



April 27, 2009

Mr. Greg Fuhrmann
Iowa Department of Natural Resources
Land Recycling Program Coordinator
Contaminated Sites Section
Land Quality Bureau
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319

RE: Participation Agreement
Property located east of Abbott Drive known as Owen Parkway East
Carter Lake, Iowa

Dear Mr. Fuhrmann,

On behalf of Myth Live, LLC, Kleinfelder is submitting a copy of the Iowa Department of Natural Resources (IDNR) Land Recycling Program (LRP) Participation Agreement (PA) for the site reference above. Myth Live, LLC would like to reactivate the site in the LRP. Kleinfelder understands that the site has been enrolled in the LRP in the past and that the enrolment fee of \$750 has been paid by prior participants. The purpose of this letter is to activate the site in the LRP with Myth Live, LLC as the new participant. Myth Live, LLC has a purchase agreement with Richard F Owen Co LLC, the current owner of the property.

The property is currently known as Owen Parkway East and a portion of the site was formerly used as a landfill. The site is approximately 40 acres in size. The site is bound on the north and east side by the Canadian National Railway Company formerly known as the Illinois Central Gulf Railroad, on the west by Abbott Drive, and on the south side by a levee. The site is a triangular shape with the Iowa-Nebraska State Line towards the northern portion of the site.

The site currently consists of a steel sculpture, a driveway, and unoccupied land. The general vicinity appeared to be primarily commercial/retail to the north, south, east, and west.

Based on historical review of the site, the western half of the site was used by the City of Omaha as a burn and fill facility for industrial and municipal wastes. Reportedly Omaha Steel Casting Company disposed scrubber sludge/dust at the landfill. It was reported that standard disposal procedures at this facility involved burning the waste and subsequent spreading of ash over the surface at the site. Over the years this resulted in the deposition of numerous ash

Owen Parkway East
Owen Parkway Circle and Abbott Drive
Carter Lake, Iowa
Kleinfelder Project No. 99363

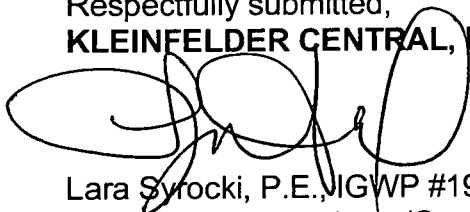
layers causing an increase in ground elevation of approximately 8 to 12 feet.

This site is within the Omaha Lead Site. The Omaha Lead Site (OLS) include contaminated surface soils present at sites within 20 mile radius of the former Asarco Lead Processing Facility. Asarco operated a lead refinery at 500 Douglas Street in Omaha, NE. The Asarco facility conducted lead refining operations from the early 1870s until 1996. The Asarco facility was located on approximately 23 acres on the west bank of the Missouri River in downtown Omaha. During the operational period, lead and other heavy metals were emitted into the atmosphere through smoke stacks. The pollutants were transported downwind in various directions and deposited on the ground surface due to the combined process of turbulent diffusion and gravitational settling. In addition, Gould, Inc. operated as a lead battery recycling plant and was considered a secondary lead smelter in the area. The Gould, Inc., plant closed in 1982.

Prior subsurface assessments have been performed at the site from the period of 1989 to 2004 by several consultants and the reports are on file with the IDNR.

If you have any questions, please contact the undersigned at (402) 331-2260.

Respectfully submitted,
KLEINFELDER CENTRAL, INC.



Lara Syrocki, P.E., IGWP #1924
Environmental Engineer/Group Manager



C. Kirk Fraser, PG
Nebraska Area Manager

Enc: Participation Agreement

Cc:
Reg Plowman, RJ Marco Construction, Inc
Dawn Danley, PE, Leo A Daly Company

**IOWA DEPARTMENT OF NATURAL RESOURCES
IOWA LAND RECYCLING PROGRAM
PARTICIPATION AGREEMENT**

I. RECITALS

WHEREAS, the following participants ("the participants") in the Iowa Land Recycling Program (LRP) and the Iowa Department of Natural Resources ("the department") enter into this agreement as required by Iowa Code section 455H.107(2) and in accordance with administrative rule 567 Iowa Administrative Code (IAC) 137.3(4).

WHEREAS, Iowa Code chapter 455H grants participants certain benefits, privileges and immunities as well as establishing certain obligations. Only those parties who have entered into this agreement shall be considered "participants" as defined in Iowa Code section 455H.103(10) and entitled to those benefits, privileges and immunities. Parties may be removed from this agreement by withdrawal or upon final agency action terminating enrollment in accordance with department rules 567 IAC 137.3(6) - (8). Parties may be added to this agreement by written consent of all participants or a determination by the department that the party meets the criteria for consideration as a participant as defined in Iowa Code section 455H.103(10).

WHEREAS, an essential purpose of this agreement is to establish a general understanding between the participant(s) and the department as to the scope of the project being undertaken by the participants and a general set of mutual expectations. To the extent possible at the time of entering into this agreement, the parties are expected to reach an understanding on such issues as what contaminants associated with what known or suspected sources within the affected area are to be addressed and are not to be addressed, the scope of expected liability protection arising out of participation in the LRP, and any barriers the parties foresee in completion of the environmental project and the planned reuse of the affected area.

