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IN THE COURT OF COMMON PLEAS

LUCAS COUNTY, OHIO

ATTORNEY GENERAL OFFICE  
ENVIRONMENTAL ENFORCEMENT

COMMON PLEAS COURT

BERNIE QUILTER

CLERK OF COURT

CASE NO. CIU200002366

STATE OF OHIO, ex rel.

BETTY D. MONTGOMERY,

ATTORNEY GENERAL OF OHIO

JUDGE

Plaintiff,

vs.

ASSIGNED TO JUDGE LANZINGER

ENVIROSAFE SERVICES OF

OHIO, INC.,

Defendants.

**CONSENT ORDER AND FINAL JUDGMENT ENTRY**

Plaintiff, State of Ohio, ex rel. Betty D. Montgomery, Attorney General of Ohio, has filed the Complaint in this action against Defendant EnviroSAFE Services of Ohio, Inc. to enforce Ohio's hazardous waste laws found in Chapter 3734 of the Revised Code and rules adopted thereunder. Plaintiff has alleged that Defendant has committed violations as set forth in the Complaint and in notices of violation issued by the Ohio EPA between January 31, 1996 and June 30, 1999 and in Appendix A attached to this Consent Order. Defendant does not admit to the alleged violations. In order to resolve this matter, however, Plaintiff and Defendant have consented to the entry of this Order.

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

## I. DEFINITIONS

As used in this Consent Order:

**"Consent Order" or "Order"** means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this Order and any appendix, the Order shall control.

**"Defendant"** means EnviroSAFE Services of Ohio, Inc.

**"Director"** means Ohio's Director of Environmental Protection.

**"Facility"** refers to the location where Defendant treats, stores, and disposes of hazardous waste, which facility is located at 876 Otter Creek Road, Oregon, Lucas County, Ohio, and at which certain hazardous management activities are authorized pursuant to Hazardous Waste Facility Installation & Operation Permit No. 03-48-0092.

**"Ohio EPA"** means the Ohio Environmental Protection Agency.

**"O.A.C."** means the Ohio Administrative Code.

**"Plaintiff"** means the State of Ohio by and through the Attorney General of Ohio.

**"R.C."** means the Ohio Revised Code.

**"SCB"** means the stabilization and containment building located at the Facility.

**"Treat" or "treatment"** means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

## **II. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action, pursuant to R.C. Chapter 3734 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.

## **III. PERSONS BOUND**

The injunctive provisions of this Consent Order shall apply to and be binding upon Defendant, its officers, agents, employees, servants, assigns, successors in interest and any persons acting in active concert or participation with them who receive actual notice of this Consent Order whether by personal service or otherwise.

## **IV. SATISFACTION OF LAWSUIT**

1. Except as otherwise provided in this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint and for violations alleged in notices of violation issued by the Ohio EPA between January 31, 1996 and June 30, 1999, and for alleged violations identified in Appendix A.

2. Nothing in this Consent Order, including the imposition of stipulated civil penalties, shall limit the authority of the State of Ohio to:

(a) Seek relief for claims or conditions not alleged in the Complaint or described as violations in notices of violations described in Paragraph IV.1. or listed in Appendix A of this Consent Order;

(b) Seek relief for claims or conditions alleged in the Complaint or for the violations described in notices of violation described in Paragraph IV.1. or listed in Appendix A of this Consent Order, if such claims, conditions or violations arise from acts or omissions by Defendant taking place after the entry of this Consent Order;

(c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;

(d) Bring any action against Defendant or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. 9601, et seq. and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages, and/or (2) to order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order; and

(e) Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the Facility which may present an imminent threat to the public health or welfare, or the environment.

3. By consenting to the entry of this Order, Defendant reserves and does not waive any legal or equitable rights, remedies or defenses that may be available to it with respect to future enforcement, claims, or allegations of violations of its permit, applicable statutes, rules, regulations, or this Consent Order.

