5-12-06
Donna / Arvin - FYI R02811
re: Site clean up
at Sherwin Williams.
SH.

Department of Toxic Substances Control

Dan Skopec
Acting Secretary
Cal/EPA

Maureen F. Gorsen, Director
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2721

Arnold Schwarzenegger
Governor

May 10, 2006

Alameda County
MAY 11 2006
Environmental Health

2006 MAY 11 PM 12:49

VIA CERTIFIED MAIL

Larry Mencin
The Sherwin-Williams Company
101 Prospect
Cleveland, OH 44115

Dear Mr. Mencin:

The Department of Toxic Substances Control (DTSC) has issued the enclosed Imminent or Substantial Endangerment Determination and Order and Remedial Action Order to your company as a party responsible for cleaning up a release of hazardous substances at the Sherwin-Williams Site located at 1450 Sherwin Street in Emeryville, Alameda County, California.

Please note that your company may be liable for substantial penalties and punitive damages if it does not comply with the Order. Your company may also be subject to Security Exchange Commission (SEC) reporting requirements as a responsible party to whom an Imminent or Substantial Endangerment Determination and Order and Remedial Action Order has been issued.

This Site may be listed pursuant to Health and Safety Code section 25356. Pursuant to Section 25355(d), the DTSC is required to notify the owners of the site property by certified mail within 30 days after listing a site pursuant to Section 25356, and at least 30 days before initiating a removal or remedial action. Notification is not required for actions taken pursuant to Section 25358.3(b), or immediate corrective actions taken pursuant to Section 25354.

Pursuant to Section 6.1 of the Order, your company is required to notify DTSC in writing with the name, address, and telephone number of your Project Coordinator within ten days of the effective date of this Imminent or Substantial Endangerment Determination and Order and Remedial Action Order. Respondent(s) failure to notify DTSC pursuant to Section 6.1 will be construed as non-compliance with this Order.

If you wish to discuss the Order, please contact Janet Naito at (510) 540-3833 or jnaito@dtsc.ca.gov.

Sincerely,

Barbara J. Cook, P.E., Chief
Northern California
Coastal Cleanup Operations Branch

Enclosure

Certified Mail No. 7004 2510 0002 5269 4898 (Return Receipt Requested)

cc: Mr. Mark Johnson
San Francisco Bay Region
Regional Water Quality Control Board
1515 Clay St. Suite 1400
Oakland, California 94612

Mr. Michael Berg
Chiron Corporation
4560 Horton Street
Emeryville, California 94608

Mr. Robert Cave
BAAQMD
939 Ellis Street
San Francisco, California 94109

Mr. Ignacio Dayrit
City of Emeryville Redevelopment Agency
1333 Park Avenue
Emeryville, California 94608

Mr. Paul Germain
45th Street Artists' Cooperative
1420 45th Street
Emeryville, California 94608

cc: Ms. Jody Sparks
Toxics Assessment Group
P.O. Box 186
Stewarts Point, California 95480

Ms. Susan Hugo
Alameda County Health Agency
Department of Environmental Health
1131 Harbor Bay Parkway, 2nd floor
Alameda, California 94502

Ms. Carol Campagna
Shell Oil Company
5055 Business Center Drive Suite 108 - 357
Fairfield, California 94534-1668

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket No. IS/E 05/06-007
	)	
The Sherwin-Williams Company	)	
1450 Sherwin Street	)	IMMINENT AND SUBSTANTIAL
Emeryville, Alameda County	)	ENDANGERMENT
	)	DETERMINATION AND ORDER
Respondent:	)	AND REMEDIAL ACTION ORDER
	)	
The Sherwin-Williams Company	)	Health and Safety Code
101 Prospect Avenue NW	)	Sections 25355.5(a)(1)(B),
Cleveland, OH 44115	)	25358.3(a), 58009 and 58010
	)	

I. INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) issues this Imminent and Substantial Endangerment Determination and Order and Remedial Action Order (Order) to The Sherwin-Williams Company, an Ohio corporation conducting business in California (referred to as the "Respondent").

1.2 Property/Site. This Order applies to the property located at 1450 Sherwin Street, Emeryville, Alameda County, California, 94608 and a portion of the adjacent former Rifkin property, now owned by Chiron Properties Inc., located at 4525-4563 Horton Street, Emeryville, Alameda County, California, 94608. The property consists of approximately 10 acres and is identified by Assessor's Parcel numbers 049-1041-006-00, 049-1041-026-02, 049-1041-026-06, 049-1041-026-07, 049-1041-026-04 and 049-1041-005-00. A site location map showing the property is attached as Exhibit A. This Order applies to the Sherwin-Williams property, a portion of the former Rifkin property to which hazardous substances have migrated from the Sherwin-Williams property, and the areal extent of the groundwater plume emanating from the Sherwin-Williams property (hereinafter collectively referred to as the "Site).

1.3 Jurisdiction. This Order is issued by DTSC to Respondent pursuant to its authority under Health and Safety Code sections 25358.3(a), 25355.5(a)(1)(B), 58009 and 58010.

Health and Safety Code section 25358.3(a) authorizes DTSC to take various actions, including issuance of an Imminent or Substantial Endangerment Determination and Order, when DTSC determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance.

Health and Safety Code section 25355.5(a)(1)(B) authorizes DTSC to issue an order establishing a schedule for removing or remedying a release of a hazardous substance at a site, or for correcting the conditions that threaten the release of a hazardous substance. The order may include, but is not limited to requiring specific dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan prepared and submitted to DTSC for approval, and a removal or remedial action completed.

Health and Safety Code section 58009 authorizes DTSC to commence and maintain all proper and necessary actions and proceedings to enforce its rules and regulations; to enjoin and abate nuisances related to matters within its jurisdiction which are dangerous to health; to compel the performance of any act specifically enjoined upon any person, officer, or board, by any law of this state relating to matters within its jurisdiction; and/or on matters within its jurisdiction, to protect and preserve the public health.

Health and Safety Code section 58010 authorizes DTSC to abate public nuisances related to matters within its jurisdiction.

II. FINDINGS OF FACT

DTSC hereby finds:

2.1 Liability of Respondent. Respondent is a responsible party or liable person as defined in Health and Safety Code section 25323.5. The Sherwin-Williams Company is named as a Respondent because it owned the property and operated the Sherwin-Williams plant at the time of the release of hazardous substances therein and currently owns the property.

2.2 Physical Description of Site. The Sherwin-Williams property is located at 1450 Sherwin Street in Emeryville, California approximately 2000 feet from San Francisco Bay and comprises approximately 10 acres. The Sherwin-Williams property is bounded by Horton Street to the east, the former Rifkin property and Temescal Creek to the north, Sherwin Street to the south and railroad tracks to the west. The Site is currently defined as the Sherwin-Williams' property located at 1450 Sherwin Street, a portion of the adjacent former Rifkin property located at 4525-4563 Horton Street, to which hazardous substances have migrated from the Sherwin-Williams property, and the areal extent of the groundwater plume emanating from the Sherwin-Williams property. The boundaries of the Site may be modified in the future based on the extent of hazardous substances defined during additional investigations. The Sherwin-Williams property is currently covered by 11 buildings and asphalt and concrete paved areas. The former Rifkin property is currently covered by an asphalt-covered parking lot. The area is mixed use, with residential, commercial, and industrial properties.

