Suzanne Burdick
Dept. of Law/NRE
1525 Sherman Street, 7th Floor
Denver, CO 80203

Reception #: D1039985, 04/27/2011 at 01:10:58 PM, 1 OF 17, COV, Rec Fee $91.00
Arapahoe County CO Nancy A. Doty, Clerk & Recorder

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

C&S Holdings, LLC grants an Environmental Covenant ("Covenant") this 5th day of April, 2011 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq*. The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, C&S Holdings, LLC is the owner of certain property commonly referred to as the C&S Holdings, LLC facility, located at 1775 West Wesley, Englewood, Colorado, more specifically described in Exhibit A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to the Compliance order on Consent No. 01-10-02-01, the Property is the subject of remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, et. seq. ("CHWA") and the Resource Conservation and Recovery Act, 42 U.S.C. § § 6926, et. seq. ("RCRA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by reducing or minimizing the potential risk to human health and the environment on, or in the vicinity of, the Property from the release of hazardous materials or substances, specifically by providing an effective and enforceable means of ensuring the conduct of any required maintenance, monitoring, or operation, and of restricting future uses of the land for as long as residual contamination remains above applicable risk levels; and

WHEREAS, C&S Holdings, LLC desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind C&S Holdings, LLC and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department and the OWNER.

NOW, THEREFORE, C&S Holdings, LLC hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Exhibit A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 11, below, which shall run with the Property in perpetuity and be binding on C&S Holdings, LLC and all parties now or subsequently having any right, title or interest in the Property, or any part thereof and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the then current record owner of the Property

and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1) **Use Restrictions** C&S Holdings, LLC both retains for itself and hereby grants to the Department an irrevocable, permanent, and continuing right to enforce the following restrictions on the property:

i) Prohibition on Certain Uses No residential use including, any single family or multi-family residential dwelling or living unit, whether permanent or temporary. In addition, the property shall not be used for any sensitive uses involving children or any outdoor uses including but not limited to playgrounds, parks or recreational facilities, schools, daycare centers whether independent or ancillary to a permitted use, or community centers with outdoor uses. No agricultural use on the Property, including but not limited to, the cultivation or storage of crops, grazing, feeding or keeping of any animal for agricultural or commercial purposes.

ii) Restriction on Surface Disturbance, and Underground Disturbance Soil disturbance or excavation on the Property must be in accordance with the Soil Management Plan (Exhibit B).

iii) Prohibition on Construction of Surface Water Containment Structures OWNER shall not allow, permit, construct and/or otherwise locate any surface water or stormwater detention and/or retention ponds or manmade lakes and/or ponds on the Property.

2) **Implementation of Operation and Maintenance Requirements** OWNER shall complete the following activities on the Property.

a. **Groundwater Water Monitoring** OWNER shall conduct groundwater monitoring on the Property in accordance with the Post-Closure Care Requirements. The Post-Closure Care Requirements are incorporated herein and included as Exhibit C.

b. **Storm Water Management** OWNER shall conduct storm water management in accordance with the Storm Water Management Plan and any amendments thereto, as required by the Department's Water Quality Control Division.

c. **Inspection and Maintenance of Concrete Cap** OWNER shall inspect and maintain all capped areas at the Property, in accordance with the Post-Closure Care Requirements (Exhibit C). Specifically, the OWNER shall inspect for signs of deterioration, breaches, and surface depressions and implement whatever corrective measures are necessary to prevent contact with contamination present in the underlying ground, such corrective measures to include, without limitation, re-surfacing to maintain the effectiveness of the concrete cap as a surface covering which prevents migration of liquids to native soils.

3) **Modifications** This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

a) a proposal to perform additional remedial work;
b) new information regarding the risks posed by the residual contamination;
c) information demonstrating that residual contamination has diminished;
d) information demonstrating that a hard surface feature or structure is no longer necessary;
e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
f) other appropriate supporting information.

4) **Conveyances** OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property.

5) **Notice to Lessees** OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

6) **Notification for proposed construction and land use** OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

7) **Inspections** The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

8) **No Liability** The Department does not acquire any liability under State law by virtue of accepting this Covenant.

