SDMS DocID 2127017

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

ORIGINAL

NOV 18 2009

INFORMATION REQUEST
URGENT LEGAL MATTER: PROMPT REPLY REQUIRED
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gibson Industrial, Inc.
(Capital City Iron Works Inc.)
2804 Walmsley Blvd.
Richmond, VA 23234-3135

Re: Peck Iron and Metal Site
Portsmouth, Virginia

Dear Sir or Madam:

EPA has obtained information which suggests that Capital City Iron Works Inc. arranged for the disposal of scrap materials which may have contained hazardous substances, pollutants and/or contaminants at the Peck Iron and Metal Site at 3850 Elm Avenue in Portsmouth, Virginia (the "Site").

Pursuant to the authority of Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §9604(e), EPA has the authority to require your company to furnish all information and documents in its possession, custody or control, or in the possession, custody or control of any of your company's employees or agents, which concern, refer, or relate to hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14), pollutants and/or contaminants as defined by Section 101(33) of CERCLA, 42 U.S.C. §9601(33), which were transported to, stored, treated, or disposed of at the Peck Iron and Metal Site.

Section 104(e) of CERCLA authorizes EPA to pursue penalties for failure to comply with that section or for failure to respond adequately to required submissions of information. In addition, providing false, fictitious, or fraudulent statements or representations may subject your company to criminal penalties under 18 U.S.C. §1001. The information your company provide may be used by EPA in administrative, civil, or criminal proceedings.

Instructions for responding to this required submission of information are provided below.

INSTRUCTIONS

1. Your company is entitled to assert a claim of business confidentiality covering any part or all of the information you submit. If you desire to assert a claim of business confidentiality, please see Enclosure 1, Business Confidentiality Claims/Disclosure to EPA Contractors & Grantees of Your Response. You must clearly mark such information by either stamping or using any other form of notice that such information is trade secret, proprietary, or company confidential. To best ensure that your intent is clear, we recommend that you mark as confidential each page containing such claimed information.

2. Please provide a separate, detailed narrative response to each question, and to each subpart of a question, set forth in this Information Request. If you fail to provide a detailed response, EPA may deem your response to be insufficient and thus a failure to comply with this Information Request, which may subject your company to penalties.

3. Precede each response with the number of the question or subpart of the question to which it corresponds. For each document or group of documents produced in response to this Information Request, indicate the number of the specific question(s) or subpart of the question(s) to which it responds.

4. Should you find at any time after submission of your response that any portion of the submitted information is false, misrepresents the truth or is incomplete, you must notify EPA of this fact and provide EPA with a corrected written response.

5. Any terms that are used in this Information Request and/or its Enclosures that are defined in CERCLA shall have the meaning set forth in CERCLA. Definitions of several such terms are set forth in Enclosure 1, *Definitions*, for your convenience. Also, several additional terms not defined in CERCLA are defined in Enclosure 1. Those terms shall have the meaning set forth in Enclosure 1 any time such terms are used in this Information Request and/or its Enclosures.

DEFINITIONS

Please use the following definitions in interpreting the questions and requests for documents in this Information Request:

1. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

2. The term "any," as in "any documents" for example, shall mean "any and all."

3. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft,

canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, telecopy, telefax, report, notice, message, analysis, comparison, graph, chart, map, interoffice or intra-office communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any computer disk, any information stored on a computer hard drive or memory tape or other type of memory generally associated with computers and data processing; and (a) every copy of each document which is not an exact duplicate of a document which is produced, (b) every copy which has any writing, figure or notation, annotation or the like on it, (c) drafts, (d) attachments to or enclosures with any document and (e) every document referred to in any other document.

4. The term "hazardous material" shall mean any hazardous substances, pollutants or contaminants, and hazardous wastes, as defined below.

5. The term "hazardous substance" shall have the same definition as that contained in Subsection 101 (14) of CERCLA, 42 U.S.C. § 9601 (14), and includes any mixtures of such hazardous substances with any other substances. The hazardous substances are listed at 40 C.F.R. § 302.4.

6. The term "hazardous waste" shall have the same definition as that contained in Subsection 1004 (5) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6903(5), and 40 C.F.R. Part 261.

7. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business and personal addresses and telephone numbers, and present or last known job title, position or business.

8. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including, but not limited to, a sole proprietorship), to set forth its full name, address, and legal form (e.g., corporation (including state of incorporation), partnership, etc.), organization, if any, a brief description of its business, and to indicate whether or not it is still in existence and, if it is no longer in existence, to explain how its existence was terminated and to indicate the date on which it ceased to exist.

9. The term "identify" means, with respect to a document, to provide the type of document, to provide its customary business description, its date, its number, if any (e.g., invoice or purchase order number), subject matter, the identity of the author, addressor, addressee and/or recipient, and the present location of such document.

10. The term "identify" means, with respect to a piece of real property or property interest, to provide the legal description which appears in the county property records office, or in the equivalent office which records real property transactions for the area which includes the real property in question.

11. The terms "includes," or "including" shall not be construed as words of limitation; that is, they shall be construed such that the phrases "without limitation" or "but not limited to" are implied, unless such phrases are already in place. For example, "including x, y, and z" would be construed as "including without limitation x, y, and z" or as "including, but not limited to, x, y and z," but the phrase "including without limitation x, y and z" would be construed as it reads.

12. The terms "the company" or "your company" refer not only to the addressee of this letter as it is currently named and constituted, but also to all predecessors and successors in interest of the addressee, and all subsidiaries, divisions, affiliates, and branches of the addressee and its predecessors and successors.

13. The term "Peck Iron and Metal Co." shall mean the corporation known as Peck Iron and Metal Co., Inc., as well as Peck Recycling, and any other company controlled by Julius S. Peck, B. David Peck or Aaron Peck and operating at the Site.

14. The term "person" shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of a state, or any interstate body. See Subsection 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).

15. The term "pollutant or contaminant," shall have the same definition as that contained in Subsection 101 (33) of CERCLA, 42 U.S.C. § 9601 (33), and includes any mixtures of such pollutants and contaminants with any other substances.

16. The term "property interest" means any interest in property including but not limited to, any ownership interest, an easement, a deed, a lease, a mining claim, any interest in the rental of property, any interest in a corporation that owns or rents or owned or rented property, and any interest as either the trustee or beneficiary of a trust that owns or rents, or owned or rented property.

17. The term "recyclable material" has the same definition as contained in 42 U.S.C. § 9627, and means scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid, spent nickel-cadmium, and other spent batteries, as well as minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use prior to becoming scrap; except that such term shall not include: 1) shipping containers of a capacity from 30 liters to 3,000 liters, whether intact or not, having any hazardous substance (but not metal bits and pieces or hazardous substance that form an integral part of the container) contained in or adhering thereto; or 2) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard promulgated pursuant to applicable Federal laws.

18. The term "release" has the same definition as that contained in Subsection 101 (22) of CERCLA, 42 U.S.C. § 9601 (22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.

19. The term "scrap metal" shall have the same definition contained in 42 U.S.C. § 9627 and shall mean bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled, except for scrap metals that the EPA Administrator excludes from this definition by regulation.

20. The terms "Site" shall mean the Peck Iron and Metal Co. facility located at 3850 Elm Avenue in Portsmouth, Virginia. The Site shall include, without limitation, the surface of the property, the subsurface, and the groundwater. The borders of the Site are depicted on the enclosed map (Exhibit 3).

21. Words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions as necessary to bring within the scope of these Information Requests any information which might otherwise be construed to be outside its scope.

22. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, or 40 C.F.R. Part 300, in which case the statutory or regulatory definitions shall apply.

INFORMATION REQUESTS

For the following questions which relate to transactions involving scrap metals, or other scrap materials, provide the requested information, and also provide copies of any documents that contain any information that is related to the response for the time period of 1945 through 1997:

1. List all shipments of scrap materials, including scrap metal, which you have sent to the Site. Include the date for each transaction, the type and quantity of scrap metal sent, the amount paid or collected in connection with each transaction, the method of payment, and identity of the person making or receiving payment.

