

**Finding of Suitability to Transfer  
(FOST)**

**Badger Army Ammunition Plant (BAAAP)**

**Parcel O7**

**April 2010**

**DRAFT**

**FINDING OF SUITABILITY TO TRANSFER (FOST)**  
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**Parcel O7**

**1. PURPOSE**

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of a certain parcel of property at the Badger Army Ammunition Plant (BAAAP), Baraboo, Wisconsin, for transfer to the Bureau of Indian Affairs (BIA) on the Ho-Chunk Nation's (HCN) behalf consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DoD) Policy. In addition, the FOST includes the CERCLA Notice, Covenant, and Access Provisions and other Deed Provisions and the Environmental Protection Provisions (EPPs) necessary to protect human health or the environment after such transfer.

**2. PROPERTY DESCRIPTION**

The property (hereinafter referred to as the "Property") includes Parcel O7 and consists of 32.84 total acres of land and six buildings. The Property was previously used by BAAAP for the production of nitrocellulose (NC) based propellant and for pilot plant studies. The Property is intended to be transferred for raising bison and Native American ceremonial and cultural use. A site map of the Property is attached (Enclosure 1).

**3. ENVIRONMENTAL DOCUMENTATION**

A determination of the environmental condition of the Property was made based upon the Environmental Baseline Survey (EBS) (Plexus Scientific, 1999) and Environmental Site Assessment (ESA) (Plexus Scientific, 2004). Continued site assessments and activities since the EBS and ESA resulted in Wisconsin Department of Natural Resources (WDNR) letters for "no further action" and "closure". Therefore, the DoD Environmental Condition of Property category for the Property was updated and documented in the EBS Update. The information provided is a result of a complete search of agency files during the development of environmental surveys, site assessments, and WDNR letters.

A complete list of documents providing information on the environmental condition of the Property is attached as a reference (Enclosure 2). Upon transfer of the Property, the BIA will receive all documentation and information available at that time which references the Property outlined in this FOST.

**4. ENVIRONMENTAL CONDITION OF PROPERTY**

The DoD Environmental Condition of Property (ECP) category for the Property is as follows:

- ECP Category 4: All of the Property within Parcel O7

A summary of the ECP categories for specific buildings or areas and the ECP category definitions are provided in Table 1 – Description of Property (Enclosure 3). Note that within Table 1 (Enclosure 3) the buildings have no evidence of contamination and are thus given ECP Category 1. However, there was evidence from post demolition samples that lead and arsenic above remediation levels was in the soil by one building. This soil was removed and site closure was received from the WDNR; therefore, the entire Parcel O7 has been assigned an ECP Category 4.

#### **4.1. MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)**

Based on a review of existing records and available information, there was evidence that Munitions and Explosives of Concern (MEC), specifically munitions constituents (MC) in high enough concentrations to pose an explosive hazard (MEC (MC)), were present within some structures on the Property (see Enclosure 5). The Property was previously used for the production of nitrocellulose (NC) based propellant and for pilot plant studies involving NC and nitroglycerin (NG). The term “MEC” is defined as military munitions that may pose unique explosives safety risks, including: (A) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., trinitrotoluene (TNT)), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

All MEC (MC) previously detected within structures on the Property has been removed. Cracks and other visible areas where MEC (MC) could reasonably be expected to develop in any remaining floor slabs have been inspected for the presence of MEC (MC). Each building received an explosive contamination certification confirming that no MEC (MC) was found to exist in the building. Post demolition sampling was also completed to determine if any MEC (MC) had been transported to surface soils surrounding demolished buildings with no MEC (MC) detected at actionable levels. The presence of the cement floor slabs precludes direct analysis of the soils beneath the slabs. As a result, there is a potential for MC, including MEC (MC), to be present under such slabs.

A copy of the *BAAAP/SpecPro Explosive Contamination Certification* for each account will be provided to the BIA at the time of transfer. A summary of MEC discovered on the Property is provided in Table 3 – Notification of Munitions and Explosives of Concern (Enclosure 5) and a MEC Notice (Enclosure 7).

#### **4.2. ENVIRONMENTAL REMEDIATION SITES**

There is one remediation site located on the Property. A summary of the environmental remediation site on the Property is as follows:

- Parcel O7: Soils at the Explosive Company (EC) Forced Air Dry House #8001-02 contained lead and arsenic over regulatory limits. Impacted soil was removed and placed in the on-site construction and demolition waste landfill (WDNR license #3646). Case closure was received from the WDNR on January 5, 2010.

All environmental soil and groundwater remediation activities on the Property have been completed, or are in place and operating properly and successfully. A summary of the environmental remediation site listed above is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4).

### **4.3. STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES**

Hazardous substances were stored for one year or more on the Property in excess of the reportable quantities specified in Chapter 40 Code of Federal Regulations (CFR) Part 373. All hazardous substance storage operations have been terminated on the Property. Hazardous substances were stored in excess of the 40 CFR 373 reportable quantities at the following site:

- Nitroglycerin (NG) Storage Building (Nitroglycerin Stored)

A summary of the buildings or area in which the hazardous substance activities occurred is provided in Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal (Enclosure 4). The CERCLA Section 120(h)(3) Notice, Covenant, and Access Provisions and Other Deed Provisions at Enclosure 6 will be included in the Deed.

### **4.4. PETROLEUM AND PETROLEUM PRODUCTS**

#### **4.4.1. Underground and Aboveground Storage Tanks (USTs/ASTs)**

There is no evidence that petroleum products were stored in USTs or ASTs on the Property.

#### **4.4.2. Non-UST/AST Storage, Release, or Disposal of Petroleum Products**

There is no evidence that non-UST/AST petroleum products in excess of 55-gallons were stored for one year or more on the Property.

