

IN THE COURT OF COMMON PLEAS
WAYNE COUNTY, OHIO

OHIO
JCI-3 P 857
15 1 23 1990

STATE OF OHIO, *ex rel.*
ANTHONY J. CELEBREZZE, JR.,
ATTORNEY GENERAL OF OHIO,

90 OCT 12

CASE NO. 89-CV-167
ENVIRONMENTAL
ENFORCEMENT

JUDGE MARK K. WIEST

Plaintiff,

CLERK OF COURT

vs.

CONSENT ORDER

ORRVILLE BRONZE & ALUMINUM CO.,
et al.,

Defendants.

The Plaintiff, State of Ohio, *ex rel.* Anthony J. Celebrezze, Jr., Attorney General of Ohio ("State" or "Plaintiff"), having filed the Complaint in this action against the Defendants Orrville Bronze & Aluminum Company, Charles R. Cairnie and Robert R. Cairnie (hereinafter "Defendants" unless otherwise specifically referenced), to enforce the State of Ohio's Hazardous Waste and Air Pollution Control statutes and rules concerning the Defendants' waste handling, storage, and/or disposal practices at its facility located at 100 Central Court, Orrville, Wayne County, Ohio (hereinafter the "Facility"), and Plaintiff and Defendants having consented to entry of this Order;

Therefore, without trial or admission of any issue of law or of fact, or of liability for the violations alleged, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. PERSONS BOUND

1. The provisions of this Consent Order shall apply to and be binding upon the Defendants to this action, their agents, officers, employees, assigns, successors and those persons in active concert or participation with them. Defendant Orrville Bronze & Aluminum Company ("Orrville Bronze") shall provide a copy of this Consent Order to each consultant or contractor employed to perform work under Paragraphs IV, V, or VI herein. Furthermore, Defendants shall provide a copy of this Consent Order to their successor in ownership of the Orrville Bronze & Aluminum Company.

II. SATISFACTION OF LAWSUIT

2. Except as otherwise provided below, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Defendants for all claims alleged in the Complaint. Nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to seek relief for claims or conditions not alleged in the Complaint or for violations which occur after the filing of this Consent Order, including violations of the Consent Order itself. Furthermore, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including the Defendants, to eliminate or mitigate conditions arising after the date hereof which may present an imminent endangerment to the public health, welfare or the environment. In addition,

this Consent Order shall not be construed so as to limit the authority of the State of Ohio to undertake any action, pursuant to ORC Section 3734.20, against any person, including Defendants, for remedial or corrective action or additional monitoring or testing, or to seek costs to reimburse the State of Ohio for such work, should the Director determine that such an action must be undertaken to abate pollution or contamination or to protect public health or safety.

III. JURISDICTION AND VENUE

3. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under Chapters 3734. and 3704. of the Ohio Revised Code and regulations promulgated thereunder, and venue is proper in this Court.

IV. CLEANING OF ROOF

4. Within forty-five (45) days of filing of this Consent Order, Defendants shall submit to Ohio EPA an approvable plan to remove within seventy-five (75) days any lead from the surface of the roof as necessary to meet a rinseate standard of 50 mg/l for lead. This paragraph shall apply to the portion of the roof identified as sections 1a and 1d on Attachment A.

5. If Ohio EPA notifies the Defendants in writing of any deficiencies in part or all of the roof cleaning plan, Defendants shall submit to Ohio EPA within fifteen (15) days a revised roof cleaning plan addressing such deficiencies to Ohio EPA's satisfaction.

6. Defendants shall implement the roof cleaning plan as approved by Ohio EPA.

7. Within ninety (90) days of approval of the roof cleaning plan, Defendants shall submit to Ohio EPA a report demonstrating that sections 1a and 1d of the roof have been cleaned to the rinseate standard of 50 mg/l for lead. The report shall include data from and analysis of representative sampling of sections 1a and 1d of the roof.

V. SOIL SAMPLING

8. Within seventy-five (75) days of filing of this Consent Order, Defendants shall submit to Ohio EPA an approvable plan to sample the lead content in soils surrounding the Facility within the area marked on Attachment B. The plan shall ensure representative sampling of the soils within the marked area to identify all areas with a soil lead concentration of 500 mg/kg or greater.