2.3 Site History.

2.3.1 The Sherwin-Williams Company owns and operates a coatings manufacturing plant onsite. The plant has been in operation since the early 1900s, manufacturing various types of coating products. Sherwin-Williams Company also produced lead-arsenate pesticides at the plant from approximately the 1920s until the late 1940s. Sherwin-Williams' plant included an acid plant, oil tank storage facility, solvent tank storage facilities,

alkyd resin manufacturing facility and a lacquer manufacturing facility. In 1987, Sherwin-Williams Company changed its manufacturing at the plant from oil-based paint production to water-based products. The plant currently is used for latex paint manufacturing, packaging, storage of raw materials and paint products, and laboratory space.

2.3.2 The former Rifkin property, was originally part of the larger area of the Oakland Trotting Park and later California Jockey Club Race Track until approximately 1915. It is uncertain what types of businesses operated on this property from 1915 to approximately 1928. During 1928 to 1937, one portion of the property was occupied by Rotary Oil and the other portion was occupied by Rheem Manufacturing, and then owned by the Chubbucks. Both of these portions were combined and transferred to the California Container Corporation in 1937, which produced corrugated shipping containers and boxes. A Sherwin-Williams map, with a date of 1938, indicates that an East Bay Chemical Company was present on the Rifkin property. In 1958, the Container Corporation of America took control of California Container Corporation and the property. The Concora Corporation owned and operated on the property between 1969 and 1978. Rifkin Investments purchased the property in 1978 and rented portions of building space to various small businesses including a small furniture refinisher, a silkscreen company, an automobile body and paint shop, and a foreign auto repair shop. The Chiron Corporation acquired the property in 1996. NOVAD (formerly known as Chiron Corporation) is the current owner of the Rifkin property.

2.3.3 On June 24, 1997, Sherwin-Williams Company submitted a Request to the California Environmental Protection Agency (Cal/EPA) for designation of administering agency seeking the appointment of the San Francisco Bay Region, Regional Water Quality Control Board (SFRWQCB) as the administering agency for the Site pursuant to California Health and Safety Code section 25260 et seq. In Cal/EPA Resolution 97-12, dated July 31, 1997, Sherwin-Williams Company's request was granted. Contained in this Resolution was a requirement for a Consultative Workgroup. The SFRWQCB formed such a workgroup which includes representatives of regulatory support agencies, the City of Emeryville, adjacent property owners and the community.

2.3.4 Pursuant to Cleanup and Abatement Order No. 97-047, in mid-June 1997, Sherwin-Williams Company excavated and removed arsenic impacted soil identified along Horton Street, 45th Street, Sherwin Avenue and an adjacent residential property. The removal, including replacement of sidewalks was completed by the end of September 1997 and approved by the SFRWQCB, DTSC and the City of Emeryville. The SFRWQCB subsequently issued Site Cleanup Requirements Order No. 98-009 which rescinded Cleanup and Abatement Order No. 97-047.

2.3.5 Several phases of soil and groundwater investigations have been conducted at the Site since 1988. Site soil and groundwater data through October 2000 is summarized in the Remedial Investigation Report approved by the SFRWQCB on October 21, 2002. Two supplemental investigations were conducted in September 2002 and December 2004. Results from these investigations were summarized in reports submitted to the SFRWQCB in December 2002 and March 2005. The SFRWQCB approved the Human Health Risk Assessment dated February 11, 2005 on December 23, 2005.

2.3.6 A number of Interim Remedial Measures (IRMs) were implemented at the Site in the early 1990s and are still in place to reduce the flow of contaminants in groundwater and the potential for human exposure. The IRMs implemented onsite between 1993 and 1995 under SFRWQCB oversight include (1) a slurry wall to contain certain areas of chemically affected soil, (2) a cap and storm water collection system to prevent storm water infiltration into chemically affected soils, and (3) a groundwater extraction and treatment system to minimize the migration of and treat affected groundwater. The implemented IRMs are still in place at the Site. The Site Layout Map (Exhibit B) shows the locations of these features.

2.3.7 On January 20, 2006, the SFRWQCB requested the Site Designation Committee to designate DTSC as the administering agency, based on new information and changed circumstances, including anticipated future land use of the site, character and land use of nearby properties, decreased concern about threat to water quality, and community concern regarding potential human health impacts during implementation of remedial actions. On February 23, 2006, the Site Designation Committee approved the designation of the DTSC as the lead Agency for the Site.

2.4 Hazardous Substances Found at the Site.

2.4.1 Several phases of soil and groundwater investigation have been conducted at the Site. The phases were conducted under the oversight of the RWQCB for the Sherwin-Williams property since 1989 to assess the nature and extent of a range of potential contaminants. The investigations have revealed that contaminants in the soil and groundwater onsite include volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), total petroleum hydrocarbons (TPHs), arsenic, and lead. VOCs, SVOCs, total petroleum hydrocarbons (TPHs), lead, and arsenic, have also been detected in groundwater at the Site. Two zones of groundwater are part of a single hydrogeologic unit. The A-zone groundwater unit is 2- to 5-feet thick varying from approximately 3 to 12 feet below ground surface (bgs). The B-zone is a confined groundwater unit subject to several feet of piezometric pressure head; groundwater elevations can vary between 6 and 9 meet mean sea level and can fluctuate seasonally up to two feet.

2.4.2 Pursuant to section 102 of CERCLA (42 U.S.C. section 9602) and Health and Safety Code section 25316, a substance is a "hazardous substance" if it is listed in Title 40, Code of Federal Regulations ("CFR"), Section 302.4. Based upon the investigations described above, the following substances, listed in 40 CFR section 302.4, have been detected in the soil at the Site: arsenic up to 110,000 milligrams per kilogram (mg/kg); acetone up to 2,200 mg/kg, benzene up to 5.4 mg/kg, ethylbenzene up to 520 mg/kg, methyl ethyl ketone (MEK) up to 77 mg/kg; toluene up to 14,000 mg/kg and total xylenes up to 5,200 mg/kg. The following substances, listed in 40 CFR section 302.4, have been detected in the groundwater at the Site since 1999: arsenic up to 720 milligrams per liter (mg/L), lead up to 0.15 mg/L, MEK up to 85 mg/L, acetone up to190 mg/L, benzene up to 0.64 mg/L, ethylbenzene up to 4.5 mg/L, toluene up to 95 mg/L and total xylenes up to 13.4 mg/L.

2.4.3 Pursuant to section 64444 of Title 22 of the California Code of Regulations, the following substances have been found above their primary maximum contaminant level (MCL) or action level: arsenic up to 820 mg/L (U.S.EPA MCL is 0.01 mg/L), lead up to 0.15 mg/L (U.S.EPA and California DHS action level MCL is 0.015mg/L), benzene up

to 0.95 mg/L (California DHS MCL is 0.001 mg/L), ethylbenzene up to 9.8 mg/L (California DHS MCL is 0.3 mg/L), toluene up to 330 mg/L (California DHS MCL is 0.15 mg/L), total xylenes up to 210 mg/L (California DHS MCL is 1.75 mg/L).

2.4.4 Soil and groundwater investigations were conducted on the Rifkin property between 1993 and 1996. VOCs and arsenic were identified in soil and groundwater in the southern portion of the Rifkin property. TPH and their constituents were also detected. The investigations concluded that several contaminants have migrated from the Sherwin-Williams property onto a portion of the adjacent former Rifkin property.