9) **Enforcement** The Department may enforce the terms of this Covenant pursuant to §25-15-322. C.R.S. C&S Holdings, LLC may file suit in district court to enjoin actual or threatened violations of this Covenant.

10) **Owner's Compliance Certification** OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing OWNER'S compliance, and any lack of compliance, with the terms of this Covenant.

11) **Notices** Any document or communication required under this Covenant shall be sent or directed to:

Walter Avramenko, Unit Leader
Hazardous Waste Corrective Action Unit
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

and to:

Mr. Craig Uhrig
C&S Holdings, LLC
1775 West Wesley
Englewood, Colorado 80110-7714

and to:

Mr. Hal Rosen
Envirosure Solutions LLC
1979 East Broadway Road
Tempe, Arizona 85282

C&S Holdings, LLC has caused this instrument to be executed this 5th day of April, 2011.

C&S Holdings, LLC

By: _____
Mr. Craig Uhrig

Title: manager

STATE OF Colorado)
) ss:
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 5th day of April, 2011 by Mr. Craig Uhrig on behalf of C&S Holdings, LLC

Debra K Robuda
Notary Public

1775 W Hesley Ave
Address

Englewood, Co 80110

My commission expires: 01/22/2012

Accepted by the Colorado Department of Public Health and Environment this 8th day of April, 2011.

By: Gary W Baughman

Mr. Gary Baughman, Director
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

STATE OF Colorado)
) ss:
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 8th day of April, 2011 by Mr. Gary W. Baughman on behalf of the Colorado Department of Public Health and Environment.

Alicia L. Huber
Notary Public

4300 Cherry Creek Dr South
Address

Denver Co 80246

My commission expires: 2-29-2011

ALICIA L. HUBER NOTARY PUBLIC STATE OF COLORADO

EXHIBIT A

Legal Description of Property Subject to an Environmental Covenant
for
All Recycling, Inc. (formerly Remelt Metals)
1775 West Wesley Avenue
Englewood, CO

Tract #1

The West 180 feet of the South ½ of the Northeast ¼ of the Northeast ¼ of the Southwest ¼ of Section 28, Township 4 South, Range 68 West of 6th P.M., except the West 30 feet and also except the South 30 feet thereof, County of Arapahoe, State of Colorado. Containing 45,171 square feet or 1.037 acres.

Tract #2

The East 230 feet of the West 410 feet of the South ½ of the Northeast ¼ of the Northeast ¼ of the Southwest ¼ of Section 28, Township 4 South, Range 68 West of 6th P.M., except the South 30 feet thereof, County of Arapahoe, State of Colorado. Containing 69,255 Square Feet or 1.590 acres.

