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October 15, 2010 HAND DELIVERED

Mr. Jeff Derouen
Executive Director
Public Service Commission of Kentucky
211 Sower Boulevard
Frankfort, KY 40602

RE: PSC Cae No. 2010-00049

Dear Mr. Derouen:

Please find enclosed for filing with the Public Service Commission in the above referenced case an original and ten (10) copies of the Responses of Fleming County Water Association, Inc. to the Commission Staff's First Set of Information Requests dated September 9, 2010.

Sincerely,

Marvin W. Suit
Counsel for Fleming County Water Association, Inc.

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISION

In the Matter of

WILMER AND PAULINE CONN	)
	) CASE NO.
COMPLAINANTS	)2010-00049
V.	)

FLEMING COUNTY WATER ASSOCIATION

DEFENDANTS

RESPONSES TO COMMSSION STAFF'S FIRST INFORMATION REQUESTS
TO FLEMING COUNTY WATER ASSOCIATION
DATED OCTOBER 15,2010

FLEMING COUNTY WATER ASSOCIATION

PSA CASE 2010-00049

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 09/09/10

Fleming County Water Association (FCWA) hereby submits responses to the Commission Staff's First Information Requests dated September 9, 2010. Each response with its associated supportive reference materials is individually tabbed.

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 1

RESPONSIBLE PERSON: EUGENE JETT, SUPERINTENDENT

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 1a. State the amount of money that FCWA reimbursed Roscoe Johnson when FCWA disconnected service to his property in 1997.

Response 1a. **$330.00**

Request 1b. Explain how FCWA determined the amount that it reimbursed Mr. Johnson.

Response 1b. **This was the amount of the connection fee originally paid by Roscoe Johnson.**

Request 1c. How much did Mr. Johnson, or his predecessors pay to FCWA for the establishment of water service to his property at 1860 Rock Lick Creek Road?

Response 1c. **$330.00**

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 2

RESPONSIBLE PERSON: EUGENE JETT, SUPERINTENDENT

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 2a. Identify the total number of customers near the Maxey Flats site that received reimbursement from FCWA after it disconnected service in 1997.

Response 2a. Nine

Request 2b. Identify the total amount of money that was reimbursed to all customers indentified in 2(a).

Response 2b. $2,970.00

Request 2c. Explain how the amount in 2(b) was calculated.

Response 2c. We multiplied the number of customers disconnected (9) by the Connection Fee of $330.00 each

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 3

RESPONSIBLE PERSON: EUGENE JETT, SUPERINTENDENT

COMPANY: FLEMING COUNTY WATER ASSOCIATION

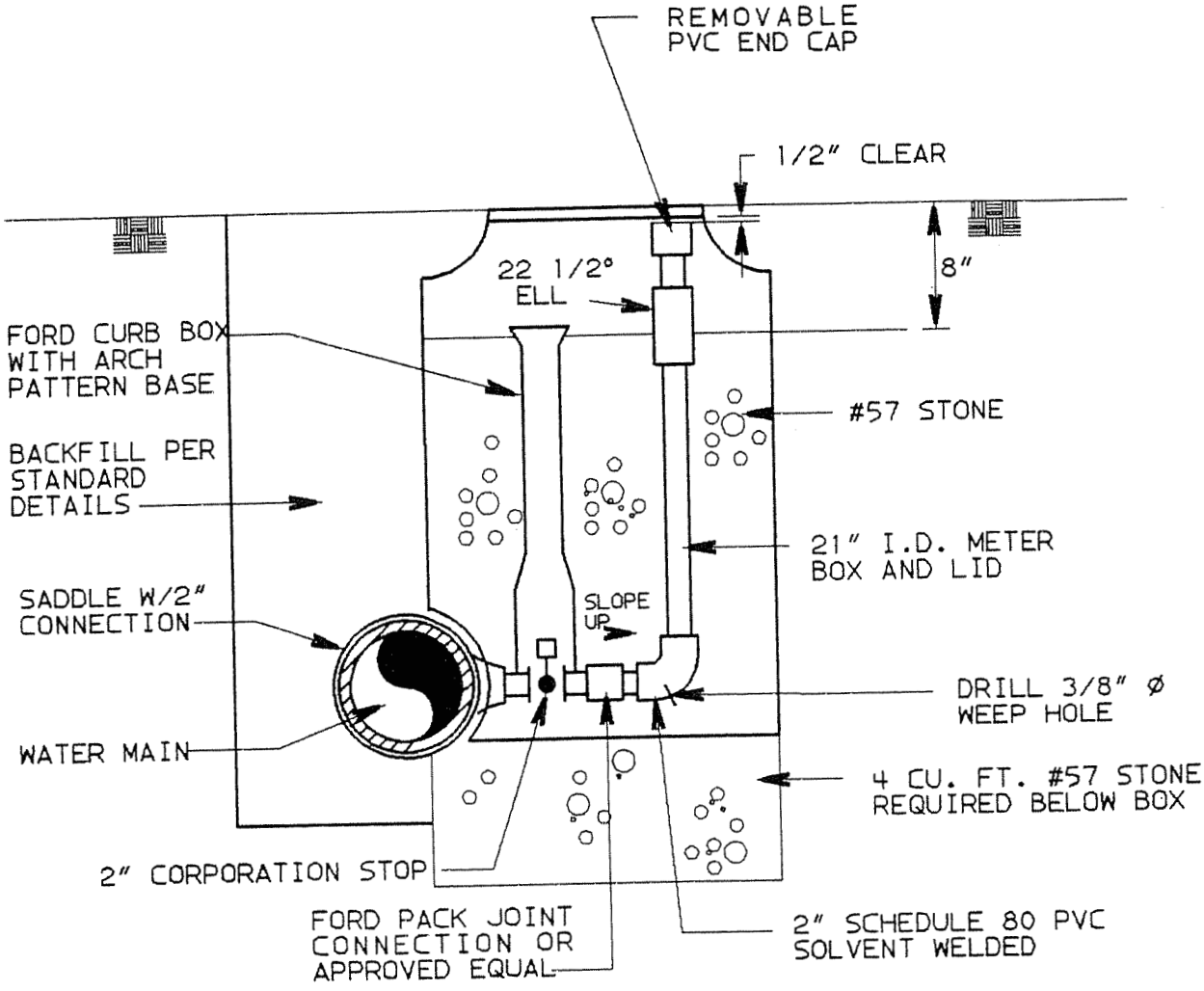
Request 3a. State whether FCWA's disconnected portion of water line near Maxey Flats is separated from FCWA's distribution system or whether the line has been valved off.

Response 3a. The line has been separated and a blow off assembly has been installed at the end of the active line.

Request 3b. Provide a detailed drawing showing how the end of the line is valved, including the blow-off assembly.

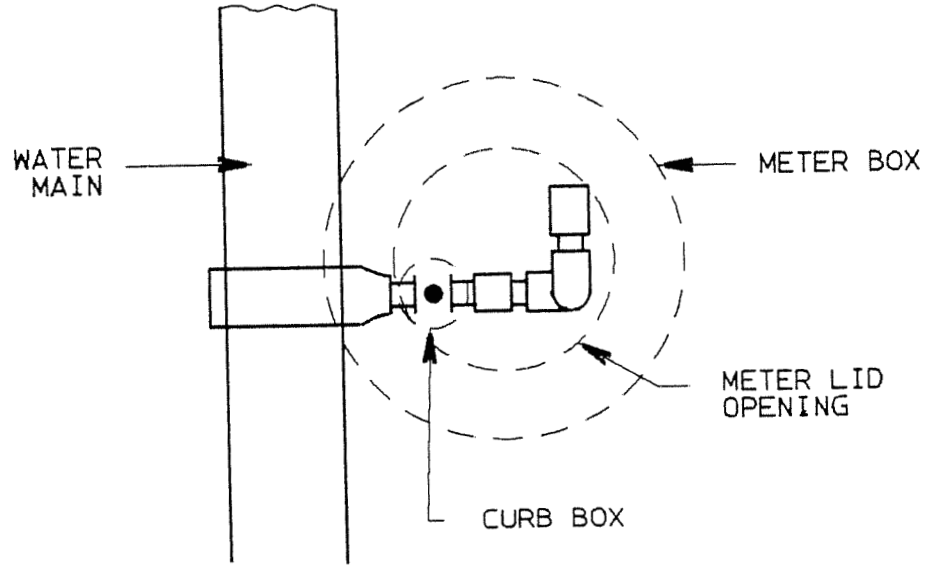
Response 3b. **The drawing is on the attached page.**

JARVIS
TENANT HOUSE
REMOVED CHECK VALVE
GATE VALVE
4000'
JARVIS
NEW BRICK HOUSE
MOVED → LATE 1997
UPPER ROCKLICK RD LINE
THIS LINE OUT OF SERVICE
BLOW OFF
INSTALLED BY JOSH & JASON
11-27-07
3500'
JAMES NICHOLS
LAST CUSTOMER ON ROCKLICK ROAD
3' DVS LINE
2" ADPE
KY 158



BLOWOFF ASSEMBLY

NOT TO SCALE



FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 4

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 4a. Explain all actions that would be required to restore service to 1860 Rock Lick Creek Road through the water line that was disconnected in 1997.

Response 4a. Service cannot be restored to the disconnected water line due to the possible contamination by radioactive discharges from the Maxey Flat Nuclear Containment Structure located directly above this line.

The real estate on both sides of our line that has been disconnected was purchased by the Natural Resources and Environmental Protection Cabinet of the Commonwealth of Kentucky in 1994 and 1995. They continue to be the present owners. There were seven different land owners who sold to the Cabinet. Each occupant moved from the properties and located elsewhere. No one occupies these lands today.

Copies of the deeds from these seven former owners are included herein as Exhibit 4-A.

Also included is a copy of the applicable portion of the PVA map showing the seven acquired properties numbered 59, 61, 62, 63, 64, 65 and 66. The red line along the Upper Rock Lick Road is the disconnected 3" water line of FCWA. See Exhibit 4-B.

A Declaration of the Restrictions was filed in the office of the Fleming County Clerk in December 2003 on each of the purchased properties which stated "tritium and other risks above the de minimum levels for all exposure scenarios if the Remedy were to fail. Any releases could migrate to this property."

Further, Declarant (NR & EPC) shall not sell, transfer, lease, or convey this property, not allow it to be occupied by any person other than the Commonwealth personnel and agents…" The disconnected water line of FCWA lies within this prohibited area. See Exhibit 4-C.

Request 4b. Identify the monetary costs to accomplish those actions.

Response 4b. Due to the risk of contamination of the entire system of FCWA and its ultimate destruction from an infiltration of radioactive discharges from the Maxey Flat Containment Structure, the association cannot consider reconnecting the line.

Exhibit 4-A

181-548

For Consent Decree & Agreement w/ Ky. Environ. & Nat. Res., see Lease DBK. 319, this 5-10-96.

RAY & RUBY LAMBERT

TO——————————DEED

see DB 217 PG 178 M Spencer & Darnella Davis 1-5-04

COMMONWEALTH OF KENTUCKY- NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET

DEED OF CONVEYANCE

THIS DEED OF CONVEYANCE, made and entered into by and between RAY LAMBERT and RUBY LAMBERT, his wife, 205 Jackson Place, Morehead, Kentucky 40351, hereinafter referred to as "the Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as "the Grantee."

WITNESSETH:

That for and in consideration of the sum of ONE HUNDRED FORTY-SIX THOUSAND DOLLARS AND NO CENTS ($146,000.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, a parcel of land containing approximately 200 acres situated in Fleming County, Kentucky on Upper Rock Lick Branch, said parcel being more fully described as follows:

TRACT NO. I. A certain tract or parcel of land lying in Fleming County, Kentucky, on the waters of Rocklick, bounded as follows: BEGINNING at a stone; thence N 78 E 122 poles, Robinson corner; thence N 69 E 125 poles to a black oak S 30 W 125 poles to a white oak; thence with an agreed straight line to the beginning, containing 100 acres, more or less. This land is sold by the boundary and not by the acre.