2.5 Health Effects. The primary hazardous substances found at the Site are listed below. The health effects for each of these chemicals, according to *The Merck Index, 11th edition, 1989*, the National Institute for Occupational Safety and Health ("NIOSH") Pocket Guide to Chemical Hazards, U.S. Department of Health and Human Services, dated June 1997, and the Agency for Toxic Substances and Disease Registry (ASTDR) are summarized below.

2.5.1 Arsenic. The primary modes of possible exposure to arsenic are through inhalation and ingestion of contaminated soils, ingestion of contaminated foods (e.g., seafood, grains) or drinking water, and through general skin contact with contaminated soils. Common symptoms of exposure to arsenic at elevated concentrations include: ulceration of the nasal septum, gastrointestinal disturbances, respiratory irritation, and hyper-pigmentation of the skin. By the inhalation route, the most sensitive effect of inorganic arsenic is an increased risk of lung cancer, although respiratory irritation, nausea, and skin effects may also occur. Exposure to arsenic at elevated concentrations may affect the liver, kidneys, skin, lungs, and lymphatic system. Inorganic arsenic is classified as a human carcinogen based on sufficient evidence from human data according to the United States Environmental Protection Agency's Integrated Risk Information System (IRIS) database. Increased lung cancer mortality was observed in multiple human populations exposed primarily through inhalation. Also, increased mortality from multiple internal organ cancers (liver, kidney, lung, and bladder) and an increased incidence of skin cancer were observed in populations consuming drinking water high in inorganic arsenic.

2.5.2 Lead. The primary modes of possible exposure to lead are through inhalation and ingestion of contaminated soils, ingestion of contaminated foods (e.g. fruits, vegetables) or drinking water, and through general skin or eye contact with contaminated soils. Common symptoms of exposure to lead at elevated concentrations include: fatigue, facial pallor, constipation, abdominal pain, nausea, vomiting, anemia, tremor, encephalopathy, kidney diseases, eye irritation, and hypertension. Exposure to lead at elevated concentrations may affect the eyes, gastrointestinal tract, central nervous system, kidneys, blood, and gingival tissues. The Center for Disease Control considers children to have an elevated level of lead if the amount of lead in the blood is at least 10 micrograms of lead per deciliter of blood (μg/dL). CDC recommends that children with blood lead levels between 10 and 14 μg/dL be retested, and for communities with a large number of children with blood lead levels in this range, community-wide prevention activities should be initiated. CDC recommends that children with blood lead levels between 15 and 19 μg/dL should receive nutritional and educational intervention, and environmental intervention if blood lead levels persist in this range. CDC recommends environmental remediation and medical evaluations for children with blood lead levels of 20

µg/dL and higher.

2.5.3 Methyl Ethyl Ketone (MEK). The primary modes of possible exposure to MEK are through inhalation of vapor, ingestion of contaminated soils, and through general skin or eye contact with contaminated soils. Common symptoms of exposure to MEK at elevated concentrations include: irritation of the eyes, skin, nose, and throat, coughing, blurred vision, pulmonary edema, blisters, abdominal pain, vomiting, and diarrhea. Exposure to MEK at elevated concentrations may affect the eyes, skin, respiratory system, liver, and kidneys.

2.5.4 Benzene. The primary modes of possible exposure to benzene are through inhalation of vapor, ingestion of contaminated soils or groundwater, and through general skin or eye contact with contaminated soils or groundwater. Common symptoms of exposure to benzene at elevated concentrations include irritation of eyes, skin, and nose, headache, and nausea. Target organs include eyes, skin, respiratory system, blood, central nervous system, and bone marrow. Benzene is a known human carcinogen based upon evidence presented in numerous occupational epidemiological studies according to the IRIS database. Significantly increased risks of leukemia have been reported in benzene-exposed workers in the chemical industry, shoemaking, and oil refineries

2.5.5 Acetone. The primary modes of possible exposure to acetone are through inhalation of vapor, ingestion of contaminated soils or groundwater, and through general skin or eye contact with contaminated soils or groundwater. Common symptoms of exposure to acetone at elevated concentrations include irritation of skin, eyes, nose, throat, trachea, and lungs, headache, dizziness, and central nervous system depression. Target organs include eyes, skin, respiratory system, and the central nervous system.

2.5.6 Ethylbenzene. The primary modes of possible exposure to ethylbenzene are through inhalation of vapor, ingestion of contaminated soils or groundwater, and through general skin or eye contact with contaminated soils or groundwater. Common symptoms of exposure to ethylbenzene at elevated concentrations include headache, dizziness, and irritation of eyes, skin, and mucous membranes. Target organs include eyes, skin, respiratory system, and the central nervous system.

2.5.7 Toluene. The primary modes of possible exposure to toluene are through inhalation of vapor, ingestion of contaminated soils or groundwater, and through general skin or eye contact with contaminated soils or groundwater. Common symptoms of exposure to toluene at elevated concentrations include irritation of eyes, skin, and nose, nausea, vomiting, headache, dizziness, fatigue, altered color vision, and central nervous system depression. Target organs include eyes, skin, respiratory system, blood, liver, and the central nervous system.

2.5.8 Xylenes. The primary modes of possible exposure to xylenes are through inhalation of vapor and through general skin or eye contact with contaminated soils or groundwater. Common symptoms of exposure to xylenes at elevated concentrations include irritation of eyes, skin, nose, and throat, nausea, vomiting, abdominal pain, dizziness, fatigue, and central nervous system depression. Target organs include eyes, skin, respiratory system, blood, liver, kidneys, gastrointestinal tract, and the central nervous system.

2.6 Potential Routes of Exposure.

2.6.1 Depending upon current and future land use, typical routes of potential chemical exposure include inhalation, ingestion, and dermal contact. Currently, the Site is paved, preventing exposure to dust-borne contaminants.

2.6.2 Contaminated groundwater could migrate to adjacent properties, including Temescal Creek and the San Francisco Bay. Sensitive species may be exposed to contaminants via contact, inhalation, and/or ingestion of contaminated water. Currently, a stormwater collection system exists to prevent contaminated groundwater from impacting the stormwater collection system and a groundwater extraction and treatment system exists to minimize migration of groundwater containing the highest concentrations of contaminants from the Site.

2.7 Public Health and/or Environmental Risk. The Sherwin-Williams Company has owned and operated a coatings manufacturing plant onsite since the early 1900s. The asphalt and concrete cap have reduced exposure to impacted soils and the groundwater extraction and treatment system and slurry wall have minimized the migration of contaminants. The groundwater treatment system was redesigned in 1999 and a new system was installed from late 1999 to early 2000 in order to increase and optimize withdrawal and treatment rates. A development plan has been proposed in which manufacturing operations will be shut down sometime in early 2007, decommissioning and demolition activities will commence, followed by site remediation of the Sherwin-Williams and former Rifkin properties, and construction of a mixed commercial and residential use development.

III. CONCLUSIONS OF LAW

3.1 Respondent is a responsible party as defined by Health and Safety Code section 25323.5.

3.2 Each of the substances listed in Section 2.4 is a "hazardous substance" as defined in Health and Safety Code section 25316.

3.3 There has been a "release" and/or there is a "threatened release" of hazardous substances listed in Section 2.4 at the Site, as defined in Health and Safety Code section 25320.