Tract #3

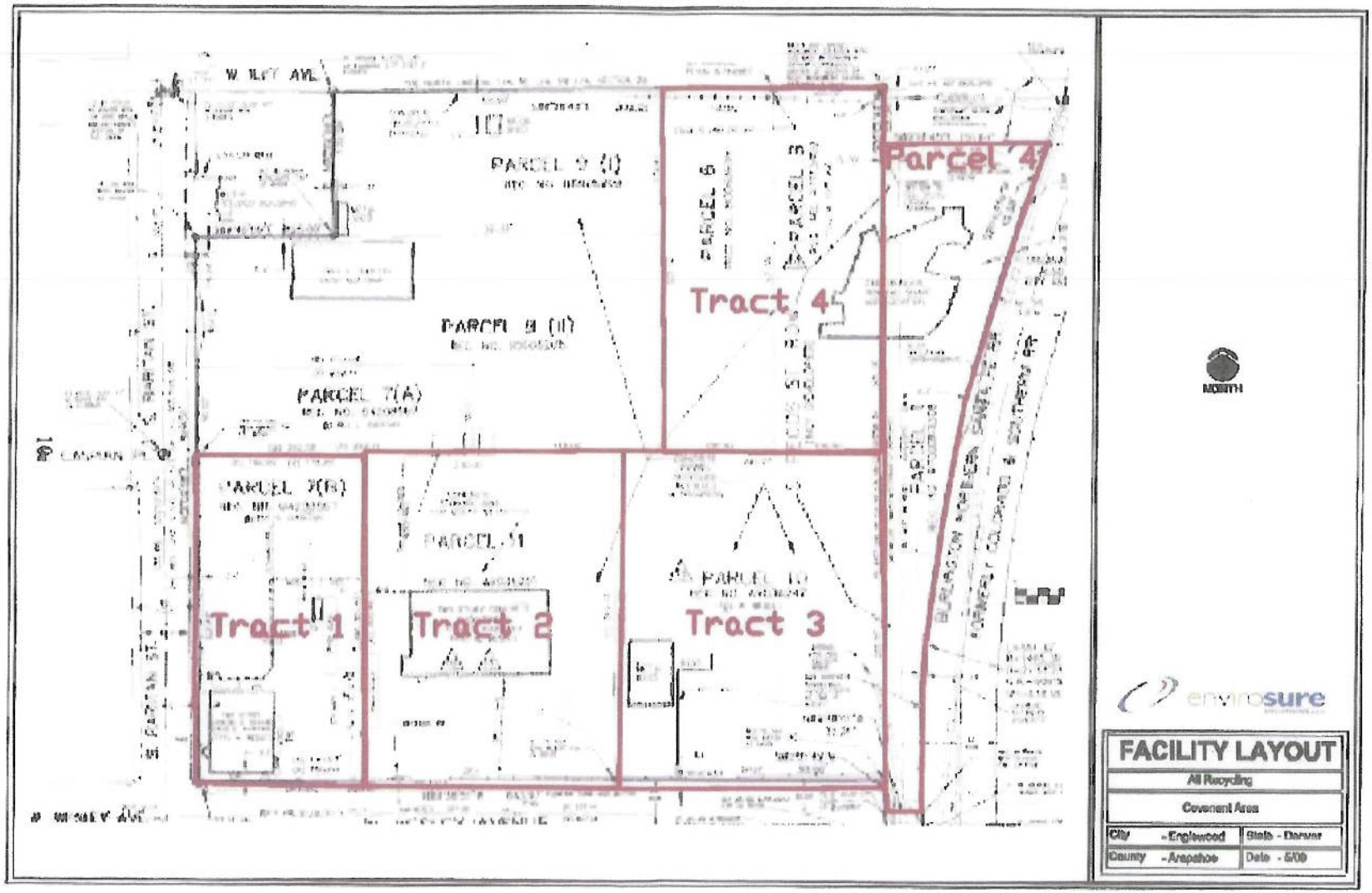
The South ½ of the Northeast ¼ of the Northeast ¼ of the Southwest ¼ of Section 28, Township 4 South, Range 68 West of the 6th P.M., Except the South 30 feet thereof and except the West 410 feet, County of Arapahoe, State of Colorado. Containing 74,428 Square Feet or 1.709 acres.

Tract #4

The East 100 feet of the North ½ of the Northeast ¼ of the Northeast ¼ of the Southwest ¼ of Section 28, Township 4 South. Range 68 West of the 6th P.M., County of Arapahoe, State of Colorado. Containing 33,109 Square Feet or 0.760 acres.

Parcel #4

Block "I", Breenlow Park, City and County of Denver, State of Colorado. Containing 34,132 Square Feet or 0.7836 acres.


Parcel 4
Tract 4
Tract 1
Tract 2
Tract 3
NORTH
envirosure
FACILITY LAYOUT
All Recycling
Covenant Area
City - Englewood
State - Denver
County - Arapahoe
Date - 5/09