### **4.5. POLYCHLORINATED BIPHENYLS (PCB)**

PCB-containing transformers were located at the BAAAP. There was one known PCB-containing transformer on Parcel O7. This transformer has been removed. There is no evidence of releases from this PCB-containing transformer. See corresponding site investigation reports for additional information (Enclosure 2). Based on testing that show PCB in paint on structures elsewhere on the installation, all structures within the Property are presumed to contain PCBs in the paint on the building exterior trim work (doors, windows, etc.) and interior and exterior painted surfaces. On transfer, the Grantee will receive a Facility Paint Data report for each building remaining on the Property. The Deed will include a PCB Paint warning and covenant (Enclosure 7).

#### **4.6. ASBESTOS**

There was asbestos-containing material (ACM) consisting of class 1 or 2 non-friable asbestos, such as transite siding or floor tiles, in the following buildings (all buildings at BAAAP are referred to by their unique building number):

- Parcel O7: #8007-00, #8008-00, #8010-00, #8011-01, #B000-13, #H01L-14

The ACM remaining does not currently pose a threat to human health or the environment because all identified friable asbestos that posed an unacceptable risk to human health has been removed as documented on the BAAAP Asbestos Certification Forms. The Deed will include an asbestos warning and covenant (Enclosure 7).

#### **4.7. LEAD-BASED PAINT (LBP)**

Based on the age of the buildings (constructed prior to 1978), all structures within the Property are presumed to contain LBP on the building exterior trim work (doors, windows, etc.) and interior painted surfaces. See the BAAAP LBP Survey (SpecPro, Inc., 2005-2010) for additional information. The Property was not used for residential purposes and the Grantee does not intend to use the Property for residential purposes in the future. The Deed will include a LBP warning and covenant (Enclosure 7).

#### **4.8. RADIOLOGICAL MATERIALS**

There is no evidence that radioactive material or sources were stored or used on the Property.

#### **4.9. RADON**

There were no radon surveys conducted on the Property.

#### **4.10. OTHER PROPERTY CONDITIONS**

There are no other hazardous conditions on the Property that present an unacceptable risk to human health and the environment.

### **5. ADJACENT PROPERTY CONDITIONS**

Contaminants have been found in groundwater on the installation and off the installation. A contamination plume exists to the south and east of the Deterrent Burning Ground (DBG) in the northeast portion of the installation. This plume has migrated beyond the east boundary of the installation. A contamination plume also exists to the south of the Propellant Burning Ground (PBG), which is located in the southern portion of the installation. This plume has migrated beyond the south boundary of the installation. The contaminants of concern in these plumes are solvents and dinitrotoluene (DNT). A contamination plume exists in the Rocket Propellant manufacturing area of the installation that is located in the east central portion of the installation.

The contaminant of concern in this plume is DNT. The Rocket Propellant plume is migrating to the south/southeast, in the direction of the groundwater flow. The contaminants in the groundwater do not pose a human health or ecological risk since the groundwater beneath the installation is generally 30 to 140 feet below ground surface. These plumes are all south or east of Parcel O7 and therefore do not pose an unacceptable risk to the Property.

## **6. ENVIRONMENTAL REMEDIATION AGREEMENTS**

The WDNR first issued its requirements for environmental investigation and restoration in a document entitled the In-Field Conditions Report (IFCR) dated September 14, 1987. Since originally issued, the IFCR has been modified by the WDNR as necessary to reflect the changes in the environmental investigation, remediation, and monitoring requirements for the BAAAP.

All remediation activities on the Property, required by the IFCR as modified, are completed or in place and operating properly and successfully (See Section 4.2. Environmental Remediation Sites). All approved current monitoring programs must be maintained by the Army unless amended by the WDNR. This requirement shall run with the land. The Deed will include a provision reserving the Army's right to conduct remediation activities (Enclosure 6).

## **7. REGULATORY/PUBLIC COORDINATION**

The United States Environmental Protection Agency (USEPA) Region 5, WDNR, and the public were notified of the initiation of this FOST. Regulatory/public comments received during the public comment period will be reviewed and incorporated, as appropriate. A copy of the regulatory/public comments and the Army responses will be included in Enclosure 8.

## **8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE**

The environmental impacts associated with the proposed transfer of the Property have been analyzed in accordance with the NEPA. The results of this analysis are documented in an Environmental Impact Statement (EIS) (U.S. General Services Administration (GSA), March 2003). A Record of Environmental Consideration (REC) to update the EIS and Record of Decision was completed in December 2009. There were no encumbrances or conditions identified in the NEPA analysis as necessary to protect human health or the environment. As identified in the REC, Property requiring MEC cleanup cannot be used for commercial, residential, utility, or subsurface recreational purposes because MEC cleanup was completed only to a depth of four feet below ground surface. The proposed transfer is consistent with the intended reuse of the Property.

## 9. FINDING OF SUITABILITY TO TRANSFER

Based on the above information, I conclude that all removal or remedial actions necessary to protect human health and the environment have been taken and the Property is transferable under CERCLA Section 120(h)(3). In addition, all DoD requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions set forth in the attached EPPs (Enclosure 7) which shall be included in the Deed for the Property. The Deed will also include the CERCLA Section 120(h)(3) Notice, Covenant, and Access Provisions and Other Deed Provisions. Finally, the Hazardous Substance Notification (Table 2 from Enclosure 4) shall be included in the Deed as required under the CERCLA Section 120(h) and DoD FOST Guidance.