3.4 The actual and threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or to the environment.

3.5 Response action is necessary to abate a public nuisance and/or to protect and preserve the public health, welfare or the environment.

IV. DETERMINATION

4.1 Based on the foregoing findings of fact and conclusions of law, DTSC hereby determines that response action is necessary at the Site because there has been a release and/or there is a threatened release of a hazardous substance.

4.2 Based on the foregoing findings of fact and conclusions of law, DTSC hereby determines that there may be an imminent and/or substantial endangerment to the public health or welfare or to the environment because of the release and/or the threatened release of the hazardous substances at the Site.

V. ORDER

Based on the foregoing FINDINGS, CONCLUSIONS, AND DETERMINATION, IT IS HEREBY ORDERED THAT Respondent conducts the following response actions in the manner specified herein, and in accordance with a schedule specified by DTSC as follows:

5.1 All response actions taken pursuant to this Order shall be consistent with the requirements of Chapter 6.8 (commencing with section 25300), Division 20 of the Health and Safety Code and any other applicable state or federal statutes and regulations.

5.2 Administrative Record List. A copy of the Administrative Record List for this Site shall be submitted within 15 days of the effective date of this Order. Upon receipt, DTSC shall review the list and determine what records, if any, it needs to complete its administrative file for this Site. Any missing records shall be submitted within 15 days of receipt of DTSC's request in accordance with the requirements of section 6.5 of this Order.

5.3 Site Remediation Strategy. The purpose of this Order is to require for the Site: preparation and completion of a DTSC-approved Feasibility Study (FS) and Remedial Action Plan (RAP), preparation of California Environmental Quality Act (CEQA) documents, and Design and Implementation of the remedial actions approved in the RAP. An overall Site remediation strategy shall be developed by Respondent in conjunction with DTSC which reflects program goals, objectives, and requirements. Current knowledge of the Site contamination sources, exposure pathways, and receptors shall be used in developing this strategy.

If necessary for the protection of public health and the environment, DTSC will require additional response actions not specified in this Order to be performed as removal actions or separate operable units. Removal actions shall be implemented in accordance with a workplan and implementation schedule submitted by Respondent and approved by DTSC.

5.3.1 Site Remediation Strategy Meeting. Respondent, including the Project Coordinator (Section 6.1) and Project Engineer/Geologist (Section 6.2), shall meet with DTSC within 30 days from the effective date of this Order to discuss the Site remediation strategy. These discussions will include Site risks and priorities, project planning, phasing and scheduling, public participation requirements, remedial action objectives, remedial technologies, data quality objectives, and the Draft Feasibility Study / Remedial Action Plan (CDM, May 3, 2005).

5.3.2 Removal Actions. Respondent shall undertake removal actions if, during the course of the RI or FS, DTSC determines that they are necessary to mitigate the release of hazardous substances at or emanating from the Site. DTSC may require Respondent to submit a removal action workplan that includes a schedule for implementing the workplan for DTSC's approval. Either DTSC or Respondent may identify the need for removal actions.

5.3.2.1 Interim Remedial Measures were implemented onsite under SFRWQCB oversight. These include (1) a slurry wall to contain certain areas of chemically affected soil, (2) a cap and storm water collection system to prevent storm water infiltration into chemically affected soils, and (3) a groundwater extraction and treatment system to minimize the migration of and treat affected groundwater. Sherwin-Williams Company shall continue to operate and maintain these interim remedial measures. Within sixty (60) days of the effective date of this Order, Sherwin-Williams Company shall submit a report evaluating the effectiveness of these interim measures. The report shall provide the results of the remedial action evaluation, and if necessary or appropriate, propose modifications to address and/or improve the existing remedial system. If the evaluation determines that any modifications, repairs or upgrades are necessary, the Sherwin-Williams Company shall implement those modifications upon DTSC's approval.

5.3.2.2 Respondent shall continue interim Groundwater Extraction and Treatment System monitoring in accordance with RWQCB's Order No. R2-2004-0055 (RWQCB 2004 Order), NPDES No. CAG912003. Quarterly reports shall be submitted by the 15th day of the month following the end of each quarter and shall include quarterly data summaries of monthly influent concentrations, monthly effluent concentrations, influent and effluent concentrations for constituents including pH, semivolatile organic compounds (SVOCs) and other constituents, treatment system flow data, estimated VOC mass treatment, compliance evaluation for the treatment system effluent and receiving waters, and a summary of additional analyses performed outside of NPDES requirements. Subsequent monitoring shall be conducted until DTSC determines it is appropriate to terminate monitoring.

5.3.3 Groundwater Monitoring. Sherwin-Williams Company shall continue interim groundwater monitoring in accordance with Exhibit C. The sampling program consists of one annual and three quarterly sampling rounds. Groundwater elevations are also measured quarterly at all extraction wells, former Rifkin property wells and piezometers, and selected Sherwin-Williams property well/piezometer pairs. The annual sampling round is conducted during the first quarter of each calendar year (January through March) and consists of collecting groundwater samples from all monitoring and extraction wells. Subsequent monitoring shall be conducted until DTSC determines it is appropriate to modify or terminate monitoring.

Within 45 days of the effective date of the Order, Sherwin-Williams Company shall submit an assessment of the current groundwater monitoring plan. The assessment shall outline proposed modifications to the plan including, but not limited to, new wells required, parameters, and frequency of the plan. If applicable, a schedule for implementing any changes shall be included.

5.4 Public Participation Plan (Community Relations). Respondent shall work cooperatively with DTSC in providing an opportunity for meaningful public participation in response actions. Any such public participation activities shall be conducted in accordance with H&SC §§ 25356.1 and 25358.7 and DTSC's most current Public Participation Policy and Guidance Manual, and shall be subject to DTSC's review and approval.

Respondent shall submit an updated Public Participation Plan (PPP) within 60 days of

DTSC's request, if DTSC determines that the PPP needs to be updated in response to the community survey results and to ensure that it meets the requirements in DTSC's most current Public Participation Policy and Guidance Manual. The Public Participation Plan shall describe how, under this Order, the public, adjoining community and the Community Advisory Group will be kept informed of activities conducted at the Site, how documents will be distributed and how Respondent will respond to inquiries from concerned citizens.

Respondent shall implement any of the public participation support activities identified in the Public Participation Plan (PPP), at the request of DTSC. DTSC retains the right to implement any of these activities independently. These activities include, but are not limited to, development and distribution of fact sheets; public meeting preparations; and development and placement of public notices.

5.5 California Environmental Quality Act (CEQA). DTSC will comply with CEQA for all activities required by this Order that are projects subject to CEQA. Upon DTSC request, Respondent shall provide DTSC with any information that DTSC deems necessary to facilitate compliance with CEQA. The costs incurred by DTSC in complying with CEQA are response costs and Respondent shall reimburse DTSC for such costs pursuant to Section 6.18.

5.6 Feasibility Study/Remedial Action Plan (FS/RAP).

5.6.1 Feasibility Study Workplan. Within thirty (30) days from the effective date of this Order, Respondent shall prepare and submit to DTSC for review and approval a detailed Feasibility Study Workplan and implementation schedule which addresses all the activities necessary to complete the feasibility study. Treatability testing is required to demonstrate the implementability and effectiveness of technologies, unless Respondent can show DTSC that similar data or documentation or information exists. The Feasibility Study Workplan shall include any treatability testing necessary to develop data for the remedial alternatives. The Feasibility Study Workplan shall include a detailed description of the tasks to be performed, information or data needed for each task, and the deliverables which will be submitted to DTSC. Either Respondent or DTSC may identify the need for additional work.

