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September 29, 2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 SEP 29 PM 2:56
CHIEF CLERKS OFFICE

Via Hand Delivery
LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk
12100 Park 35 Circle, Bldg. F-1
Austin, Texas 78711-3087

Re: Docket No. 2006-0349-IHW; Permit No. 30093

Dear Ms. Castañuela:

Enclosed are the original and 12 copies of Applicant U. S. Steel Tubular Products, Inc.'s Brief in Support of Proposed Post-Closure Care Order and Response to Request for Contested Case Hearing in the above-referenced matter.

Please file the original and 11 copies, and return a file-marked copy to me. I am this date sending copies of the same to the below named individuals.

Thank you.

Very truly yours,

James C. Morriss III

Enclosures

cc's to:

For the Executive Director
Ms. Susan J. White, Staff Attorney
Texas Commission on Environmental Quality
(Mailing:) MC-100
P.O. Box 13087
Austin, Texas 78711-3087

Via CM, RRR#
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Public Interest Counsel
Texas Commission on Environmental Quality
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Office of the Chief Clerk
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Via Hand Delivery

Requester
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Riverside, CA 92517

Via CM, RRR #
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For the Applicant
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Chris Smith, Firm

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 SEP 29 PM 2:56

CHIEF CLERKS OFFICE

DOCKET NO. 2006-0349-IHW

IN THE MATTER OF POST-CLOSURE CARE AND REMEDIATION CONCERNING	§	**BEFORE THE**
	§	
	§	**TEXAS COMMISSION ON**
	§	
U. S. STEEL TUBULAR PRODUCTS, INC.	§	**ENVIRONMENTAL QUALITY**
	§	

APPLICANT U. S. STEEL TUBULAR PRODUCTS, INC.'S BRIEF IN SUPPORT OF PROPOSED POST-CLOSURE CARE ORDER AND RESPONSE TO REQUEST FOR CONTESTED CASE HEARING

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

U. S. Steel Tubular Products, Inc. ("U. S. Steel") (formerly Lone Star Steel Company, L.P.), the Applicant in this docket, respectfully asks the Commission to issue the Post-Closure Care Order ("PCO") as proposed.

I. BACKGROUND

U. S. Steel operates a steel mill that manufactures steel products, including piping and tubing. Historically, on-site wastes were disposed in two hazardous waste management units: Unit 01/02 and Unit 07A. Wastes were also managed at certain solid waste management units ("SWMUs").

A. Unit 01/02 and Unit 07A.

The wastes in Unit 01/02 include hazardous and non-hazardous wastes generated from past plant operations including, dredgings, sludges, flue dust, baghouse dust, general plant refuse, spent refractory brick, mill scale, slag, spent barium heat treating salts, threadlube compound, and varnish residue. The wastes in Unit 07A include hazardous and non-hazardous wastes consisting of open-hearth flue dust, air pollution sludge from open-hearth and electric arc furnaces, and dredgings.

The TCEQ and its predecessor agencies have regulated Unit 01/02 and Unit 07A since 1976, when the Texas Water Quality Control Board issued a Notice of Registration for on-site disposal facilities for these units. In 1980, a Notification of Hazardous Waste Activity was submitted to EPA for Unit 01/02 and Unit 07A, along with a Hazardous Waste Permit Application pursuant to the requirements of the Resource Conservation and Recovery Act ("RCRA").[1] The appropriate Part A permit application was also filed with the state. The following year, 1981, groundwater sampling data from wells in the area around Unit 01/02 and Unit 07A were submitted to the agency pursuant to Lone Star Steel's wastewater permit. In 1982, the Texas Department of Water Resources approved the well system, originally installed to comply with the wastewater permit, for use in the RCRA monitoring program at Unit 01/02 and Unit 07A. Groundwater in the vicinity of these units has been monitored on an ongoing basis since that time.

A Closure and Post-Closure Plan for hazardous waste management areas, including Unit 01/02 and Unit 07A was submitted in 1985. The other units in the original plan have since been clean-closed or closed as nonhazardous landfills. The Closure and Post-Closure Plan was approved by the Texas Water Commission in 1987. Closure certifications for both Unit 01/02 and Unit 07A were submitted in 1991, and the closures were approved in 1996. As part of the closures, site-specific groundwater sampling plans were developed and implemented for both units. Groundwater monitoring of Unit 01/02 and Unit 07A continues to show no release to groundwater.