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Addison D. Davis, IV  
Deputy Assistant Secretary of the Army  
Environment, Safety, and Occupational Health

Eight Enclosures:

Encl 1 – Property Map and MEC Cleanup Area Map

Encl 2 – Environmental Documentation

Encl 3 – Table 1 – Description of Property

Encl 4 – Table 2 – Notification of Hazardous Substance Storage, Release, or Disposal

Encl 5 – Table 3 – Notification of Munitions and Explosives of Concern

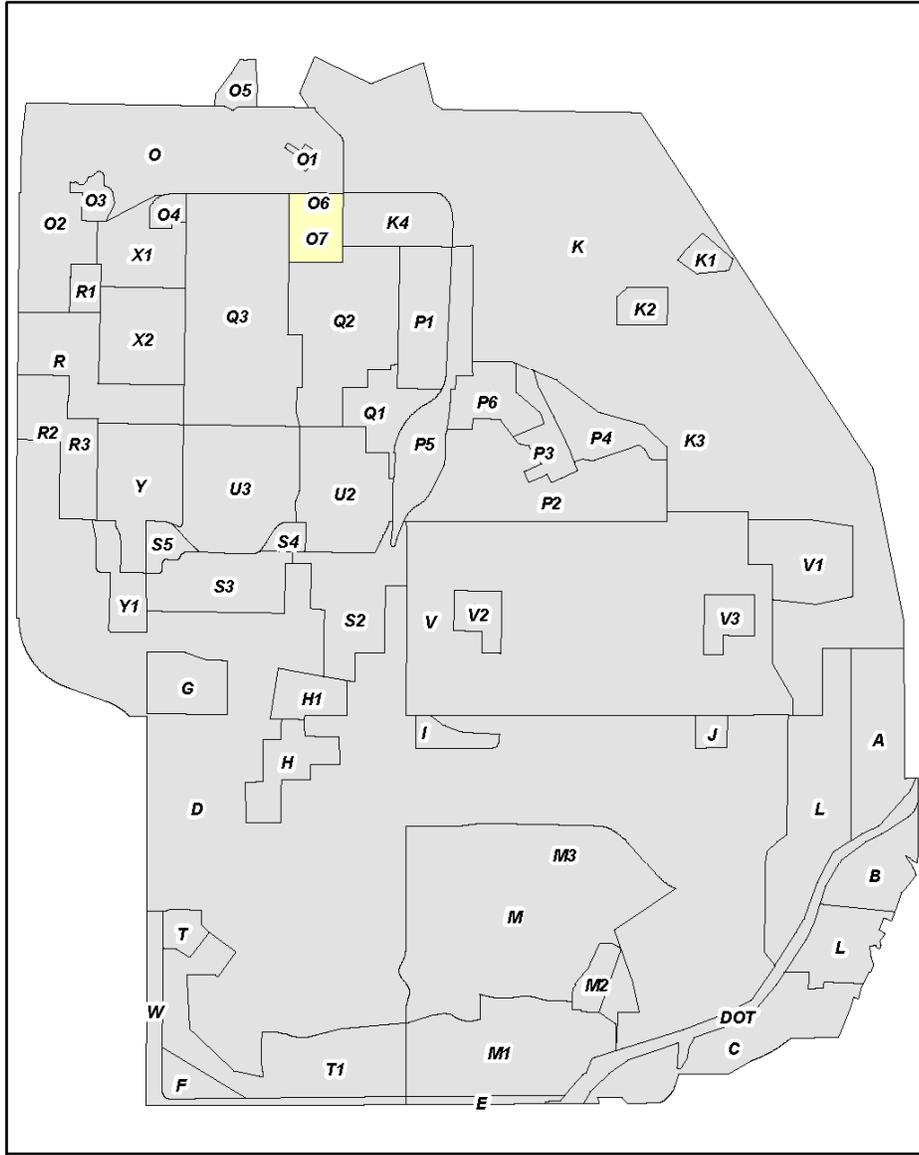
Encl 6 – CERCLA Notice, Covenant, and Access Provisions and Other Deed Provisions

