust emissions over a ten (10) hour period; and

WHEREAS, on March 8, 1994, EPA and the Owner entered into an Administrative Consent Order, Docket No. RCRA-3-018-AM ("Order"), pursuant to Section 3013 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6934, requiring the Owners to prepare a Soil Management Plan ("Plan"); and

WHEREAS, EPA approved the Plan on May 8, 2001; and

WHEREAS, the Plan identifies portions of the Property as "Remediation Areas" as depicted in Figure 1-2 of the Plan (See Exhibit A, attached hereto and hereby incorporated herein by reference, for a depiction of the Remediation Areas); and

WHEREAS, the Plan requires that certain land use restrictions be placed on the Property and that the Owner notify DNREC in writing requesting approval prior to any soil disturbance or earthwork construction and/or remediation activities at the Property;

WHEREAS, on December 23, 2005, EPA issued a Final Decision and Response to Comments selecting, as part of the final remedy for the Property, certain land use restrictions to ensure long-term control of the Property and protection of EPA's selected remedy; and

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Delaware's good nature depends on you!

WHEREAS, the Owner is willing to establish this Environmental Covenant on the Property in order to implement the land use restrictions required as part of EPA's selected remedy for the Property.

Now, therefore, the Owner and DNREC agree to the following:

1. Environmental Covenant. This instrument is an Environmental Covenant developed and executed pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act.

2. Property. This Environmental Covenant concerns Property is located at 700 North Broad Street, Middletown, in New Castle County, Delaware. The Property consists of approximately 16.27 acres and is known as New Castle County tax parcel number # 2300300009. The EPA Identification Number for the Property is EPA ID No. DED002353092. See Exhibit B, attached hereto and hereby incorporated herein by reference, for a more detailed description of the Property.

3. Owner. Johnson Controls Battery Group, Inc. ("Owner") who is located at P.O. Box 591, Milwaukee, WI 53201 is the owner of the Property.

4. Holder. The Delaware Department of Natural Resources and Environmental Control ("DNREC") is the Holder of this Environmental Covenant.

5. Land Use Restrictions. As required by EPA's final remedy for the Property described in the Final Decision and Response to Comments, the Owner hereby imposes and agrees to comply with the following land use restrictions:

- [a.] Use Restrictions. Use of the Property shall be restricted solely to those non-residential uses permitted within Commercial, Manufacturing, or Industrial Districts, respectively, as such district types and uses (including, without limitation, ancillary or accessory uses) are described and permitted, respectively, pursuant to the Delaware Code in effect as of the date of this Environmental Covenant;
- [b.] Interference with Remedy. There shall be no digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities on the Property, as identified in Figure 1-2 of the Plan, without the prior written approval of DNREC. See Exhibit B, attached hereto and hereby incorporated herein by reference, for a copy of Figure 1-2 of the Plan;
- [c.] Limitation of Groundwater Withdrawal. No groundwater wells shall be installed, and no groundwater shall be withdrawn from any well on the Property without the prior written approval of DNREC-SHWMB;
- [d.] Compliance with Soil Management Plan. Perform all work required by the Soil Management Plan ("Plan"), as issued, approved, modified and/or amended by EPA and all work approved by DNREC to be performed under guidance of the Plan; and
- [e.] Compliance with regulations. Comply with all applicable local, state, and federal regulations and ordinances.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to 7 Del. C. Section 7910(a), subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to 7 Del. C. Section 7916. Failure to timely enforce compliance with this Environmental Covenant or the land use restrictions contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to DNREC, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Administrative Record. The Administrative Record in support of EPA's Final Decision and Response to Comments contains all documents which support EPA's issuance of the Final Remedy and is located at the offices of DNREC-SHWMB, 89 Kings Highway, Dover, Delaware, 19901.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the land use restrictions set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2009, RECORDED IN THE OFFICIAL RECORDS OF THE NEW CASTLE COUNTY RECORDER OF DEEDS ON _____, 2009, in [BOOK _____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[A.] USE RESTRICTIONS. USE OF THE PROPERTY SHALL BE RESTRICTED SOLELY TO THOSE NON-RESIDENTIAL USES PERMITTED WITHIN COMMERCIAL, MANUFACTURING, OR INDUSTRIAL DISTRICTS, RESPECTIVELY, AS SUCH DISTRICT TYPES AND USES (INCLUDING, WITHOUT LIMITATION, ANCILLARY OR ACCESSORY USES) ARE DESCRIBED AND PERMITTED, RESPECTIVELY, PURSUANT TO THE DELAWARE CODE IN EFFECT AS OF THE DATE OF THIS ENVIRONMENTAL COVENANT;

[B.] INTERFERENCE WITH REMEDY. THERE SHALL BE NO DIGGING, DRILLING, EXCAVATING, GRADING, CONSTRUCTING, EARTH MOVING, OR ANY OTHER LAND DISTURBING ACTIVITIES ON THE PROPERTY, AS IDENTIFIED IN FIGURE 1-2 OF THE PLAN, WITHOUT THE PRIOR WRITTEN APPROVAL OF DNREC. SEE EXHIBIT B,

ATTACHED HERETO AND HEREBY INCORPORATED HEREIN BY REFERENCE, FOR A COPY OF FIGURE 1-2 OF THE PLAN;

- [C.] LIMITATION OF GROUNDWATER WITHDRAWAL. NO GROUNDWATER WELLS SHALL BE INSTALLED, AND NO GROUNDWATER SHALL BE WITHDRAWN FROM ANY WELL ON THE PROPERTY WITHOUT THE PRIOR WRITTEN APPROVAL OF DNREC-SHWMB;
- [D.] COMPLIANCE WITH SOIL MANAGEMENT PLAN. PERFORM ALL WORK REQUIRED BY THE SOIL MANAGEMENT PLAN ("PLAN"), AS ISSUED, APPROVED, MODIFIED AND/OR AMENDED BY EPA AND ALL WORK APPROVED BY DNREC TO BE PERFORMED UNDER GUIDANCE OF THE PLAN; AND
- [E.] COMPLIANCE WITH REGULATIONS. COMPLY WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL REGULATIONS AND ORDINANCES.

Owner shall notify DNREC within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone numbers of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- [a.] that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- [b.] that the Owner has identified all other parties that hold any interest (e.g., encumbrance) in the Property and notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- [c.] that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party of by which Owner may be bound or affected.