2. For each shipment of scrap material identified in response to Question 1 above, identify:

   a. the source of the scrap material;

   b. the prior use of the scrap material;

   c. whether the scrap material was a collection of homogenous materials;

d. whether the scrap material was tested for any hazardous substances prior to shipment to Peck Iron and Metal Co.

3. At the time of the transaction(s) involving scrap materials listed in your response to Question 1, what was the intended disposition of the scrap materials at the Site?

4. Did a market exist for the scrap metal listed in your response to Question 1, above? If so, describe the nature of such market at the time of the transaction (possible uses, possible consumers, etc.) and the source of that commercial specification grade (e.g., ISRI, Department of Defense, or wherever you would find the grade published).

5. What commercial specification grade did the scrap metal listed in your response to Question 1 meet? Identify/list the commercial specification grades that each scrap metal identified in 1 met.

6. After sale, transfer, delivery, or disposal, what portion of the scrap metal listed in your response to Question 1 was to be made available for use as a feedstock for the manufacturing of new saleable products? Explain how the portion identified in this answer was derived or calculated.

7. Could the scrap metal listed in your response to Question 1 have been used as a replacement or substitute for a virgin raw material? If so, provide details.

8. Could any products to be made from the scrap metal listed in your response to Question 1 have been used as a replacement or substitute for a product made, in whole or in part, from a virgin raw material? If so, provide details.

9. Did you process any of the scrap materials sent to Peck Iron and Metal Co. prior to transport and delivery to the Site? If yes, describe the process used and the purpose for subjecting the scrap material to the process.

10. Was the transaction between you and Peck Iron and Metal Co.: 1) an outright sale; 2) the subject of a written or verbal "tolling" agreement between the companies; or 3) the "banking" of the transacted material in a metal account at your request for return or other disposition at a later date.

11. Did you have a basis for believing that the scrap materials listed in your response to Question 1 would be recycled? If not, what was that basis? Provide supporting documentation.

12. Describe all efforts (i.e., site visits) taken by you to determine what would be done with the scrap materials identified in your response to Question 1 that may have been sold, transferred, or delivered to Peck Iron and Metal Co. at the Site.

13. What steps (e.g., internal procedures, Federal, state, and local compliance inquiries) were taken by you to ensure that Peck Iron and Metal Co., the recipient of the scrap materials listed in your response to Question 1, was in compliance with applicable Federal environmental regulations or standards, and any amendments, with respect to the scrap materials it received from you?

14. Did you have any basis for believing that the Peck Iron and Metal Co. facility at the Site was in compliance with substantive provisions of any Federal, state, or local environmental laws or regulations, or compliance order or decree applicable to the handling, processing, reclaiming, storage, or other management activities associated with the scrap materials listed in your response to Question 1? If so, identify that basis and provide supporting documentation.

15. Describe the efforts you undertook with respect to the management and handling of the scrap materials listed in your response to Question 1, including the extent to which they complied with customary industry practices current at the time of the transaction designed to minimize contamination of the scrap materials by hazardous substances.

16. Provide all information in your possession that shows that you were in compliance with applicable Federal environmental regulations or standards regarding the storage, transport, management, or other activities associated with the scrap materials listed in your response to Question 1.

17. Identify the person(s) answering these questions and requests for copies of documents on behalf of your company.

18. For each Request, identify all persons consulted in the preparation of the answer.

19. For each Request, identify all documents consulted, examined, or referred to in the preparation of the answer or that contain information responsive to the Request and provide true and accurate copies of all such documents.

20. Describe in detail any agreement/contract your company has had with Peck Iron and Metal Company. In addition, identify any other company operating at the Site and describe in detail any arrangements you have had with each such company, if any, including the time period of your involvement with such company.

21. Provide all business records pertaining to your company and Peck Iron and Metal Company, or any other company operating at the Site, including:

    a. Copies of correspondence to and from these companies, including letters and memoranda (both internal and external);

b. Copies of invoices, manifests, bills-of-lading, purchase orders, tickets, and any other documents pertaining to shipping, receiving, and transporting scrap materials; and

c. Copies of all business records pertaining to sale, transfer, delivery, or disposal, of any hazardous substances, scrap materials, and/or recyclable materials to the Site.

d. If you are unable to provide any or all of these documents, explain why, and what you did to find them.