## **V. INJUNCTIVE RELIEF**

Defendant is ordered and enjoined to:

1. Within sixty (60) days after entry of this Consent Order, submit to the Director a

permit modification application to modify the bin cover design for the rail unloading system and the additive charging system in general accordance with the design proposal attached hereto as Appendix B with the purpose and intention of reducing dust emissions from those locations, act expeditiously to obtain approval of the permit modification application, and, within one hundred twenty (120) days after approval of the application for the permit modification by the Director, complete the proposed modifications.

2. Within thirty (30) days after entry of this Consent Order, submit to the Director a permit modification application to modify the spray bar system in general accordance with the design proposal attached hereto as Appendix C with the purpose and intention of reducing dust emissions from that location during waste mixing, act expeditiously to obtain approval of the permit modification application, and, within one hundred twenty (120) days after approval of the application for a permit modification by the Director, complete the proposed modifications.

3. Manage the accumulation of process residue waste within the SCB by the implementation of a housekeeping program whereby accumulations of process residues (including accumulations purposely made during a shift as part of Defendant's housekeeping program) that are greater than three cubic feet in volume will be removed once each shift, except that such accumulations of process residue from rail unloading activities will be removed after each unloading event and such accumulations of process residue from crushing operations will be removed at the end of each crushing cycle. An "unloading event" as used herein may involve either the usual set of two rail cars or, in certain instances, just one. No more than two cars shall constitute a "loading event." "Accumulations," as used herein, is not intended to represent the aggregate accumulation of all process residue waste within the SCB at a particular time, but instead means the separate piles

of such residue that accumulate at various locations within the SCB. The three-cubic-foot/single-shift limitation on waste accumulations is intended to prevent Defendant from allowing piles exceeding three cubic feet that form under conveyors or other machines or as a result of sweeping from remaining for more than one shift. The three-cubic-foot/single-shift limitation on waste accumulations is not intended to apply to the aggregate accumulation of all waste in the SCB nor intended to allow Defendant to form smaller piles than would normally be created as a result of operations in order to avoid the three-cubic-foot/single-shift limitation. Defendant shall make and maintain records of the removals in accordance with Permit Condition A.13.

4. Evaluate all on-site generated hazardous wastes in accordance with OAC 3745-52-11.

5. Take measures to prevent the tracking of hazardous waste from the SCB by personnel or equipment. Within fifteen minutes after a hazardous waste transportation vehicle leaves the SCB area after exiting the SCB or unloading waste into the SCB, Defendant shall inspect the SCB entrance apron, or, if appropriate, the containment pad used by the vehicle. If, despite measures taken, hazardous waste is tracked from the SCB or has fallen from the vehicle onto the entrance apron or the containment pad, Defendant must commence the removal of the tracked or fallen waste within fifteen minutes of the inspection. Cleanup must be continued and completed without unreasonable delay. Defendant shall maintain a log recording the inspections of and any actions taken at the entrance apron and containment pad pursuant to the obligations created by this Order.

The term "entrance apron or the containment pad," as used in this paragraph, is intended to include all doors through which vehicles, including trucks, sweepers and fork lifts, exit from the SCB with treated wastes. This Order shall not be construed to be a substitute for Defendant's obligation to take measures to prevent the tracking of hazardous waste from the SCB or to design and operate the SCB

to ensure containment. Notwithstanding the additional measures described in this Order, Ohio EPA may still take into consideration the number of instances of tracking taking place from the SCB and the volumes of hazardous wastes involved in those instances in determining whether Defendant has complied with the obligation in its permit to take measures to prevent such tracking from the SCB.

6. Label and close containers of hazardous waste in accordance with applicable rules and conditions C.3.(f) and (r) and F.2(l) of the permit.

7. Treat any hazardous wastes subject to the Land Disposal Restrictions at 40 CFR 268 received from off-site generators for treatment or generated on-site and requiring treatment in accordance with the treatment standards in those regulations prior to disposing of such wastes in Cell M at the Facility.

