

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

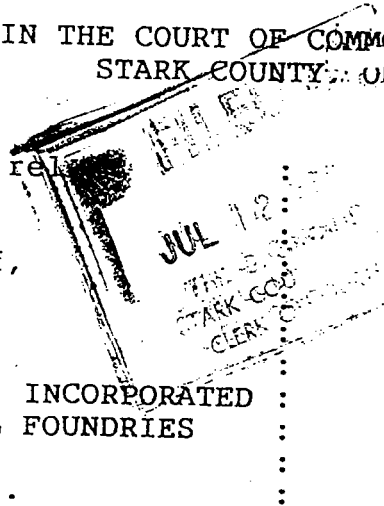
STATE OF OHIO, ex rel
LEE FISHER,

Plaintiff,

vs.

AMSTED INDUSTRIES, INCORPORATED
dba AMERICAN STEEL FOUNDRIES

Defendant.



CASE NO. 1993CV01107

JUDGE: *Beggs*

CONSENT ORDER

Plaintiff, State of Ohio, by its Attorney General, Lee Fisher (hereinafter "Plaintiff"), having filed the Complaint against Defendant Amsted Industries, Incorporated dba American Steel Foundries (hereinafter "Defendant") alleging violations of Chapter 3734 of the Ohio Revised Code, and the parties having consented to the entry of this Order,

NOW THEREFORE, without the trial of any issue of fact or law, upon the consent of the parties hereto, and without any admission of liability or of fact or law, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

1. The Court has jurisdiction over the subject matter of this action, pursuant to Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder. This Court has jurisdiction over the parties. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted.

II. PERSONS BOUND

2. The provisions of this Consent Order shall apply and be binding upon the Defendant to this action, its agents, officers, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendant. Defendant shall provide a copy of this Consent Order to each contractor it employs to perform work itemized herein, and each such contractor shall provide a copy to each subcontractor it employs to do such work.

III. SATISFACTION OF LAWSUIT

3. Plaintiff has alleged in its Complaint that Defendant has operated its facility located at 1001 East Broadway, Alliance, Stark County, Ohio ("the Facility") in violation of various provisions of the hazardous and solid waste laws of Ohio as set forth in Chapter 3734 of the Ohio Revised Code ("R.C.") and the rules adopted thereunder. Defendants deny these allegations. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for those claims which have been alleged in the Complaint.

4. Nothing in this Consent Order shall limit the authority of Plaintiff to seek relief for claims or conditions not alleged in the Complaint, or to seek any relief for claims or conditions alleged in the Complaint which occur after the entry of this Consent Order. The Plaintiff hereby specifically

reserves the right to take any action against any person, including, but not limited to Defendant Amsted Industries, Incorporated, dba American Steel Foundries, pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601, et seq. ("CERCLA") and/or Ohio Revised Code Sections 3734.20 through 3734.27 for any removal, remedial or corrective actions. Plaintiff also hereby specifically reserves the right to take any action against any person including Defendant pursuant to R.C. Chapter 3734 or any other applicable law involving any activities conducted at Defendant's landfill located in Smith Township, Mahoning County, Ohio or any other facility.

5. Defendant hereby specifically reserves any private right of action which Defendant may have against any party under Section 107 of CERCLA. Defendant does not waive any argument or defense that it may wish to raise in any other action brought against Defendant by any other person. Defendant reserves the right to appeal, to the extent provided by R.C. Chapter 3745, any action of the Director concerning any closure plan submitted pursuant to this Consent Order, or to seek an amendment or modification thereto; however, such reservation does not alter any requirement of this Consent Order.

IV. HAZARDOUS WASTE CLOSURE PLAN

6. Defendant is hereby ordered and enjoined to perform closure of those areas designated as Area A and Area B in

Exhibit One, attached hereto, in accordance with O.A.C. Chapter 3745-66, including but not limited to O.A.C. Rules 3745-66-10 through 3745-66-20.

7. Within ninety (90) days of entry of this Consent Order, Defendant shall submit to Ohio EPA an approvable closure plan for those areas designated as Area A and Area B in Exhibit One, attached hereto, that meets the requirements of O.A.C. Chapter 3745-66, including but not limited to O.A.C. Rule 3745-66-12.