12. Amendment or Termination.

- a. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; and DNREC, pursuant to 7 Del. C. Section 7915 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the land use restrictions set forth herein, or the elimination of one or more land use restrictions when there is at least one limitation remaining; an Amendment shall also include an assignment of the Environmental Covenant, as specified in 7 Del. C. Section 7915. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all

land use restrictions set forth herein and all other obligations under this Environmental Covenant.

- b. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by DNREC and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any Amendment or Termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the New Castle County Recorder of Deeds Office, and shall provide a file-and date-stamped copy of the recorded instrument to DNREC.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Delaware.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the New Castle County Recorder of Deeds Office. This environmental covenant must be indexed in the grantor's index in the name of the Owner, and in the grantee's index in the name of the Holder, DNREC.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the New Castle County Recorder of Deeds.

17. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: DNREC; the Town of Middletown; any lessee; each person who signed the Environmental Covenant; each person holding a recorded interest in the Property, and any other person designated by DNREC.

18. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Program Manager II
DNREC-SHWMB
89 Kings Highway
Dover, DE 19901

The undersigned Owner, or authorized representative of the Owner represents and certifies that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Johnson Controls Battery Group, Inc.

Rickey A Thompson
Signature of Owner

Rickey A. Thompson Plant Manager
Printed Name and Title

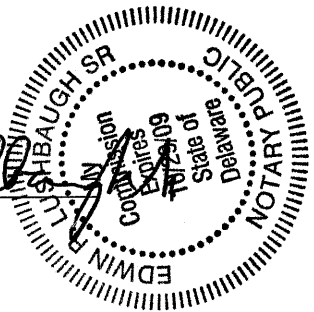
JUNE 16th, 2009
Date

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

Before me, a notary public, in and for said county and state, personally appeared *Rickey A Thompson*, a duly authorized representative of Johnson Controls Battery Group, Inc., who acknowledged to me that he did execute the foregoing instrument on behalf of Johnson Controls Battery Group, Inc.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this *16th* day of *JUNE*, 2009.

Ed R Juske
Notary Public



Continued on next page

Delaware Department of Natural Resources & Environmental Control

Nancy C. Marker
Signature of Holder

Nancy C. Marker, Environmental Program Manager II
Printed Name and Title

3/4/09
Date

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

Before me, a notary public, in and for said county and state, personally appeared Nancy C. Marker, Environmental Program Manager II, a duly authorized representative of the Delaware Department of Natural Resources and Environmental Control, who acknowledged to me that she did execute the foregoing instrument on behalf of the Department of Natural Resources and Environmental Control.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this 4th day of March, 2009.

Jennifer M. Bothell
Notary Public

JENNIFER M. BOTHELL
Notary Public, State of Delaware
My Commission Expires June 3, 2012

This instrument prepared by:

David Perrego
Senior Environmental Compliance Specialist
Department of Natural Resources and Environmental Control
Division of Air and Waste Management
Solid & Hazardous Waste Management Branch
89 Kings Highway
Dover, DE 19901

NCM: DPP: dtd
Johnson Controls\Institutional Controls\DPP07013.doc

EXHIBIT A

Soil Management Plan

Working Copy
 Public Non-Public

~~FILE COPY~~

JOHNSON CONTROLS

Johnson Controls Battery Group, Inc. Middletown, Delaware

Soil Management Plan

March 2001



MONTGOMERY WATSON



MONTGOMERY WATSON

March 29, 2001

FILE COPY

RECEIVED

APR 04 2001

SOLID & HAZARDOUS WASTE
MANAGEMENT BRANCH

Mr. Vernon Butler, RPM
General Operations Branch
Region III
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Soil Management Plan
Docket No. 3-018-AM
Johnson Controls Battery Group, Inc.
Middletown, DE

Dear Mr. Butler:

On behalf of Johnson Controls Battery Group, Inc. (JCBGI), Montgomery Watson is pleased to submit the Soil Management Plan.

If you have any questions, please contact Tim Lafond of JCBGI at (414) 524-2745 or me at (610) 993-0800.

Sincerely,

MONTGOMERY WATSON


Augustus M. Mergenthaler, P.E.
Principal Engineer

cc: T. Lafond, JCBGI
N. Bender, JCBGI
M. Higgins, DNREC
S. Rotenberg, USEPA

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**Response to Comments
Soil Management Plan
Johnson Controls Battery Group, Inc. (JCBGI)
Middletown, Delaware**

RECEIVED

APR 04 2001

OLD & HAZARDOUS WASTE
MANAGEMENT BRANCH

Provided below are the review comments (in italic) submitted by the USEPA Region III on March 8, 2001, followed by Montgomery Watson's response to each comment.

General Comments

- 1. Forward submissions to all appropriate Federal, State and Local agencies.*

Response: The Soil Management Plan will be submitted to the USEPA Region III and DNREC.

- 2. New releases of contaminants may occur in areas that have been previously investigated and require implementation of the SMP. Therefore, the SMP should be implemented for any new release of contaminant.*

Response: The text has been modified to include any new releases of contaminants.

- 3. The SMP should be coordinated with the facility's Contingency Plan or Spill Control Plan for incidents of an unplanned nature.*

Response: The text has been modified to state that the SMP will be coordinated with the facility's Contingency Plan and Spill Control Plan for incidents of an unplanned nature.

Specific Comments

Section 2.0 SMP Workplan

- 4. Regulatory notification of releases should occur within 24 hours. Discuss coordination of the SMP with the facility contingency plan. Immediate threats (i.e. spills, releases, fugitive dusts from pollution control failure, etc.) should be addressed by JCBGI immediately and not only after EPA submits a request to minimize the amount and migration of any material spills, leaks, etc. as soon as possible.*

Response: The text has been modified to state that regulatory notification of releases shall occur within 24 hours.

The text has been modified to include references to the Facility Contingency Plan and how the SMP activities will be integrated.

The text has been modified to include sections discussing immediate actions to be taken by JCBGI for immediate threats.

Section 3.0 SMP Investigative Program

- 5. Confirmatory soil samples shall be taken and analyzed by SW-846 6010B.*

**Response to Comments
Soil Management Plan
Johnson Controls Battery Group, Inc. (JCBGI)
Middletown, Delaware**

Response: The text has been modified as follows: "For soil analysis under SW-846 6010B, 400 parts per million (ppm) is the acceptable criteria."

Section 3.1. Data Collection Quality Assurance Plan

6. *The Quality Assurance Project Plan was prepared in 1994. Ensure that the latest revision of all EPA guidance and methodology is used.*

Response: The text has been modified as follows: "When sampling of excavated areas is required, the sample collection, parameter analysis, and data interpretation will follow the Quality Assurance Project Plan (QAPP), prepared as part of the Environmental Facility Investigation (EFI) in October 1994 by James C. Anderson Associates, Inc. Referenced data collection procedures will include the latest revisions of all EPA guidance and methodology."