TRACT NO. II.: A certain tract or parcel of land lying in Fleming County, Kentucky, on the waters of Rock Lick Creek and described by boundary in the absence of a general survey. Bounded on the North by the lands of R.Y. Hutton, on the East by the lands of W.G. Cox, on the South by the lands of Russell McLain, and on the West by the lands of Bert Johnson, and containing 75 acres, more or less, be what it may.

TRACT NO. III.: A certain tract or parcel of land lying and being in Fleming County, Kentucky, and bounded and described as follows: On the waters of Rock Lick Creek, bounded on the North by the lands of R.M. Bowalin and Thomas L. McClain; on the East by the lands of A.T. Denton Heirs; on the South by the lands of A.T. Denton Heirs and on the West by the lands of R.M. Bowalin, containing 25 acres, more or less.

This being the same property conveyed to the Grantors by C.L. Armstrong and Freda Armstrong, his wife; Paul J. Reynolds and Mable C. Reynolds, his wife; and Homer Gregory and Ada Gregory, his wife by Deed dated June 30, 1972 and recorded in Deed Book 134, Page 255, in the Office of the Fleming County Clerk.

Reservation of approximately one-half (1/2) acre from Tract III above was made by Robert Y. Hutton in a Deed dated March 11, 1971 and recorded in Deed Book 132, Page 86, in the Office of the Fleming County Clerk.

Mailed Delivered To: Date: 1-31-95 By:

Reservation of one-half (1/2) of the oil and gas in the property was made by Nina Lee Molton in a Deed dated December 14, 1945, and recorded in Deed Book 104, Page 210, in the Office of the Fleming County Clerk.

The Grantors herein retain the tobacco base and the right to lease the property from the Grantee for one-year intervals at a reasonable rental rate, subject to regulations, policies, and procedures of the Commonwealth of Kentucky, Finance and Administration Cabinet.

TO HAVE AND TO HOLD, the above-described property with appurtenances, thereunto belonging unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

The Grantors acknowledge that they shall pay all transfer taxes due as a result of this transaction, and that they shall pay all property taxes assessed against the above-described property for the 1994 tax year and a pro-rated share of the property taxes assessed for the 1995 tax year.

CONSIDERATION CERTIFICATE OF GRANTORS

The Grantors hereby certify that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

IN TESTIMONY WHEREOF, the Grantors have executed this Deed, including the Consideration Certificate of Grantors, on this the 26 day of January, 1995.

GRANTORS:

Ray Lambert

Ruby Lambert

CONSIDERATION CERTIFICATE OF GRANTEE

The undersigned agent of the Grantee hereby certifies that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

This 26 day of January, 1995.

GRANTEE:

By: George Clarke
Commonwealth of Kentucky
Natural Resources and Environmental
Protection Cabinet

Name: George CLARKE

Title: Property Analyst

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF ROWAN)

I, the undersigned, certify that the foregoing Deed, including the Consideration Certificate of Grantors, was produced before me in my said County and State and duly acknowledged and sworn to by Ray Lambert and Ruby Lambert, his wife, this 26th day of January 1995.

Notary Public, State-at-Large

My Commission expires: 6-8-96.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

I, the undersigned certify that the foregoing Consideration Certificate of Grantee was produced before me in my said County and State and duly acknowledged and sworn to by George Clarke, Property Analyst as agent for the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, this 26 day of January, 1995.

Notary Public, State-at-Large

My Commission expires: 6-8-96.

This Instrument Prepared By:

Angela C. Robinson

Angela C. Robinson, Attorney
Finance and Administration Cabinet
Room 374, Capitol Annex Building
Frankfort, Kentucky 40601

STATE OF KENTUCKY)
COUNTY OF FLEMING) SCT:

I, PHYLLIS B. HARMON, CLERK OF THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING DEED FROM RAY & RUBY LAMBERT TO COMMONWEALTH OF KENTUCKY-- NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CAB WAS PRODUCED TO ME AND LODGED FOR RECORD THE 30TH DAY OF JANUARY ,19 95, BEARING $146.00 FOR TAX LEVY, WHEREUPON THE SAME TOGETHER WITH THIS CERTIFICATE HAS BEEN DULY RECORDED IN MY OFFICE IN DEED BOOK 181 ,PAGE 548 , FLEMING COUNTY CLERKS OFFICE.
WITNESS MY HAND THIS THE 30TH DAY OF JANUARY 19 95.
PHYLLIS B. HARMON, CLERK
Phyllis B. Harmon

182-64

JOHN R. & EULA VISE
TO DEED
COMMONWEALTH OF KENTUCKY- NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

DEED OF CONVEYANCE

THIS DEED OF CONVEYANCE, made and entered into by and between JOHN R. VISE and EULA VISE, his wife, Route 2, Box 199, Hillsboro, Kentucky 41049, hereinafter referred to as the "Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as the "Grantee."

WITNESSETH:

That for and in consideration of the sum of TWO HUNDRED FIFTY-TWO THOUSAND DOLLARS AND NO CENTS ($252,000.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, three (3) parcels of land containing approximately 136 acres situated in Fleming County, Kentucky on the waters of Rock Lick Creek, said parcels being more fully described as follows:

PARCEL 34

A certain tract or parcel of land located in Fleming County, Kentucky, on the waters of Rock Lick Creek, situated along Rock Lick Creek Road, 0.6 mile east of KY 158 and being more particularly described as follows:

Beginning at a spike in the center of Rock Lick Creek Road, corner to Bill Hall and Richard Brumagen, thence leaving Rock Lick Creek Road with Richard Brumagen;

North 01 degree 12'43" East 577.50 feet to an iron pin, thence;

North 66 degrees 14'57" West 435.94 feet to a 6" Hickory, corner to Parcel 34A, thence with Parcel 34A;

North 04 degrees 48'35" East 109.50 feet to a 24" Poplar, thence;

North 19 degrees 13'20" East 224.95 feet to a 16" Chestnut Oak, thence;

North 33 degrees 12'46" East 100.57 feet to a 22" Tulip Poplar, thence;

South 85 degrees 25'56" East 167.48 feet to a 36" White Oak, corner to Ray Lambert, thence with Ray Lambert;

South 64 degrees 14'07" East 623.86 feet to an iron pin, corner to Hurl Johnson, thence with Hurl Johnson;

South 67 degrees 05'58" East 159.56 feet to a point in the center of the gravel road, thence with the gravel road and Hurl Johnson;

North 01 degree 46'42" West 46.74 feet to a point in the center of the gravel road, thence;

North 04 degrees 48'07" East 62.83 feet to a point in the gravel road, thence;

North 07 degrees 28'08" East 46.43 feet to a point in the center of the gravel road, corner to Ray Lambert, thence with Ray Lambert;

North 10 degrees 52'22" East 74.07 feet to a point in the center of the gravel road, thence;

North 13 degrees 16'35" East 61.29 feet to a point in the center of the gravel road, thence;

North 18 degrees 33'37" East 75.53 feet to a point in the center of the gravel road, thence;

North 80 degrees 26'33" East 467.56 feet to an iron pin, corner to Commonwealth of Kentucky, Maxey Flats, thence with Commonwealth of Kentucky;

North 86 degrees 49'17" East 1395.07 feet to an iron pin, corner to Willie Skaggs, thence with Willie Skaggs;

South 45 degrees 39'15" West 601.03 feet to an iron pin at a 30" White Oak, thence;

South 38 degrees 34'07" West 677.42 feet to an iron pin at a 48" Beech, corner to Wendell McCarty, thence with Wendell McCarty;

South 34 degrees 30'09" West 397.96 feet to an iron pin, thence;

South 06 degrees 16'54" East 16.33 feet to a spike in the center of Rock Lick Creek Road, corner to Willie Skaggs, thence with Willie Skaggs;

South 06 degrees 16'57" East 1184.13 feet to an iron pin, corner to Edson Whitt, thence with Edson Whitt;

South 82 degrees 00'56" West 1641.96 feet to an iron pin, corner to Bill Hall, thence with Bill Hall;

North 01 degree 12'43" East 1373.00 feet to the beginning.

Parcel 34 contains 99.530 Acres and is the same or a part of the same property as conveyed to John Vise from Linda Denton, by deed dated April 11, 1953, as recorded in Deed Book 111, Page 219, in the Fleming County Clerk's Office.

This description prepared by Palmer Engineering from a survey performed January 1995.

PARCEL A

A certain tract or parcel of land located in Fleming County, Kentucky, on the waters of Rock Lick Creek, and being more particularly described as follows:

Beginning at a 6" Hickory, corner to John Vise and Richard Brumagen, thence with Richard Brumagen;

North 63 degrees 49'14" West 924.55 feet to an iron pin, thence;

North 40 degrees 56'11" East 496.64 feet to an iron pin, corner to Ray Lambert, thence with Ray Lambert;

South 64 degrees 14'07" East 898.94 feet to a 36" White Oak, corner to John Vise, thence with John Vise;

North 85 degrees 25'56" West 167.48 feet to a 22" Tulip Poplar, thence;

South 33 degrees 12'46" West 100.57 feet to a 16" Chestnut Oak, thence;

South 19 degrees 13'20" West 224.95 feet to a 24" Poplar, thence;

South 04 degrees 48'35" West 109.50 feet to the beginning.

Parcel A contains 9.120 Acres and may be a part of property owned by Ray Lambert or John Vise. Deed descriptions of Ray Lambert and John Vise do not precisely describe the area (Parcel A) in question. Both Ray Lambert and John Vise believe Parcel 34A to be part of their respective lands.

This description prepared by Palmer Engineering from a survey performed January 1995.

PARCEL 38

A certain tract or parcel of land located in Fleming County, Kentucky, on the waters of Rock Lick Creek, situated along Rock Lick Creek Road, 1.3 miles east of KY 158, and being more particularly described as follows:

Beginning at a spike in the center of Rock Lick Creek Road, corner to Willie Skaggs and Roscoe Johnson, thence with the center of Rock Lick Creek Road and Roscoe Johnson;

South 86 degrees 21'13" East 60.75 feet to a nail and cap in the center of the road, thence;

South 85 degrees 47'00" East 59.28 feet to a nail and cap in the center of the road, thence;

South 85 degrees 13'00" East 200.13 feet to a nail and cap in the center of the road, thence;

South 83 degrees 36'50" East 57.62 feet to a nail and cap in the center of the road, thence;

South 84 degrees 50'08" East 61.02 feet to a nail and cap in the center of the road, thence;

South 87 degrees 39'21" East 59.73 feet to a nail and cap in the center of the road, thence;

South 89 degrees 43'24" East 55.49 feet to a nail and cap in the center of the road, thence;

North 89 degrees 22'26" East 58.85 feet to a nail and cap in the center of the road, thence;

South 89 degrees 13'32" East 87.97 feet to a spike in the center of the road, at the ditch, thence leaving the road continuing with Roscoe Johnson down and meandering with the ditch;

South 27 degrees 33'26.479" West 54.9265 feet to an iron pin, thence;

South 16 degrees 42'29.301" West 35.7848 feet to a point, thence;

South 11 degrees 54'02.983" West 19.3969 feet to a point, thence;

South 01 degree 29'34.342" East 46.3677 feet to a point, thence;

South 10 degrees 59'50.283" West 29.2929 feet to a point, thence;

South 26 degrees 29'36.273" West 14.3064 feet to a point, thence;

South 42 degrees 45'57.592" West 30.4931 feet to a point, thence;

South 44 degrees 16'04.840" West 111.5849 feet to an iron pin, thence;

South 59 degrees 03'53.852" West 63.3051 feet to a point in Rock Lick Creek, thence down and meandering with Rock Lick Creek;

South 87 degrees 18'23.589" East 78.8641 feet to a point, thence;