Encl 7 – Environmental Protection Provisions

Encl 8 – Regulatory/Public Comments and Army Response

**ENCLOSURE 1**  
**PROPERTY MAP**  
**AND**  
**MEC CLEANUP AREA MAP**

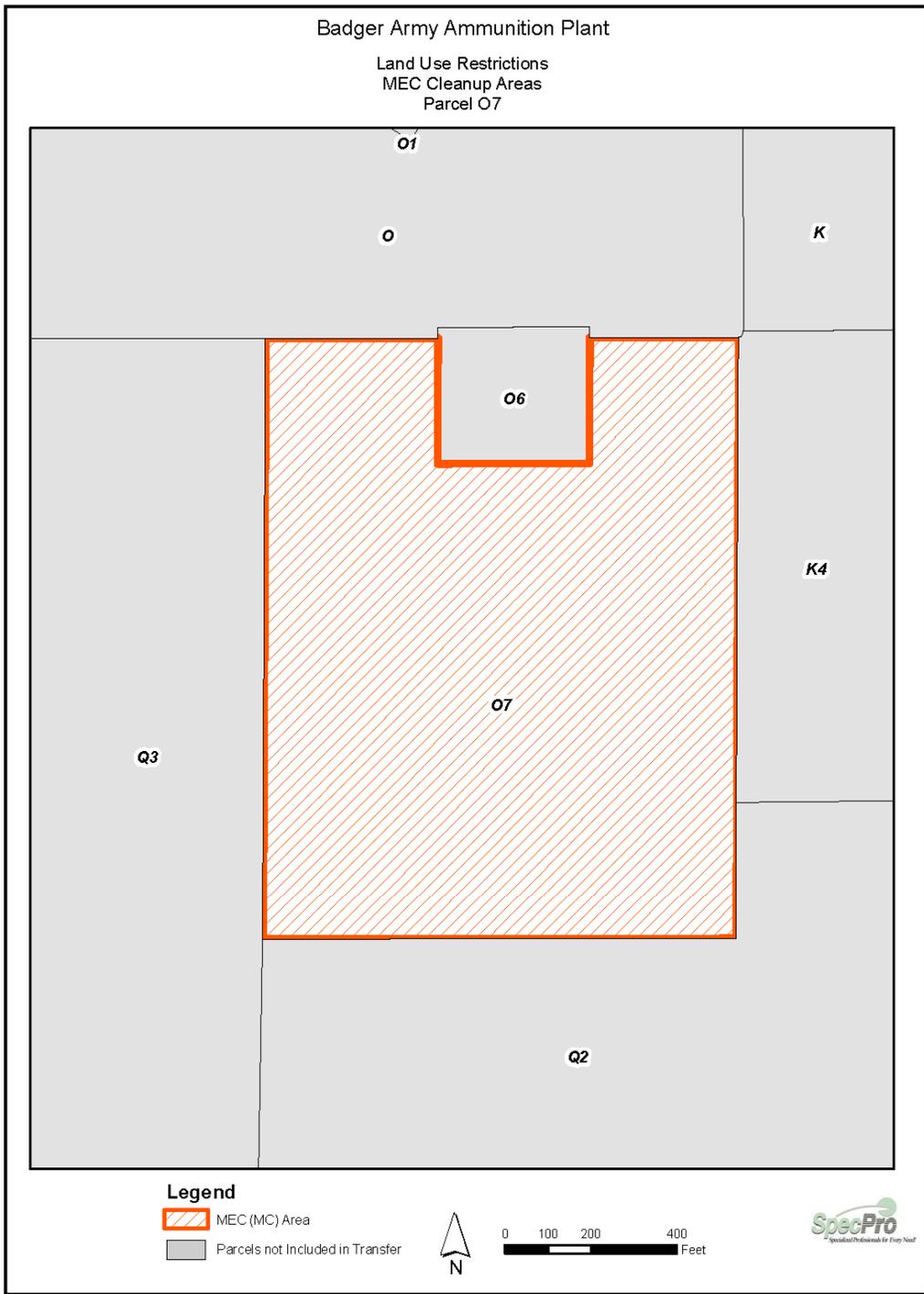
Badger Army Ammunition Plant  
 Property Map  
 (Showing GSA Transfer Parcels)



Legend

- BIA/Ho-Chunk
- Parcels not Included in Transfer





**ENCLOSURE 2**  
**ENVIRONMENTAL DOCUMENTATION**

- *BAAAP Explosive, Asbestos, LBP Surveys, and Post Demolition Soil Sample Reports* (Located at BAAAP in Database), Army/SpecPro, Inc., 2005-2010\*\*
- *BAAP Contamination Survey, Final Report*, U.S. Army Toxic and Hazardous Materials Agency, March 1981 (Repository Document #45\*)
- *BAAAP Environmental Site Assessment*, U.S. Army Base Realignment & Closure Office/Plexus Scientific, December 2004 (Repository Document #510\*)
- *Department of the Army Letter, Subject: Notification for Hazardous Substance Discharge, Badger Army Ammunition Plant*, Department of the Army/SpecPro, Inc., September 3, 2008 (Repository Document #704\*)
- *Department of the Army Letter, Subject: Supplemental Information – Parcel O7 Post-Demolition Sampling Report, Badger Army Ammunition Plant*, Department of the Army/SpecPro, Inc., February 25, 2009 (Repository Document #731\*)
- *Department of the Army Letter, Subject: Sewer Removal/Remedial Investigation – Parcel O7, Badger Army Ammunition Plant*, Department of the Army, November 30, 2009 (Repository Document #752\*)
- *Dinitrotoluene in Deer Tissues Final Report*, Lee R. Shugart, September 30, 1991 (Repository Document #331\*)
- *Draft Parcel ECP Updates*, SpecPro, Inc., March 2010 (Repository Document #765\*)
- *Environmental Assessment for Total Plant Operation – BAAAP*, Olin Corporation, May 1983 (Repository Document #51\*)
- *Environmental Baseline Survey (EBS) – BAAAP*, Plexus Scientific, January 1999 (Repository Document #335\*)
- *Environmental Condition of Property (ECP) Report Update, Parcel O7*, SpecPro, Inc., February 2010 (Repository Document #771\*)
- *Feasibility Study Addendum Report*, ABB Environmental Services for U.S. Army Environmental Center, July 1996 (Repository Document #217\*)
- *Final Environmental Impact Statement (FEIS) – BAAAP*, U.S. General Services Administration (GSA), March 2003 (Repository Document #448\*)