Section 3.1.1 Data Collection Strategy, fifth bullet

7. *Should the word "period" be "periodic"?*

Response: The text has been modified from "period" to "periodic".

Section 3.1.2. Sampling and Field Measurement

8. *Include a bullet item for determining the number of confirmatory samples to be taken and analyzed by analytical method SW-846 6010B.*

Response: The following bullet has been added to the text: "Determine the number of confirmatory samples to be taken and analyzed by analytical method SW-846 6010B."

Section 3.1.3. Sample Analysis

9. *In this section, include additional information such as laboratory certifications, operator training certificates for XRF use, and specific analytical methods, etc.*

Response: The following bullets have been added to the text: "Laboratory certifications" and "Operator training certificates for XRF use". The 4th bullet has been modified as follows: "Analytical methods and procedures, including scope and application of the procedure, sample matrix, potential interferences, precision and accuracy of the methodology, and method detection limits;"

Section 5.3. Sample Requirements

10. *Incorporate analytical methods for the sampling requirements.*

Response: The text has been modified as follows: "The CQA will summarize the sampling and testing activities, sample size, sample locations, frequency, analytical methods,

**Response to Comments
Soil Management Plan
Johnson Controls Battery Group, Inc. (JCBGI)
Middletown, Delaware**

criteria, and potential corrective actions.”

Section 6.6. SMP Final Workplan

11. Submit the Final SMP Workplan to the USEPA and DNREC within thirty days after receiving comments on the Draft Soil Management Plan.

Response: The text has been modified as follows: “Upon receipt and incorporation of comments received on the Draft SMP Report, a Final SMP Report will be submitted to the USEPA and DNREC within thirty days of receiving the comments.”

CERTIFICATION

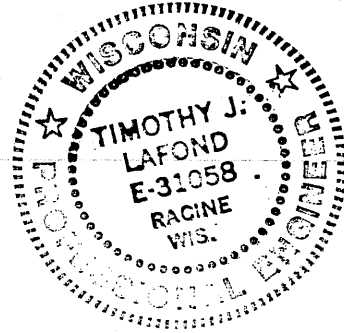
I certify that the information contained in or accompanying this Soil Management Plan is true, accurate and complete.

As to those portions of this submittal for which I cannot personally verify their accuracy, I certify under penalty of law that this Soil Management Plan and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Name: Timothy J. Lafond, P.E

Title: Environmental Relations Manager



SOIL MANAGEMENT PLAN

**Johnson Controls Battery Group, Inc.
700 North Broad Street
Middletown, Delaware 19709**

Submitted to:

**General Operations Branch
Region III
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029**

**State of Delaware
Department of Natural Resources and Environmental Control
Division of Air & Waste Management
Hazardous Waste Management Branch
P.O. Box 1401, 89 Kings Highway
Dover, Delaware 19903**

RE: DED 002353092; File 10, Code 15

**Montgomery Watson
335 Phoenixville Pike
Malvern, Pennsylvania 19355**

March 2001

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LIST OF ATTACHMENTS

ATTACHMENT

A HEALTH AND SAFETY PLAN

LIST OF FIGURES

Figure No.

1-1 Site Location Map
1-2 Site Features Map

LIST OF ACRONYMS AND ABBREVIATIONS

CQA	Construction Quality Assurance
DNREC	State of Delaware Department of Natural Resources and Environmental Control
EFI	Environmental Facility Investigation
EIR	Environmental Investigation Report
EIW	Environmental Investigation Workplan
JCBGI	Johnson Controls Battery Group, Inc.
O&M	Operation and Maintenance
ppm	parts per million
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control
RCRA	Resource Conservation and Recovery Act
RFI	RCRA Facility Investigation
SMP	Soil Management Plan
USEPA	United States Environmental Protection Agency
XRF	X-Ray Fluorescence

1.0 INTRODUCTION

This document is the *Soil Management Plan (SMP)* for the Johnson Controls Battery Group, Inc. (JCBGI) Facility in Middletown, Delaware (Figure 1-1). This *Soil Management Plan* has been prepared in response to the United States Environmental Protection Agency (USEPA) Region III and the State of Delaware Department of Natural Resources and Environmental Control (DNREC) comments regarding the *Environmental Investigation Report (EIR) Addendum* dated July 2000.

Remedial activities were conducted at the Johnson Controls facility to remove lead-impacted soils identified in the EIR. Soil sampling, excavation, and disposal of delineated areas was conducted from October 1998 to January 1999 in Areas A through E, as shown on Figure 1-2. Resampling activities were conducted in February 2000 in response to the USEPA comments to resample specific areas where the EIR delineation and confirmation analytical results were in conflict. The remedial and resampling activities are detailed in the *Final Environmental Investigation Report Addendum Volumes I and II*, dated November 2000.

Additional remedial activities were not conducted at Area B, which is entirely covered by asphalt pavement (see Figure 1-2). The pavement prevents exposure of plant personnel to underlying soil, limits infiltration of precipitation, and limits migration of surface deposits by surface water runoff. Because lead-impacted soils remain in place beneath the pavement, institutional controls such as a Deed Restriction and a Soil Management Plan are required. This SMP will also apply to areas of the JCBGI Facility where investigative and/or remedial activities have not been conducted (i.e., beneath the pavement and buildings adjacent to Areas A through E) and to areas where new releases of contaminants may have occurred.

1.1 PURPOSE

The purpose of this *Soil Management Plan* is to identify and correct any actual or potential releases of hazardous waste or constituents from regulated units, solid waste management units, and other sources or areas at the facility which may present an endangerment to human health or the environment. The SMP shall also be used whenever possible to achieve the

initial goals of controlling the migration of contaminated soil and controlling current human and ecological exposure to contaminated soil. Activities performed under the SMP will be consistent with the objectives of, and contribute to, the performance of any long-term remedy which may be required at the Facility. The provisions in this SMP will be triggered whenever soils are excavated and disposed from Area B or other areas of the Facility where investigative and/or remedial activities have not been conducted (i.e., beneath the pavement and buildings adjacent to Areas A through E) or in areas where new releases of contaminants may have occurred.