North 86 degrees 36'16.725" East 67.5386 feet to a point, thence;

North 82 degrees 00'02.823" East 65.1267 feet to a point, thence;

North 77 degrees 30'18.395" East 49.1050 feet to a point, thence;

South 82 degrees 32'56.976" East 44.3646 feet to a point, thence;

South 63 degrees 03'32.289" East 54.0442 feet to a point, thence;

South 52 degrees 36'44.337" East 23.4814 feet to a point, thence;

South 05 degrees 12'51.819" West 72.4890 feet to a point, thence;

South 14 degrees 03'53.401" East 36.4538 feet to a point, thence;

South 38 degrees 36'39.214" East 25.0614 feet to a point, thence;

South 58 degrees 24'25.221" East 57.4366 feet to a point at the mouth of a drain, thence up and meandering with the drain;

South 08 degrees 18'39.377" East 37.5938 feet to a point, thence;

South 25 degrees 19'12.958" West 158.6171 feet to a point, thence;

South 19 degrees 17'25.797" West 101.5081 feet to a point, thence;

South 28 degrees 22'16.338" West 45.7740 feet to a point, thence;

South 10 degrees 31'35.301" West 40.6043 feet to a point, thence;

South 34 degrees 37'56.069" West 40.9532 feet to a point, thence;

South 21 degrees 25'58.962" West 55.7450 feet to a point, thence;

South 32 degrees 20'21.707" West 40.5341 feet to a point, thence;

South 49 degrees 45'04.050" West 29.8371 feet to a point, thence;

South 00 degrees 50'07.788" West 31.8894 feet to a point, thence;

South 00 degrees 13'26.221" West 30.4452 feet to a point, thence;

South 31 degrees 41'40.921" West 21.0928 feet to a point, thence;

South 12 degrees 29'04.052" East 20.5991 feet to a point, thence;

South 17 degrees 49'03.108" East 28.6712 feet to a point, thence;

South 06 degrees 10'43.593" East 21.4808 feet to a point, thence;

South 26 degrees 10'10.682" West 20.8013 feet to a point, thence;

South 03 degrees 23'43.878" East 38.0899 feet to a point, thence;

South 11 degrees 24'51.212" West 12.7134 feet to a point, thence;

South 06 degrees 11'38.969" West 40.1212 feet to a point, thence;

South 52 degrees 57'05.072" West 14.1081 feet to a point, thence;

South 11 degrees 02'23.488" East, 13.9379 feet to a point, thence;

South 33 degrees 04'50.615" West 15.3347 feet to a point, thence;

South 09 degrees 06'46.741" West 21.3282 feet to a point, thence;

South 14 degrees 33'11.765" East 80.4720 feet to a point, thence;

South 04 degrees 53'12.185" West 61.8177 feet to a point, thence;

South 02 degrees 20'44.689" West 57.0248 feet to a point, thence;

South 05 degrees 41'22.104" East 18.0861 feet to a point, thence;

South 04 degrees 35'14.098" West 59.9922 feet to a point, thence;

South 05 degrees 03'19.826" East 37.4146 feet to a point, thence;

South 22 degrees 31'14.454" West 44.4811 feet to a point, thence;

South 15 degrees 27'19.237" West 85.8090 feet to a point, thence;

South 14 degrees 01'04.208" West 52.8437 feet to a point, thence;

South 14 degrees 13'53.067" West 87.0815 feet to a 24" Gum, corner to Gary Johnson, thence with Gary Johnson;

North 65 degrees 23'25" West 383.44 feet to an iron pin, corner to Virginia Reeder, thence with Virginia Reeder;

North 65 degrees 23'25" West 137.52 feet to an iron pin, corner to Charles Blevins, thence with Charles Blevins;

North 65 degrees 23'25" West 25.29 feet to an iron pin, corner to Willie Skaggs, thence with Willie Skaggs;

North 04 degrees 15'30" West 1488.01 feet to an iron pin at a 24" Sweet Gum, thence;

Parcel 38 contains 27.705 Acres and is the same property as conveyed to John Vise from Charles R. Holton, by deed, dated April 18, 1957, as recorded in Deed Book 114, Page 352, in the Fleming County Clerk's Office.

This description prepared by Palmer Engineering from a survey performed January 1995.

The Grantors herein shall retain the tobacco base, the small barn on runners, and yard flowers, rose bushes, and small shrubs, and shall be permitted to salvage any and all desired property, including structures, materials, and fixtures, from the old house across Rock Lick Road opposite the residence occupying the property herein conveyed.

Grantors herein and their son, John Vise, Jr. shall be permitted to reside on the properties currently occupied for a period of eighteen (18) months from date of closing or until they acquire or build a new house, whichever first occurs. At the expiration of the eighteen (18) month period, Grantors and John Vise, Jr. shall be permitted to lease the property from the Grantee herein at a reasonable rental rate, subject to regulations, policies, and procedures of the Commonwealth of Kentucky, Finance and Administration Cabinet.

Grantee shall have the right to take any and all action necessary effecting the herein conveyed property in order to monitor the area.

TO HAVE AND TO HOLD, the above-described property with appurtenances thereunto belonging, unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

The Grantors acknowledge that they shall pay all transfer taxes due as a result of this transaction, and that they shall pay all property taxes assessed against the above-described property for the 1994 tax year and a pro-rated share of the property taxes assessed for the 1995 tax year.

CONSIDERATION CERTIFICATE OF GRANTORS

The Grantors hereby certify that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

IN TESTIMONY WHEREOF, the Grantors have executed this Deed, including the Consideration Certificate of Grantors on this the 23 day of March, 1995.

GRANTORS:

Johnny R. Vise
John R. Vise

Eula Vise
Eula Vise

CONSIDERATION CERTIFICATE OF GRANTEE

The undersigned agent of the Grantee hereby certifies that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

This 23 day of March, 1995.

GRANTEE:

By: George Clarke
Commonwealth of Kentucky
Natural Resources and Environmental
Protection Cabinet

Name: George Clarke

Title: Property Analyst

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Fleming)

I, the undersigned, certify that the foregoing Deed, including the Consideration Certificate of Grantors, was produced before me in my said County and State and duly acknowledged and sworn to by John R. Vise and Eula Vise, his wife, this 23 day of March, 1995.

Phyllis B. Harmon Co. Clerk
~~Notary Public, State at Large~~

My Commission expires: term.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

I, the undersigned, certify that the foregoing Consideration Certificate of Grantee was produced before me in my said County and State and duly acknowledged and sworn to by George Clarke as agent for the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, this 23 day of March, 1995.

Phyllis B. Harmon, Co. Clerk
~~Notary Public, State at Large~~

My Commission expires: term.

This Instrument Prepared By:

Angela C. Robinson
Angela C. Robinson, Attorney
Finance and Administration Cabinet
Room 374, Capitol Annex Building
Frankfort, Kentucky 40601

STATE OF KENTUCKY)
SCT:
COUNTY OF FLEMING)

I, PHYLLIS B. HARMON, CLERK OF THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING DEED FROM JOHN R. & EULA VISE TO COMMONWEALTH OF KENTUCKY-NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION AGENCY WAS PRODUCED TO ME AND LODGED FOR RECORD THE ___ DAY OF MARCH, 19 95 AT 11:30AM, BEARING $252.00 FOR TAX LEVY, WHEREUPON THE SAME TOGETHER WITH THIS CERTIFICATE HAS BEEN DULY RECORDED IN MY OFFICE IN DEED BOOK 182, PAGE 64, FLEMING COUNTY CLERKS OFFICE.
WITNESS MY HAND THIS THE 23RD DAY OF MARCH, 19 95.
PHYLLIS B. HARMON CLERK
Phyllis B. Harmon

182-103

(45)

MARCUS & SHIRLEY BALL

TO—**DEED OF CONVEYANCE**

COMMONWEALTH OF KENTUCKY-NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

THIS DEED OF CONVEYANCE, made and entered into by and between MARCUS BALL and SHIRLEY BALL, his wife, Route 2, Box 195, Hillsboro, Kentucky 41049, hereinafter referred to as the "Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as the "Grantee."

For restriction
see D217 pg 173 mspencer
Dawnellen Davis nc
1-5-24

WITNESSETH:

That for and in consideration of the sum of SEVENTY-ONE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($71,500.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, a parcel of land containing approximately 1 acre situated in Fleming County, Kentucky on the waters of Upper Rock Lick Branch, said parcel being more fully described as follows:

> BEGINNING at a point corner to Rock Lick Road and the land of Roscoe Johnson at an iron stake 150 feet E. to an iron stake; thence 292 feet S. to a stake; thence at a right angle 150 feet W. to a stake; thence a right angle 292 feet N. to the stake at the beginning, containing 1 acre, more or less.
>
> *Being the same property conveyed* Marcus Ball, married, by Deed from Glenna Ball (now Rawlings) and Roland Rawlings, her husband, dated August 28, 1985, and recorded in Deed Book 160, Page 506 in the Fleming County Clerk's Office.

Mailed
Delivered To:
Date:
By:

Shirley Ball joins in the execution of this Deed of Conveyance for purposes of releasing her contingent rights of homestead and dower in the above-described property.

TO HAVE AND TO HOLD, the above-described property with appurtenances thereunto belonging, unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

Grantors herein shall retain all fruit trees in the yard. Grantors acknowledge that they shall pay all transfer taxes due as a result of this transaction, and that they shall pay all property taxes assessed against the above-described property up to and including the 1995 tax year.

CONSIDERATION CERTIFICATE OF GRANTORS

The Grantors hereby certify that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

IN TESTIMONY WHEREOF, the Grantors have executed this Deed, including the Consideration Certificate of Grantors on this the 29 day of March, 1995.

GRANTORS:

Marcus Ball

Shirley Ball

CONSIDERATION CERTIFICATE OF GRANTEE

The undersigned agent of the Grantee hereby certifies that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

This 29 day of March, 1995.

GRANTEE:

By:

Commonwealth of Kentucky
Natural Resources and Environmental
Protection Cabinet

Name: George Clarke

Title: Property Analyst

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Bowan)

I, the undersigned, certify that the foregoing Deed, including the Consideration Certificate of Grantors, was produced before me in my said County and State and duly acknowledged and sworn to by Marcus Ball and Shirley Ball, his wife, this 29 day of March, 1995.

Notary Public, State-at-Large

My Commission expires: 6-3-97.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

I, the undersigned, certify that the foregoing Consideration Certificate of Grantee was produced before me in my said County and State and duly acknowledged and sworn to by George Clark as agent for the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, this 29 day of March, 1995.

Janet Susan McClung
Notary Public, State-at-Large

My Commission expires: 6-3-97.

This Instrument Prepared By:

Angela C. Robinson
Angela C. Robinson, Attorney
Finance and Administration Cabinet
Room 374, Capitol Annex Building
Frankfort, Kentucky 40601

STATE OF KENTUCKY)
SCT:
COUNTY OF FLEMING)

I, PHYLLIS B. HARMON, CLERK OF THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING DEED FROM MARCUS & SHIRLEY BALL TO COMMONWEALTH OF KENTUCKY-NATURAL RESOURCES AND ENVIRONMENTAL CABINET WAS PRODUCED TO ME AND LODGED FOR RECORD THE 31ST DAY OF MARCH, 19 95, AT 9:50AM, BEARING $71.50 FOR TAX LEVY, WHEREUPON THE SAME TOGETHER WITH THIS CERTIFICATE HAS BEEN DULY RECORDED IN MY OFFICE IN DEED BOOK 182, PAGE 103, FLEMING COUNTY CLERKS OFFICE.
WITNESS MY HAND THIS THE 31ST DAY OF MARCH, 19 95
PHYLLIS B. HARMON, CLERK
Phyllis B. Harmon

182-168

WILLIE D. & IVIS PAULINE SKAGGS

TO——————————————DEED

COMMONWEALTH OF KENTUCKY - NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET

DEED OF CONVEYANCE

THIS DEED OF CONVEYANCE, made and entered into by and between WILLIE D. SKAGGS and IVIS PAULINE SKAGGS, his wife, Route 2, Hillsboro, Kentucky 41049, hereinafter referred to as "the Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as "the Grantee."