22. If you have reason to believe that someone could provide a more detailed or complete response to any of these questions or requests for copies of documents, or if you have reason to believe that there could be someone who may be able to provide additional documents that would be responsive to these questions and requests for copies of documents, identify such person(s), identify the additional documents that they may have, and describe any information related to these questions that they may have.

23. Provide details, including dates and materials involved, of all on-site spills or releases of hazardous materials of which you have knowledge and that occurred during the processing of scrap materials containing hazardous substances at the Site.

24. To the extent not identified in Question 1, identify all transactions or agreements for disposal in which your company gave, sold, or transferred any material or item, scrap materials, waste materials, pollutant, or contaminant, including copper- bearing material and ash, to the Site. In addition:

a. State the dates on which each such person may have given, sold, transferred, or delivered such material.

b. Describe the materials or items that may have been given, sold, transferred, or delivered, including the type of material, chemical content, physical state, quantity by volume and weight, and other characteristics.

c. Describe the nature, including the chemical content, characteristics, physical state (e.g., solid, liquid) and quantity (volume and weight) of all hazardous substances involved in each such arrangement.

d. State whether any of the hazardous substances identified in subpart c. above exhibit any of the characteristics of a hazardous waste identified in 40 C.F.R. Section 261, Subpart C.

25. What other materials, if any, did you send to the Site (items/materials not covered in Question 24 above)?

a. Describe the purpose of each sale, transfer, or delivery of materials to the Site.

26. Describe what was done to materials indicated in your response to Questions 24 and 25 above once they were brought to the Site including any further processing of the materials.

27. Identify the person(s) who sold, transferred, delivered, and selected the Site as the location at which scrap materials from your company were to be disposed or treated.

    a. Identify all documents mentioning these arrangements for disposal.

    b. Describe all efforts (i.e., site visits) taken by the person(s) identified in your response to determine what would be done with the materials that may have been sold, transferred, or delivered after such materials had been sold, transferred, or delivered to the Site.

28. For each sale, transfer, or delivery of materials to the Site, had any hazardous substances been added to the materials described in your response to Questions 24 and 25 above? If so, identify the hazardous substance added and the person responsible for adding such hazardous substance.

    a. Why were these hazardous substances added to the materials?

    b. Describe the source of or the process that produced the materials described in your response to Questions 24 and 25 above.

29. Identify all individuals who currently have, or who previously had, responsibility for your environmental matters (e.g., responsibility for the disposal, treatment, storage, recycling, or sale of your company's wastes, scrap materials and/or recyclable materials). Hereafter, these individuals are referred to as environmental caretakers. For each environmental caretaker, indicate the dates of the individual's employment or contractual obligation (i.e., the dates indicating the length of the individual's tenure[s]), the nature of the individual's duties and responsibilities, and a description of the type of environmental information that the individual would know.

For each and every question contained herein, if information or documents responsive to this Information Request are not in your possession, custody or control, then provide the names, titles, areas of responsibility, current addresses and telephone numbers of the persons from whom such information or documents may be obtained.

If you have any information about other parties who may have information which may assist the Agency in its investigation of the Site or who may be responsible for the generation of scrap materials sent to the Site, the transportation of scrap materials to the Site, or the release of contaminants at the Site, please provide such information. The information you provide in response to this Request should include each party's name, address, type of business and the reasons why you believe the party may have contributed to the contamination at the Site or may have information regarding the Site.

You must respond in writing to this required submission of information within **thirty (30) calendar days** of your receipt of this letter.

If, for any reason, you do not provide all information responsive to this letter, your answer to EPA must: (1) describe specifically what was not provided, and (2) provide EPA an appropriate reason why the information was not provided.

All documents and information should be sent to:

Joan Martin Banks (3HS62)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

This required submission of information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3501, et seq.

If you have any questions concerning the PRP investigation, please contact Civil Investigator Joan Martin Banks at (215) 814-3156. If you have any legal questions, please contact Assistant Regional Counsel James Van Orden, of EPA's Office of Regional Counsel, at (215) 814-2693.