1.2 SITE DESCRIPTION

The JCBGI Middletown Facility is located at 700 North Broad Street, Middletown, Delaware in New Castle County, just north of the town center and south of the intersection of North Broad Street and U.S. Route 301. The land to the west of the site is primarily agricultural (i.e., corn fields) while the area to the south is commercial and residential. A new commercial center was constructed in 1993 on the eastern side of North Broad Street across from the JCBGI Facility. The area immediately to the north of the facility is commercial. The facility location and its major features are illustrated in Figures 1-1 and 1-2.

Currently, approximately 84 percent of the JCBGI facility is impervious due to the presence of the main plant building, asphalt driveways and parking lots. Stormwater runoff is controlled by a series of catch basins and underground culverts that channel water to either one of the two stormwater sedimentation basins, or directly to the municipal sewer. Stormwater is eventually discharged to Dove Nest Branch, a tributary of Drawyer Creek.

Area B is located along the southern side of the main building at the southeast corner (see Figure 1-2). The paved area runs along the rail spur between the main facility building and the loading dock. Stormwater from the roof of the main building is discharged to this area through roof downspouts.

The descriptions in this section were derived from the *Environmental Investigation Workplan (EIW)* for the facility (James C. Anderson Assoc., Inc., 1994).

1.3 PLAN ORGANIZATION

This document is organized as follows:

- Section 1 provides an introduction to the SMP, including the purpose of the plan and a site description.
- Section 2 outlines the requirements for SMP Workplans.
- Section 3 outlines the requirements for the SMP Investigation Program.
- Section 4 outlines the requirements for the SMP Design Program.
- Section 5 outlines the requirements for Construction Quality Assurance Plans.
- Section 6 identifies the reporting requirements under the SMP Program.

2.0 SMP WORKPLAN

This section outlines the requirements for preparing and submitting SMP Workplans prior to the initiation of excavation activities at Area B, other areas of the Facility where investigative and/or remedial activities have not been conducted, or in areas where new releases of contaminants may have occurred.

In the event JCBGI identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous constituents, or discovers new solid waste management units not previously identified, JCBGI shall notify the EPA Project Coordinator, orally within 24 hours of discovery and notify EPA, State and Local regulatory authorities in writing within three (3) calendar days of such discovery summarizing the immediacy and magnitude of the potential threat(s) to human health and/or the environment. Upon written request of USEPA, JCBGI will implement the approved SMP. In the case of immediate or potential threats to human health and/or the environment, JCBGI shall take immediate steps to mitigate the situation, with or without a written request from the USEPA. If the USEPA determines that immediate action is required, the USEPA Project Coordinator may orally authorize JCBGI to act prior to USEPA's receipt of the SMP Workplan. The SMP shall be consistent with the JCBGI Facility Contingency Plan.

2.1 OBJECTIVES

The workplan shall specify the objectives of the SMP, demonstrate how the SMP will abate releases and threatened releases, and, to the extent possible, be consistent and integrated with any long term solution at the facility. The SMP Workplan will include:

- A discussion of the overall management approach, including how the SMP is coordinated with the Facility Contingency Plan;
- A discussion of the technical approach, including engineering designs and plans;
- A proposed schedule for project completion; and
- A description of personnel qualifications performing or directing the SMP, including contractor personnel.

2.2 COMMUNITY RELATIONS PLAN

In conjunction with the SMP Workplan, a Community Relations Plan to be used to direct the dissemination of information to the public regarding the soil management activities, including excavation, sampling, and disposal tasks. The Community Relations Plan will provide for preparation and distribution of fact sheets and participation in public meetings.

3.0 SMP INVESTIGATION PROGRAM

This section outlines the requirements for the SMP Investigation Program to be implemented prior to the initiation of excavation activities at Area B, other areas of the Facility where investigative and/or remedial activities have not been conducted, or in areas where new releases of contaminants may have occurred.

Any soil generated by on-site activities must be managed in accordance with the SMP and analyzed for the Resource Conservation and Recovery Act (RCRA) metals and antimony as the constituents of concern. Soil tested for lead will be analyzed discretely (i.e., not composited). For soil analysis under SW-846 6010B, 400 parts per million (ppm) is the acceptable criteria. However, if X-Ray Fluorescence (XRF) analyses is used in the field to determine soil lead levels, then the criteria of 400 ppm is not valid. Instead, JCBGI will use 314 ppm, the criteria approved by the USEPA and DNREC for the facility cleanup.

The action levels for the RCRA metals and antimony based on the USEPA Region III Risk Based Concentration soil residential levels and other references are as follows:

Parameter	Criteria
Antimony	31 ppm
Arsenic	10 ppm (Environmental Investigation Report – Background Data)
Barium	5,500 ppm
Cadmium	39 ppm (water exposure, food exposure is 78 ppm)
Chromium (VI)	230 ppm
Lead	400 ppm (as determined by SW-846)
Lead	314 (as determined by XRF)
Mercury	10 ppm (DNREC 2000 Remediation Guidance)
Selenium	390 ppm
Silver	390 ppm

3.1 DATA COLLECTION QUALITY ASSURANCE PLAN

When sampling of excavated areas is required, the sample collection, parameter analysis, and data interpretation will follow the *Quality Assurance Project Plan (QAPP)*, prepared as part of the Environmental Facility Investigation (EFI) in October 1994 by James C. Anderson Associates, Inc. Referenced data collection procedures will include the latest revisions of all EPA guidance and methodology. Modifications to the QAPP will be made based on specific project objectives as needed to supplement the QAPP, and will be submitted to the USEPA prior to the initiation of excavation activities. Modifications will outline specific additional protocols to document monitoring, sampling, field measurements, and laboratory analysis. All information, data, and resulting decisions must be technically sound, statistically valid, and properly documented.

3.1.1 Data Collection Strategy

The strategy section of the Data Collection Quality Assurance Plan shall include, but not be limited to the following:

- A description of the intended uses for the data, and the necessary level of precision and accuracy for these intended uses;
- A description of the methods and procedures to be used to assess the precision, accuracy, and completeness of the measurement data;
- A description of the rationale used to assure that the data accurately and precisely represents a characteristic of a population, parameter variations at a sampling point, a process condition, or an environmental condition. Examples of factors which shall be considered and discussed include environmental conditions at the time of sampling, the number of sampling points, the representativeness of the selected soil, and the representativeness of the selected analytical parameters;
- A description of the measures to be taken to assure that the data sets can be compared to each other, including data generated by Johnson Controls, consultants, contractors, and laboratories; and

- Details relating to the schedule and information to be provided in quality assurance reports. The reports should include, but will not be limited to, periodic assessments of measurement data accuracy, precision, and completeness, results of performance audits, results of system audits, significant quality assurance problems and recommended solutions, and resolutions of previously stated problems.