WITNESSETH:

That for and in consideration of the sum of ONE HUNDRED FORTY-ONE THOUSAND THREE HUNDRED FIFTY DOLLARS ($141,350.00), sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, a parcel of land containing approximately ninety-one (91) acres situated on Rock Lick Road in Fleming County, Kentucky, said parcel being more fully described by a metes and bounds description prepared by Rodney A. Hall, K.R.L.S. #2841, a copy of which is attached hereto as "Exhibit A"and made a part hereof as if copied verbatim herein.

This conveyance is subject to all easements of record.

This being the same property conveyed to Grantors by Ruby H. Ratliff and Arvel Ratliff, her husband, by Deed dated July 19, 1974 and recorded in Deed Book 137, Page 765, in the Office of the Fleming County Clerk.

Grantors acknowledge the receipt of one hundred thirty-six thousand three hundred fifty dollars ($136,350.00) as cash in hand paid, the remaining five thousand dollars ($5,000.00) to be paid upon removal of the house and grading of the lot.

TO HAVE AND TO HOLD, the above-described property with appurtenances thereunto belonging, unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

The Grantors shall retain the residence, barns, and shrubbery located on the property. In addition, the Grantors may retain possession of the property for one (1) year in order to allow salvage operation and construction of a new home.

Delivered To:
Date:
By:

D E E D D E S C R I P T I O N

PARCEL 37

A certain tract or parcel of land located in Flemming County, Kentucky, on the waters of Rock Lick Creek, situated along Rock Lick Road, 1 mile east of KY 158 and being more particularly described as follows:

Beginning at a spike in the center of Rock Lick Road, corner to John Vise and Wendell McCarty, thence with Rock Lick Road and Wendell McCarty;

North 89°55'51" East 62.13 feet to a Nail & Cap, thence;

North 86°16'09" East 75.92 feet to a Nail & Cap, thence;

North 85°16'31" East 63.59 feet to a Nail & Cap, thence;

North 83°35'13" East 61.12 feet to a Nail & Cap, thence;

North 80°59'06" East 16.05 feet to a PK Nail, thence leaving Rock Lick Road with Wendell McCarty;

North 09°34'41" West 21.10 feet to an 8" Oak, thence;

North 09°28'32" West 308.00 feet to an Iron Pin at 48" Beech, corner to John Vise, thence leaving Wendell McCarty with John Vise;

North 38°34'07" East 677.42 feet to an Iron Pin at a 30" White Oak, thence;

North 45°39'15" East 601.03 feet to an Iron Pin, corner to the Commonwealth of Kentucky, thence leaving John Vise with the Commonwealth of Kentucky;

South 82°10'17" East 221.31 feet to an Iron Pin, thence;

South 00°57'17" East 1299.17 feet to an Iron Pin, thence;

North 60°41'52" East 1124.08 feet to a 40" White Oak, corner to Roscoe Johnson, thence leaving the Commonwealth of Kentucky with Roscoe Johnson;

South 11°29'07" West 672.30 feet to a spike in the center of Rock Lick Road, corner to John Vise, thence leaving Roscoe Johnson with John Vise;

South 05°23'35" East 216.96 feet to a 24" Sweet Gum, thence;

South 04°15'30" East 1488.01 feet to an iron pin, corner to Charles Blevins, thence leaving John Vise with Charles Blevins;

North 76°30'28" West 989.78 feet to an iron pin, corner to Edson Whitt, thence leaving Charles Blevins with Edson Whitt;

North 58°11'17" West 378.79 feet to an iron pin at a 14" Maple, thence;

North 56°33'16" West 524.98 feet to an iron pin at a 24" Maple, thence;

South 83°08'12" West 445.16 feet to an iron pin, corner to Edson Whitt and John Vise, thence leaving Edson Whitt with John Vise;

North 06°16'57" West 1184.13 feet to the beginning.

Parcel 37 contains (by this description) 100.62± Acres, however, there is included within this boundary a parcel of land owned by Willie Skaggs, Jr. (Parcel 37A) which contains 0.48± Acre, and is deducted from the net area, leaving a remainder of 100.14± Acres, and is a part of the same property as conveyed to Willie Skaggs from Arvel Ratliff, by deed, dated July 19, 1974, as recorded in Deed Book 137, Page 765, in the Flemming County Clerk's Office.

This description prepared by Palmer Engineering from a survey performed March 1995.

The Grantee shall be allowed to take any and all necessary actions in order to monitor the area.

The Grantors acknowledge that they shall pay all transfer taxes due, if any, as a result of this transaction, and that they shall pay all city, county, and state real estate taxes assessed against the above-described property up to April 1, 1995.

CONSIDERATION CERTIFICATE OF GRANTORS

The Grantors hereby certify that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

IN TESTIMONY WHEREOF, the Grantors have executed this Deed, including the Consideration Certificate of Grantors, on this the 12 day of April, 1995.

GRANTORS:

Willie D. Skaggs

Willie D. Skaggs

Ivis Pauline Skaggs

Ivis Pauline Skaggs

CONSIDERATION CERTIFICATE OF GRANTEE

The undersigned agent of the Grantee hereby certifies that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

This 12 day of April, 1995.

GRANTEE:

By: George Clarke

Commonwealth of Kentucky

Name: George Clarke

Title: Property Analyst

182-173

WILLIE D. SKAGGS, JR. & PATRICIA SKAGGS

TO——DEED

COMMONWEALTH OF KENTUCKY- NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

DEED OF CONVEYANCE

THIS DEED OF CONVEYANCE, made and entered into by and between WILLIE D. SKAGGS, JR. and PATRICIA SKAGGS, his wife, Route 2, Box 88, Hillsboro, Kentucky 41049, hereinafter referred to as "the Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as "the Grantee."

For restriction see D 217 pg 145 M Spencer Danielle Jarson 1-5-04

WITNESSETH:

That for and in consideration of the sum of SEVEN THOUSAND SEVEN HUNDRED DOLLARS ($7,700.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, a parcel of land containing approximately one-half (1/2) acre situated on Rock Lick Road in Fleming County, Kentucky, said parcel being more fully described by a metes and bounds description and plat prepared by Rodney A. Hall, K.R.L.S. #2841, copies of which are attached hereto as "Exhibits A and B" and made a part hereof as if copied verbatim herein.

This being the same property conveyed to Willie D. Skaggs, Jr. by Willie D. Skaggs and Ivis Pauline Skaggs, his wife, by Deed dated October 27, 1990 and recorded in Deed Book 170, Page 527, in the Office of the Fleming County Clerk.

Patricia Skaggs joins in the execution of this Deed of Conveyance for purposes of releasing her contingent rights of homestead and dower in the above-described property.

TO HAVE AND TO HOLD, the above-described property with appurtenances thereunto belonging, unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

The Grantors shall retain a storage building, small trees, and a water spigot. In addition, the Grantors may retain possession of the property for one (1) year in order to allow the house trailer currently located on the property to be relocated, and shall be allowed to rent the lot for an additional one (1) year period at $50.00 per month.

The Grantors acknowledge that they shall pay all transfer taxes due, if any, as a result of

For Consent Decree Agree. w/ Environ + ... Res., see ... 1368, Pg. 318, this 5-10-96.

Mailed
Delivered To: George Clark
Date: 4-25-95

"Exhibit A"

D E E D D E S C R I P T I O N

PARCEL 37A

A certain tract or parcel of land located in Flemming County, Kentucky, on the waters of Rock Lick Creek, situated along Rock Lick Road, 1.1 miles east of KY 158 and being more particularly described as follows:

Beginning at a PK Nail the center of Rock Lick Creek Road, corner to Willie Skaggs, thence with Rock Lick Road and Willie Skaggs;

North 81°25'48" West 78.03 feet to a Nail & Cap, thence;

North 78°35'42" West 91.32 feet to a PK Nail, corner to Willie Skaggs, thence leaving Rock Lick Road with Willie Skaggs;

North 13°57'52" East 22.47 feet to a 20" White Oak, thence;

North 13°57'47" East 111.67 feet to a 15" Tulip Poplar, thence;

South 71°49'24" East 169.53 feet to an 8" Maple, thence;

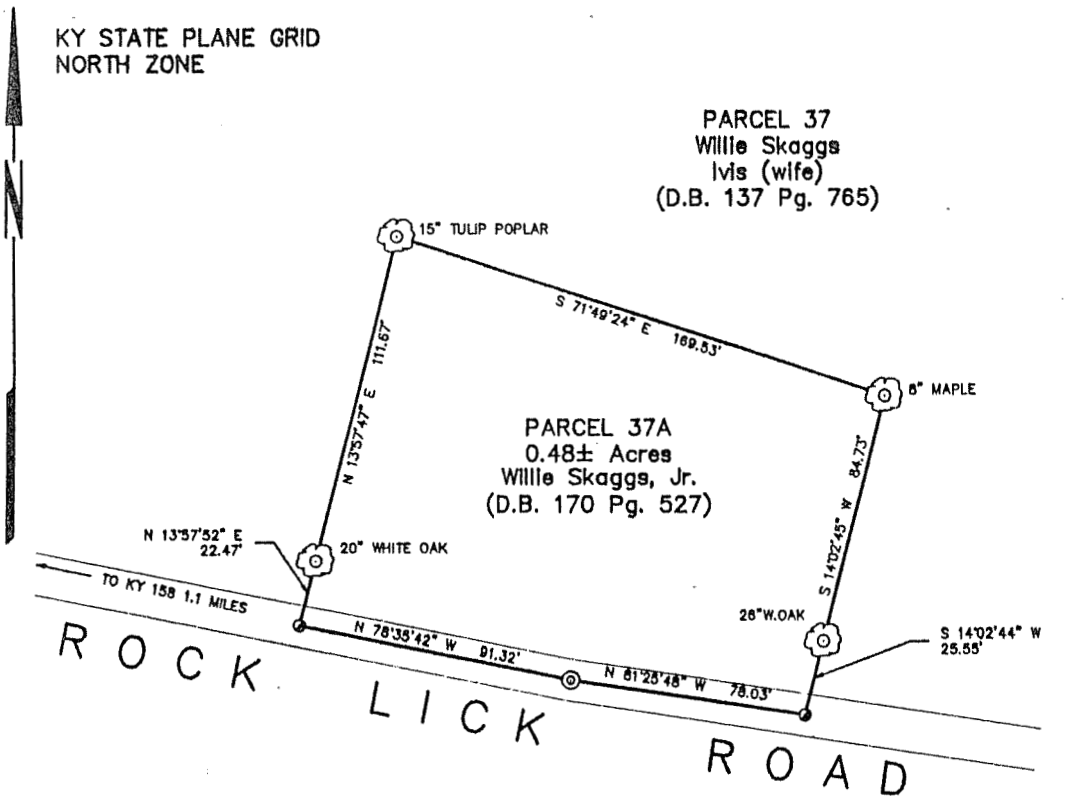
South 14°02'45" West 84.73 feet to a 26" White Oak, thence;

South 14°02'44" West 25.55 feet to the beginning.

Parcel 37A contains 0.48± Acres and is the same property as conveyed to Willie Skaggs, Jr. by deed from Willie Skaggs, dated October 27, 1990, as recorded in Deed Book 170, Page 527, in the Flemming County Clerk's Office.

This description prepared by Palmer Engineering from a survey performed March 1995.

KY STATE PLANE GRID
NORTH ZONE



LEGEND

- ⊙ _ _ Iron Pin
- ◕ _ _ PK Nail
- (⊙) _ _ Tree
- ◎ _ _ Nail & Cap

NOTES

1. Properties platted hereon are subject to any existing easements, recorded or unrecorded.
2. All corners indicated were set this survey unless otherwise noted.
3. Public roadways without specific right-of-way widths are subject to provisions of KRS 178.025.