5.6.2 Implementation of Feasibility Study Workplan. Respondent shall implement the approved Feasibility Study Workplan in accordance with the approved schedule.

5.6.3 Sherwin-Williams Company submitted a Draft Feasibility Study/Remedial Action Plan (FS/RAP) and DTSC's comments were presented to Respondent on September 20, 2005. Respondent shall submit a revised Draft FS / RAP for DTSC review addressing these comments no later than sixty (60) days from the date DTSC receives the report documenting implementation of the Feasibility Study Workplan described in section 5.6.1. The FS shall be prepared consistent with the U.S. Environmental Protection Agency's "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," October 1988. The draft FS/RAP shall be prepared consistent with the NCP and Health and Safety Code section 25356.1. The draft FS/RAP public review process may be combined with that of any other documents required by CEQA. The draft FS/RAP shall clearly set forth:

(a) Health and safety risks posed by the conditions at the Site.

(b) The effect of contamination or pollution levels upon present, future, and probable beneficial uses of contaminated, polluted, or threatened resources.

(c) The effect of alternative remedial action measures on the reasonable availability of groundwater resources for present, future, and probable beneficial uses.

(d) Site specific characteristics, including the potential for offsite migration of hazardous substances, the surface or subsurface soil, and the hydrogeologic conditions, as well as preexisting background contamination levels.

(e) Cost-effectiveness of alternative remedial action measures. Land disposal shall not be deemed the most cost-effective measure merely on the basis of lower short-term cost.

(f) The potential environmental impacts of alternative remedial action measures, including, but not limited to, land disposal of the untreated hazardous substances as opposed to treatment of the hazardous substances to remove or reduce their volume, toxicity, or mobility prior to disposal.

(g) A statement of reasons setting forth the basis for the removal and remedial actions selected. The statement shall include an evaluation of each proposed alternative submitted and evaluate the consistency of the remedial actions proposed by the plan with the NCP.

(h) A schedule for implementation of all proposed remedial actions.

In conjunction with DTSC, Respondent shall implement the public review process specified in DTSC's Public Participation Policy and Guidance Manual. DTSC will prepare a response to the public comments received. If required, Respondent shall submit within fifteen (15) days of a request from DTSC the information necessary for DTSC to prepare this document.

Following DTSC's finalization of the Responsiveness Summary, DTSC will specify any changes to be made in the FS/RAP. Respondent shall modify the document in accordance with DTSC's specifications and submit a final FS/RAP within fifteen (15) days of receipt of DTSC's comments.

5.7 Remedial Design (RD). Within 60 days after DTSC approval of the final RAP, Respondent shall submit to DTSC for review and approval a RD describing in detail the technical and operational plans for implementation of the final RAP which includes the following elements, as applicable:

(a) Design criteria, process unit and pipe sizing calculations, process diagrams, and final plans and specifications for facilities to be constructed.

(b) Description of equipment used to excavate, handle, and transport contaminated material.

(c) A field sampling and laboratory analysis plan addressing sampling during implementation and to confirm achievement of the performance objectives of the RAP.

(d) A transportation plan identifying routes of travel and final destination of wastes generated and disposed.

(e) For groundwater extraction systems: aquifer test results, capture zone calculations, specifications for extraction and performance monitoring wells, and a plan to demonstrate that capture is achieved.

(f) An updated health and safety plan addressing the implementation activities.

(g) Identification of any necessary permits and agreements.

(h) An operation and maintenance plan including any required monitoring.

(i) A detailed schedule for implementation of the remedial action consistent with the schedule contained in the approved RAP including procurement, mobilization, construction phasing, sampling, facility startup, and testing.

(j) A community Air Monitoring Plan.

5.8 Land Use Covenant.

5.8.1 If the approved remedy in the final RAP includes deed restrictions or land use restrictions, pursuant to California Code of Regulations, title 22, section 67391.1, the current owner(s) of the Site shall sign and record deed restrictions approved by DTSC within 90 days of DTSC's approval of the final RAP.

5.8.2 The Sherwin-Williams Company (Current Property Owner) signed a Deed Notice for Assessor's Parcel Numbers 49-1041-006, 49-1041-026-02, 49-1041-026-04, 49-1041-026-06. The document was recorded with the Alameda County Recorder's Office. The Current Property Owner shall abide by the terms of those covenants until they are either removed or replaced.

5.9 Implementation of Final RAP. Upon DTSC approval of the RD, Respondent shall implement the final RAP in accordance with the approved schedule in the RD or final RAP. Within 30 days of completion of field activities, Respondent shall submit an Implementation Report documenting the implementation of the Final RAP and RD.

5.10 Operation and Maintenance (O&M). Respondent shall comply with all O&M requirements in accordance with the final RAP and approved RD. Within 30 days of the date of DTSC's request, Respondent shall prepare and submit to DTSC for approval an O&M plan that includes an implementation schedule. Respondent shall implement the plan in accordance with the approved schedule.

5.11 Five-Year Review. Respondent shall review and reevaluate the remedial action after a period of five years from the completion of construction and startup, and every five years

thereafter. The review and reevaluation shall be conducted to determine if human health and the environment are being protected by the remedial action. Within one hundred twenty (120) calendar days before the end of the time period approved by DTSC to review and reevaluate the remedial action, Respondent shall submit a remedial action review workplan to DTSC for review and approval. Within sixty (60) days of DTSC's approval of the workplan, Respondent shall implement the workplan and shall submit a comprehensive report of the results of the remedial action review. The report shall describe the results of all sample analyses, tests and other data generated or received by Respondent and evaluate the adequacy of the implemented remedy in protecting public health, safety and the environment. As a result of any review performed under this Section, Respondent may be required to perform additional Work or to modify Work previously performed.

5.12 Changes During Implementation of the Final RAP. During the implementation of the final RAP and RD, DTSC may specify such additions, modifications, and revisions to the RD as DTSC deems necessary to protect public health and safety or the environment or to implement the final RAP.

5.13 Stop Work Order. In the event that DTSC determines that any activity (whether or not pursued in compliance with this Order) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Respondent to stop further implementation of this Order for such period of time needed to abate the endangerment. In the event that DTSC determines that any Site activities (whether or not pursued in compliance with this Order) are proceeding without DTSC authorization, DTSC may order Respondent to stop further implementation of this Order or activity for such period of time needed to obtain DTSC authorization, if such authorization is appropriate. Any deadline in this Order directly affected by a Stop Work Order, under this Section, shall be extended for the term of the Stop Work Order.

5.14 Emergency Response Action/Notification. In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Order, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Project Manager. Respondent shall take such action in consultation with the Project Manager and in accordance with all applicable provisions of this Order. Within seven days of the onset of such an event, Respondent shall furnish a report to DTSC, signed by Respondent's Project Coordinator, setting forth the events which occurred and the measures taken in the response thereto. In the event that Respondent fails to take appropriate response and DTSC takes the action instead, Respondent shall be liable to DTSC for all costs of the response action. Nothing in this Section shall be deemed to limit any other notification requirement to which Respondent may be subject.