---

[1] 42 U.S.C § 6901 et. seq.

B. SWMUs.

A 1989 RCRA Facility Assessment ("RFA") identified a number of SWMUs and Areas of Concern ("AOCs"). All SWMUs and AOCs identified in the RFA other than Unit 5B (SWMU #5) and the Former Tarry Waste Impoundment Site (SWMU #D) have been addressed, and if need be, remediated.

C. The PCO.

This PCO will govern continued post-closure care for Unit 01/02 and Unit 07A and the completion of any investigation and remediation work required for the two remaining SWMUs. A map showing the locations of the units subject to the PCO (Unit 01/02, Unit 7A, and the SWMUs subject to corrective action) is attached as **Exhibit A**. A chronology of the regulatory history of these units is attached as **Exhibit B**.

II. ARGUMENT

A. The Commission should issue the PCO.

The PCO represents the culmination of a 28-year process during which the facilities have been subject to regulation as "Interim Status" facilities pursuant to state and federal regulations. These units have been subject to regulation and oversight, including comprehensive groundwater monitoring, since the beginning of the waste management program in Texas. In fact, the units have been subject to monitoring standards that are more stringent than required by applicable interim status regulations. When Unit 01/02 and Unit 07A were closed, Lone Star Steel worked with the agency to develop site-specific groundwater monitoring programs that exceeded the limited indicator parameters required by interim status regulations. The expanded groundwater monitoring program for both units will be continued under the PCO. Likewise, all but two of the SWMUs and AOCs identified during the 1989 RFA have been addressed to

the satisfaction of the remediation division during the past 20 years. One of the remaining two areas requires further investigation and may require further action or monitoring. The second is the subject of an approved Remedial Action Plan. The remaining investigation and any further remediation of these two SWMUs will also be governed by this PCO.

In 2001, the agency agreed to have the units continue under interim status until new PCO rules were developed. The PCO process authorized by the rules is well suited to these facilities. It has allowed the staff to tailor the requirements to the two remaining RCRA units and the two remaining SWMUs. The PCO is the step in which these units move from "interim status" to final site-specific control under an order.

B. The Commission should not grant a contested case hearing.

Mr. Donnie Turner has requested a contested case hearing in this docket. Mr. Turner is a California resident who owns property approximately three-quarters of a mile from Unit 07A, the closest of the four units subject to the order. All intervening property is owned by U. S. Steel. The location of Mr. Turner's property is shown on **Exhibit A**. Mr. Turner is not entitled to a contested case hearing for multiple, independent, reasons.

i. Mr. Turner lacks standing to request a hearing under TCEQ rules.

TCEQ rules establish the scope and method of public participation on PCOs. Members of the public, like Mr. Turner, are afforded an opportunity to comment during a prescribed comment period, but are not afforded an opportunity to seek a contested case hearing. Under TCEQ rules the only parties to a PCO contested case hearing and thus, the only parties with standing to request such a hearing, are the Executive Director, the

applicant, and the Public Interest Counsel.[2] U. S. Steel agrees with the Executive Director that Mr. Turner is not entitled to a hearing under this provision.

ii. Mr. Turner's comments were not timely.

Comments in this docket were due on July 15, 2007. Mr. Turner's comments and hearing request were dated December 14, 2007, approximately five months after the deadline. U. S. Steel agrees with the Executive Director that the comments, and thus the request, were untimely.

iii. Mr. Turner did not raise issues related to any disputed fact relevant and material to the Commission's decision on the PCO.

Even if Mr. Turner had standing and had submitted a timely hearing request, which he did not, he would still not be entitled to a hearing because he has not raised any issue related to disputed facts relevant and material to the PCO.[3] Mr. Turner has not identified any specific objection to the PCO, and has not explained why, if the Commission were to issue the PCO, he would be an affected person.[4] Thus, he has failed to meet the requirements for a hearing request.[5]

Instead, Mr. Turner has made unsupported allegations of illegal waste disposal. As noted by the Executive Director, these allegations were previously investigated by TCEQ and by EPA's Criminal Investigation Division. A copy of EPA's report on this issue is attached as **Exhibit C**. Both agencies concluded that there was no merit to Mr.