LAND SURVEYORS CERTIFICATION

"I do hereby certify that the survey shown hereon was performed by me, or under my direction, by the method of random traverse, and all monuments indicated hereon actually exist and their size, location and material are correctly shown. This plat conforms with current minimum standards for Surveying in Kentucky. The bearings and distances shown hereon have been adjusted for closure."

Rodney A. Hall — 2841 — 3-23-1995
Signature — L.S. — Date

	REVISIONS	DATE
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STATE OF KENTUCKY
RODNEY A. HALL
2841
REGISTERED
LAND SURVEYOR

BOUNDARY SURVEY
WILLIE SKAGGS, JR. PROPERTY
Flemming County, Kentucky

AS BUILT DATE		DRAWING NO.
DRAWN BY: JDM	COMMONWEALTH OF KENTUCKY EXECUTIVE DEPT. FOR FINANCE AND ADMINISTRATION BUREAU OF FACILITIES MANAGEMENT DIVISION OF ENGINEERING FRANKFORT, KENTUCKY	SCALE: 1" = 50'
CHECKED BY: REN		
A & E FILE NO.: 94-309	Palmer ENGINEERING WINCHESTER/HARRODSBURG/LOUISVILLE	REVIEWED DIV. OF ENGR. For Intent Only
DATE: 3-20-95		ENGR. FILE NO.

AGENCY AUTHORIZED AGENT _____ DATE _____
Approved For Program Concept Only

DIV OF ENGR AUTHORIZED AGENT _____ DATE _____
Approved For Program Concept Only

this transaction, and that they shall pay all city, county, and state real estate taxes assessed against the above-described property up to and including the current tax year.

CONSIDERATION CERTIFICATE OF GRANTORS

The Grantors hereby certify that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

IN TESTIMONY WHEREOF, the Grantors have executed this Deed, including the Consideration Certificate of Grantors, on this the 12 day of April, 1995.

GRANTORS:

Willie D. Skaggs, Jr.

Patricia Skaggs

CONSIDERATION CERTIFICATE OF GRANTEE

The undersigned agent of the Grantee hereby certifies that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

This 12 day of April, 1995.

GRANTEE:

By: George Clarke
Commonwealth of Kentucky

Name: George Clarke

Title: Property Analyst

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Fleming)

I, the undersigned, certify that the foregoing Deed, including the Consideration Certificate of Grantors, was produced before me in my said County and State and duly acknowledged and sworn to by Willie D. Skaggs, Jr. and Patricia Skaggs, this 12 day of April, 1995.

Notary Public, State-at-Large

My Commission expires: Nov. 2, 1998.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

I, the undersigned certify that the foregoing Consideration Certificate of Grantee was produced before me in my said County and State and duly acknowledged and sworn to by George Clarke, as agent for the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, this 12 day of April, 1995.

Notary Public, State-at-Large

My Commission expires: Nov. 2, 1998.

This Instrument Prepared By:

Angela C. Robinson

Angela C. Robinson, Attorney
Finance and Administration Cabinet
Room 374, Capitol Annex Building
Frankfort, Kentucky 40601
(502) 564-6660

STATE OF KENTUCKY)
SCT.
COUNTY OF FLEMING)

I, PHYLLIS B. HARMON, CLERK OF THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING DEED FROM WILLIE D. SKAGGS, & PATRICIA SKAGGS TO COMMONWEALTH OF KENTUCKY-NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET WAS PRODUCED TO ME AND LODGED FOR RECORD THE 12TH DAY OF APRIL, 19 95, AT 11:01AM, BEARING $8.00 FOR TAX LEVY, WHEREUPON THE SAME TOGETHER WITH THIS CERTIFICATE HAS BEEN DULY RECORDED IN MY OFFICE IN DEED BOOK 182 PAGE 173 FLEMING COUNTY CLERKS OFFICE.
WITNESS MY HAND THIS THE 13TH DAY OF APRIL, 19 95
PHYLLIS B. HARMON CLERK

Phyllis B. Harmon

182-178

for Consent Decree Agree. w/ Ky Energy + Nat Res., Inc. Zone Bk 8. Pg. 318. this 5-10-96.

LINDA KAY & WENDELL MCCARTY TO DEED

DRE DB 217 Pg 176 MSpencer'd Caldwell Ferry Rd 1-5-04

COMMONWEALTH OF KENTUCKY-NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

DEED OF CONVEYANCE

THIS DEED OF CONVEYANCE, made and entered into by and between LINDA KAYE MCCARTY and WENDELL MCCARTY, her husband, Route 2, Box 197, Hillsboro, Kentucky 41049, hereinafter referred to as "the Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as "the Grantee."

WITNESSETH:

That for and in consideration of the sum of TWENTY-SIX THOUSAND DOLLARS ($26,000.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, a parcel of land containing approximately one (1) acre situated on the waters of Rock Lick Creek along Rock Lick Road, one (1) mile east of KY 158, in Fleming County, Kentucky, said parcel being more fully described by a metes and bounds description and plat prepared by Rodney A. Hall, K.R.L.S. #2841, copies of which are attached hereto as "Exhibits A and B" and made a part hereof as if copied verbatim herein.

Mailed Delivered To: Date:

This being the same property conveyed to the Grantors by Willie D. Skaggs and Ivis Pauline Skaggs, his wife, by Deed dated February 1990 and recorded May 21, 1991 in Deed Book 171, Page 765, in the Office of the Fleming County Clerk.

TO HAVE AND TO HOLD, the above-described property with appurtenances thereunto belonging, unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

The Grantors shall be allowed to salvage the front addition to the mobile home, however, Grantee shall retain the mobile home. In addition, the Grantors may retain possession of the property for one (1) year in order to allow salvage operation and construction of a new home.

The Grantors acknowledge that they shall pay all transfer taxes due, if any, as a result of this transaction, and that they shall pay all city, county, and state real estate taxes assessed against the above-described property up to and including the current tax year.

D E E D D E S C R I P T I O N

PARCEL 37B

A certain tract or parcel of land located in Flemming County, Kentucky, on the waters of Rock Lick Creek, situated along Rock Lick Road, 1 mile east of KY 158 and being more particularly described as follows:

Beginning at a PK Nail in the center of Rock Lick Road, corner to Willie Skaggs, thence with Rock Lick Road and Willie Skaggs;

South 80°59'06" West 16.05 feet to a Nail & Cap, thence;

South 83°35'13" West 61.12 feet to a Nail & Cap, thence;

South 85°16'31" West 63.59 feet to a Nail & Cap, thence;

South 86°16'09" West 75.92 feet to a Nail & Cap, thence;

South 89°55'51" West 62.13 feet to a PK Nail, corner to John Vise, thence leaving Rock Lick Road with John Vise;

North 06°16'54" West 16.33 feet to an Iron Pin, thence;

North 34°30'09" East 397.96 feet to an Iron Pin at a 48" Beech, corner to Willie Skaggs, thence with Willie Skaggs;

South 09°28'32" East 308.00 feet to an 8" Oak, thence;

South 09°34'41" East 21.10 feet to a the beginning.

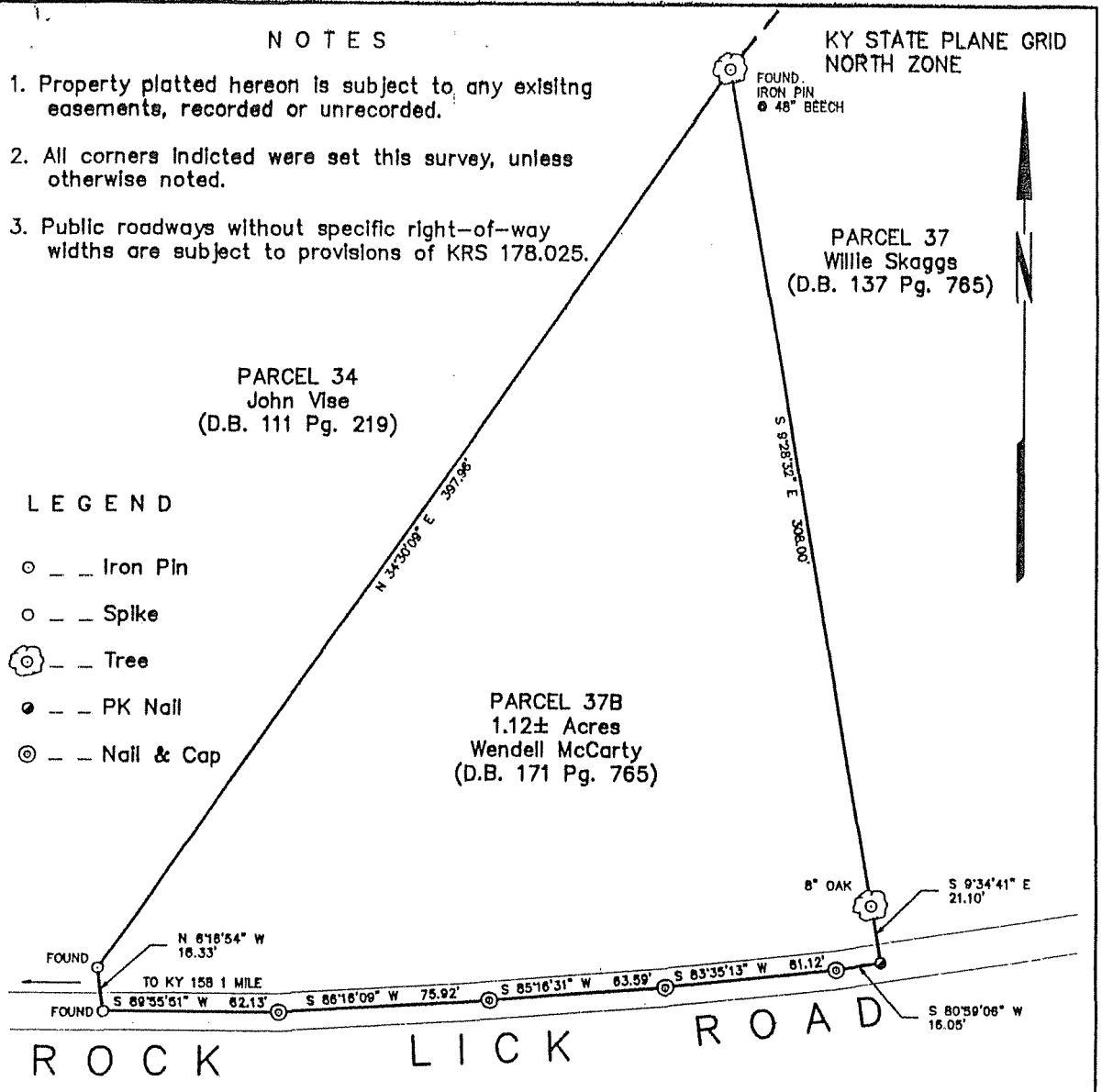
Parcel 37B contains 1.12± Acres and is the same property as conveyed to Wendell McCarty from Willie Skaggs, by deed, dated February 1990, as recorded in Deed Book 171, Page 765, in the Flemming County Clerk's Office.

This description prepared by Palmer Engineering from a survey performed March 1995.

"Exhibit B"

NOTES

1. Property platted hereon is subject to any exisitng easements, recorded or unrecorded.
2. All corners indicted were set this survey, unless otherwise noted.
3. Public roadways without specific right-of-way widths are subject to provisions of KRS 178.025.



LAND SURVEYORS CERTIFICATION

"I do hereby certify that the survey shown hereon was performed by me, or under my direction, by the method of random traverse, and all monuments indicated hereon actually exist and their size, location and material are correctly shown. This plat conforms with current minimum standards for Surveying in Kentucky. The bearings and distances shown hereon have been adjusted for closure."