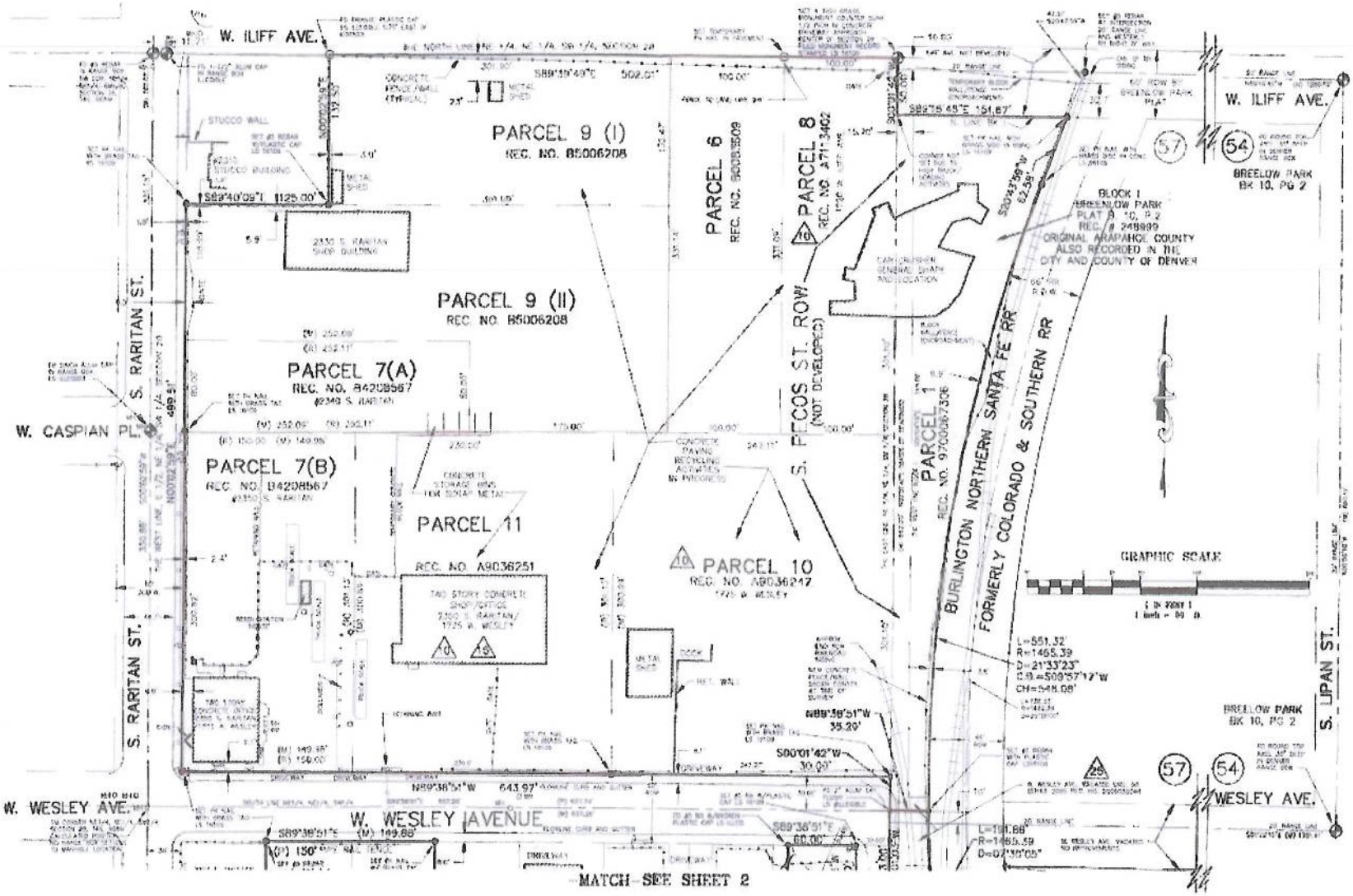

W. ILIFF AVE.
PARCEL 9 (I)
REC. NO. B5006208
PARCEL 6
REC. NO. B5006509
PARCEL 8
REC. NO. A71-3402
PARCEL 9 (II)
REC. NO. B5006208
PARCEL 7(A)
REC. NO. B4208567
PARCEL 7(B)
REC. NO. B4208567
PARCEL 11
REC. NO. A9036251
PARCEL 10
REC. NO. A9036247
PARCEL 1
REC. NO. 9700067306
S. RARITAN ST.
W. CASPIAN PL.
S. PECOS ST. ROW
(NOT DEVELOPED)
BURLINGTON NORTHERN SANTA FE RR
FORMERLY COLORADO & SOUTHERN RR
BREELOW PARK
BK 10, PG 2
BLOCK 1
BREELOW PARK
PLAT B 10, P 2
REC. # 248999
ORIGINAL ARAPAHOE COUNTY
ALSO RECORDED IN THE
CITY AND COUNTY OF DENVER
GRAPHIC SCALE
S. LIPAN ST.
W. WESLEY AVE.
W. WESLEY AVENUE
MATCH SEE SHEET 2