- *Final Remedial Investigation Report, Volume I & II, Appendices A through R*, ABB Environmental Services, Inc., April 1993 (Repository Document #126\*)
- *Groundwater Monitoring Program*, BAAAP, SpecPro, Inc., 2007 (Data can be obtained on WDNR Groundwater & Environmental Monitoring System (GEMS) on internet at <http://dnr.wi.gov/org/aw/wm/monitor/gemsweb>.)
- *In-Field Conditions Report (IFCR)*, WDNR, September 14, 1987, as amended (Repository Document #66\*)
- *Infrastructure Remedial Environmental Study*, Olin Corporation, December 1996 (Repository Document #315\*)
- *Installation Assessment of BAAP*, U.S. Army Toxic and Hazardous Materials Agency, May 1977 (Repository Document #60\*)
- *Master Environmental Plan for BAAAP Volume 1: Main Text and Appendix A*, Argonne National Laboratory (ANL), January 1988 (Repository Document #9\*)
- *PCB Spill Survey for BAAAP*, U.S. Army Environmental Hygiene Agency (USAEHA), September 17, 1993 (Repository Document #173\*)
- *Phase 1 Remedial Investigation Report - Report, Appendices A-F, Appendices G-L*, U.S. Army Toxic and Hazardous Materials Agency, January 1990 (Repository Document #20\*)
- *Position Paper, Ecological Risk Assessment for Settling Ponds and Rocket Paste Area/Ecological Risk Assessment No. 39-EJ-1410-96*, U.S. Army Center For Health Promotion and Preventive Medicine, December 2, 1997 & November 13, 1997 (Repository Document #278\*)
- *Record of Environmental Consideration (REC), Update to the Badger Army Ammunition Plant (BAAAP) Record of Decision (ROD) and Environmental Impact Statement (EIS)*, Badger Army Ammunition Plant, SpecPro, Inc., December 15, 2009 (Repository Document #754\*)
- *Site Assessment Report, Ball Powder<sup>®</sup> Pilot Plant, Follow-up Remedial Investigation, Badger Army Ammunition Plant*, Olin Corporation, January 2004 (Repository Document #472\*)
- *Site Assessment Report, Ball Powder<sup>®</sup> Pilot Plant, Follow-up Remedial Investigation Phase 2, Badger Army Ammunition Plant*, Department of the Army/SpecPro, Inc., April 2006 (Repository Document #561\*)
- *Small Mammal Survey*, Army Environmental Center and ABB Environmental Services, November 1996 (Repository Document #230\*)

- *SpecPro/Badger Geographic Information System (GIS) Mapping Services*; Available at <http://gis.msa-ps.com/badger>

### **BAAAP Site Specific Closure Documentation**

- *WDNR Letter, Subject: No Action Required for the Badger Army Ammunition Plant Ball Powder<sup>®</sup> Pilot Plant, Baraboo; Sauk County; BRRTS Number 02-57-001002, June 22, 2006 (Repository Document #573\*)*
- *WDNR Letter, Subject: Final Case Closure for the BAAP – Parcel O7 Post-Demolition and Sewer Removal Case; Sauk County; BRRTS Number 02-57-554597, January 5, 2010 (Repository Document #760\*)*

\*BAAAP has established three repositories located at the public libraries in Prairie du Sac and Sauk City, Wisconsin, and at the Badger Army Ammunition Plant in Baraboo, Wisconsin. The repositories were established to allow public access to documents concerning installation remediation actions. Each document is given a unique number for easy access.

\*\*Data is maintained at BAAAP and can be made available for review. Data will be supplied to Grantee at time of transfer.

**ENCLOSURE 3**

**TABLE 1 – DESCRIPTION OF PROPERTY**

<b>Property Description</b>	<b>Building #</b>	<b>Building Area (feet<sup>2</sup>)</b>	<b>Parcel</b>	<b>EBS Area (1999)*</b>	<b>ECP Category (2010)**</b>	<b>Remedial Actions</b>
West Ball Powder <sup>®</sup> Pilot Plant	-----	-----	O7	20	4	The 2006 remedial investigation in the Ball Powder <sup>®</sup> Area for MEC (MC) received WDNR ‘no action required’ letter dated June 22, 2006. Post demolition sampling showed soil impacted with lead and arsenic in concentrations above regulatory levels at Building #8001-02. Impacted soil was removed and placed in the on-site landfill, with actions completed in 2009. A report was submitted November 30, 2009. A WDNR ‘case closure’ letter dated January 5, 2010, was received.
Liquid Waste Treatment Facility	0420-09	400	O7	20	1	Demolished to slab in 2007. No remedial action required.
Drying House (EC Incorporator House)	8000-01	1,410	O7	20	1	Demolished to slab in 2008. No remedial action required.
Drying House (EC Incorporator House)	8000-02	1,056	O7	20	1	Demolished to slab in 2006. No remedial action required.

<b>Property Description</b>	<b>Building #</b>	<b>Building Area (feet<sup>2</sup>)</b>	<b>Parcel</b>	<b>EBS Area (1999)*</b>	<b>ECP Category (2010)**</b>	<b>Remedial Actions</b>
Drying House (EC Incorporator House)	8000-03	1,290	O7	20	1	Demolished to slab in 2008. No remedial action required.
EC Forced Air Dry House	8001-01	-----	O7	20	1	Demolished to slab in 1954. No remedial action required.
EC Forced Air Dry House	8001-02	-----	O7	20	4	Demolished to slab in 1954. Soil impacted with lead and arsenic removed to on-site landfill. Closed in 2010 as described above.
EC Screen House	8002-01	-----	O7	20	1	Demolished to slab in 1954. No remedial action required.
Dry Sample Process House (EC Screen House)	8002-00 (8002-02 as EC Screen House)	724	O7	20	1	Demolished to slab in 2008. No remedial action required.
Dry Processing House (EC Screen & Sweetie Barrel House)	8003-00	1,016	O7	20	1	Demolished to slab in 2006. No remedial action required.
NG Storage House (EC Blending House)	8004-00 (8004-01 as EC Blending House)	543	O7	20	1	Demolished to slab in 2008. No remedial action required.
Rest House (EC Rest House)	8005-00	1,500	O7	20	1	Demolished to slab in 2005. No remedial action required.
Blending House (EC Pack House)	8006-00	1,276	O7	20	1	Demolished to slab in 2006. No remedial action required.
Chemical Store	8007-00	480	O7	20	1	Transfer "As Is". No remedial action required.