3.1.2 Sampling and Field Measurement

The Sampling and Field Measurements section of the Data Collection Quality Assurance Plan shall discuss:

- Selecting appropriate sampling and field measurement locations, depths, etc.;
- Providing a statistically sufficient number of sampling and field measurement sites;
- Measuring all necessary ancillary data;
- Determining which media are to be sampled (e.g., ground water, soil, sediment, etc.)
- Determining which parameters are to be measured and the sample locations;
- Selecting the frequency of sampling and field measurement and the length of the sampling period;
- Selecting the types of sample (e.g., composites, grabs, etc.) and the number of samples to be collected;
- Determining the number of confirmatory samples to be taken and analyzed by analytical method SW-846 6010B.
- Documenting field sampling and field measurement operations and procedures, including use of reagents or sampling supplies, documentation of sampling locations, documentation of field conditions, documentation of sample preservation methods, calibration of field devices, collection of replicate samples, submission of field-biased blanks, potential interferences present at the facility, monitoring well and piezometer construction information, use of field equipment, documentation of sample containers, and decontamination procedures;
- Selecting appropriate sample containers;
- Sample preservation; and
- Proper chain-of-custody procedures.

October 1994 by James C. Anderson Associates, Inc. Modifications to the *Data Management Plan* will be made based on specific project objectives as needed to supplement the document, and will be submitted to the USEPA prior to the initiation of excavation activities. Modifications will outline specific additional protocols to identify and set up data documentation procedures, project file requirements, project-related progress reporting procedures, and formatting procedures for raw data and data interpretation.

3.2.1 Data Record

The Data Record section of the Data Management Plan shall include the following:

- Unique sample or field measurement code;
- Sampling or field measurement location and sample or measurement type;
- Sampling or field measurement raw data;
- Laboratory analysis identification number;
- Property or component measured; and
- Result of analysis (e.g., concentration).

3.2.2 Tabular Displays

The following data shall be presented in tabular displays:

- Unsorted (raw) data;
- Results from each medium, or for each constituent monitored;
- Data reduction for numerical analysis;
- Sorting of data by potential stratification factors (e.g., location, soil layer, topography); and
- Summary data.

3.2.2 Graphical Displays

The following data shall be presented in graphical formats (e.g., bar graphs, line graphs, area or plan maps, isopleth plots, cross-sectional plots or transects, three dimensional graphs, etc.):

3.1.3 Sample Analysis

The Sample Analysis section of the Data Collection Quality Assurance Plan shall specify the following:

- Chain-of-custody procedures, including identification of a responsible party to act as sample custodian at the laboratory facility, provision for a laboratory sample custody log consisting of serially numbered standard lab-tracking report sheets, and specification of laboratory sample custody procedures for sampling handling, storage, and dispersment for analysis;
- Operator training certifications for XRF use;
- Sample storage and holding times;
- Sample preservation methods;
- Required laboratory certifications;
- Analytical methods and procedures, including scope and application of the procedure, sample matrix, potential interferences, precision and accuracy of the methodology, and method detection limits;
- Calibration procedures and frequency;
- Data reduction, validation, and reporting;
- Internal quality control checks, laboratory performance and systems audits and frequency, including method blanks, laboratory control samples, calibration check samples, replicate samples, matrix-spiked samples, "blind" quality control samples, control charts, surrogate samples, zero and span gases, and reagent quality control checks;
- Preventive maintenance procedures and schedules;
- Corrective action for laboratory problems; and
- Turnaround time.

A performance audit may be conducted by EPA on the laboratories selected for sample analysis.

3.2 DATA MANAGEMENT PLAN

When sampling of excavated areas is required, the sample collection, parameter analysis, and data interpretation will follow the *Data Management Plan*, prepared as part of the EFI in

- Sampling location and sampling grid;
- Boundaries of sampling area and areas where more data are required;
- Levels of contamination at each sampling location;
- Geographical extent of contamination;
- Contamination levels, averages, and maxima;
- Changes in concentration in relation to distance from the source, time, depth, or other parameters; and
- Features affecting intramedia transport and potential receptors.

4.0 SMP DESIGN PROGRAM

This section outlines the requirements for the SMP Design Program to be implemented prior to the initiation of excavation activities at Area B, in other areas of the Facility where investigative and/or remedial activities have not been conducted or in areas where new releases of contaminants may have occurred.

4.1 DESIGN PLANS AND SPECIFICATIONS

When required by project scope, design plans and specifications may be developed and will include the following:

- Discussion of the design strategy and the design basis, including compliance with all applicable and relevant environmental and public health standards, minimization of environmental and public impacts, short and long term objectives, and methods to measure achievement of objectives;
- Discussion of the key technical factors, including the use of currently accepted environmental control measures and technology specific design features to meet short and long term objectives, the constructability of the design and proper management of any hazardous materials, and use of currently acceptable construction practices and techniques;
- Discussion of assumptions made and detailed justification of these assumptions;
- Detailed drawings of the proposed design, including qualitative flow sheets, quantitative flow sheets, facility layouts, and utility locations;
- Tables listing materials, equipment, and specifications;
- Tables giving material balances; and
- Appendices, including sample calculations, derivation of equations essential to understanding the report, and results of laboratory or field tests.

General correlation between drawings and technical specifications is a basic requirement of any set of working construction plans and specifications. Before submission, the drawings and specifications will be cross-checked.

4.2 OPERATION AND MAINTENANCE PLAN

When required by project scope, and Operation and Maintenance (O&M) Plan will be prepared to cover both implementation and long term maintenance of the interim measure(s). The O&M Plan, if required, will be submitted along with the Final Design Documents and will be composed of the following elements:

- Equipment start-up and operator training, including technical specifications governing treatment systems, contractor requirements for providing appropriate service, and appropriate training requirements;
- Description of normal operation and maintenance, including a description of tasks for operation, a description of tasks for maintenance, a description of prescribed treatment conditions, a schedule showing each O&M task, and common or anticipated remedies;
- Description of routine monitoring and laboratory testing, including a description of monitoring tasks, a description of required laboratory tests, any required Quality Assurance/Quality Control (QA/QC) samples, and the sampling schedule;
- Description of the equipment, including equipment identification, installation of monitoring components, maintenance of site equipment, and replacement schedule for equipment and monitoring components; and
- Records and reporting mechanism required, including daily operating logs, laboratory records, emergency reporting, personnel records, maintenance records, and monthly and annual reports to regulatory agencies.