## **VI. NOTICE AND SUBMITTAL OF DOCUMENTS**

Any notice or documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: DHWM Supervisor

## **VII. CIVIL PENALTY**

Defendant is ordered and enjoined to pay to the State of Ohio a civil penalty in the amount of Two Hundred Twenty Thousand Dollars (\$220,000.00) for deposit into the hazardous waste

clean-up fund created by R.C. 3734.28. This amount shall be paid by delivering to Plaintiff, c/o Jena Suhadolnik, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio 43266-0410, a certified check in that amount, payable to the order of "Treasurer, State of Ohio" in four equal installments over the next two years with the first payment of Fifty-Five Thousand (\$55,000.00) dollars within thirty (30) days from the date of entry of this Consent Order and the following three equal payments at six month intervals from the date of entry of this Consent Order.

#### **VIII. STIPULATED PENALTIES**

1. If Defendant fails to meet any of the requirements of this Consent Order referenced below, Defendant shall pay the following stipulated penalties:

- (a) For the first violation of the obligations set forth in Paragraph V.5. of this Consent Order to inspect or remove waste from the entrance apron and containment pad in a calendar month: \$300.

For the second violation of the obligations set forth in Paragraph V.5. of this Consent Order to inspect or remove waste from the entrance apron and containment pad in a calendar month: \$600.

For the third or more violation(s) of the obligations set forth in Paragraph V.5. of this Consent Order to inspect or remove waste from the entrance apron and containment pad in a calendar month: \$900.



- (b) For the first violation of the obligations set forth in Paragraph V.6. of this Consent

Order to label or close a container in a calendar month: \$300.

For the second violation of the obligations set forth in Paragraph V.6. of this Consent

Order to label or close a container in a calendar month: \$500.

For the third or more violation(s) of the obligations set forth in Paragraph V.6. of this

Consent Order to label or close a container in a calendar month: \$700.

- (c) For the first violation of the obligations set forth in Paragraph V.7. of this Consent

Order within a three-month period: \$5,000.

For the second violation of the obligations set forth in Paragraph V.7. of this Consent

Order within a three-month period: \$7,500.

For the third or more violation(s) of the obligations set forth in Paragraph V.7. of this

Consent Order within a three month period: \$10,000 each.

2. Defendant is ordered and enjoined to pay any required stipulated penalty by delivering to Plaintiff, c/o Jena Suhadolnik, or her successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25<sup>th</sup> Floor, Columbus, Ohio

43266-0410, a certified check in the amount of the stipulated penalty, payable to the order of "Treasurer, State of Ohio" for deposit into the hazardous waste clean-up fund created by R.C. Section 3734.28 within thirty (30) days from a determination that there has been a failure to meet a requirement referenced in Paragraph VIII.1. of this Consent Order.

3. Plaintiff reserves the right to reject a tendered or accrued stipulated penalty and seek civil penalties under R.C. 3734.13 instead. Payment by Defendant of any stipulated penalty shall constitute full and complete satisfaction of any civil penalty liability under 3734.13 for any violation of this Consent Order for which the stipulated penalty is paid, if and only if the State accepts payment of the tendered stipulated penalty. Cashing by Plaintiff of the check in payment of the stipulated penalty shall constitute acceptance of the stipulated penalty by Plaintiff. Acceptance of a stipulated penalty does not limit Plaintiff's right to seek relief other than a civil penalty, including judicial enforcement of this Consent Order.

#### **IX. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND APPROVALS**

Nothing in this Consent Order is intended or shall be construed to exempt or relieve Defendant from compliance with any applicable requirement of any law, rule or regulation, or any permit or license or other similar requirement.

#### **X. DELAY IN PERFORMANCE**

In any action to enforce the provisions of this Consent Order, Defendant may raise the question of whether it is entitled to a defense that its conduct or failure to comply with the requirements of this Consent Order was caused by reasons beyond its control. While Plaintiff does

not agree that such a defense exists, it is agreed that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time to adjudicate the existence of such a defense is at the time that a dispute arises and/or an enforcement action, if any, is commenced.

#### **XI. RETENTION OF JURISDICTION**

This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

#### **XII. COSTS**

Defendant is hereby ordered to pay the court costs of this action.

#### **XIII. TERMINATION**

Defendant may apply to the court for termination of this Consent Order no earlier than the later of the effective date of the renewal of Defendant's Part B permit or two years after the effective date of this Consent Order. Plaintiff reserves the right to, but will not unreasonably, oppose the termination based upon the extent of Defendant's compliance with this Consent Order.