5.15 Discontinuation of Remedial Technology. Any remedial technology employed in implementation of the final RAP shall be left in place and operated by Respondent until and except to the extent that DTSC authorizes Respondent in writing to discontinue, move or modify some or all of the remedial technology because Respondent has met the criteria specified in the

final RAP for its discontinuance, or because the modifications would better achieve the goals of the final RAP.

5.16 Financial Assurance. Respondent shall demonstrate to DTSC and maintain financial assurance for operation and maintenance and monitoring. Respondent shall demonstrate financial assurance prior to the time that operation and maintenance activities are initiated and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities. The financial assurance mechanisms shall meet the requirements of Health and Safety Code Section 25355.2. All financial assurance mechanisms are subject to the review and approval of DTSC.

VI. GENERAL PROVISIONS

6.1 Project Coordinator. Within 15 days from the date the Order is signed by DTSC, Respondent shall submit to DTSC in writing the name, address, and telephone number of a Project Coordinator whose responsibilities will be to receive all notices, comments, approvals, and other communications from DTSC. Respondent shall promptly notify DTSC of any change in the identity of the Project Coordinator. Respondent shall obtain approval from DTSC before the new Project Coordinator performs any work under this Order.

6.2 Project Engineer/Geologist. The work performed pursuant to this Order shall be under the direction and supervision of a qualified professional engineer or a professional geologist in the State of California, with expertise in hazardous substance site cleanups. Within 15 calendar days from the date this Order is signed by DTSC, Respondent must submit: a) The name and address of the project engineer or geologist chosen by Respondent; and b) in order to demonstrate expertise in hazardous substance cleanup, the resumé of the engineer or geologist, and the statement of qualifications of the consulting firm responsible for the work. Respondent shall promptly notify DTSC of any change in the identity of the Project Engineer/Geologist. Respondent shall obtain approval from DTSC before the new Project Engineer/Geologist performs any work under this Order.

6.3 Monthly Summary Reports. Unless DTSC approves an alternative schedule, Respondent shall submit a Monthly Summary Report of their activities under the provisions of this Order. The report shall be received by DTSC by the 5th day of each month and shall describe:

(a) Specific actions taken by or on behalf of Respondent during the previous month;

(b) Actions expected to be undertaken during the current calendar month;

(c) All planned activities for the next month;

(d) Any requirements under this Order that were not completed; and

(e) Any problems or anticipated problems in complying with this Order.

6.4 Quality Assurance/Quality Control (QA/QC). All sampling and analysis conducted by Respondent under this Order shall be performed in accordance with QA/QC procedures submitted by Respondent and approved by DTSC pursuant to this Order. Respondent shall update their Quality Assurance Project Plan and submit it within sixty (60) days of the effective date of the Order. Respondent shall continue to use the QAPP approved by the SFRWQCB until DTSC approves the revised QAPP.

6.5 Submittals. All submittals and notifications from Respondent required by this Order shall be sent simultaneously to:

Department of Toxic Substances Control
Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch
Attention: Janet Naito
700 Heinz Avenue, Suite 200
Berkeley, California 94710

For all final reports, Respondent shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file or Microsoft Word formatted file (doc). The electronic copy shall be submitted on a compact disc (CD) and labeled with the name of the report, the author, and the date.

6.6 Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to Respondent in writing by the Site Mitigation Branch Chief, or his/her designee and sent to:

Larry R. Mencin
The Sherwin-Williams Company
101 Prospect Avenue, N.W., 4M
Cleveland, Ohio 44115-1075

and

Allen J. Danzig
Legal Department
The Sherwin-Williams Company
101 Prospect Avenue, N.W., 11M
Cleveland, Ohio 44115-1075

No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

6.7 DTSC Review and Approval.
(a) All response actions taken pursuant to this Order shall be subject to the approval of

DTSC. Respondent shall submit all deliverables required by this Order to DTSC. Once the deliverables are approved by DTSC, they shall be deemed incorporated into, and where applicable, enforceable under this Order.

(b) If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, DTSC may:

(1) Modify the document as deemed necessary and approve the document as modified; or

(2) Return comments to Respondent with recommended changes and a date by which Respondent must submit to DTSC a revised document incorporating the recommended changes.

(c) Any modifications, comments or other directives issued pursuant to (a) above, are incorporated into this Order. Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Order.

6.8 Compliance with Applicable Laws. Nothing in this Order shall relieve Respondent from complying with all other applicable laws and regulations, including but not limited to compliance with all applicable waste discharge requirements issued by the State Water Resources Control Board or San Francisco Bay Region, Regional Water Quality Control Board and with Bay Area Air Quality Management District requirements. Respondent shall conform all actions required by this Order with all applicable federal, state and local laws and regulations.

6.9 Respondent's Liabilities. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current or future operations of Respondent. Nothing in this Order is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site. Nothing in this Order is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law to protect public health or safety or the environment and recovering the cost thereof. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health and the environment.

6.10 Site Access. Access to the Site and laboratories used for analyses of samples under this Order shall be provided at all reasonable times to employees, contractors, and consultants of DTSC. Nothing in this Section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of Respondent in carrying out the terms of this Order; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by Respondent.

To the extent the Site or any other property to which access is required for the implementation of this Order is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons access for Respondent, as well as DTSC, its representatives, and contractors, as necessary to effectuate this Order. To the extent that any portion of the Site is controlled by tenants of Respondent, Respondent shall use best efforts to secure from such tenants, access for Respondent, as well as for DTSC, its representatives, and contractors, as necessary to effectuate this Order. If any access required to complete the Work is not obtained within forty-five (45) days of the effective date of this Order, or within forty-five (45) days of the date DTSC notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify DTSC, and shall include in that notification a summary of the steps Respondent have taken to attempt to obtain access. DTSC may, as it deems appropriate, assist Respondent in obtaining access. Respondent shall reimburse DTSC in obtaining access, including, but not limited to, DTSC personnel time, including attorneys fees.

6.11 Sampling, Data and Document Availability. Respondent shall permit DTSC and its authorized representatives to inspect and copy all sampling, testing, monitoring or other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall submit all such data upon the request of DTSC. Copies shall be provided within seven (7) days of receipt of DTSC's written request. Respondent shall inform DTSC at least seven (7) days in advance of all field sampling under this Order, except NPDES compliance sampling, and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order.

6.12 Record Retention. All such data, reports and other documents shall be preserved by Respondent for a minimum of ten years after the conclusion of all activities under this Order. If DTSC requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Respondent shall notify DTSC in writing at least six months prior to destroying any documents prepared pursuant to this Order.

6.13 Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in Section 6.26, Parties Bound, in carrying out activities pursuant to this Order, nor shall the State of California be held as party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

6.14 Additional Actions. By issuance of this Order, DTSC does not waive the right to take any further actions authorized by law.

6.15 Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, Respondent may, prior to expiration of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity

or document is due.

6.16 Extension Approvals. If DTSC determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Respondent shall comply with the new schedule incorporated in this Order.

6.17 Liability for Costs. Respondent is liable for all of DTSC's costs that have been incurred in taking response actions at the Site (including costs of overseeing response actions performed by Respondent) and costs to be incurred in the future.

6.18 Payment of Costs. DTSC may bill Respondent for costs incurred in taking response actions at the Site prior to the effective date of this Order. DTSC will bill Respondent quarterly for its response costs incurred after the effective date of this Order. Respondent shall pay DTSC within sixty (60) days of receipt of any DTSC billing. Any billing not paid within sixty (60) days is subject to interest calculated from the date of the billing pursuant to Health and Safety Code section 25360.1. All payments made by Respondent pursuant to this Order shall be by cashier's or certified check made payable to this "DTSC," and shall bear on the face the project code of the Site (Site 200956) and the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control
Accounting/Cashier
1001 "I" Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Order.