4.3 PROJECT SCHEDULE

A detailed project schedule will be developed detailing construction and implementation of the interim measures(s) which identifies timing for initiation and completion of all critical activities. The schedule will identify dates for project completion and major and minor milestone dates. The project schedule will be submitted simultaneously with the Final Design Documents.

4.4 FINAL DESIGN DOCUMENTS

The Final Design Documents will consist of the Final Design Plans and Specifications (100% complete), the Final Draft Operation and Maintenance Plan, and the Project Schedule. The Final Design Documents will be of sufficient quality such that they may be included in a bid package and invite contractors to submit bids for the project.

5.0 CONSTRUCTION QUALITY ASSURANCE PLAN

This section outlines the requirements for the SMP Construction Quality Assurance (CQA) Plan to be implemented prior to the initiation of excavation activities at Area B, in other areas of the Facility where investigative and/or remedial activities have not been conducted, or in areas where new releases of contaminants may have occurred.

5.1 CONSTRUCTION QUALITY ASSURANCE OBJECTIVES

When required by project scope, the CQA Plan will identify and document the objectives and framework for the development of a construction quality assurance program including, but not limited to, the following:

- Responsibility and authority;
- Personnel qualifications;
- Inspection activities;
- Sampling requirements; and
- Proper documentation procedures.

The CQA Plan will also describe each party's responsibilities and authorities for project tasks. The CQA will identify a CQA officer and the necessary supporting inspection staff.

5.2 INSPECTION ACTIVITIES

The CQA Plan will summarize the observations and tests that will be used to monitor the construction and installation of the components of the interim measure(s). The plan will include the scope and frequency of each type of inspection. Inspections will verify compliance with all environmental requirements and include, but not be limited to, air quality and emissions monitoring records and waste disposal records (e.g. RCRA transportation manifests). The inspections will ensure compliance with all health and safety procedures.

5.3 SAMPLING REQUIREMENTS

The CQA will summarize the sampling and testing activities, sample size, sample locations, frequency, analytical methods, criteria, and potential corrective actions.

5.4 DOCUMENTATION

The CQA will describe the reporting requirements for all CQA activities. This will include daily summary reports, inspection data sheets, problem identification, SMP reports, design acceptance reports, and final documentation. Provisions for the final storage of all records shall also be presented in the CQA plan.

6.0 REPORTS

This section outlines the report requirements for the SMP including progress reports, the Draft SMP Workplan, Final SMP Workplan, Final Design Documents, the Draft SMP Report, and the Final SMP Report.

6.1 PROGRESS REPORTS

At least bimonthly, signed progress reports will be submitted to the USEPA and DNREC containing the following:

- A description and estimate of the percentage of the SMP completed;
- Summaries of all findings;
- Summaries of all changes made in the SMP during the reporting period;
- Summaries of all contacts with representatives of the local community, public interest groups, or state government during the reporting period;
- Summaries of all problems or potential problems encountered during the reporting period;
- Actions to be taken to rectify problems;
- Changes in personnel during the reporting period;
- Projected work for the next reporting period; and
- Copies of daily reports, inspection reports, laboratory/monitoring data, and other project documentation.

6.2 SMP DRAFT WORKPLAN

An Draft SMP Workplan will be prepared and submitted as described in Section 2.0. The Draft SMP Workplan will include a list of any other required submittals (e.g., Final Design Documents, CQA Plan, etc.) and a schedule for submitting them to the USEPA and DNREC.

6.3 SMP FINAL WORKPLAN

Upon receipt and incorporation of comments received on the Draft SMP Workplan, a Final SMP Workplan will be submitted to the USEPA and DNREC.

6.4 FINAL DESIGN DOCUMENTS

The Final Design Documents will be prepared and submitted as described in Section 4.4.

6.5 DRAFT SMP REPORT

At the completion of the project (except for long term operation, maintenance, and monitoring), a Draft SMP Report will be submitted to the USEPA and DNREC. The Draft SMP Report will document that the project is consistent with the design specification and that the SMP tasks were adequate. The Draft SMP Report will include, but not be limited to, the following elements:

- Synopsis of the SMP and certification of the design and construction;
- Explanation of any modifications to the plans and why these were necessary for the project;
- Listing of the criteria, established before the SMP tasks were initiated, for judging the functioning of the SMP and also for explaining any modifications to these criteria;
- Results of facility monitoring indicating that the SMP will meet or exceed the performance criteria; and
- Explanation of the O&M (including monitoring) to be undertaken at the facility.

The Draft SMP Report will include the inspection summary reports, inspection data sheets, problem identification and corrective reporting data sheets, design engineer's acceptance reports, deviations from design and material specifications (with justifying documentation), and as-built drawings.