II. PARTICIPANTS

The following parties to this agreement are participants:

Person/organization:

Myth Live, LLC

Address:

**C/O RJ Marco Construction, Inc.
75 W. Viking Drive, Suite 104**

City, State

Little Canada, Minnesota 55117

III. TERMS

1. The participants shall grant the department and all authorized representatives reasonable access to the affected area as defined in Iowa Code section 455H.103(1) in order to fulfill regulatory duties including but not limited to site inspections and oversight of all response actions conducted by participants or their agents and surface or subsurface site investigation and response actions related to any suspected contaminants.
2. The participants shall be jointly and severally responsible to reimburse the department for actual costs assessed in accordance with department subrule 137.3(3). The participants also agree to allocate the costs of reimbursement amongst themselves according to the method as described in the attached Exhibit but in doing so do not relieve themselves of their joint and several liability to the department for full reimbursement.

III. CERTIFICATION OF FINANCIAL ABILITY

1. The participants certify they have obtained an estimate from a qualified groundwater professional of the costs of completing the site assessment and risk evaluation/response phase for the affected area in accordance with chapter 567 IAC 137 based on currently available information. Further, the participants certify they have the financial means to complete the site assessment and risk evaluation/response phase of this project based on this initial estimate and have entered into a legally enforceable contract with the following qualified professional, **Kleinfelder Central, Inc. 3730 South 149th Street, Suite 107, Omaha, NE 68144**. Further, the participants certify that if costs of completion of this response action is to be allocated amongst participants, this allocation has been specified and made part of a legally binding contractual agreement.
2. Unless the cost of response action and demonstration of compliance leading to a no further action classification can be reasonably estimated at the time of execution of this agreement, the participants agree to amend this agreement, and provide certification of financial ability upon approval of a response action. If the participants choose to expedite response action without prior review and approval of the department as provided in subrule 567 IAC 137.9(8), they agree to provide financial certification prior to or within a reasonable time after notice to the department of expedited response action.
3. The participants agree to notify the department in writing and at the earliest practicable date if they have reason to believe they will not be able to complete response actions in accordance with chapter 567 IAC 137 and this certification.

IV. SCOPE OF PROJECT

1. The participants have (or have not) met with the department project manager and agree to the following project description:

a. A general description of the contaminants expected to be evaluated and those known or suspected contaminants, sources and probable locations which the participants do not expect to evaluate.

Pesticides, metals, Volatile Organic Compounds (VOCs), Semi-volatile organic compounds, and methane are expected to be evaluation.

The attached map show the site location.

b. A general description of the affected area including areas which are not currently within the control of the participants or for which access agreements have not been obtained.

Myth Live, LLC (the enrollee) has a purchase agreement to buy the 40-acre site.

c. A timetable for initiation of site assessment and submittal of assessment work plans and reports. If the participants intend to proceed with or have begun expedited site assessment in accordance with 567 IAC 137.8(2) and (5), please attach a copy of the required notice of expedited action.

See the timetable below:

d. A projected timetable for each phase of the proposed project and any outlying deadlines applicable to property development objectives.

The site was previously enrolled in the LRP program and assessment reports are on file with the IDNR. Additional assessments reports not on file with the IDNR will be sent to the department under a separate cover.

Myth Live, LLC
C/O RJ Marco Construction, Inc.
75 W. Viking Drive, Suite 104
Little Canada, Minnesota 55117

TIMETABLE

Task	Date
1. LRP Enrollment Application	Received
LRP Application submitted to IDNR	Received
LRP Application approved by IDNR	Received
Participation Agreement to IDNR	May 8, 2009
Participation Agreement executed	
2. Site Investigation Work Plan	Previously submitted to the IDNR
3. Site Assessment Report – Provide additional assessment reports performed at the site that is not on file with IDNR.	May 22, 2009
4. Risk Evaluation & Response Action (RE/RA)	June 12-26, 2009
Submit RE/RA Report to IDNR	June 12-16, 2009
Public Notice Published	
Approval of RE/RA by IDNR	
Public Comment Period Ends	10 days from posting
5. No Further Action issued	July 2009

V. CONSTRUCTION

1. Words and phrases in this document shall be interpreted consistent with meanings and definitions as used in Iowa Code Chapter 455H and Chapter 567 IAC 137.

Brian Torny Dated this 25th day of February, 2010
Iowa Department of Natural Resources

By:

Participant Signatures:

Reginald A. Chasen Dated this 5 day of May, 2009
for Rhyth Live, LLC



Source: Pottawatomie County Assessor website
Approximate Scale: Not Provided



FIGURE 1: SITE MAP
Proposed MYTH Nightclub/Amphitheater
NEC of Abbott Drive and Freedom Park Road
Carter Lake, Pottawattamie County, IA
Omaha, Douglas County, NE

Project 99363 April 2009