8. If the Director determines that Defendant's closure plan(s) is deficient, Defendant shall, within thirty (30) days of written notification of the deficiencies from Ohio EPA, resubmit a revised closure plan correcting the deficiencies.

9. Upon approval by Ohio EPA of Defendant's closure plan(s), as submitted by the Defendant or as modified by the Director to ensure compliance with applicable rules, the Defendant shall implement the approved closure plan(s) in the manner and pursuant to the time frames set forth in the approved closure plan(s), any conditions attached to the approvals, and all applicable rules, including O.A.C. Rule 3745-66-13.

10. Within sixty (60) days of completion of each closure, the Defendant shall submit to Ohio EPA a certification of closure pursuant to O.A.C. Rule 3745-66-15.

V. SOLID WASTE

11. Within sixty (60) days of the completion of certification of Hazardous Waste closure of Area B of Exhibit One, the Defendant shall remove all solid wastes disposed of at the Facility in the area designated as Area C in Exhibit Two attached hereto. Defendant shall dispose of such wastes at a licensed solid waste disposal facility or otherwise manage such waste in accordance with applicable law and shall submit documentation which demonstrates such removal and disposal or management to "Solid Waste Group Leader, Ohio Environmental Protection Agency Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087."

12. Defendant agrees to submit copies of all progress reports concerning the closure of the Defendant's landfill located in Smith Township, Mahoning County, Ohio conducted pursuant to Section X of the Federal Consent Decree attached hereto as Exhibit Three. The reports shall be submitted to "Supervisor, Division of Solid and Infectious Waste Management, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087."

VI. FINANCIAL ASSURANCE

13. Within ninety (90) days of entry of this Consent Order, Defendant shall submit to Ohio EPA a detailed cost estimate for closure of Areas A and B on Exhibit One which is calculated pursuant to O.A.C. Rule 3745-66-42, and, unless the

approvable closure plan provides for removal of all hazardous waste from the Facility, a detailed cost estimate for post-closure care of these areas which is calculated pursuant to O.A.C. Rule 3745-66-44.

14. Within ninety (90) days of entry of this Consent Order, Defendant shall submit to Ohio EPA documentation of financial assurance for closure of Areas A and B on Exhibit One pursuant to O.A.C. Rule 3745-66-43, and, unless the approvable closure plan provides for removal of all hazardous waste from the Facility, for post-closure care for Areas A and B on Exhibit One pursuant to O.A.C. Rule 3745-66-45.

15. Within ninety (90) days of entry of this Consent Order, Defendant shall submit to Ohio EPA documentation demonstrating financial responsibility pursuant to O.A.C. Rule 3745-66-47.

VII. SUBMITTAL OF DOCUMENTS

16. Unless otherwise specified herein, all documents required to be submitted to Ohio EPA shall be submitted to: "Manager, Compliance Monitoring & Enforcement Section, Division of Hazardous Waste Management, Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio 43266-0149" and to "RCRA Group Leader, Ohio Environmental Protection Agency, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087."

VIII. CIVIL PENALTY AND COSTS CLAIMS

17. Defendant shall pay to the State of Ohio the amount of

ninety thousand dollars (\$90,000) in settlement of Plaintiff's claims for civil penalties. This amount shall be paid by delivering to counsel for Plaintiff a certified check for that amount, payable to the order of "Treasurer, State of Ohio," within thirty (30) days from the date of entry of this Consent Order, to Janis Miller, Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. This payment shall be paid into the Ohio Hazardous Waste Clean-up Fund created under R.C. Section 3734.28. The sum of ninety (90) thousand dollars (\$90,000) relates to Plaintiff's claims as follows: \$80,000 in settlement of hazardous waste claims; \$10,000 in settlement of solid waste claims.

18. Defendant shall pay the amount of Four Thousand Thousand Dollars (\$4,000.00) in settlement of Plaintiff's claims for costs expended in pursuing the instant action by delivering a certified check in such an amount for payment into the State's Treasury made payable to the order of "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days after the entry of the instant Consent Order. Any check submitted in compliance with this Section, shall be in addition to and separate from any check submitted pursuant to any other Section of this Consent Order.