Rodney A. Hall — Signature
2841 — L.S.
3-23-1995 — Date

REVISIONS		DATE
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STATE OF KENTUCKY
RODNEY A. HALL
2841
REGISTERED
LAND SURVEYOR

BOUNDARY SURVEY
WENDELL McCARTY PROPERTY
Flemming County, Kentucky

AS BUILT DATE		DRAWING NO.
DRAWN BY JDM	COMMONWEALTH OF KENTUCKY EXECUTIVE DEPT. FOR FINANCE AND ADMINISTRATION BUREAU OF FACILITIES MANAGEMENT DIVISION OF ENGINEERING FRANKFORT, KENTUCKY	SCALE
CHECKED BY REN		
A & E FILE NO. 94-309	Palmer ENGINEERING CINCINNATI NASHVILLE LOUISVILLE	REVIEWED DIV. OF ENGR.
DATE 3-20-95		For Intent Only ENGR. FILE NO.

AGENCY AUTHORIZED AGENT _____ DATE _____
Approved For Program Concept Only
DIV OF ENGR AUTHORIZED AGENT _____ DATE _____
d For Program Concept Only

CONSIDERATION CERTIFICATE OF GRANTORS

The Grantors hereby certify that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

IN TESTIMONY WHEREOF, the Grantors have executed this Deed, including the Consideration Certificate of Grantors, on this the 12 day of April, 1995.

GRANTORS:

Linda Kaye McCarty

Linda Kaye McCarty

Wendell McCarty

Wendell McCarty

CONSIDERATION CERTIFICATE OF GRANTEE

The undersigned agent of the Grantee hereby certifies that the consideration set forth in this Deed hereinabove is the full consideration paid for the property hereby conveyed.

This 12 day of April, 1995.

GRANTEE:

By: George Clarke

Commonwealth of Kentucky

Name: George Clarke

Title: Property Analyst

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Fayette) (Lowan)

I, the undersigned, certify that the foregoing Deed, including the Consideration Certificate of Grantors, was produced before me in my said County and State and duly acknowledged and sworn to by Linda Kaye McCarty and Wendell McCarty, this 12th day of April, 1995.

Russell G. Howard

Notary Public, State-at-Large

My Commission expires: 1/21/96.

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FRANKLIN)

I, the undersigned certify that the foregoing Consideration Certificate of Grantee was produced before me in my said County and State and duly acknowledged and sworn to by George Clarke, as agent for the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, this 12 day of April, 1995.

Russell G. Howard
Notary Public, State-at-Large

My Commission expires: 1/21/96.

This Instrument Prepared By:

Angela C. Robinson
Angela C. Robinson, Attorney
Finance and Administration Cabinet
Room 374, Capitol Annex Building
Frankfort, Kentucky 40601
(502) 564-6660

STATE OF KENTUCKY)
SCT:
COUNTY OF FLEMING)

I, PHYLLIS B. HARMON, CLERK OF THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING DEED FROM LINDA KAYE & WENDELL MCCARTY TO COMMONWEALTH OF KENTUCKY-NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET WAS PRODUCED TO ME AND LODGED FOR RECORD THE 12TH DAY OF APRIL, 1995, AT 11:02AM, BEARING $26.00 FOR TAX LEVY, WHEREUPON THE SAME TOGETHER WITH THIS CERTIFICATE HAS BEEN DULY RECORDED IN MY OFFICE IN DEED BOOK 182, PAGE 178, FLEMING COUNTY CLERKS OFFICE.

WITNESS MY HAND THIS THE 13TH DAY OF APRIL, 1995.

PHYLLIS B. HARMON, CLERK
Phyllis B. Harmon

(1) see DB 179 pg 195 In Spencer's Dawn Ellen Johnson 1-6-04

182-368

DEED OF CONVEYANCE

THIS DEED OF CONVEYANCE, made and entered into by and between ROSCOE JOHNSON and JEWELL JOHNSON, his wife, Route 2, Box 194, Hillsboro, Kentucky 41049, hereinafter referred to as the "Grantors" and the COMMONWEALTH OF KENTUCKY, for the use and benefit of the NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET, Capital Plaza Tower, Frankfort, Kentucky 40601, hereinafter referred to as the "Grantee."

Delivered Tax: ______
Date: 5-15-95
Sig: [illegible]

WITNESSETH:

That for and in consideration of the sum of TWENTY-SIX THOUSAND DOLLARS AND NO CENTS ($26,000.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantors do hereby grant, transfer and convey to the Grantee, its successors and assigns, in fee simple, with covenant of General Warranty, a parcel of land containing approximately 49 acres situated in Fleming County, Kentucky on the waters of Rock Lick Creek, said parcel being more fully described by a metes and bounds description prepared by Palmer Engineering (Rodney A. Hall, K.R.L.S. #2841) from a survey performed March 1995, attached hereto as "Exhibit A" and made a part hereof.

Excepted from this description is a parcel of land containing approximately one (1) acre, conveyed to Marcus Ball, married, by Deed from Glenna Ball (now Rawlings) and Roland Rawlings, her husband, dated August 28, 1985, and recorded in Deed Book 160, Page 506 in the Fleming County Clerk's Office.

This conveyance is subject to all easements of record and a ten (10) year oil and gas lease, with renewals, in favor of Harris Engineering, et al, at record in Miscellaneous Book 12, Page 155 in the office of the Fleming County Clerk.

TO HAVE AND TO HOLD, the above-described property with appurtenances thereunto belonging, unto the Grantee, its successors and assigns, in fee simple. The Grantors warrant that they are vested with a good and marketable title to the subject property and that their title thereto is free and unencumbered by any mortgage or other enforceable lien.

Grantors herein shall retain the tobacco base. Grantors acknowledge that they shall pay all transfer taxes, if any, due as a result of this transaction, and all property taxes assessed against the above-described property up to and including the 1995 tax year.

"Exhibit A"

D E E D D E S C R I P T I O N

PARCEL 41

A certain tract or parcel of land located in Flemming County, Kentucky, on the waters of Rock Lick Creek, situated along Rock Lick Road, 1.3 miles east of KY 158 and being more particularly described as follows:

Beginning at a Spike in the center of Rock Lick Road, corner to John Vise, thence with Rock Lick Road and John Vise;

North 89°13'32" West 87.97 feet to a Nail & Cap, thence;

South 89°22'26" West 58.85 feet to a Nail & Cap, thence;

North 89°43'24" West 55.49 feet to a Nail & Cap, thence;

North 87°39'21" West 59.73 feet to a Nail & Cap, thence;

North 84°50'08" West 61.02 feet to a Nail & Cap, thence;

North 83°36'50" West 57.62 feet to a Nail & Cap, thence;

North 85°13'30" West 200.13 feet to a Nail & Cap, thence;

North 85°47'00" West 59.28 feet to a Nail & Cap, thence;

North 86°21'13" West 60.75 feet to Spike, corner to Willie Skaggs, thence leaving Rock Lick Road and John Vise, with Willie Skaggs;

North 11°29'07" East 672.30 feet to a 40" White Oak, corner to Commonwealth of Kentucky, thence leaving Willie Skaggs with the Commonwealth of Kentucky;

North 15°35'15" East 500.08 feet to an Iron Pin, thence;

South 78°40'17" East 594.01 feet to an Iron Pin, thence;

North 26°23'33" East 258.24 feet to an Iron Pin in a Stump, thence;

North 86°35'11" East 567.87 feet to an Iron Pin, corner to Alla Huffman, thence leaving the Commonwealth of Kentucky with Alla Huffman;

South 21°09'38" East 616.63 feet to an iron pin, thence;

South 21°09'38" East 616.63 feet to an iron pin, corner to Roscoe Johnson, thence leaving Alla Huffman with Roscoe Johnson;

South 63°08'19" West 663.34 feet to a Spike in the center of Rock Lick Road, thence continuing with Roscoe Johnson and Rock Lick Road;

North 73°17'51" West 73.84 feet to a Nail & Cap, thence;

North 67°19'09" West 58.81 feet to a Nail & Cap, thence;

North 63°27'43" West 62.97 feet to a Spike, thence;

North 70°16'43" West 56.42 feet to a Nail & Cap, thence;

North 80°03'38" West 55.82 feet to a Spike, thence leaving Rock Lick Road and continuing with Roscoe Johnson;

South 09°15'43" West 123.10 feet to an Iron Pin, thence;

South 80°00'44" East 72.69 feet to an Iron Pin at a 8" Wild Cherry tree, thence;

South 29°31'03" West 373.31 feet to an Iron Pin, thence;

South 22°23'26" West 69.87 feet to an Iron Pin, corner to John Vise, thence leaving Roscoe Johnson with John Vise;

North 08°18'39" West 37.59 feet to a point in Rock Lick Creek, thence continuing with John Vise and Rock Lick Creek;

North 58°24'25.221" West 57.4366 feet to a point in the creek, thence;

North 38°36'39.214" West 25.0614 feet to a point in the creek, thence;

North 14°03'53.401" West 36.4538 feet to a point in the creek, thence;

North 05°12'51.819" East 72.4890 feet to a point in the creek, thence;

North 52°36'44.337" West 23.4814 feet to a point in the creek, thence;

North 63°03'32.289" West 54.0442 feet to a point in the creek, thence;

North 82°32'56.976" West 44.3646 feet to a point in the creek, thence;

South 77°30'18.395" West 49.1050 feet to a point in the creek, thence;

South 82°00'02.823" West 65.1267 feet to a point in the creek, thence;

South 86°36'16.725" West 67.5386 feet to a point in the creek, thence;

North 87°18'23.589" West 78.8641 feet to a point in the creek, at a ditch, thence leaving Rock Lick Creek with the ditch;

North 59°03'53.852" East 63.3051 feet to a point in the ditch, thence;

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of July, in the year of our Lord, one thousand nine hundred ninety four (1994).

Signed and acknowledged
in the presence of:

Thomas F. Zachman

Mary Jean Reetz

Clara Edith Frost

Clara Edith Frost

STATE OF OHIO, COUNTY OF BROWN, ss:

Be It Remembered, That on this 30th day of July, 1994, before me, the subscriber, a Notary Public in and for said county, personally came CLARA EDITH FROST, who acknowledged that she did sign the foregoing Power of Attorney, and that the same is her voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

THOMAS F. ZACHMAN, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
OHIO REVISED CODE, SEC. 147.03

This Instrument Prepared By:
THOMAS F. ZACHMAN
Attorney at Law
134 N. Front Street
P. O. Box 114
Ripley, OH 45167
Phone: (513) 392-1142

C & F

STATE OF KENTUCKY)
SCT.
COUNTY OF FLEMING)

I, PHYLLIS B. HARMON, CLERK OF THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING POWER OF ATTORNEY FROM CLARA EDITH FROST TO LOIS ANDERSON WAS PRODUCED TO ME AND LODGED FOR RECORD THE 11TH DAY OF MAY, 19 95

WHEREUPON THE SAME TOGETHER WITH THIS CERTIFICATE HAS BEEN DULY RECORDED IN MY OFFICE IN DEED BOOK 182, PAGE 362, FLEMING COUNTY CLERKS OFFICE.