9. If Ohio EPA notifies the Defendants in writing of deficiencies in part or all of the sampling plan, Defendants shall submit to Ohio EPA with thirty (30) days a revised sampling plan addressing such deficiencies to Ohio EPA's satisfaction.

10. Defendants shall implement the sampling plan as approved by Ohio EPA.

11. Within seventy-five (75) days of approval of the sampling plan, Defendants shall submit to Ohio EPA a report setting forth and analyzing the results of the sampling plan

work. The report shall identify with particularity all areas with a soil lead concentration 500 mg/kg or greater.

VI. SOIL REMEDIATION

12. If the sampling plan report submitted pursuant to Section V identifies any areas with a soil lead concentration of 500 mg/kg or greater, Defendants shall comply with the following:

(a) Within seventy-five (75) days of submittal of the soil sampling report pursuant to Section V, Defendants shall submit to Ohio EPA an approvable soil remediation plan for the removal or other remediation within one hundred and twenty (120) days of any soils with a concentration of lead in an amount equal to or greater than 500 mg/kg using total metal analysis in accordance with a method in SW-846. The plan shall ensure that soils shall be removed or otherwise remediated to less than 500 mg/kg. The plan shall ensure proper disposal or treatment of any solid or hazardous waste generated during the soil remediation.

(b) If Ohio EPA notifies the Defendants in writing of deficiencies in part or all of the soil remediation plan, Defendants shall submit to Ohio EPA within fifteen (15) days a revised soil remediation plan addressing such deficiencies to Ohio EPA's satisfaction.

(c) Defendants shall implement the soil remediation plan as approved by Ohio EPA.

(d) Within one hundred and fifty (150) days of approval of the soil remediation plan, Defendants shall submit to Ohio EPA a report demonstrating that soils identified to have lead in a concentration equal to or greater than 500 mg/kg have been removed or otherwise remediated to less than 500 mg/kg.

VII. RECORD RETENTION

13. The Defendants shall retain all records relating to any claim by Defendants that materials generated at the Facility are not hazardous wastes for a period of three years from the date the material in question was generated.

VIII. RECORDKEEPING

14. The Defendants shall keep a written operating record of the generation, storage, sale and reprocessing of secondary materials at the Facility. All information concerning secondary materials that are generated at the Facility, relating to any claim that the Defendants are nonspeculatively accumulating these secondary materials (as defined in paragraph (C) of Rule 3745-51-01 of the O.A.C.), shall be recorded. Secondary materials include, but are not necessarily limited to, any wheelabrator dust, floor sweepings, slags, skims, drosses, grindings, spills or other metal byproducts or particulates at the Facility. The operating record shall include, but not necessarily be limited to, for each type of secondary material, the following:

(a) the volume or weight of secondary material generated at the Facility and when such material were generated;

(b) the volume or weight of secondary material accumulated at the Facility at the beginning of each calendar year; and

(c) the volume or weight of secondary material described in subparagraph (b) that was sold or reprocessed during that calendar year, including the dates when such material was sold or reprocessed, the volume or weight of material sold or reprocessed on each occasion and to whom the material was sold.

IX. AIR POLLUTION CONTROL

15. Defendants shall not cause, permit or allow any visible emissions of air contaminants from the Facility's casting cleaning room as a result of the operation of the shot blaster (wheelabrator), cut-off saw, grind booths (4), and belt grinders (2), collectively identified by Ohio EPA application number 0285010269 P001 (hereinafter "source P001").

16. If the baghouse or any other air pollution control equipment serving source P001 malfunctions in such a manner as to cause visible emissions of air contaminants from the casting cleaning room, Defendants shall immediately shut down source P001 and cease emitting any air contaminants until such time as the malfunction is corrected and source P001 can be operated without any visible emissions from the casting cleaning room.

X. PERMANENT INJUNCTION

17. The Defendants are hereby permanently enjoined and ordered to comply with ORC Chapters 3704. and 3734. and the

rules promulgated thereunder. The Defendants are permanently enjoined from engaging in any storage, treatment or disposal of hazardous waste for which a permit would be required without first obtaining, as may be required by law, a hazardous waste facility installation and operation permit from the hazardous waste facility board.