---

[2] 30 TEX. ADMIN. CODE § 80.109(b)(11) (2008) (emphasis added).

[3] *See* 30 TEX. ADMIN. CODE § 50.115(c) (Commission may not refer and issue to SOAH unless the Commission determines the issue involves a disputed question of fact relevant and material to the application.).

[4] 30 TEX. ADMIN. CODE § 55.201(d)(2) (Person requesting a hearing must state how the will be affected by the activity in a manner not common to members of the general public.).

[5] *Id.*

Turner's allegations of improper waste disposal. This assessment is documented in the Executive Director's response to comments.

Wastes managed at the northern end of the U. S. Steel property, the area closest to Mr. Turner's property, were consolidated and capped at Unit 07A prior to 1991. Other areas were "clean closed" (closed without further regulatory obligations). The only activity at Unit 07A in the intervening 17 years has been routine maintenance of the landfill cap and monitoring of groundwater monitoring wells. The activities subject to the PCO, including continued groundwater monitoring at Unit 07A, will have no effect on Mr. Turner. Thus, his hearing request should be denied.

III. CONCLUSION

The units covered by this PCO have been subject to regulation and oversight for almost 30 years and for almost 20 years since their closure. This PCO is the needed next step to continue the post-closure process for these units. U. S. Steel respectfully asks the Commission to deny Mr. Turner's hearing request and issue the PCO.

Respectfully submitted,

Thompson & Knight LLP

By: _____

James C. Morriss III
Christopher D. Smith

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Attorneys for Applicant
U. S. Steel Tubular Products, Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document will be served, via certified mail, return receipt requested, on the following parties of record on this, the 29th day of September, 2008.

James C. Morriss III

For the Executive Director
Ms. Susan J. White, Staff Attorney
Texas Commission on Environmental Quality
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Via CM, RRR#
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and Via e-mail

Ms. Katherine Nelson, Technical Staff
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For Public Interest Counsel
Mr. Blas Coy, Jr.
Public Interest Counsel
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For the Office of Public Assistance
Ms. Bridget Bohac, Director
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Via Hand Delivery