WITNESS MY HAND THIS THE 12TH DAY OF MAY, 19 95

PHYLLIS B. HARMON, CLERK

Phyllis B. Harmon

Exhibit 4-B

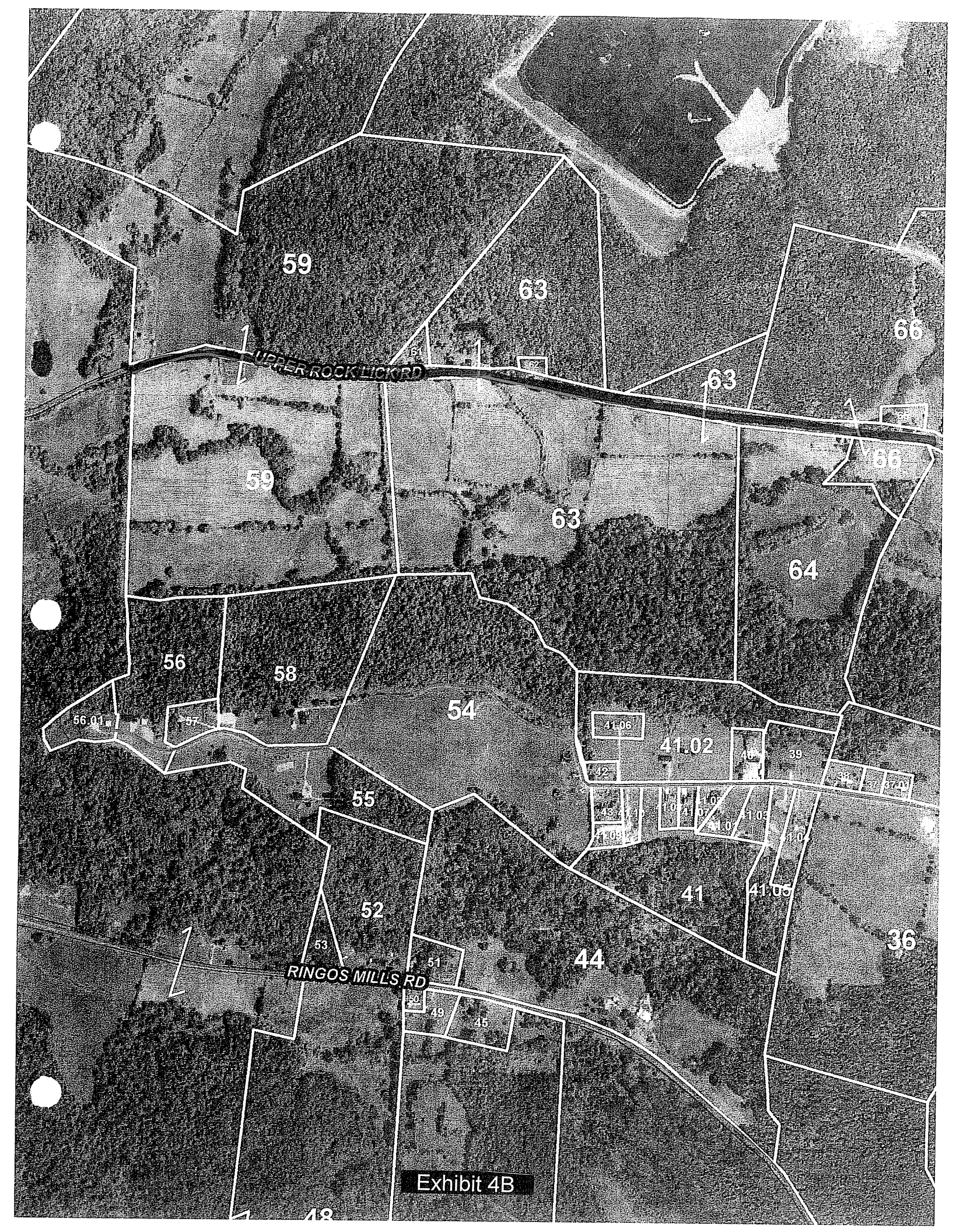
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Exhibit 4B

Exhibit 4-C

217-200

DECLARATION OF RESTRICTIONS

THIS DECLARATION is made as of December 5, 2003 by the Commonwealth of Kentucky, for the use and benefit of the Natural Resources and Environmental Protection Cabinet (Declarant).

WHEREAS, Declarant is the owner of real property located at Rock Lick Road, in Fleming County, Kentucky (the Property), more particularly described in Deed Book 182, Page 64, of the Fleming County Clerk's Office as indicated in Exhibit A.

WHEREAS, this property is adjacent to (and serves as a "buffer zone" for) a low-level nuclear disposal site with a history of releases to the environment, specifically the Maxey Flats site (site). The site is on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

WHEREAS, this site has been the subject of a Remedial Action and is undergoing Operations and Maintenance pursuant to a Consent Decree with the U.S. Environmental Protection Agency (Civil Action Number 95-58). The site has been capped to control exposure to the hazardous substances, pollutants or contaminants by restricting direct contact and diverting rainfall.

WHEREAS, U.S. Environmental Protection Agency (EPA) has approved the Remedial Action and Interim Maintenance Period Workplan at the site (a document which governs Operations and Maintenance activities, among other items), and the Commonwealth of Kentucky is performing the actions required by the approved Workplan. However, tritium and other radioactive isotopes remain onsite in amounts that could pose risks above the de minimum levels for all exposure scenarios if the Remedy were to fail. Any releases could migrate to this property.

WHEREAS, further information concerning the site may be obtained by contacting the Custodian of Records of the Division of Waste Management at 14 Reilly Road, Frankfort, Kentucky 40601.

NOW THEREFORE, pursuant to the Consent Decree, and the Remedial Action as specified in the Record of Decision, Declarant imposes the following restrictions:

1.) Definitions. (A) "Residential use" means any use of the property related to a (i) residence or dwelling, including but not limited to a house, apartment, or condominium, or (ii) school, hospital, day care center, playground, or outdoor recreational area. (B) "Owner" means the Declarant or any successor owner or owners.

2.) Restrictions Applicable to the Property. Declarant shall assure that the use, occupancy, and activity of and at the Property are restricted as follows:

A. Groundwater. Groundwater at the Property shall not be used for drinking or other domestic, agricultural or industrial purposes. Groundwater will only be used for sampling and/or investigation purposes.

B. Except as necessary to protect human health, safety or the environment, no action shall be taken, allowed, suffered, or omitted on the Property if such action or omission is reasonably likely to:

i. Create a risk of migration of hazardous substances, pollutants or contaminants or a potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain hazardous substances, pollutants or contaminants or limit human exposure to hazardous substances, pollutants or contaminants. This includes cutting or otherwise damaging trees on the sideslopes of the site.

C. Access shall be restricted to Commonwealth of Kentucky personnel and agents. Persons other than Commonwealth of Kentucky personnel and agents may access the property with permission of the Commonwealth of Kentucky for purposes of investigation, remediation, or support activities related to investigation and remediation. Also, members of the public may access portions of the property pursuant to a Community Relations Plan. However, such activity shall be carried out under a Health and Safety Plan meeting Occupational Safety and Health Act requirements. Note this restriction precludes residential and industrial uses.

3.) Restrictions Run With Land.

(A) Declarant shall not sell, transfer, lease, or convey this property, nor allow it to be occupied by any person other than Commonwealth of Kentucky personnel and agents (with exceptions as stated in (2).C, above), until such time as Declarant and EPA enter into an agreement formally executed by a legal instrument, which is agreed to by both parties.

(B). Unless canceled, altered or amended under the provisions of paragraph 4 of this Declaration, these restrictions are to run with the land and shall be binding on Declarant, his successors, heirs and assigns unless an instrument signed by the Declarant and EPA has been recorded, agreeing to change these restrictions in whole or in part.

(C). Except as provide in paragraph 4 of this Declaration, the Declarant hereby declares that the Property shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the restrictions set forth herein, each and all of which is and are for, and shall inure to the benefit of and pass with each and every part of the Property and shall apply to and bind the heirs, assignees and successors in interest of the Declarant.

4.) Release of Restriction. These restrictions may not be canceled, altered or amended without the affirmative action of the Declarant and EPA, in an instrument executed by both parties agreeing to change these restrictions in whole or in part.

5.) Effect of Invalidation. Invalidation of any one of these restrictions, conditions or covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Restrictions as of the date set forth above.

Recommended:

Natural Resources and
Environmental Protection Cabinet

Examined:

Gary Bale, General Counsel
Finance and Administration Cabinet

Approved:

Gordon C. Duke, Secretary
Finance and Administration Cabinet

Examined:

Counsel to the Governor

Commonwealth of Kentucky:

Paul E. Patton, Governor

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 5

RESPONSIBLE PERSON: J. E. SMITH, JR. CHAIRMAN

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 5a. State whether anyone resides along FCWA's portion of water line near the Maxey Flats site that was disconnected in 1997.

Response 5a. **No one resides along the disconnected water line and in fact are prohibited from doing so by virtue of the DECLARATION OF RESTRICTIONS filed herein as Exhibit 4-C.**

Request 5b. If there are residents along that water line and to the extent that FCWA knows, state how those residences have potable water.

Response 5b. **There are no residents along the disconnected line. Residents are prohibited.**

Request 5c. State whether any of those residents **have requested water service from FCWA since 1997.**

Response 5c. Not along the disconnected line but at other locations to where they have relocated.

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 6

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 6. Provide a copy of the consent decree that was entered in Civil Action No. 95-98 in the U.S. District Court for the Eastern District of Kentucky. Identify or highlight all sections that relate to the disconnection of service by FCWA near the Maxey Flats site.

Response 6. In the **NOTICE OF CONSENT DECREE AND ACCESS AGREEMENT** filed in the Office of the Fleming County Clerk in Encumbrance Book 8, Page 318, it is stated that "Certified copies of the Consent Decree may be examined at the Fleming County and Rowan County Public Libraries."

The Consent Decree is in excess of 140 pages and it would be burdensome and unenlightening to furnish ten copies with this response. There are over 400 parties to the action, both public and private. These signature pages are not included with the copy furnished with the original response only.

So far as I can ascertain, there is nothing specifically requiring the disconnection of respondent's water line. However, on page 16, it is stated, "The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment at the Site through the funding, design and implementation of response actions at the Site by the Settling Parties, and to partially reimburse response costs of the Plaintiff."

The BoRP Activities, BoRP Design, BoRP Work, and the Commonwealth IRP Obligations mentioned on pages 8 and 9 were assigned to the Commonwealth of Kentucky. These actions were accomplished by the Natural Resources and Environmental Protection Cabinet of Kentucky.

FCWA cannot find the initial contact from the Cabinet requiring the disconnection of the line in question.

#6

COPY OF CONSENT DECREE

ORIGINAL ONLY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CERCLA CONSENT DECREE FOR REMEDIAL
DESIGN, REMEDIAL ACTION, AND
PARTIAL REIMBURSEMENT OF RESPONSE
COSTS FOR THE MAXEY FLATS DISPOSAL
SUPERFUND SITE
FLEMING COUNTY, KENTUCKY

NOTE

Pages 1, 2 & 3 are missing from the Fleming County Library Copy

any statement in the administrative record. The Settling Parties reserve their rights to raise any defense and to challenge any fact or liability in any proceeding except one to enforce this Consent Decree.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, at 51 Fed. Reg. 21,055 and 21,095.

H. In response to an alleged release or substantial threat of a release of hazardous substances at or from the Site, the Maxey Flats Steering Committee, composed of 82 PRPs, commenced on March 24, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430 under the Administrative Order by Consent ("AOC") for the Site dated March 24, 1987.

I. The Remedial Investigation ("RI") Report for the Site was finalized on July 21, 1989, and the Feasibility Study ("FS") Report was finalized, with an Addendum, on May 31, 1991. The Maxey Flats Steering Committee has completed the work required under the AOC.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 3 and June 4, 1991, in major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of

the public meeting held on the proposed plan is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), issued on September 30, 1991, (attached as Appendix A), on which the Commonwealth had a reasonable opportunity to review and comment and has given its general concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information currently available to EPA, EPA believes that the Work as defined herein will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and the Statement of Work ("SOW").

M. Solely for the purposes of Section 113(j) of CERCLA, the remedial action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties represent, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation among the

Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Parties. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Settling Parties shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the Settling Defendants, and their successors and assigns. Any reorganization, abolition, size reduction, transfer of function, or change in the existence or authority of a Settling Federal Agency or the Commonwealth, or change in ownership or corporate status of a Settling Private Party including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the responsibilities under this Consent Decree of the Settling Federal Agency, Settling Private Party, or the Commonwealth.