19. Defendant shall pay all court costs of this action.

IX. PERMANENT INJUNCTION

20. Defendant is hereby permanently enjoined and ordered to comply with the solid and hazardous waste requirements applicable to it under Chapter 3734 of the Ohio Revised Code and the regulations promulgated thereunder.

X. COMPLIANCE WITH APPLICABLE LAWS

21. Nothing herein shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

XI. STIPULATED PENALTIES

22. In the event that Defendant violates any of the requirements of this Consent Order, including any milestone requirement in the approved closure plan schedule, but not including the requirements in Section XII of this Consent Order, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule. For each day of each failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day. For each day of each failure to meet a requirement, from thirty-one (31) to sixty (60) days - Eight Hundred Dollars (\$800.00) per day. For each day of each failure to meet a requirement, from sixty-one (61) days to ninety (90) days - One Thousand Five Hundred Dollars (\$1,500.00) per day. For each day of failure to meet a requirement, over ninety (90) days - Two Thousand Five Hundred Dollars (\$2,500.00) per day.

23. Any payment required to be made under the provisions of the preceeding paragraph of this Order shall be made by delivering a certified check or checks for the appropriate amounts, within forty-five (45) days from the date of the failure to meet the requirement of the Consent Order, made payable to "Treasurer, State of Ohio" to Janis Miller, Administrative Assistant, or a person subsequently designated by the State, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410. Such payment shall be deposited into the hazardous waste clean-up account created under R.C. Section 3734.28.

24. The provisions of this Section providing for the payment of stipulated penalties shall terminate after Defendant has demonstrated to the State's satisfaction that Defendant has properly certified closure for Areas A and B pursuant to O.A.C. Rule 3745-66-15, has complied with all provisions of the Consent Order for two years thereafter, and has paid all penalties and costs due under the Consent Order.

XII. WASTE MINIMIZATION/POLLUTION PREVENTION

25. Defendant is ordered and enjoined to continue to identify and to achieve technically and economically feasible reductions in the amount and toxicity of waste generated at the Facility.

26. Defendant is ordered and enjoined to submit to Ohio EPA annual reports documenting Defendant's efforts and accomplishments in reducing the amount and toxicity of waste generated at the Facility during each of the three (3) years following entry of this Consent Order. The reports shall also describe the remaining waste streams at the Facility, and the economic and technical factors relevant to reducing the amount and toxicity of these waste streams. The reports shall be submitted within two (2) months of the first, second and third anniversary dates of the entry of this Consent Order.

XIII. INSPECTIONS

27. Defendant is ordered to allow representatives of the Ohio EPA, or representatives of the Stark County Health Department acting on behalf of Ohio EPA, upon proper identification, to enter upon the Facility at reasonable times, to inspect, investigate, take samples and pictures and examine or copy records in order to determine compliance with the terms of this Consent Order and O.R.C. Chapter 3734 and rules promulgated thereunder. Nothing in this Order shall limit any right of entry possessed by the Plaintiff.

XIV. RETENTION OF JURISDICTION

28. This Court will retain jurisdiction of this action for the purpose of overseeing compliance with this Consent Order.

DATED _____, 1993

JUDGE, STARK COUNTY COURT
OF COMMON PLEAS

APPROVED:

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO

BY: _____

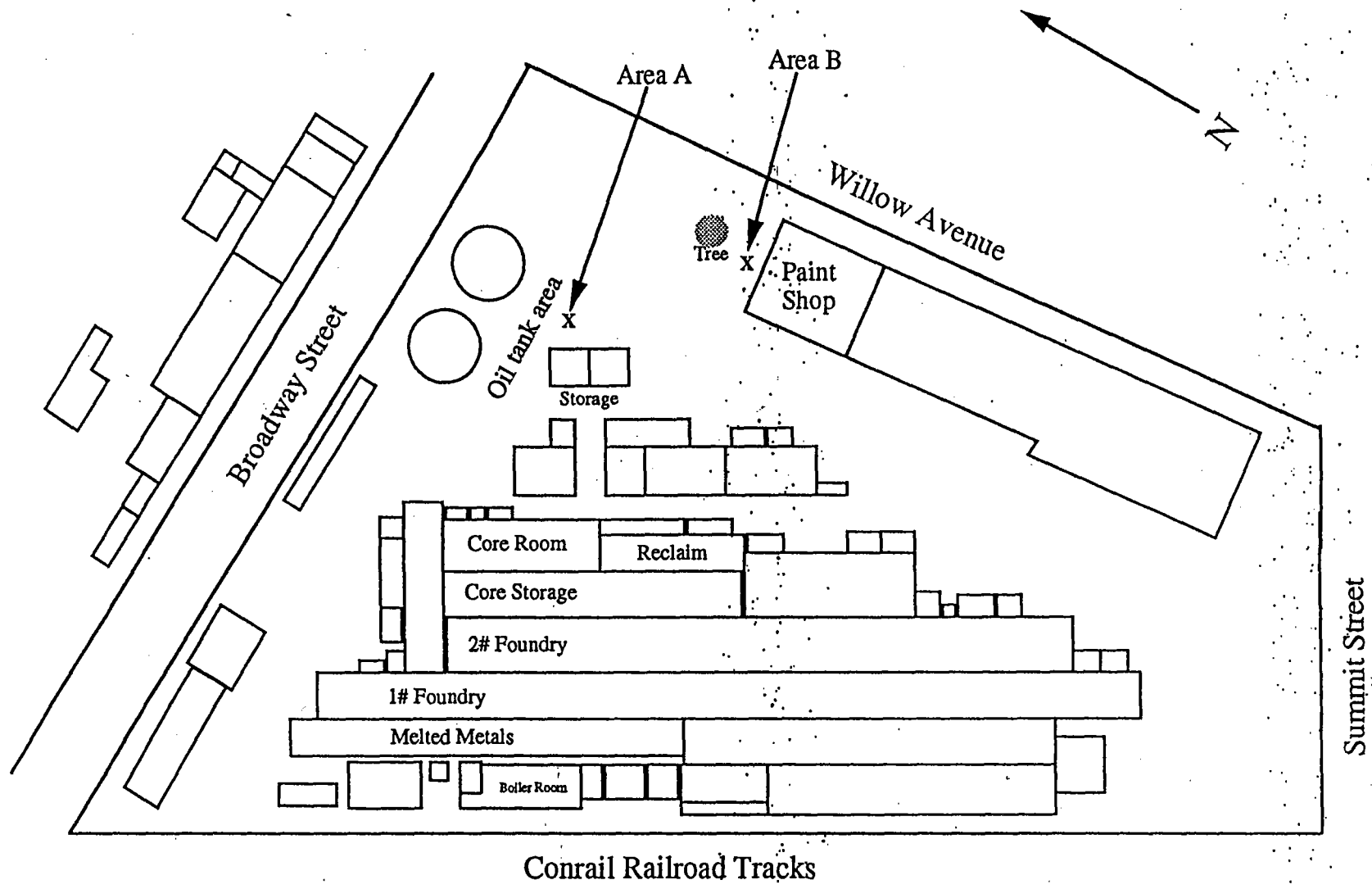
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Assistant Attorneys General
Environmental Enforcement
Section, 25th Floor
30 East Broad Street
Columbus, Ohio 43266-0410

AMSTED INDUSTRIES, INCORPORATED
dba AMERICAN STEEL FOUNDRIES

BY: _____

Norman Berg
Norman Berg
President, American Steel Foundries

3511E.35-45



NOT TO SCALE

EXHIBIT ONE: Hazardous Waste Closure Areas Alliance Foundry

Area A: Yard area south of tank area where oil mixed with solvents was stored.

Area B: Area outside paint shop extending past tree down hill to Willow Avenue.

NOTE: References to Areas A and B include all pollution emanating from these areas.