6.19 Severability. The requirements of this Order are severable, and Respondent shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

6.20 Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Respondent pursuant to this Order are incorporated in this Order upon DTSC's approval or as modified pursuant to Section 6.7, DTSC Review and Approval, and shall be implemented by Respondent. Any noncompliance with the documents incorporated in this Order shall be deemed a failure or refusal to comply with this Order.

6.21 Modifications. DTSC reserves the right to unilaterally modify this Order. Any modification to this Order shall be effective upon the date the modification is signed by DTSC and shall be deemed incorporated in this Order.

6.22 Time Periods. Unless otherwise specified, time periods begin from the effective date of this Order and "days" means calendar days.

6.23 Termination and Satisfaction. Except for Respondent's obligations under Sections 5.10 Operation and Maintenance (O&M), 5.11 Five-Year Review, 5.16 Financial Assurance, 6.12 Record Retention, 6.17 Liability for Costs, and 6.18 Payment of Costs, Respondent's obligations under this Order shall terminate and be deemed satisfied upon Respondent's receipt of written notice from DTSC that Respondent has complied with all the terms of this Order.

6.24 Parties Bound. This Order applies to and is binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors and assignees, including but not limited to, individuals, partners, and subsidiary and parent corporations. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Order, within 15 days after the effective date of this Order or the date of retaining their services, whichever is later. Respondent shall condition any such contracts upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Order.

6.25 Change in Ownership. No change in ownership or corporate or partnership status relating to the Site shall in any way alter Respondent's responsibility under this Order. No conveyance of title, easement, or other interest in the Site, or a portion of the Site, shall affect Respondent's obligations under this Order. Unless DTSC agrees that such obligations may be transferred to a third party, Respondent shall be responsible for and liable for any failure to carry out all activities required of Respondent by the terms and conditions of this Order, regardless of Respondent's use of employees, agents, contractors, or consultants to perform any such tasks. Respondent shall provide a copy of this Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred.

VII. NOTICE OF INTENT TO COMPLY

7. Not later than fifteen (15) days after the effective date of this Order, Respondent shall provide written notice, in accordance with paragraph 6.5 Submittals of this Order, stating whether or not Respondent will comply with the terms of this Order. If Respondent, or any one of them, do not unequivocally commit to perform all of the requirements of this Order, they, or each so refusing, shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "*sufficient* cause" defenses asserted by Respondent under Health and Safety Code sections 25358.3(a) and 25355.5(a)(1)(B) or CERCLA section 107(c)(3), 42 U.S.C. section 9607(c)(3).

VIII. EFFECTIVE DATE

8. This Order is final and effective five days from the date of mailing, which is the date of the cover letter transmitting the Order to you.

IX. PENALTIES FOR NONCOMPLIANCE

9. Respondent may be liable for penalties of up to $25,000 for each day out of compliance with any term or condition set forth in this Order and for punitive damages up to three times the amount of any costs incurred by DTSC as a result of Respondent's failure to comply, pursuant to Health and Safety Code sections 25359, 25359.2, 25359.4, and 25367(c). Health and Safety Code section 25359.4.5 provides that a responsible party who complies with this Order, or with another order or agreement concerning the same response actions required by this Order, may seek treble damages from a Respondent who fails or refuses to comply with this Order without sufficient cause.

DATE OF ISSUANCE: 5/10/06

Barbara J. Cook, P.E., Chief
Northern California Coastal Cleanup Operations
Department of Toxic Substances Control