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHIEF CLERKS OFFICE

Requester
Mr. Donnie O. Turner
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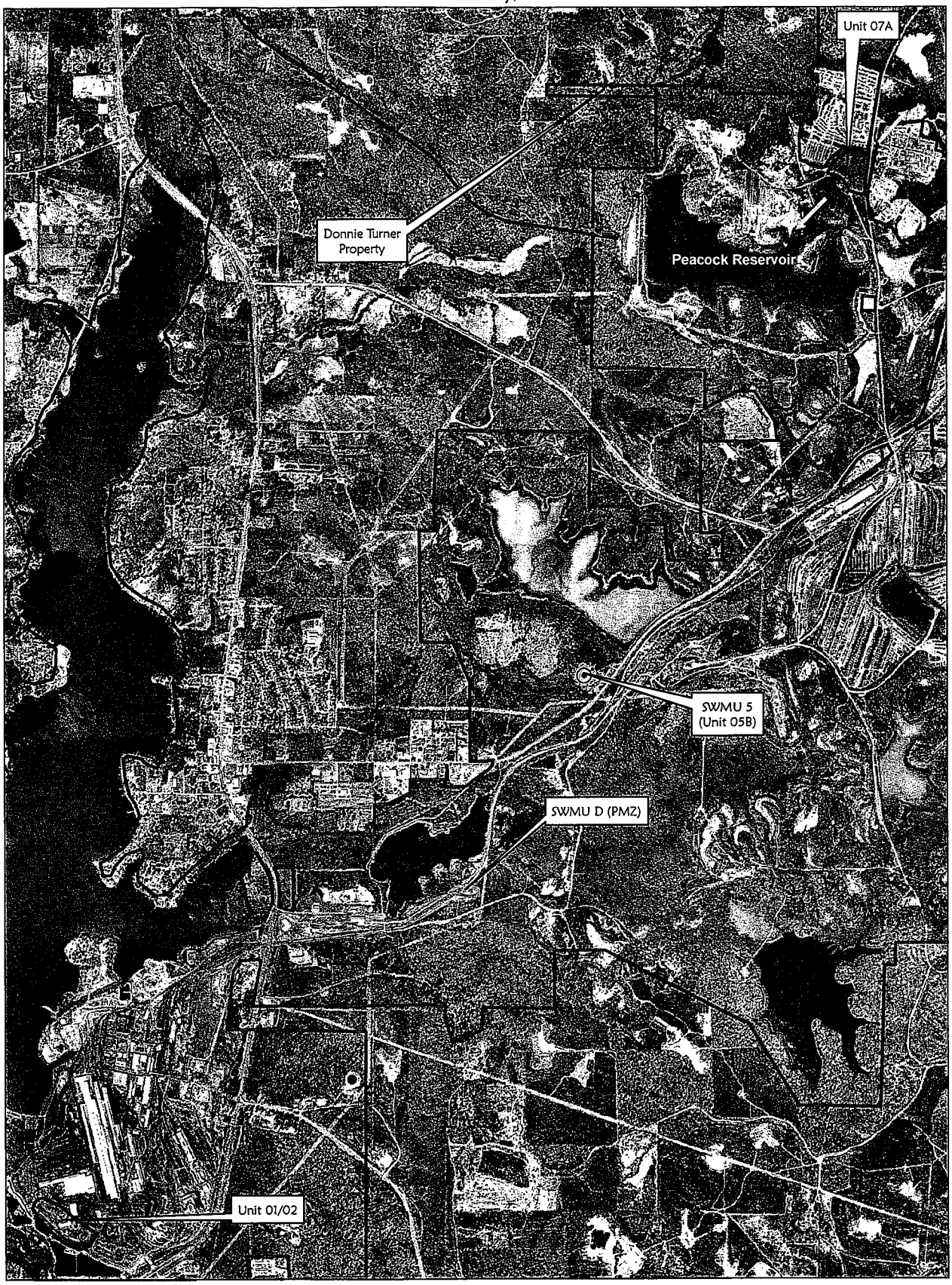
Riverside, CA 92517

Via CM, RRR #
7007 0710 0004 6507 2996

Exhibit A

Exhibit A

Geographic Reference Points, Post Closure Order 30093 Issuance
U. S. Steel Tubular Products, Inc., Texas Operations
Morris County, Texas



U. S. Steel Property Boundary
RCRA Unit
SWMU Plume Management Zone
Direction of Groundwater Flow
Direction of Creek Flow

N
W E
S

0.5 0 0.5 Miles

Vector Data are for representation only and should not be used as a legal description

Basemap Data: .5 meter resolution RGB imagery
Source: Kingwood Forestry
Date of flight: March 2008