Sincerely,

Joanne Marinelli, Chief
Cost Recovery Branch

Enclosures:

1. Business Confidentiality Claims/Disclosure of Your Response to EPA Contractors and Grantees
2. List of Contractors That May Review Your Response
3. Site Location Map

cc: James Van Orden, Esq., (3RC42)
Laura Johnson, RPM, (3HS23)
Erica Dameron, VA DEQ

Enclosure 1

Business Confidentiality Claims

You are entitled to assert a claim of business confidentiality covering any part or all of the submitted information, in the manner described in 40 C.F.R. Section 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If a claim of business confidentiality is not asserted when the information is submitted to EPA, EPA may make this information available to the public without further notice to you. You must clearly mark such claimed information by either stamping or using any other such form of notice that such information is a trade secret, proprietary, or company confidential. To best ensure that your intent is clear, we recommend that you mark as confidential each page containing such claimed information.

Disclosure Of Your Response to EPA Contractors and Grantees

EPA may contract with one or more independent contracting firms (See Enclosure 3) to review the documentation, including documents which you claim are confidential business information ("CBI"), which you submit in response to this information request, depending on available agency resources. Additionally, EPA may provide access to this information to (an) individual(s) working under (a) cooperative agreement(s) under the Senior Environmental Employment Program (SEE Enrollees). The SEE program was authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98-313). The contractor(s) and/or SEE Enrollee(s) will be filing, organizing, analyzing and/or summarizing the information for EPA personnel. The contractors have signed a contract with EPA that contains a confidentiality clause with respect to CBI that they handle for EPA. The SEE Enrollee(s) is working under a cooperative agreement that contains a provision concerning the treatment and safeguarding of CBI. The individual SEE enrollee has also signed a confidentiality agreement regarding treatment of CBI. Pursuant to CERCLA, 42 U.S.C. Section 9604(e)(7) and EPA's regulations at 40 C.F.R. Section 2.310(h), EPA may share such CBI with EPA's authorized representatives which include contractors and cooperators under the Environmental Programs Assistance Act of 1984. (See 58 Fed.Reg. 7187 (1993)). If you have any objection to disclosure by EPA of documents which you claim are CBI to any or all of the entities listed in Enclosure 3, you must notify EPA in writing at the time you submit such documents.

Enclosure 2

[rev. **06/2009**]

List of Contractors That May Review Your Response

Arctic Slope Regional Corporation
Contract # EP-W-05-052
Subcontractor: Booz-Allen & Hamilton

Booz-Allen & Hamilton
Contract # GS-35F-0306J (GSA Schedule)

CDM-Federal Programs Corporation
Contract # EP-S3-07-06
Subcontractors: L. Robert Kimball & Associates Inc.
Page Technologies Inc.
Avatar Environmental LLC
Terradon Corporation

Chenega Global Services, LLC
Contract #EP-S3-09-02

EA Engineering, Science and Technology, Inc.
Contract #EP-S3-07-07
Subcontractor: URS

Eisenstein Malanchuck, LLP
Contract #EP-W-06-014
Subcontractors: R. M. Fields International, LLC
James C. Hermann & Associated
MacRae & Company, Inc.

Guardian Environmental Services
Contract # EP-S3-07-02
Subcontractor: Aerotech, Inc.

Hydrogeologic (HGL)
Contract #EP-S3-07-05
Subcontractor: CH2MHill

Kemron
Contract # EP-S3-07-03
Subcontractor: Clean Venture/Cycle Chem Inc.
CMC Inc.
Los Alamos Technical Associates, Inc.
Carlucci Construction