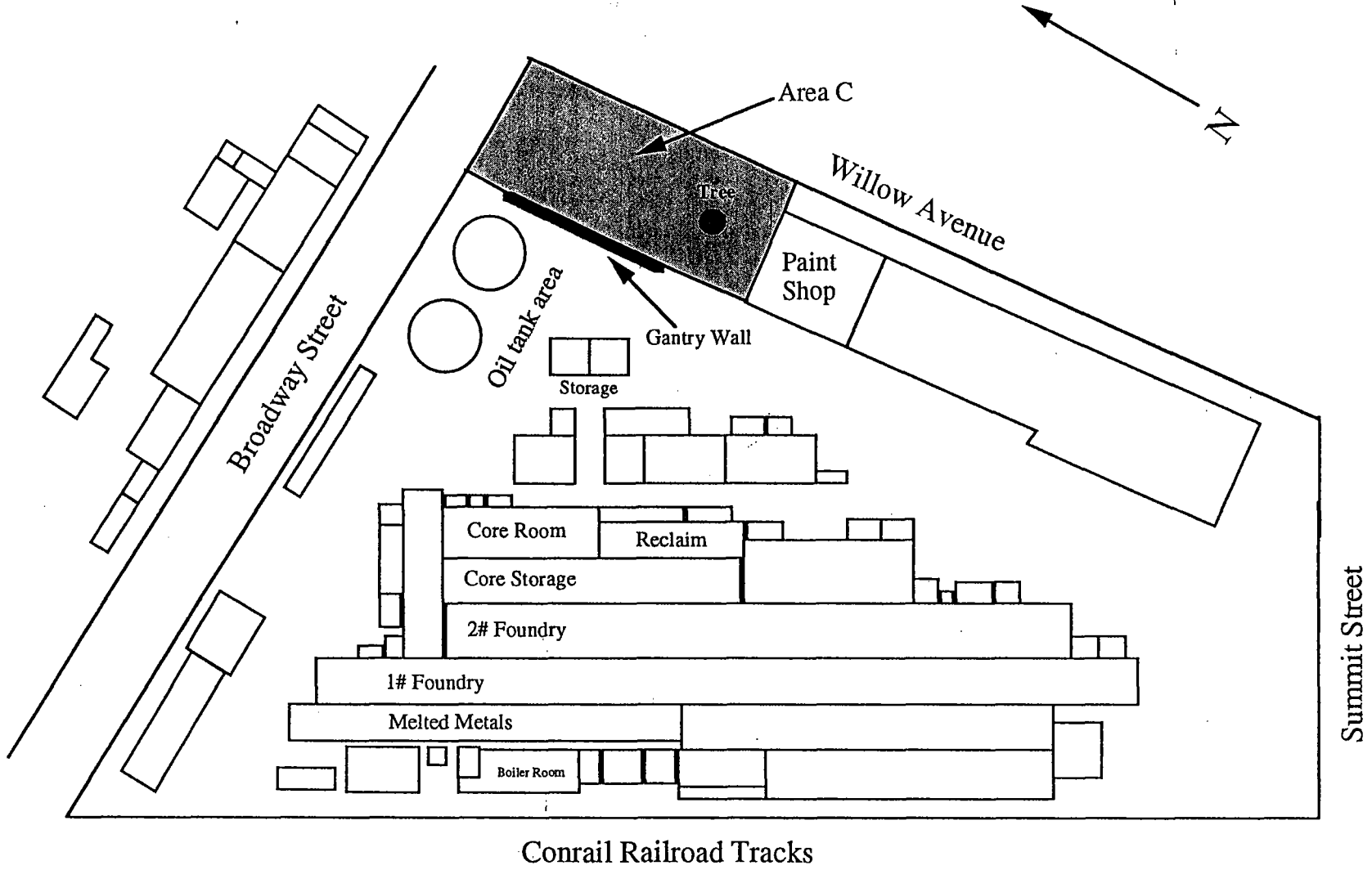


EXHIBIT TWO: Solid Waste Closure Area Alliance Foundry

○ Area C: Consists of the area on the east side of the Gantry Wall over to Willow Avenue and from Broadway Street south to the foundation of the building that houses the paint shop, down to the original soil or alley.

Area C includes the area that begins at a point 60' to the south of the northern-most point of the Gantry Wall. This area continues south along the Gantry Wall for approximately 450' to the building housing the paint shop, then proceeds east 75' along the above-mentioned building. This area then proceeds in a north-westerly direction to a point that is 60' east of the beginning point.