XI. CIVIL PENALTY

10. It is hereby ordered that the Defendants shall pay a civil penalty of fifteen thousand dollars (\$15,000.00). This penalty will be paid into the Ohio Hazardous Waste Cleanup Fund created by ORC Section 3734.28. The penalty shall be paid by certified check or money order made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise to James O. Payne, Jr. or his successor at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410 according to the following schedule:

<u>PAYMENT</u>	<u>PAYMENT DATE</u>
\$3,000.00	Forty-five (45) days from filing of Consent Order.
\$4,000.00	One (1) year from filing of Consent Order.
\$4,000.00	Two (2) years from filing of Consent Order.
\$4,000.00	Three (3) years from filing of Consent Order.

XII. STIPULATED PENALTIES

19. In the event that Defendants violate any of the terms of this Consent Order, Defendants shall immediately and automatically be liable for and shall pay stipulated penalties according to the following schedule. For each day of violation or failure to meet a requirement, up to thirty (30) days - Five Hundred Dollars (\$500.00) per day. For each day of violation or failure to meet a requirement, from thirty-one (31) to sixty (60) days - One Thousand Dollars (\$1,000.00) per day. For each day of violation or failure to meet a requirement, from sixty-one (61) to ninety (90) days - Fifteen Hundred Dollars (\$1,500.00) per day. For each day of violation or failure to meet a requirement, over ninety (90) days - Twenty-five Hundred Dollars (\$2,500.00) per day. Any payment required to be made pursuant to Section XII of this Consent Order shall be paid by certified check made payable to "Treasurer, State of Ohio," which check shall be delivered by mail, or otherwise, to James O. Payne, Jr., or his successor, at his office at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43266-0410, within thirty (30) days of the violation or failure to meet the requirement of this Consent Order. This penalty shall be paid into the hazardous waste clean-up fund created by ORC 3734.28. Furthermore, nothing in this Consent Order shall be construed so as to authorize or allow the suspension, in whole or in part, of any of the aforementioned Stipulated Penalties by the Court.

XIII. RETENTION OF JURISDICTION

20. The Court will retain jurisdiction over this action for the purpose of overseeing Defendants' compliance with this Consent Order and Chapters 3704. and 3734. of ORC and rules adopted thereunder.

XIV. INSPECTIONS

21. Defendants are ordered to allow representatives of the Ohio EPA, upon proper identification, to enter upon the Defendants' 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 ORC Chapters 3704. and 3734. and rules promulgated thereunder. Nothing in the Consent Order shall limit the rights of the Ohio EPA or U.S. EPA to conduct inspections pursuant to statute, regulation or permit.

XV. NOTICE

22. Any submission to the Ohio EPA as required by this Consent Order, unless otherwise indicated, shall be delivered to:

- a. Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Andrea Dakoski or her successor
- b. Ohio EPA
Division of Solid and Hazardous Waste Management
P.O. Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149
Attn: Michael Savage or his successor

XVI. COURT COSTS

23. The Defendants shall pay the court costs of this action.

Mark K. Wiest

JUDGE WIEST
10/10/90

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

Michael L. Hardy

MICHAEL L. HARDY
CHRISTOPHER D. KNOFF
Thompson, Hine and Flory
1100 National City Bank Building
629 Euclid Avenue
Cleveland, Ohio 44114-3070
Telephone: (216) 566-5500

Shane A. Farolino

JAMES O. PAYNE, JR.
SHANE A. FAROLINO
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street - 25th Floor
Columbus, Ohio 43266-0410
Telephone: (614) 466-2766

Attorneys for Defendants
Orrville Bronze & Aluminum
Company, Charles R. Cairnie
and Robert R. Cairnie

Counsel for Plaintiff
State of Ohio

Charles R. Cairnie

CHARLES R. CAIRNIE
Individually and on behalf of
Orrville Bronze & Aluminum
Company

Robert R. Cairnie

ROBERT R. CAIRNIE
Individually and on behalf of
Orrville Bronze & Aluminum
Company