<b>Property Description</b>	<b>Building #</b>	<b>Building Area (feet<sup>2</sup>)</b>	<b>Parcel</b>	<b>EBS Area (1999)*</b>	<b>ECP Category (2010)**</b>	<b>Remedial Actions</b>
NC Store	8008-00	320	O7	20	1	Transfer "As Is". No remedial action required.
Line Office	8010-00	638	O7	20	1	Transfer "As Is". No remedial action required.
Latrine	8011-01	59	O7	20	1	Transfer "As Is". No remedial action required.
Latrine	8011-02	59	O7	20	1	Demolished to slab in 2009. No remedial action required.
EC Warming House	8015-01	-----	O7	20	1	Demolished to slab in 1954. No remedial action required.
EC Warming House	8015-02	-----	O7	20	1	Demolished to slab in 1954. No remedial action required.
Steam Pressure Reducing Station	B000-13	317	O7	20	1	Transfer "As Is". No remedial action required.
Steam Pressure Reducing Station	H01L-14	259	O7	20	1	Transfer "As Is". No remedial action required.

\* EBS Areas are used in the Environmental Baseline Survey (Plexus, 1999) to identify certain locations within BAAAP.

\*\* Description of ECP Categories

Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).

Category 2: Areas where only release or disposal of petroleum products has occurred.

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred and all removal or remedial actions to protect human health and the environment have been taken.

**ENCLOSURE 4**

**TABLE 2 – NOTIFICATION OF HAZARDOUS SUBSTANCE STORAGE, RELEASE,  
OR DISPOSAL\***

<b>Site</b>	<b>Name of Hazardous Substance(s)</b>	<b>Date of Storage, Release, or Disposal</b>	<b>Remedial Actions</b>
Nitroglycerin (NG) Storage House (Building #8004-00) (also known as 8004-01 EC Blending House)	Nitroglycerin (CASRN 55-63-0)	1954-1985	Nitroglycerin in 50/50 mixture with ethyl acetate was stored in containers. No evidence of leaks. No remediation required.
<p>* The information contained in this notice is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or 'Superfund') 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substance's CERCLA reportable quantity. See 40 CFR Part 373.</p>			

**ENCLOSURE 5**

**TABLE 3 – NOTIFICATION OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)\***

<b>Site</b>	<b>Type of MEC</b>	<b>Date of MEC Activity</b>	<b>Munitions Response Actions</b>
West Ball Powder <sup>®</sup> Pilot Plant Area (Buildings #0420-09 <sup>+</sup> , #8000-01 <sup>+</sup> , #8000-02 <sup>+</sup> , #8000-03 <sup>+</sup> , #8001-01, #8001-02, #8002-01, #8002-00 <sup>+</sup> (also identified as #8002-02 when EC Screen House), #8003-00 <sup>+</sup> , #8004-00 <sup>+</sup> (also identified as #8004-01 when EC Blend House), #8005-00 <sup>+</sup> , #8006-00 <sup>+</sup> , #8007-00 <sup>+</sup> , #8008-00 <sup>+</sup> , #8015-01, and #8015-02)	Munitions Constituents (MC)	Approximately 1942-1974	This area was constructed for the manufacture of Explosive Company (EC) Powder in 1942. In 1954, this area was reconstructed as a Ball Powder <sup>®</sup> Pilot Plant used for study and production. Both of these propellants were nitrocellulose (NC) based. Ball Powder <sup>®</sup> is double based containing NC and nitroglycerin (NG). Buildings were inspected by an Unexploded Ordnance Safety Officer (UXOSO) qualified in accordance with U.S. Army Engineering and Support Center, Huntsville (USAESCH) Engineering Pamphlet (EP) 1110-1-18 to verify that all visible propellant had been removed. Buildings demolished after 1954 (denoted with a <sup>+</sup> symbol) were demolished by Wet Mechanical Demolition per a Department of Defense Explosive Safety Board (DDESB) approved Explosive Safety Submission (ESS) dated June 24, 2005, as amended.
<p>*<u>Munitions and Explosives of Concern (MEC)</u>. This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, is defined as: (A) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (e.g., trinitrotoluene (TNT)), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.</p> <p>Documentation of the explosives safety determination will be provided to the BIA at the time of transfer. This certifies that the material listed has been 100 percent properly inspected by qualified personnel per Department of Defense Instruction Number 4140.62 and to the best of their knowledge and belief, the material is safe for release.</p>			

## ENCLOSURE 6

### CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS AND OTHER DEED PROVISIONS

The following CERCLA Notice, Covenant, and Access Provisions, along with the Other Deed Provisions, will be placed in the Deed in a substantially similar form to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

#### **I. CERCLA PROVISIONS:**

##### **1. Property Covered by Notice, Description, Access Rights, and Covenants Made Pursuant to Section 120(h)(3)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)):**

For the Property, the Grantor provides the following notice, description, assurances and covenants, and retains the following access rights:

##### **A. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(i)(I) and (II)):**

Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in Section 120(h), is provided in Exhibit 1, attached hereto and made a part hereof.

##### **B. Description of Remedial Action Taken, if Any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(i)(III)):**

Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit 1, attached hereto and made a part hereof.

##### **C. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(ii) and (B)):**

Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(ii) and (B)), the United States warrants that -

(1) All remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to Section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed, and

(2) Any additional remedial action found to be necessary after the date of this Deed shall be conducted by the United States.

This warranty shall not apply in any case in which the person or entity to whom the Property is transferred is a potentially responsible party with respect to such Property.

**D. Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9620(h)(3)(A)(iii)):**

The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee and its successors and assigns and shall run with the land.

In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee, nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer or employee of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.

## **II. OTHER DEED PROVISIONS:**

### **2. “AS IS”**

A. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered “As Is” without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties either express or implied are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos, lead-based paint, or interior or exterior paints manufactured with polychlorinated biphenyls (PCB) (“PCB Paint”). The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos, lead-based paint, PCB Paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

C. Nothing in this “As Is” provision will be construed to modify or negate the Grantor’s obligation under the CERCLA Covenant or any other statutory obligations.