LIST OF EXHIBITS

EXHIBIT A – Site Location Map

EXHIBIT B – Site Layout Map

EXHIBIT C – Groundwater Monitoring Requirements

EXHIBIT A
Site Location Map

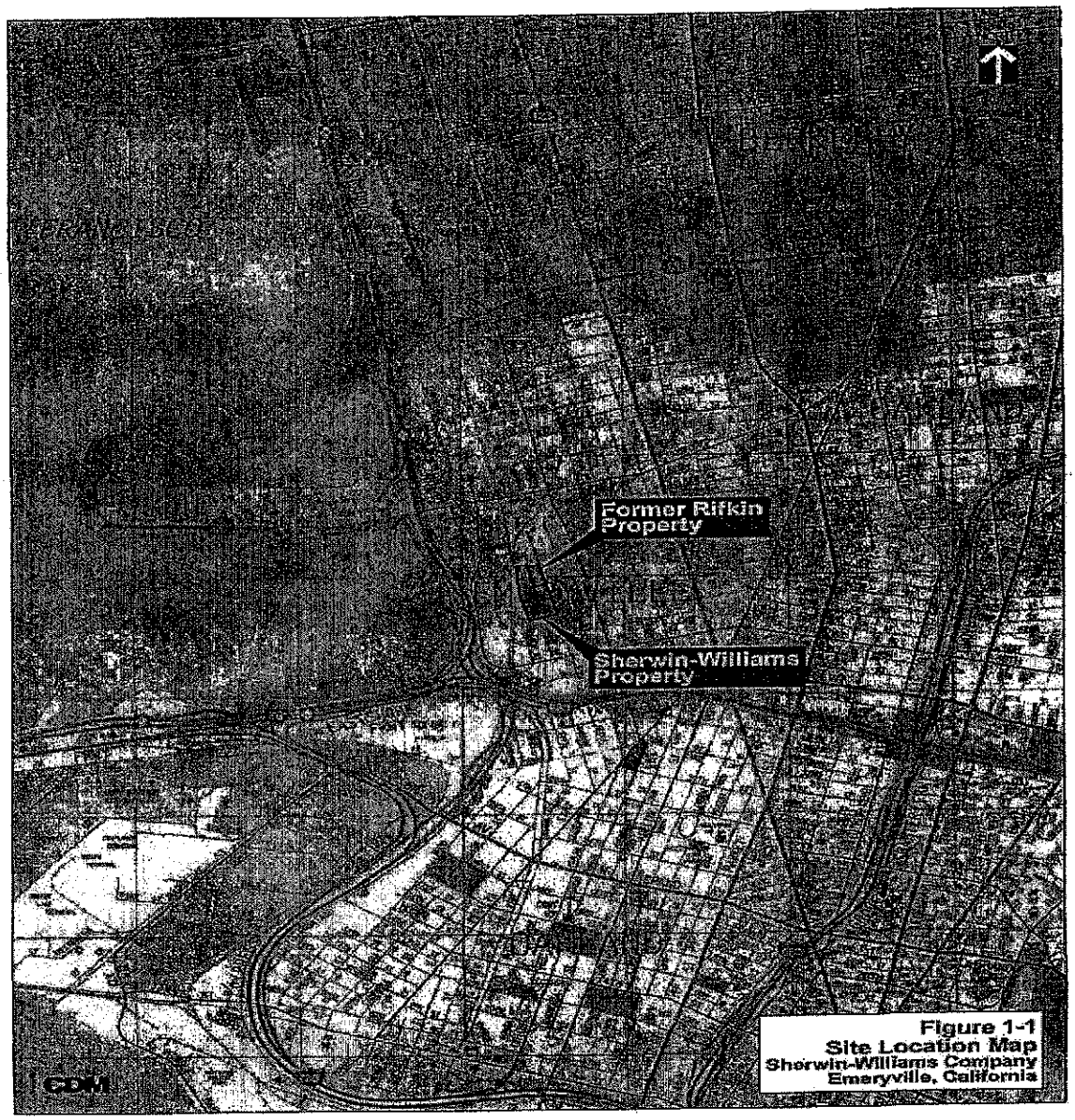
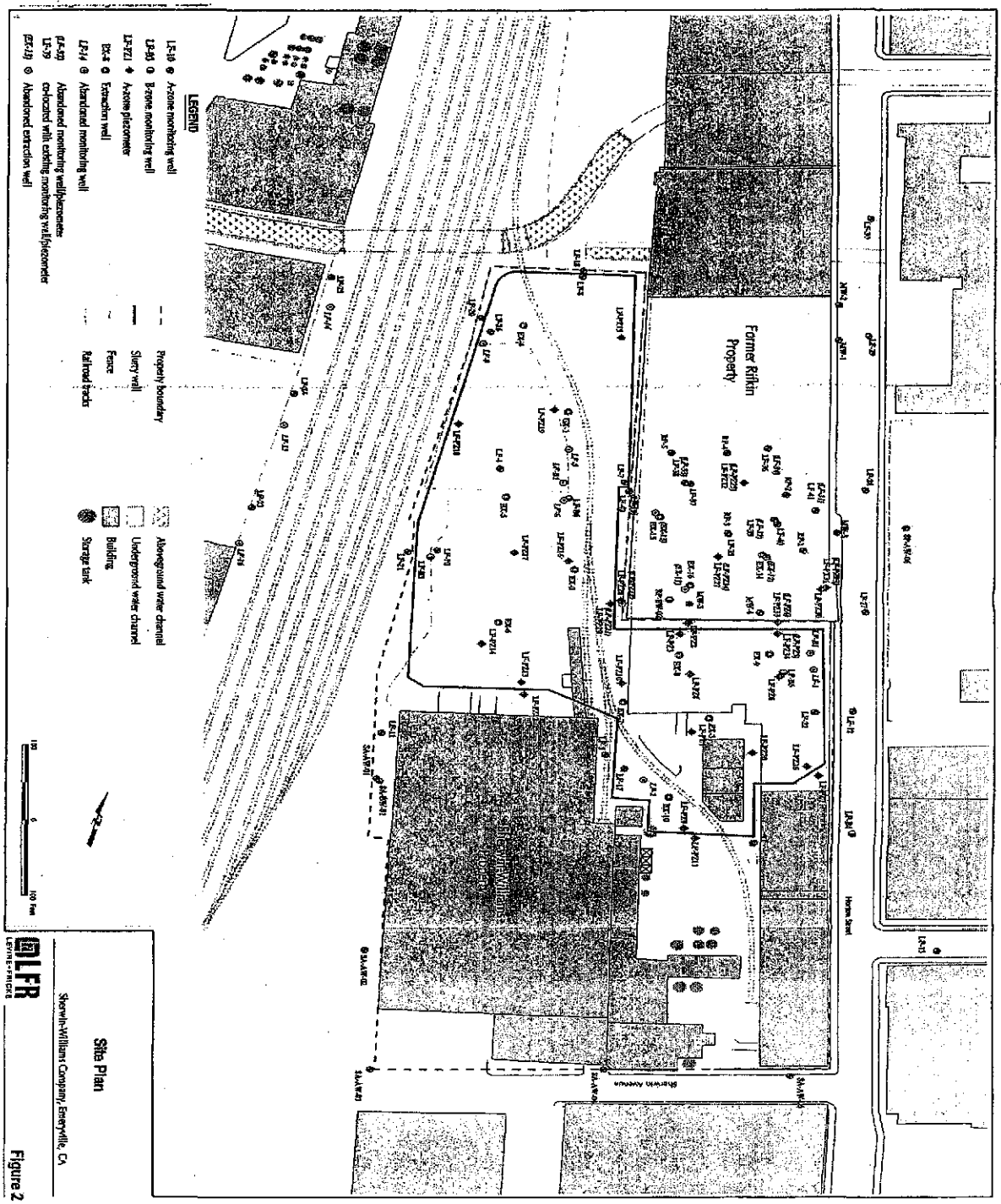


EXHIBIT B
Site Layout Map



Sherwin-Williams ISE Order
May 2006

EXHIBIT C
Groundwater Monitoring and Sampling Program

Until DTSC approves an alternative schedule, groundwater monitoring and sampling shall continue to be performed consistent with the Revised Self-Monitoring Program verbally approved by the San Francisco Bay Region, Regional Water Quality Control Board on April 10, 2000. Groundwater elevation shall be measured in all monitoring wells, extraction wells, and piezometers quarterly.

Representative samples of groundwater shall be collected and analyzed annually from all monitoring and extraction wells during the first quarter of each calendar year. Representative samples of groundwater shall be collected and analyzed quarterly from wells meeting one or more of the following criteria:

- An increasing arsenic concentration trend exists per the Mann-Kendall statistical testing method (except for wells inside the slurry wall).
- Less than four sampling events have been conducted at the well (i.e., insufficient data to establish a concentration trend).
- The well delineates the plume and/or advance of Sherwin-Williams property contaminants on the former Rifkin property (i.e., B-zone wells required by the Chiron settlement agreement and all wells between the B-zone and the Sherwin-Williams property).
- The well operates as an extraction well.
- The well contains over 50 parts per billion (ppb) arsenic or 450 ppb total VOCs (except for wells inside the slurry wall).

All groundwater samples shall be analyzed for dissolved arsenic (filtered using a 0.45 micron filter) using EPA Method 7060, VOCs using EPA Method 8260 (including Acetone, 2-butanone, and 4-methyl-2-pentenone) and field pH. Any new monitoring wells or extraction wells shall be sampled quarterly and analyzed for these same constituents, unless DTSC approves different requirements.

Copies of reports submitted in compliance with these requirements must be sent concurrently to the San Francisco Bay Region, Regional Water Quality Control Board and to DTSC.

Quarterly reports shall be submitted no later than 30 days following the end of the quarter (e.g., the report for the first quarter of the year is due April 30). The report shall include:

1. Groundwater elevation data shall be presented in tabular form, and a groundwater elevation map should be prepared for each monitored water-bearing zone. Historical groundwater elevations shall be included in the fourth quarterly report each year. Groundwater potential differences across

the slurry wall and between the A and B aquifer zone shall be tabulated and discussed in each quarterly report.

2. Groundwater sampling data shall be presented in tabular form, and on figures for one or more key contaminants for each monitored water-bearing zone, as appropriate. The report shall indicate the analytical method used, detection limits obtained for each reported constituent, and a summary of QA/QC data. Historical groundwater sampling results shall be included in the fourth quarterly report each year. The report shall describe any significant increases in contaminant concentrations since the last report, and any measures proposed to address the increases.
3. The report shall include groundwater extraction results in tabular form, for each extraction well and for the Site as a whole, expressed in gallons per minute and total groundwater volume for the quarter. The report shall also include contaminant removal results, from remediation systems installed, expressed in units of chemical mass per day and mass for the quarter. Historical mass removal results shall be included in the fourth quarterly report each year.
4. The report shall discuss any violations of this Order during the reporting period and the actions taken or planned to correct the problem.