JOURNALIZED

OCT 12 1990

PAUL L. MYERS, CLERK
WAYNE COUNTY, OHIO

JOURNALIZED

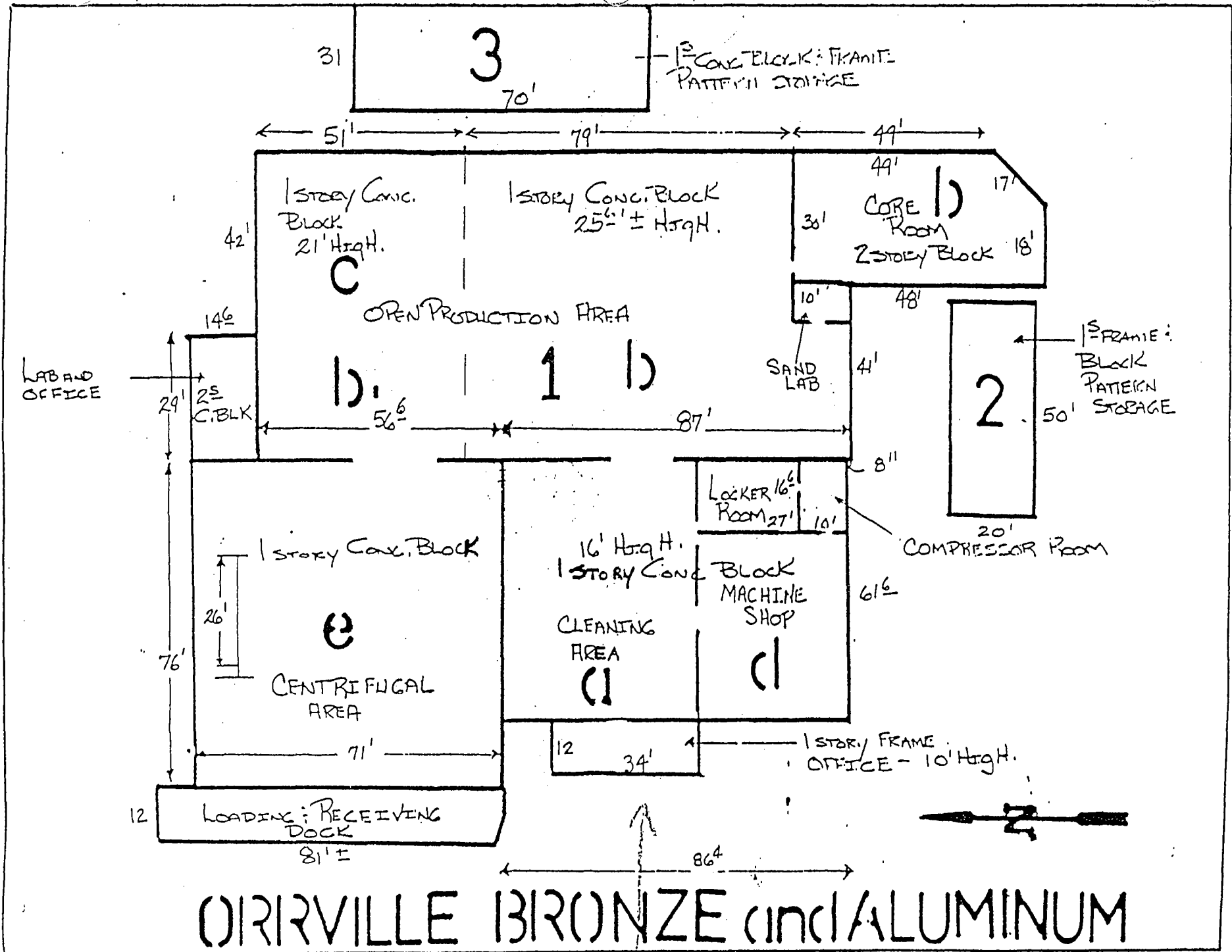
OCT 12 1990

PAULINE L. MYERS, CLERK
WAYNE COUNTY, OHIO

NOTICE TO THE CLERK: PLEASE
SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR
NOTICE OF THIS JUDGMENT AND
DATE OF ENTRY UPON THE
JUDGMENT.