### **3. HOLD HARMLESS**

A. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from: (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the Grantee, its successors and assigns; and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, PCB Paint, or other condition on any portion of the Property after the date of conveyance.

B. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, PCB Paint, or other condition on any portion of the Property.

C. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor’s obligation under the CERCLA Covenant or any other statutory obligations.

#### **4. POST-TRANSFER DISCOVERY OF CONTAMINATION**

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor's activities, use, or ownership of the Property. If the Grantee, its successors or assigns, believe the discovered hazardous substance is due to Grantor's activities, use, or ownership of the Property, Grantee will immediately secure the site and notify the Grantor of the existence of the hazardous substance. Grantee will not further disturb such hazardous substance without the written permission of the Grantor.

B. Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee or its successors, assigns, employees, invitees, agents, or contractors, after the conveyance. This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's indemnification obligations under applicable laws.

#### **5. ENVIRONMENTAL PROTECTION PROVISIONS**

The Environmental Protection Provisions are located at Enclosure 7, which is attached hereto and made a part hereof. The Grantee shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the Environmental Protection Provisions contained herein, and shall require the inclusion of the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

**EXHIBIT 1**

**NOTIFICATION OF HAZARDOUS SUBSTANCE STORAGE, RELEASE, OR DISPOSAL\***

<b>Site</b>	<b>Name of Hazardous Substance(s)</b>	<b>Date of Storage, Release, or Disposal</b>	<b>Remedial Actions</b>
Nitroglycerin (NG) Storage House (Building #8004-00) (also known as 8004-01 as EC Blending House)	Nitroglycerin (CASRN 55-63-0)	1954-1985	Nitroglycerin in 50/50 mixture with ethyl acetate was stored in containers. No evidence of leaks. No remediation required.
* The information contained in this notice is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or 'Superfund') 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (whichever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substance's CERCLA reportable quantity. See 40 CFR Part 373.			

## ENCLOSURE 7

### ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be attached, in a substantially similar form, as an exhibit to the Deed and be incorporated therein by reference in order to ensure protection of human health and the environment.

#### 1. LAND USE RESTRICTIONS

A. The Army has undertaken careful environmental study of the Property and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Grantee, its successors or assigns, shall not undertake nor allow any activity on or use of the Property that would violate the land use restrictions contained herein.

**(1) Commercial, Residential, Utility, and Subsurface Recreational Use Restriction.**

Certain areas of the Property required MEC cleanup and are identified as "MEC (MC) Area" on the map in Exhibit 1. This restriction applies only to this MEC (MC) Area, which is all of Parcel O7. The Grantee, its successors and assigns, shall not use the Property for commercial, residential, utility, or subsurface recreational purposes because MEC cleanup was completed only to a depth of four feet below ground surface. DoD Standard 6055.9 July 1999 Chapter 12 states that land remediated to four feet below ground surface can only be used for farming, agriculture, surface recreation, vehicle parking, or surface supply storage uses. For purposes of this provision, full time residential use includes, but is not limited to: single family or multi-family residences; childcare facilities; nursing home or assisted living facilities; and any building or structure for educational purpose for children/young adults in grades kindergarten through 12.

B. Modifying Restrictions. Nothing contained herein shall preclude the Grantee, its successors or assigns, from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Grantee shall consult with and obtain the approval of the Grantor, and, as appropriate, the State or Federal regulators, or the local authorities. Upon the Grantee's obtaining the approval of the Grantor and, as appropriate, State or Federal regulators, or local authorities, the Grantor agrees to record an amendment hereto. This recordation shall be the responsibility of the Grantee and at no additional cost to the Grantor.

C. Submissions. The Grantee, its successors and assigns, shall submit any requests to modifications to the above restrictions to Grantor and WDNR, by first class mail, postage prepaid, addressed as follows:

1. Grantor:

Joseph J. Vignali  
Chief, Consolidations Branch  
Base Realignment and Closure Division  
600 Army Pentagon  
Washington, DC 20310-0600

2. State Regulator:

Wisconsin Department of Natural Resources (WDNR)  
101 S. Webster Street  
PO Box 7921  
Madison, WI 53707-7921

## **2. NOTICE OF THE POTENTIAL PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)**

A. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain MEC, specifically munitions constituents (MC) in high enough concentrations to pose an explosive hazard (MEC (MC)). The term MEC is defined as specific categories of military munitions that may pose unique explosives safety risks and includes: (1) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (2) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (3) munitions constituents (e.g., trinitrotoluene (TNT)), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard.

B. The Property was previously used for propellant production and pilot plant studies. Based on a review of existing records and available information, there was evidence that MEC, specifically munitions constituents (MC) in high enough concentrations to pose an explosive hazard (MEC (MC)), was present within structures on the Property. All MEC (MC) previously detected within structures on the Property has been removed. Cracks and other visible areas where MEC (MC) could reasonably be expected to develop in remaining floor slabs have been inspected for the presence of MEC (MC). Each building received an explosive contamination certification confirming that no MEC (MC) was found to exist in the building. Post demolition sampling was also completed to determine if MEC (MC) had been transported to the surface soils surrounding demolished buildings. Post demolition sampling did not find any MEC (MC) in the floor slabs or surface soils surrounding demolished buildings.

A copy of the *BAAAP Site-Wide Explosive Contamination Certifications* for each account will be provided to the BIA at the time of transfer. A summary of MEC discovered on the Property is provided in Enclosure 5 (Table 3 – Notification of Munitions and Explosives of Concern (MEC)).

C. The Grantor represents that, to the best of its knowledge, no MEC is currently present within structures on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall

immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove, or destroy it, but shall immediately notify the local Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable laws and regulations.