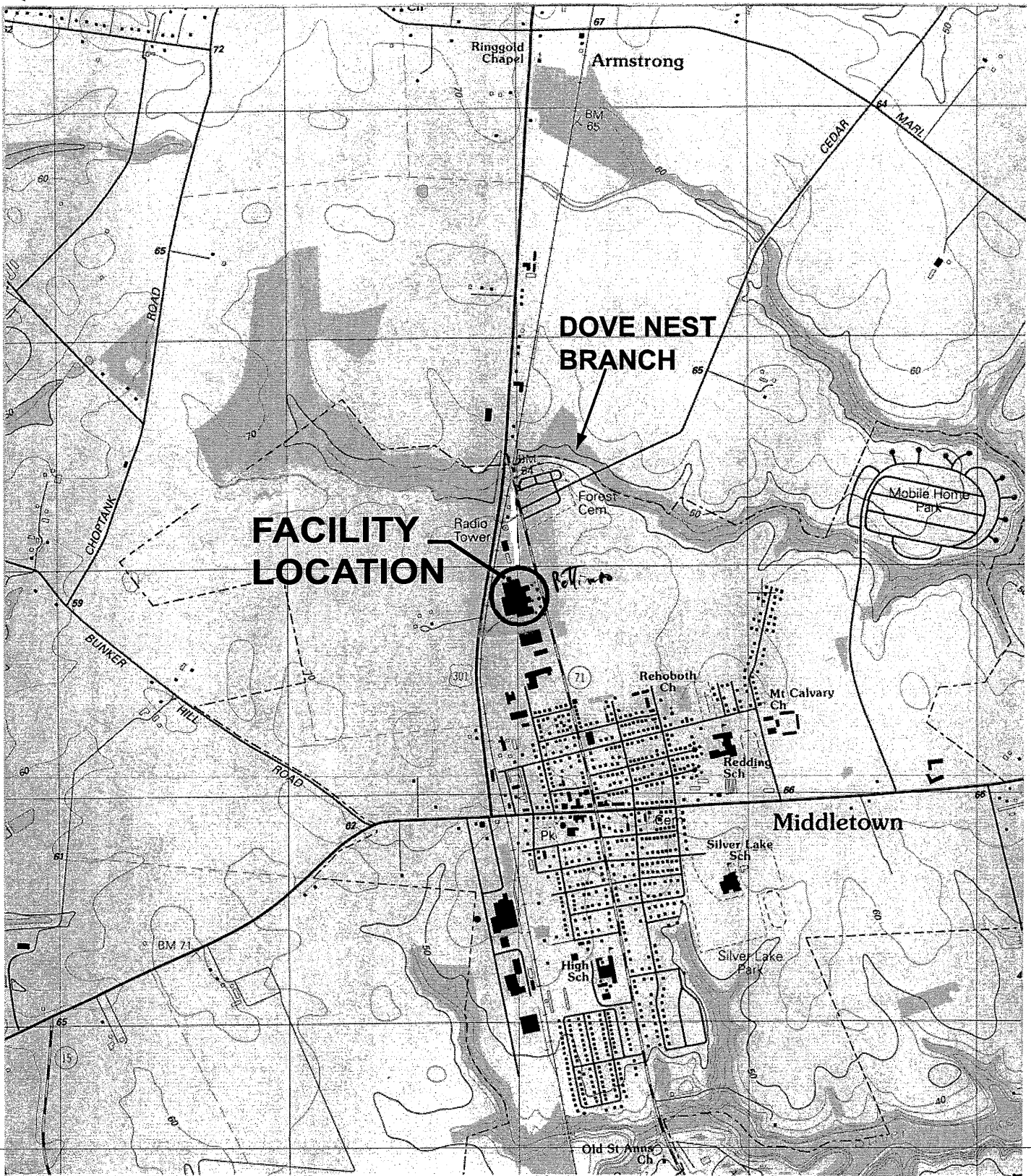
6.6 SMP FINAL WORKPLAN

Upon receipt and incorporation of comments received on the Draft SMP Report, a Final SMP Report will be submitted to the USEPA and DNREC within thirty days of receiving the comments.

7.0 REFERENCES

- James C. Anderson Associates, Inc., 1994. *Environmental Facility Investigation*. October 1994.
- James C. Anderson Associates, Inc., 1994. *Environmental Investigation Workplan*. December 1994.
- Montgomery Watson, 1997. *Environmental Investigation Report Addendum*. November 2000.

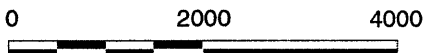
FIGURES



Source: Middletown, DE 7.5 minute U. S. G. S. Topographic Quadrangle Maps, Dated 1989 and edited 1993. Contour interval 10 feet.



SCALE IN FEET



**SOIL MANAGEMENT PLAN
JOHNSON CONTROLS BATTERY GROUP, INC.
MIDDLETOWN, DELAWARE**

SITE LOCATION MAP



MONTGOMERY WATSON

FIGURE 1-1

ATTACHMENT A
HEALTH AND SAFETY PLAN

HEALTH AND SAFETY PLAN

This section outlines the requirements for preparing and submitting a Health and Safety Plan (H&SP) prior to the initiation of excavation activities at Area B, in other areas of the Facility where investigative and/or remedial activities have not been conducted, or in areas where new releases of contaminants may have occurred.

The H&SP will include the following elements:

- Facility description, including the availability of resources such as roads, water supply, electricity, and telephone service;
- Description of the known hazards and evaluations of the risks associated with the incident and with each activity conducted, including on- and off-site exposure to contaminants;
- List of key personnel and alternatives responsible for site safety, response operations, and protection of public health;
- Delineation of the work area;
- Description of the levels of personal protective equipment (PPE) to be worn by personnel in the work area;
- Establishment of procedures to control site access;
- Description of decontamination procedures for personnel and equipment;
- Establishment of site emergency procedures;
- Emergency medical care for injuries and toxicological problems;
- Description of requirements for an environmental surveillance program;
- Routine and special training required for responders; and
- Establishment of procedures for protecting workers from weather-related problems.

The H&SP will be consistent with the following:

- National Institute of Occupational Safety and Health (NIOSH) Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1985);
- EPA Order 1440.2 – Health and Safety Requirements for Employees Engaged in Field Activities;
- EPA Order 1440.3 – Respiratory Protection;

- Facility Contingency Plan;
- EPA Standard Operating Safety Guide (1984);
- OSHA regulations, particularly in 29 CFR 1910 and 1926;
- State and local regulations; and
- Other USEPA guidance as provided.

The H&SP will be revised, as needed, to address any additions and/or changes in planned activities.

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- EPA Order 1440.3 – Respiratory Protection;

- Facility Contingency Plan;
- EPA Standard Operating Safety Guide (1984);
- OSHA regulations, particularly in 29 CFR 1910 and 1926;
- State and local regulations; and
- Other USEPA guidance as provided.

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EXHIBIT B

Tax Parcel Information



Parcel #: Deed Book/Page:

Street Number/Name:

Display Results

Parcel # 2300300009
 Incorporated in MIDDLETOWN PROPERTY TAX AREA

Property Address: 800 N BROAD ST
 MIDDLETOWN, DE 19709-

Subdivision: JOHNSON CONTROLS BAT

Owner: JOHNSON CONTROLS BATTERY GROUP

Owner Address: P O BOX 591
 MILWAUKEE, WI 53201

[View Map](#)
[Last 10](#)

Lot #:		Property Class:	INDUSTRIAL
Location:			
Map Grid:	07002883	Lot Size:	16.27
Block:		Lot Depth:	926.4
Census Tract:	166.01	Lot Frontage:	1000
Street Type:		Street Finish:	
Gas:		Electric:	
Water:			
Microfilm #:	011745		

District & Zoning Info

Districts	Zoning
APPOQUINIMINK SCHOOL DIST-TRES	M-1 - LIGHT MANUFACTURING
COUNCIL 6 - PATTY W POWELL	
TRAFFIC ZONE T295 (YR2000)	
FIRE/RESCUE - VOLUNTEER HOSE	
SOUTH OF C & D CANAL	
DE SEN 14-JAMES T VAUGHN	
DE REP 08-BETHANY A HALL-LONG	
PLANNING DISTRICT 7-ASMT	
SEWER DISTRICT SOUTHERN-ASMT	

Sales History

Deed	Cur. Owner?	Multi?	Sale Date	Sale Amount
	N	N	10/1/1979	10
	N	N	9/1/1980	10
P112 103	N	Y	9/2/1980	10
1123 149	Y	Y	12/20/1990	10

Tax/Assessment Info

Assessment	Exemption	Exmp. Amount
Land: 289200		
Structure: 4843500		
Homesite: 0		
Total: 5132700		
County Taxable: 5132700 School Taxable: 5132700		

Tax History as of 04-19-2006 08:26:07 P.M.