EXHIBIT B

SOIL MANAGEMENT PLAN

for

C&S Holdings, LLC
1775 West Wesley Avenue
Englewood, CO

INTRODUCTION

This Soil Management Plan (SMP) supports the Environmental Covenant (Covenant) which restricts use of the property located at 1775 West Wesley Avenue in Englewood, Colorado (Figure 1) ("Site"). The September 1, 2006 *Facility Corrective Action and Acid Pond Closure Plan*, as approved by the Department on September 12, 2006, includes a concrete cap as the final remedy for lead contaminated soil remaining at the site. The remedy also includes placing an environmental covenant on the site to restrict use of the property in order to prevent the spread of contamination in the environment and to prevent exposure to humans.

Since soils at the site are impacted with lead above concentrations that are safe for unrestricted use, this SMP provides a process for management of excavated soil. C&S Holdings, LLC, or the future property owner, will also be responsible for repairing any damage to the existing hard surface cap constructed to prevent groundwater infiltration to the extent possible and exposure to contaminated soil.

DEFINITION OF SOIL MANAGEMENT CRITERIA

In Colorado, the generation, treatment, and disposal of hazardous waste are regulated under the Colorado Hazardous Waste Regulations, 6 CCR 1007-3. The Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division's ("the Department") most current Contained-out Determination Procedure governs the management of environmental media (soil, groundwater, surface water and sediment) that contain listed or characteristic hazardous waste. In the case of media that exhibit only a characteristic of hazardous waste, such as the lead-contaminated soil at the Site, the media are no longer considered to "contain" hazardous waste once the characteristic is eliminated. The most current Contained-out Determination Procedure for the management of environmental media can be obtained from the Department.

Management of Soil Based on Contaminant Levels

Any testing or management of contaminated soils will be performed by qualified environmental consultants. Soil shall be managed based on total and leachable lead concentrations. New soil samples must be collected and analyzed before the soil is disturbed at that location, unless all soil

is containerized in anticipation of being characterized prior to its disposal. Based on the analytical results, the soil may fall into one of three categories:

1) Soil with total lead concentrations below the current unrestricted use level may be managed on-site or off-site with no restrictions.
2) Soil with total lead concentrations above the current unrestricted use level, but with leachable lead concentrations below the current Toxicity Characteristic concentration can be managed as restricted use, non-hazardous solid waste that must be disposed of at licensed Subtitle D solid waste landfill.
3) Soil with leachable lead concentrations above the current Toxicity Characteristic concentration must be management as hazardous waste, or treated to eliminate the Toxicity Characteristic using a Department approved method before being disposed of as a restricted use, non-hazardous solid waste at a licensed Subtitle D solid waste landfill.

These categories are discussed in detail below.

Unrestricted Use

Unrestricted use levels are based on contaminant concentrations being less than or equal to the direct exposure health-based concentration calculated using a residential/unrestricted land use scenario, and less than or equal to the soil concentration protective of groundwater. Soil determined to meet the unrestricted use criteria may be managed on-site or off-site with no restrictions. NOTE: Portions of the concrete cap that have been removed in impacted areas may be set aside and managed as unrestricted use materials.

Restricted Use Managed as Non-Hazardous

Restricted use levels are determined using the Department's most current *Contained-Out Determination Procedures for Environmental Media Contaminated with RCRA Hazardous Waste*. The Contained-out Determination Procedure defines the concentration below which environmental media contaminated with hazardous waste may be managed as something other than a hazardous waste. In the case of media that exhibit only a characteristic of hazardous waste, such as the lead-contaminated soil at the C&S Holdings, LLC site, the media are no longer considered to "contain" hazardous waste once the characteristic is eliminated. Based on the May 2002 *Corrective Action Document* Contained-out Determination Procedure, or the most current version of that same document, soil may be managed as restricted use, non-hazardous solid waste that must be disposed of at licensed Subtitle D solid waste landfill. This is subject to change in the future and it is intended that the most current Contained-out Procedure is followed when implementing this plan.