Advanced Ecology, Ltd.
Ecological Development with Environmental Excellence

Drawn by: Jeff Slaga
Date: June 24, 2008

Exhibit B

Regulatory History of Units Subject to PCO

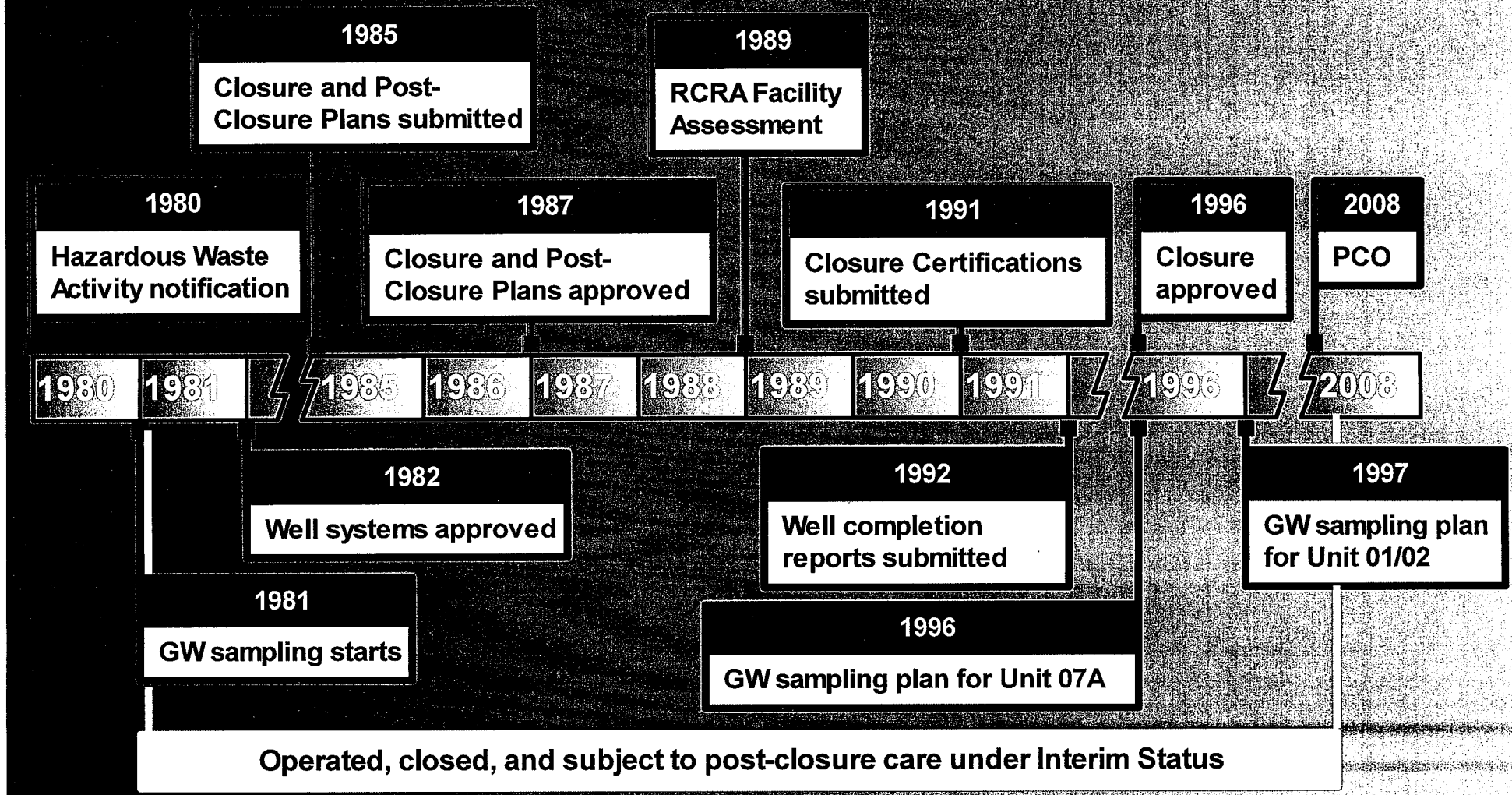


Exhibit B

Exhibit C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Criminal Investigation Division
Office of Criminal Enforcement, Forensics, and Training
Dallas Area Office (6CID)
1445 Ross Avenue
Dallas, TX 75202-2733

December 8, 2004

MEMORANDUM

SUBJECT: Investigative Lead

File:
Lead:

FROM:

Dallas Area Office

TO:

Criminal Investigation Division

On August 5, 2004, HQ Lead was received by the Dallas Area Office. The lead was assigned Dallas Lead Number

The complainant submitted a letter to the EPA in June 2004 alleging that hazardous chemicals/waste had been dumped at the Lone Star Steel facility. . Additionally, the complainant describes a dam built by Lone Star Steel that has caused flooding.

On August 10, 2004, the agent assigned to this matter traveled to Lone Star Steel and met with the manger of environmental services to discuss the allegations. The provided closure permits approved by the State of Texas for the waste piles and ponds referenced by the complainant. The dam referenced by the complainant is associated with a reservoir at the facility. The reservoir was at 50% capacity at the time of the site visit and not in danger of flooding.

Based on the investigation to date, no further action by EPA Criminal Investigation Division is warranted. This lead has been closed.

Exhibit C

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