/clp
0951*1-11

EXHIBIT A



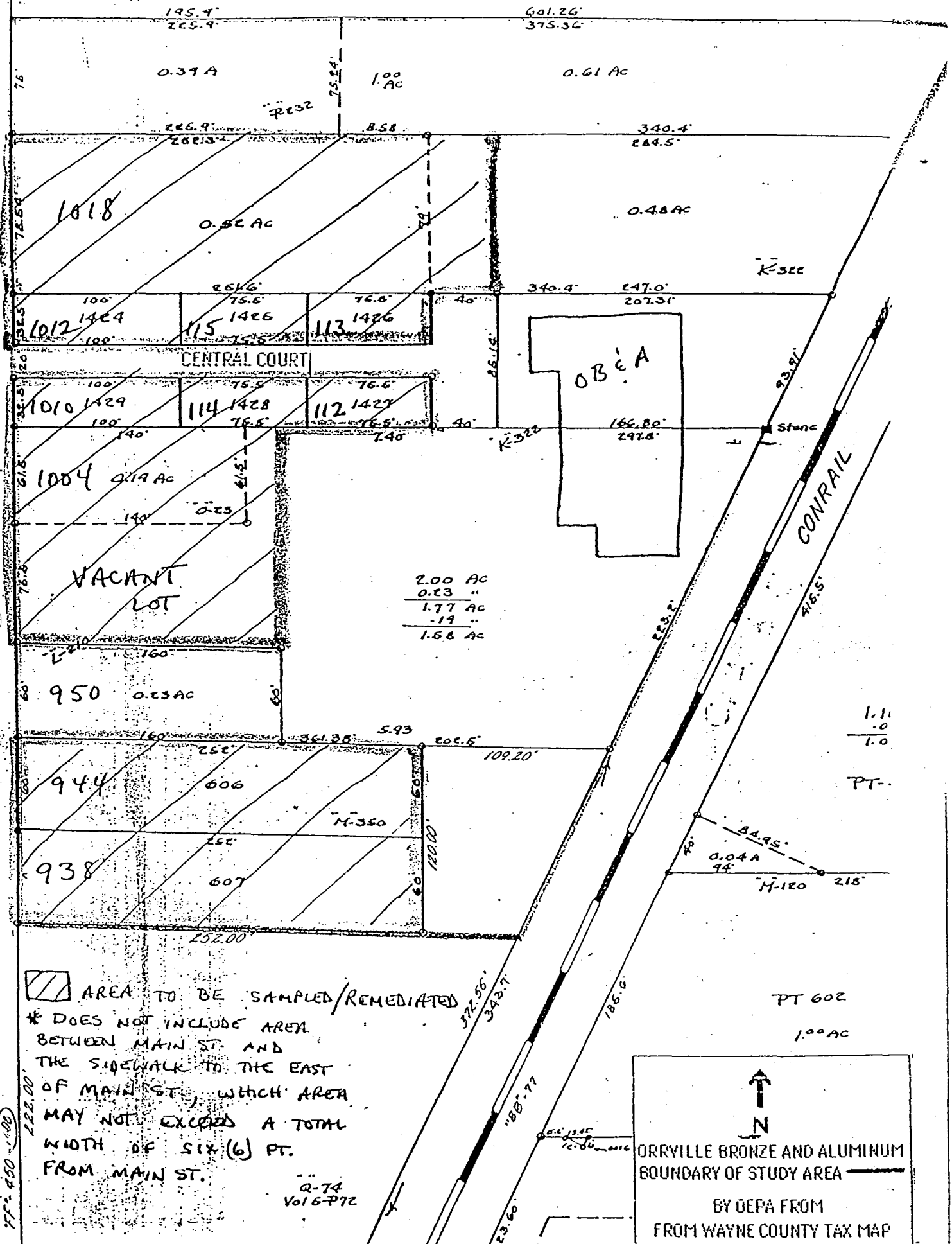
ORRVILLE BRONZE (incl) ALUMINUM


DEPO EX 1

JG-3 P869

EXHIBIT B

MAIN - S I BOU



 AREA TO BE SAMPLED/REMEDIATED
 * DOES NOT INCLUDE AREA BETWEEN MAIN ST. AND THE SIDEWALK TO THE EAST OF MAIN ST., WHICH AREA MAY NOT EXCEED A TOTAL WIDTH OF SIX (6) FT. FROM MAIN ST.

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ORRYVILLE BRONZE AND ALUMINUM BOUNDARY OF STUDY AREA

BY DEPA FROM FROM WAYNE COUNTY TAX MAP

775-450-1000