#### **XIV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK**

Upon signing of this Consent Order by the Court, the clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance

docket.

### XV. AUTHORITY TO ENTER INTO THE CONSENT ORDER

Each signatory for a corporation represents and warrants that he/she has been duly authorized to sign this document and so bind the corporation to all terms and conditions thereof.

SIGNED:

Date: \_\_\_\_\_

  
JUDGE  
LUCAS COUNTY COURT OF COMMON PLEAS

Respectfully submitted,

BETTY D. MONTGOMERY  
ATTORNEY GENERAL OF OHIO

ENVIROSAFE SERVICES OF OHIO, INC.

By: 

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Attorneys for Defendant  
Envirosafe Services of Ohio, Inc.

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## Appendix A

### 1. OAC 3745-59-07(B); P.C. K.4(b)(xiii): Compliance with LDRs:

Load 908170006- Discovered Aug. 25, 1999

Load 908260021)- Discovered Aug. 31, 1999

WSID 19012-001(load 909240023)- Discovered Sept. 30, 1999

### 2. P.C. C.3(s): Daily report

Floor sweeper dust stored in sort bins A-1/A-2 not entered on treatment/storage log 8/26-8/27/99

Debris observed in Sort bin #3 not on Stab Plant treatment/Storage log- Sept 1, 1999

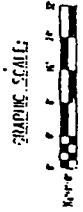
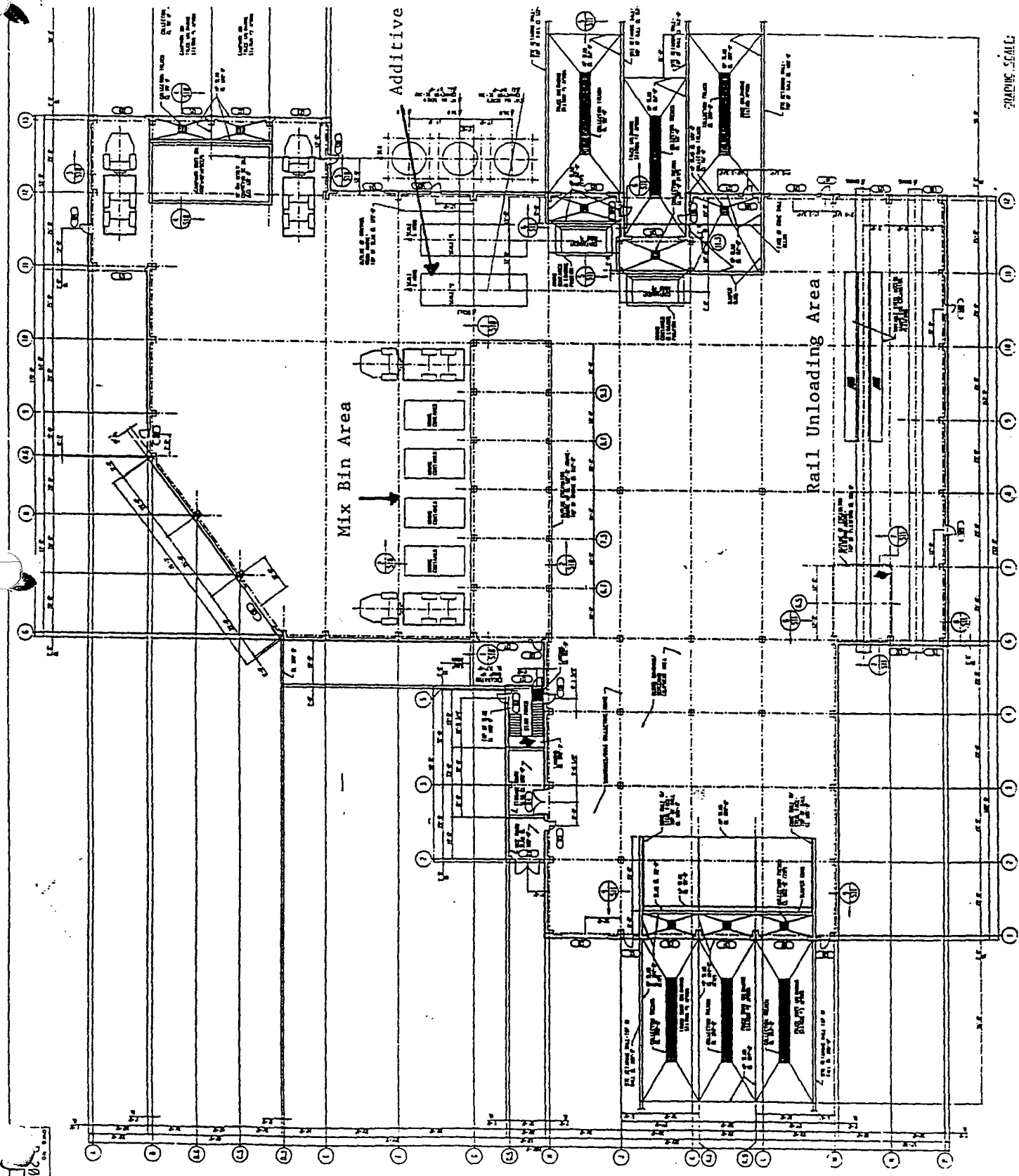
### 3. P.C. C.3(f): Closed containers