Tetra Tech EM, Inc.
Contract #EP-S3-05-02

Tech Law, Inc.
Contract #EP-S3-05-03

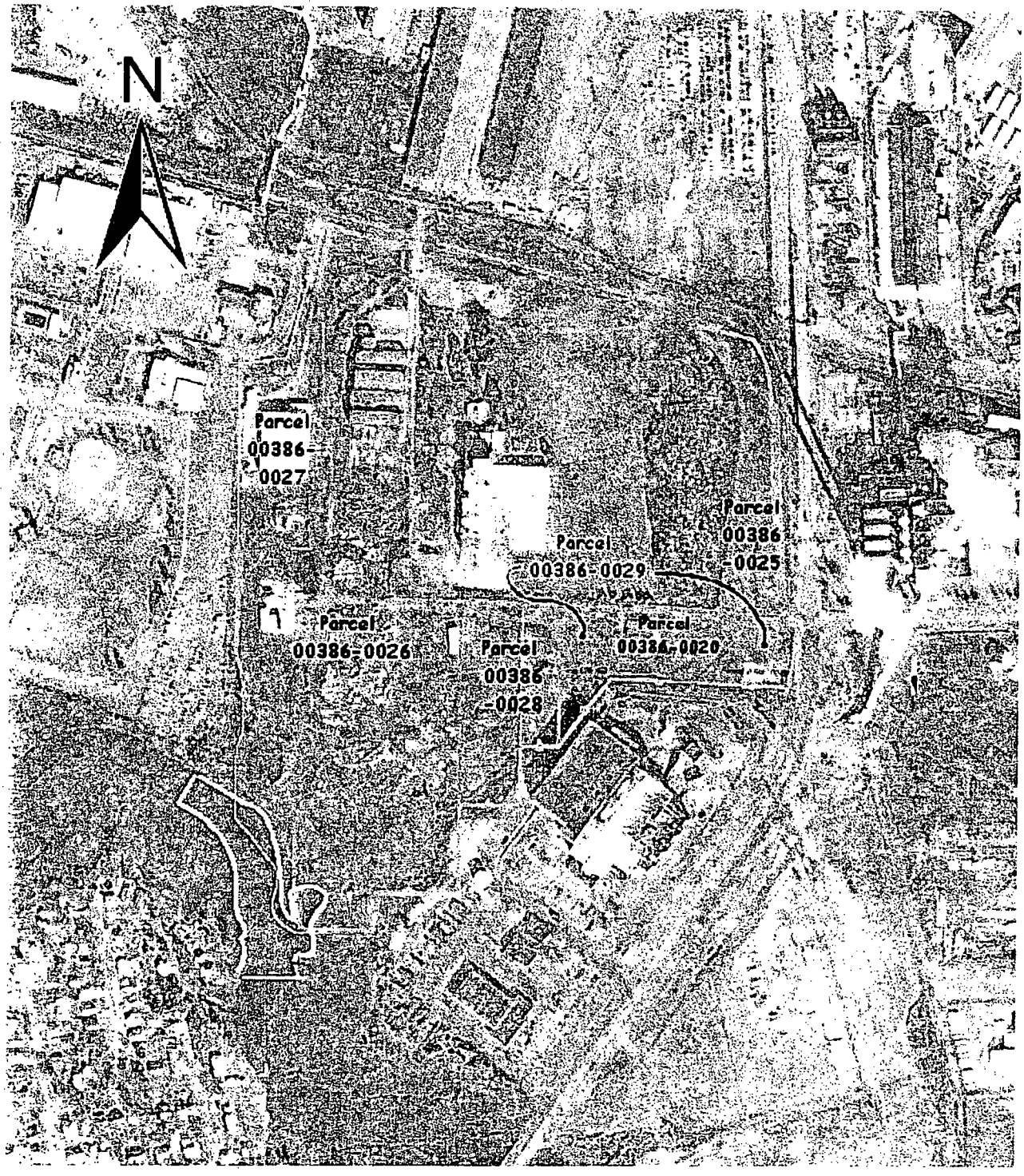
Tetra Tech NUS, Inc.
Contract #EP-S3-07-04

WRS Infrastructure & Environment, Inc.
Contracts # EP-S3-07-01 and #EP-S3-07-09
Subcontractors: AEG Environmental
Environmental Staffing
Veolia Environmental Services
Lewis Environmental Group

Cooperative Agreements

National Association of Hispanic Elderly
#CQ-832815

Peck Iron and Metal Site
Enclosure 3



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- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "*Return Receipt* Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.