Printable

County				School			
Tax Year	Principal Due	Penalty Due	Last Paid Date	Amt Paid	Principal Due	Penalty Due	Last Paid Date
2002A	\$0.00	\$0.00	09/25/2002	-	\$0.00	\$0.00	09/25/2002
2003A	\$0.00	\$0.00	10/02/2003	\$10,409.12	\$0.00	\$0.00	10/02/2003
2004A	\$0.00	\$0.00	10/01/2004	-	\$0.00	\$0.00	09/30/2004
2005A	\$0.00	\$0.00	01/24/2006	\$10,409.12	\$0.00	\$0.00	01/24/2006
	\$0.00	\$0.00		-	\$0.00	\$0.00	
				\$10,409.12			
				-\$9,757.26			
				\$0.00			

County Balance Due: \$0.00

School Balance Due: \$0.00

Overpayment: \$0.00

These amounts are valid through the last day of the month. For accounts with delinquent balances, statutory penalty accrue on the first day of next month.

No Sewer Service

Commercial Property Characteristics

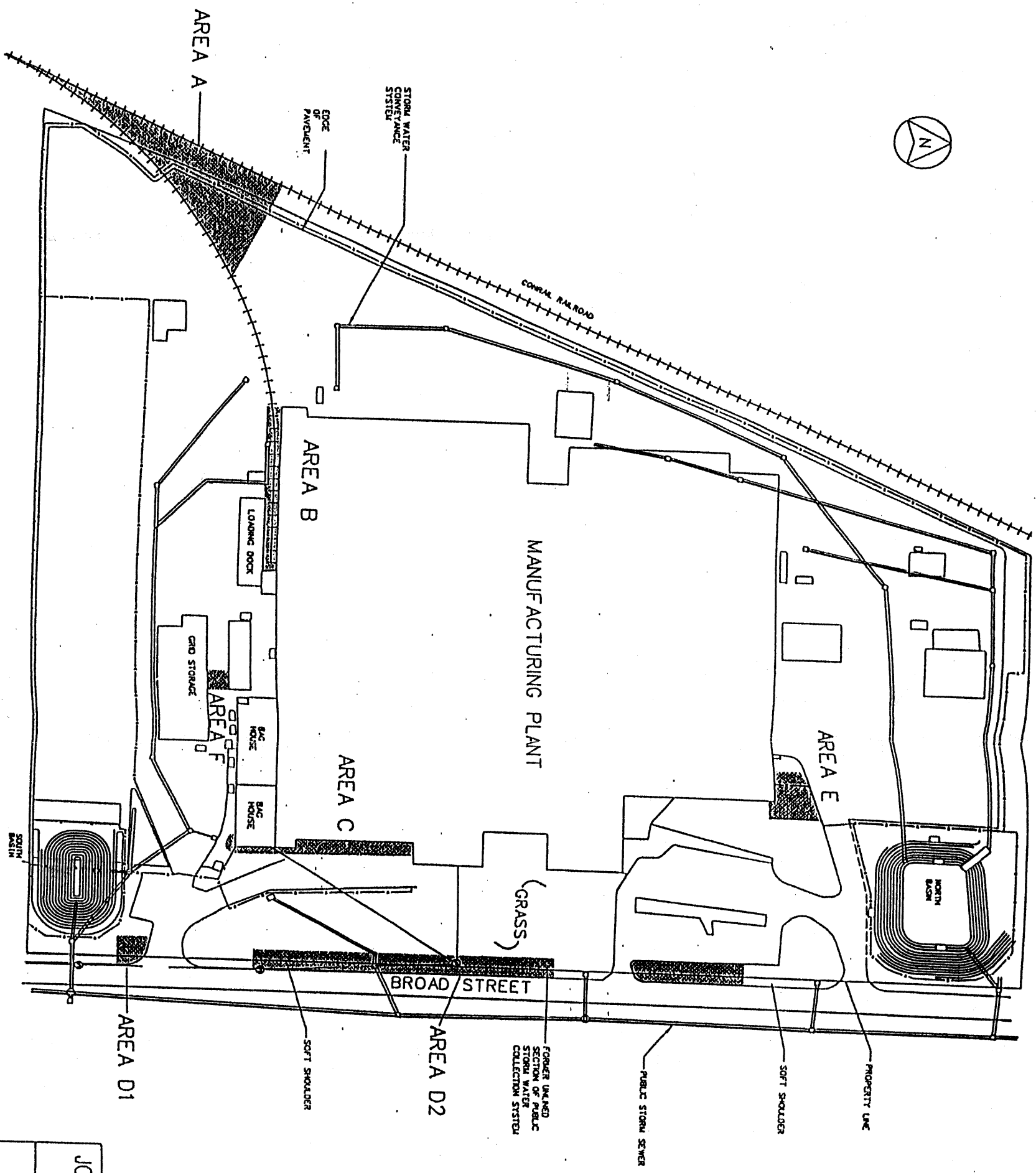
Building **Occupancy:** MFG AND **# Stories** 1 **Year Built** 19

01	Struc Class	PROCESSNEC MASONRY-WALL	Quality	AVERAGE	Condition	A
	Floor Level	FIRST	Grnd Fl Area	3000	Total Flr Area	30
	Ext Wall Type	CONCRETE-BL	Wall Height	14	Perimeter	22
	AC %	0	Heat %	90	Rentable Units	1
	Bsmt %	0	Bsmt Util	NO BSMT		
	Year Renov	0	Renov Rtnng	NONE	Eff. Yr Built	19

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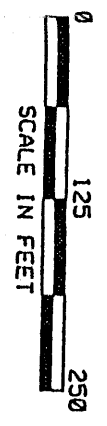
©Copyright 2001-2003, New Castle County, Delaware
 You are visitor number





LEGEND

- FENCE
 - Ⓢ SANITARY SEWER SYSTEM
 - REMEDIATION AREA
- Do Not dig*



JOHNSON CONTROLS BATTERY GROUP, INC.
MIDDLETOWN, DELAWARE

Remediation Areas



FIGURE 1-2