Soil Managed as Hazardous Waste

Soil in areas where sample results indicate the soil contains leachable lead above the current Toxicity Characteristic concentration must be managed as hazardous waste. However, the soil may be treated, after receiving approval from the Department for a specified method, to eliminate the Toxicity Characteristic, as discussed below. If testing demonstrates that leachable

lead concentrations no longer exceed the current Toxicity Characteristic concentration, the material may be managed as restricted use non-hazardous solid waste as described above.

PROJECT IMPLEMENTATION GUIDELINES

Prior to and during soil excavation, the following minimum guidelines shall be followed. Detailed procedures will depend on the nature of the specific project.

- Site personnel must be familiar with the Covenant and this SMP.
- Sample soil in the planned project area for both total lead and leachable lead and compare to the current criteria above to determine if the soil should be managed as unrestricted use, restricted use non-hazardous, or hazardous waste. The alternative to testing soil prior to excavation is to containerize it (drums or roll-off containers) until sample results are received upon which a waste determination is made. As an alternative to containers, the owner may petition the Department to allow the use of staging piles in accordance with all the requirements for staging piles in Section 264.554 of the Colorado Hazardous Waste Regulations (6 CCR1007-3).
- If soil in the planned project area is determined to meet unrestricted use criteria, the material may be managed on-site or off-site with no restrictions.
- If soil in the planned project area is determined to meet restricted use non-hazardous criteria, the material must be disposed of at a licensed Subtitle D solid waste landfill.
- If soil in the planned project area is determined to meet hazardous waste criteria, the material must be managed as hazardous waste.
    - Excavated material considered hazardous should be placed in approved containers and managed off-site at an approved disposal facility pursuant to RCRA.
    - As an alternative to off-site disposal as hazardous waste, the owner may petition the Department to allow the soil to be treated onsite to reduce the Toxicity Characteristic concentration to below the current maximum allowable concentration. Treatment must be done in a container, and must be conducted in accordance with the requirements of Section 100.21(d) of the Colorado Hazardous Waste Regulations.
    - If soil is successfully treated to below the current Toxicity Characteristic concentration, as demonstrated through laboratory analysis, the soil must be disposed of at a licensed Subtitle D solid waste landfill.