Area O3 - two roll-off containers partially untarped- 9/7/99

Area O3 - two roll-off containers partially untarped- 9/17/99

Area O3 - two roll-off containers partially untarped- 10/4/99

### 4. P.C. E.2(b): Railcar blocking paved road within facility adjacent to Storage Areas M and N over 30 minutes- Aug 27, 1999



COMPOSITE FLOOR PLAN  
Sheet No. 1

## Reduce the Generation of Dust at Sources

- Rail Unloading Area (See Appendix B1.)

### Proposed Action: Modify Bin Covers to Reduce Dust

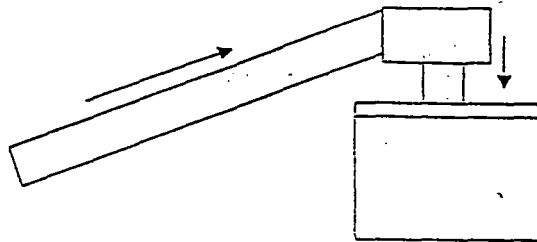
The current bin covers have one central pick-up point. The proposed modification would include the installation of additional pick-up points in an effort to reduce the amount of dust released during removal of the bin cover and to increase the efficiency of collection of dust inside the bin during and after bin loading. (See diagram below.)

- Additive Charging Area (See Appendix B1.)

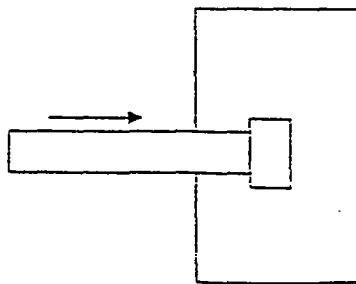
### Proposed Action: Modify Bin Covers to Reduce Dust

The current bin covers have one central pick-up point. The proposed modification would include the installation of additional pick-up points in an effort to reduce the amount of dust released during removal of the bin cover and to increase the efficiency of collection of dust inside the bin during and after bin loading. (See diagram below.)

#### CONCEPTUAL DESIGN - BIN COVER MODIFICATIONS

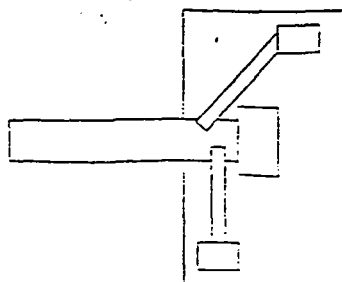


Side View - Conveyor and Bin Cover System



Top View - Conveyor and Bin Cover

DRAWINGS NOT TO SCALE



Proposed Modification to Bin Cover Dust Collector



- Mixing Area. (See Appendix B1.)

Proposed Action: Spray Bar Modification for Mix Bins

The spray bar system will be modified in an effort to reduce dust emissions from the end of the bin opposite the excavator and minimize water spray onto the floor of the containment building. (See diagram below.)