D. Easement and Access Rights.

(1) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining Property. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

(2) In exercising this easement and right of access, the Grantor shall give the Grantee, or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communication services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

(3) In exercising this easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

E. The Grantee acknowledges receipt of the building Explosives Contamination Certifications.

### **3. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

A. The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material (ACM) has been found on the Property. The Property may contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the United States Environmental Protection Agency have determined that such unprotected or unregulated exposure to airborne asbestos fibers increases

the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

B. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any remediation or abatement of asbestos found to be necessary on the Property, to include ACM in or on buried pipelines, that may be required under applicable laws or regulations.

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

#### **4. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE**

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain LBP. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from LBP that may place young children at risk of developing lead poisoning.

B. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Property, as defined under 24 CFR Part 35, without complying with this section and all applicable Federal, State, and local laws and regulations pertaining to LBP and/or LBP hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its LBP content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any LBP hazards or concerns.

#### **5. NOTICE OF THE POTENTIAL PRESENCE OF POLYCHLORINATED BIPHENYLS (PCB) IN INTERIOR AND EXTERIOR PAINT AND COVENANT**

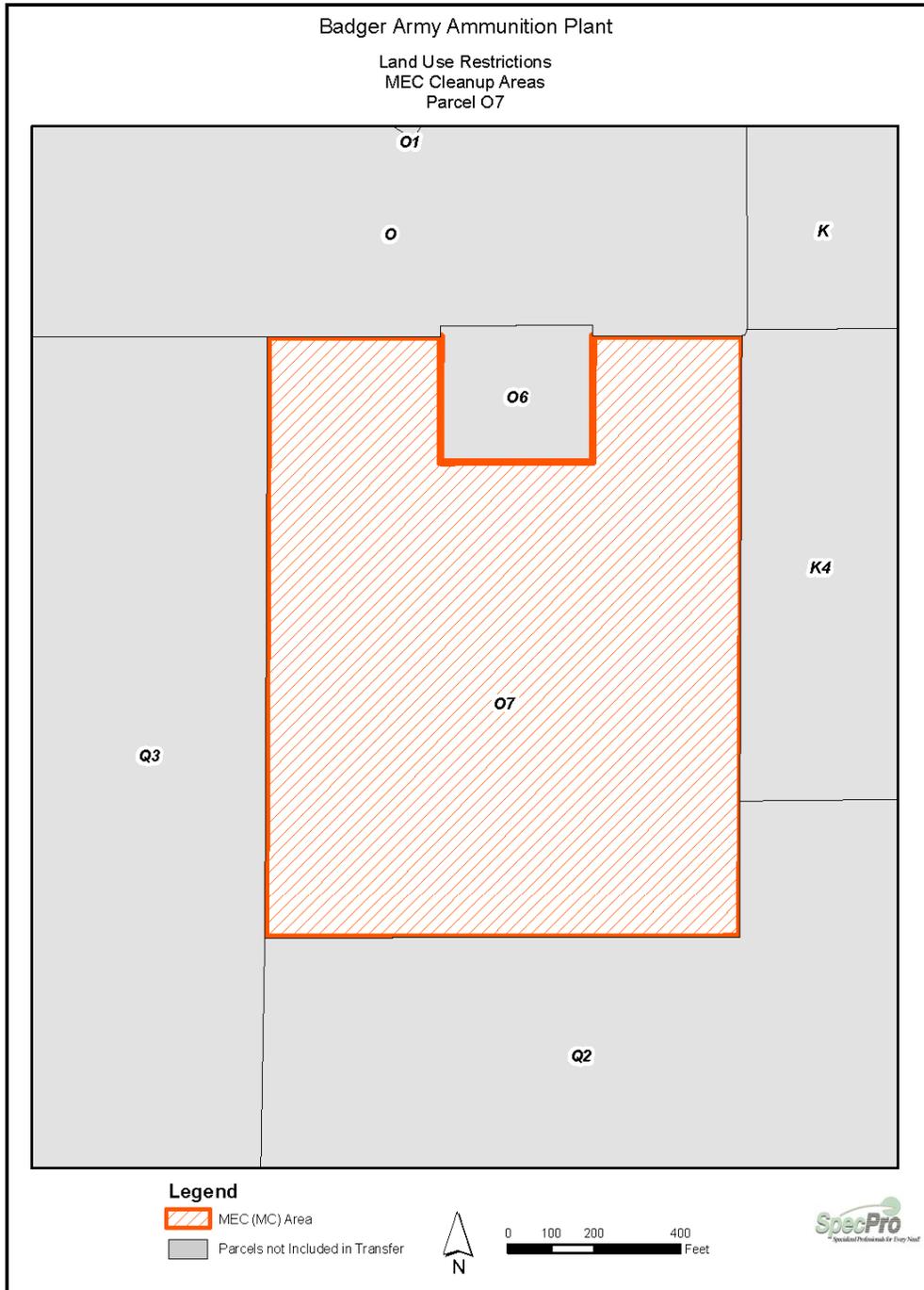
A. The Grantee is hereby informed and does acknowledge the potential presence of PCB Paint at the site.

B. All buildings on the Property are presumed to contain PCB Paint. The Grantee agrees to undertake any and all PCB Paint abatement or remediation in the aforementioned buildings that

may be required under applicable law or regulation at no expense to the Grantor. The Grantor has agreed to transfer said buildings to the Grantee, prior to remediation or abatement of PCB Paint, in reliance upon the Grantee's express representation and covenant to perform the required PCB Paint abatement or remediation of these buildings.

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to PCB Paint condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any PCB Paint concerns.

# Exhibit 1



**ENCLOSURE 8**

**REGULATORY/PUBLIC COMMENTS AND ARMY RESPONSE**