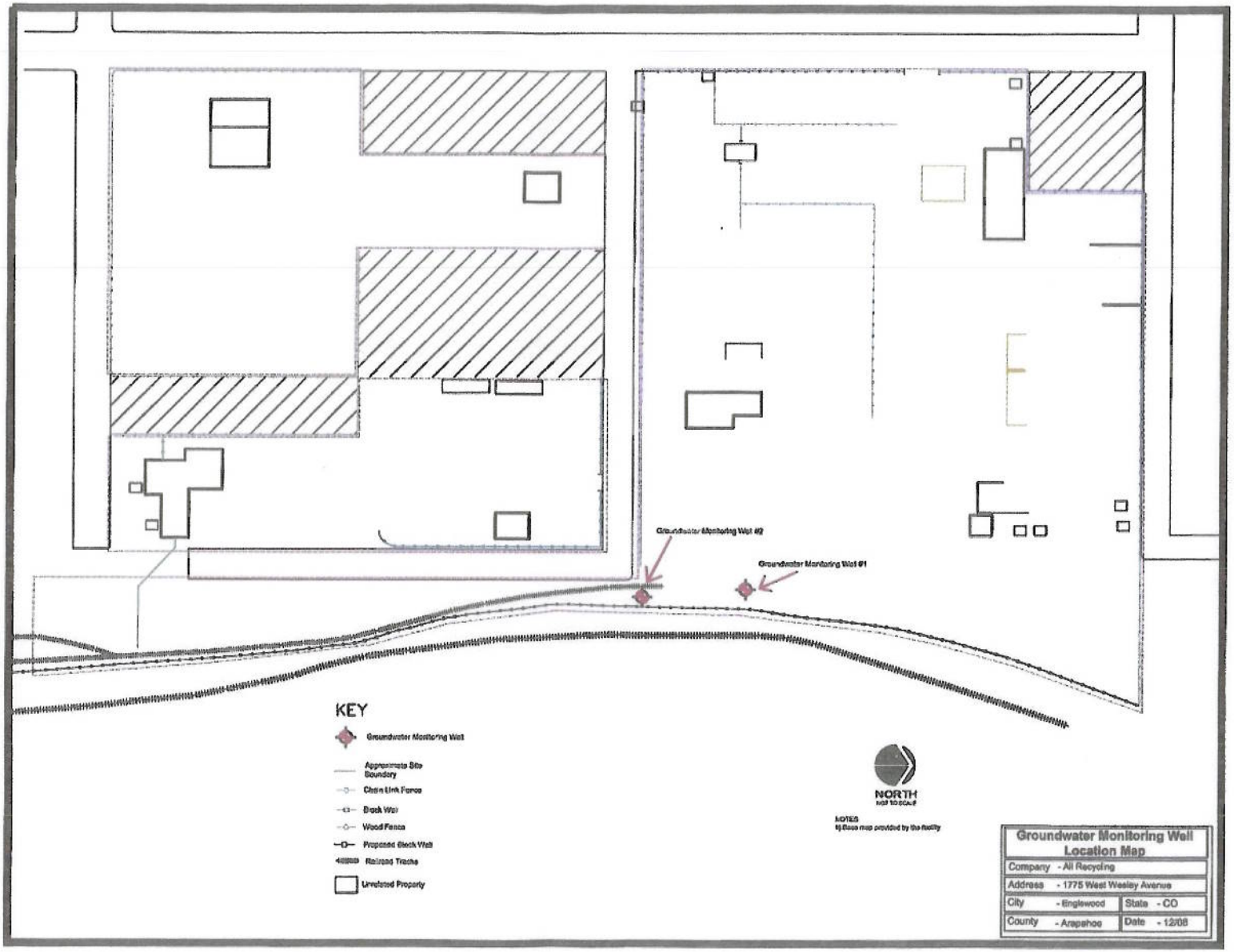
RECORDKEEPING AND REPORTING

Documentation of activities subject to the SMP shall be maintained on-site. As required in the Covenant, the property owner shall execute and return an annual certification to the Department detailing compliance or lack of compliance with the terms of the Covenant including this SMP. In addition, the property owner shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.

Groundwater monitoring data will be evaluated for the purpose of determining whether lead contamination remaining in soil beneath the concrete cap at the Facility has entered the groundwater.

In the event testing shows that there has been a significant change in the concentrations of lead in groundwater that could indicate a release (a 50% increase or more from the last sampling event), C&S Holdings, LLC shall perform the following: a) provide the data to the Department within 30 days of its receipt from the laboratory noting that significant changes in water quality were observed; b) resample the well(s) where this change was observed within 45 days of receipt of the original data from the laboratory, and; c) implement a compliance monitoring program consisting of an increased frequency of monitoring to verify trends in the data if a significant increase is observed.

In the event testing shows that lead concentrations in groundwater exceed the State groundwater standard , C&S Holdings, LLC shall perform the following: a) provide the data to the Department within 30 days of its receipt from the laboratory noting that an exceedence of the ground water standard was detected; b) resample the well(s) where this change was observed within 45 days of receipt of the original data from the laboratory, and; c) if the second sample confirms that the state standard has been exceeded, implement a corrective action program that will determine the source of the release, characterize the extent and magnitude of the impact to groundwater and implement a remedy to eliminate the source of the release impacting groundwater and either remove the contamination in groundwater or treat it in place. A plan for corrective action to halt the impact to groundwater must be provided to the Department within ninety (90) days of confirming the release with the second sample.


Groundwater Monitoring Well #2
Groundwater Monitoring Well #1
KEY
Groundwater Monitoring Well
Approximate Site Boundary
Chain Link Fence
Block Wall
Wood Fence
Proposed Block Wall
Railroad Tracks
Unrelated Property
NORTH
NOT TO SCALE
NOTES
1) Base map provided by the facility
Groundwater Monitoring Well Location Map
Company - All Recycling
Address - 1775 West Wesley Avenue
City - Englewood
State - CO
County - Arapahoe
Date - 12/08