3. Settling Private Parties shall provide a copy of this Consent Decree to each contractor hired to perform the IRP Work (as defined below) and to each person representing any Settling Private Party with respect to the Site or the IRP Work and shall condition all contracts entered into hereunder upon performance of the IRP Work in conformity with the terms of this Consent Decree. Settling Private Parties or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the IRP Work required by this Consent Decree. Settling Private Parties shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the IRP Work in accordance with this Consent Decree. With regard to the IRP Work, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Private Parties within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § ~~9607~~(b)(3).

4. The Commonwealth shall provide a copy of this Consent Decree to each contractor hired to perform the BoRP Work (as defined below) and to each person representing the Commonwealth with respect to the Site or the BoRP Work and shall condition all contracts entered into hereunder upon performance of the BoRP Work in conformity with the terms of this Consent Decree. The Commonwealth or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the BoRP Work. The Commonwealth shall nonetheless be responsible for ensuring that its contractors and

subcontractors perform the BoRP Work in accordance with this Consent Decree. With regard to the BoRP Work, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Commonwealth within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the Statement of Work or appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"AEA" shall mean the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201 et seq.

"Balance of Remedial Phase" (BoRP) shall mean that portion of the remedy for the Site described in Tasks IV and V of Section IV of the Statement of Work for the Site (SOW), attached as Appendix B, and which is equivalent to the tasks comprising the "Interim Maintenance Period" (IMP) and "Final Closure Period" (FCP) as described in the ROD.

"BoRP Activities" shall mean those activities to be undertaken by the Commonwealth to implement the final plans and specifications submitted by the Commonwealth pursuant to the IMP and FCP work plans as described in the SOW and this Consent Decree and approved by EPA.

"BoRP Remedial Design" shall mean those activities to be undertaken by the Commonwealth to develop the final plans and specifications for the BoRP Activities as required in the SOW and this Consent Decree.

"BoRP Work" shall mean all activities the Commonwealth is required to perform under this Consent Decree, including the Commonwealth IRP Obligations and other remedial tasks and O & M (as defined below) specified in the SOW, except those required by Section XXVIII (Retention of Records).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"Chemical and Radiological Monitoring" shall mean all monitoring, including monitoring for RCRA hazardous wastes or hazardous constituents, as specified in Section III.A.4.e.-j. of the SOW.

"Commonwealth IRP Obligations" shall mean the Commonwealth's responsibility to perform the following tasks until Certification of Completion of the IRP: Chemical and Radiological Monitoring; access control and security; and Site maintenance, including grass cutting, fence repair, routine cap repairs, subsidence monitoring and repair, and ditch cleaning.

"Commonwealth" or "State" shall mean the Commonwealth of Kentucky, its various State cabinets and agencies, and related entities including the State university system.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Construction Standards" shall mean those requirements designated as Construction Standards in the Statement of Work and those construction-related criteria and standards developed during IRP Remedial Design or BoRP Remedial Design which are consistent with the remedy outlined in the SOW.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"De Minimis Consent Decree" shall mean the consent decree lodged herewith to which the United States, the De Minimis Settlors and the Settling Privates Parties are signatories.

"De Minimis Settlors" shall mean, collectively, the "Non-Federal De Minimis Settlors" and the "Federal De Minimis Settlors," as listed in Exhibits 1 and 4 of the "De Minimis Consent Decree" for the Site lodged with this Consent Decree.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Final Closure Period" (FCP) shall mean that portion of the remedy described in Section IV, Task IV.B. of the SOW and identified as the Final Closure Period in the ROD.

"Future Response Costs" shall mean the costs that EPA or the United States Department of Justice incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise overseeing this Consent Decree, including payroll costs, contractor costs, travel costs, and laboratory costs; but shall not include i) costs EPA incurs in performing Emergency Response pursuant to Section XVIII; ii) costs EPA incurs in performing Work in accordance with Paragraph 126 of Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff) or in performing additional response actions as provided in Section IX (Additional Response Actions) or Section X (EPA Periodic Review); or iii) any other costs which are reserved or subject to reopeners under Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff).

"Interim Maintenance Period" (IMP) shall mean the period of natural subsidence, and Site maintenance and monitoring, commencing upon Certification of Completion of the IRP and concluding with the attainment of the trench stabilization criteria established in accordance with the SOW.

"Initial Remedial Phase" (IRP) shall mean that portion of the remedy described in the Record of Decision as the Initial Closure Period, which consists of Tasks I-III of the SOW and the

performance monitoring requirements relating to Tasks I-III in Task V of Section IV of the SOW.

"IRP Activities" shall mean those activities to be undertaken by the Settling Private Parties to implement the final plans and specifications submitted by the Settling Private Parties pursuant to the IRP Remedial Action Work Plan and approved by EPA.

"IRP Remedial Design" shall mean those activities to be undertaken by the Settling Private Parties to develop the final plans and specifications for the IRP Activities pursuant to the IRP Remedial Design Work Plan.

"IRP Work" shall mean all activities Settling Private Parties are required to perform under this Consent Decree, including the IRP tasks specified in the SOW, except those required by Section XXVIII (Retention of Records).

"National Contingency Plan" or (NCP) shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or (O & M) shall mean all activities to maintain the effectiveness of the remedial action which are described in the Record of Decision for the Site as the Custodial Maintenance Period, including all institutional control, perpetual care, and maintenance and monitoring activities as required under the Institutional Control Period

(ICP) and Post-Institutional Control Period Work Plans and Operation and Maintenance Manuals developed pursuant to this Consent Decree and the Statement of Work (SOW) and approved by EPA.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the Plaintiff, the Settling Defendants, and the Settling Federal Agencies.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States (excluding the Settling Federal Agencies) incurred and paid with regard to the Site prior to the date of entry of this Consent Decree, plus interest on those costs.

"Performance Standards" shall mean the performance standards specifically identified in Section III of the SOW and such other cleanup standards, standards of control, and other substantive requirements, criteria or limitations that EPA identifies as a result of IRP Remedial Design or BoRP Remedial Design that are consistent with the standards specified in Section III of the SOW and are required due to significant monitoring or sampling data developed during the IRP Remedial Design or BoRP Remedial Design which are materially different from previously existing data.

"Plaintiff" shall mean the United States on behalf of EPA.

"RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., which is in effect on the effective date of this Consent Decree.

"Record of Decision" (ROD) shall mean the EPA Record of Decision relating to the Site dated September 30, 1991, issued by EPA Region IV, and all attachments thereto.

"Remedial Activities" shall mean the IRP Activities and the BoRP Activities.

"Remedial Measures" shall mean the "Remedial Measures" designated in Section III of the SOW.

"Remedial Standards" shall mean the "Performance Standards" as defined in this Consent Decree and the Construction Standards and Remedial Measures described in Section III of the SOW, as may be modified by EPA during IRP Remedial Design and BoRP Remedial Design.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settlement Agreement" shall mean the agreement between the Settling Private Parties and Settling Federal Agencies, which is attached to this Consent Decree as Appendix C and which is made an enforceable part hereof.

"Settling Defendants" shall mean the Settling Private Parties and the Commonwealth.

"Settling Federal Agencies" shall mean those agencies or departments of the United States identified in Appendix D hereto.

"Settling Parties" shall mean the Settling Private Parties, the Settling Federal Agencies, and the Commonwealth.

"Settling Private Parties" shall mean those parties identified in Appendix E hereto.

"Site" shall mean the Maxey Flats Disposal Superfund Site, encompassing approximately 280 acres, located on County Road 1895, approximately 10 miles northwest of the City of Morehead, in southeastern Fleming County, Kentucky and depicted generally on the map attached as Appendix F.

"Statement of Work" (SOW) shall mean the document attached as Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor or contractors retained by the Settling Defendants to supervise and direct the design and/or implementation of their respective Work under this Consent Decree.

"United States" shall mean the United States of America, including its agencies, departments, and instrumentalities, except that, for purposes of Sections XIX, XX, XXIII, XXIV and XXV of this Consent Decree (Reimbursement of Response Costs, Indemnification and Insurance, Stipulated Penalties, Covenants Not to Sue or Take Administrative Action by Plaintiff, and Covenants by Settling Defendants), "United States" shall not include the Settling Federal Agencies.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any

pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean the IRP Work and the BoRP Work.

V. GENERAL PROVISIONS

6. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment at the Site through the funding, design and implementation of response actions at the Site by the Settling Parties and to partially reimburse response costs of the Plaintiff.

7. Commitments by Settling Parties

a. Settling Private Parties shall perform and, together with Settling Federal Agencies, shall finance the IRP Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in the SOW, as well as the schedules developed and approved by EPA pursuant to this Consent Decree. Settling Private Parties and the Settling Federal Agencies shall also reimburse the United States for response costs as provided in this Consent Decree.

b. The Commonwealth shall perform and finance the BoRP Work and the Commonwealth IRP Obligations in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in the SOW, as well as the schedules developed and approved by EPA pursuant to this Consent Decree.

This Consent Decree does not purport to settle any liability the Commonwealth may have to Plaintiff for any response costs the United States (other than the Settling Federal Agencies) has incurred as of the date of entry of the Consent Decree or which the United States will incur after the date of entry of this Consent Decree, except those costs the Commonwealth has agreed to pay under Sections XII and XVIII (Access and Emergency Response), and Paragraph 126 of Section XXIV (Covenants Not To Sue or Take Administrative Action by Plaintiff).

c. Whenever the Settling Private Parties and Settling Federal Agencies are obligated to pay money to the Plaintiff under this Consent Decree, the Settling Private Parties are jointly and severally obligated for the entire amount. The Settling Private Parties and Settling Federal Agencies have allocated the payment obligations under this Consent Decree among themselves as specified in the Settlement Agreement. The Settling Private Parties are jointly and severally obligated to perform the IRP Work and to finance all IRP Work, but the obligations to finance the IRP Work are allocated among the Settling Private Parties and the Settling Federal Agencies as specified in the Settlement Agreement.

d. Except as provided in Section XXI (Force Majeure), the failure or delay of any Settling Party to pay or otherwise perform its respective obligations shall not relieve any of the Parties of their obligations under this Consent Decree.

e. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that the Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C., §§ 1301, 1341, 1342, 1349-51, 1511-19.

8. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants shall also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

9. Permits

a. As provided in Section 121(e) of CERCLA and § 300.400(e)(1) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. In particular, the Settling Private Parties and Commonwealth agree that, by performing or paying for the IRP Work or any other response actions that are on-site, as defined at 40 C.F.R. § 300.400(e)(1)(1993), the Settling Private Parties and Settling Federal Agencies do not become subject to any existing or future State permittee or licensee obligations arising under any State statutes or regulations that implement or are the basis for delegation under the AEA, the Clean Air Act, the Clean Water Act,

RCRA, the Safe Drinking Water Act, and the Solid Waste Disposal Act; or based on any independent State statutes or regulations, existing now or in the future, that apply to the same media or Waste Material as such federal statutes. However, this Paragraph does not relieve Settling Private Parties or Settling Federal Agencies from complying with the applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD. When any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XXI (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

10. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Commonwealth of Kentucky, as owner of the Site property, shall record a certified copy of this Consent Decree with the Recorder's Office (or Registry of Deeds or other appropriate office), Fleming County, Commonwealth of Kentucky. Thereafter, each deed, title, or other instrument conveying an

interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Commonwealth with respect to the provision of access under Section XII (Access) and the implementation of institutional controls as required by the ROD and the SOW shall be binding upon any and all departments or agencies of the Commonwealth and any and all persons who subsequently acquire any ownership interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Commonwealth shall record at the Recorder's Office (or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property) a notice of obligation to provide access under Section XII (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Commonwealth and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In

the event of any such conveyance, the Commonwealth's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section XII, shall continue to be met by the Commonwealth. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Parties to comply with the Consent Decree.

d. In the event that additional parcels of property are acquired for a buffer zone pursuant to the SOW, the party acquiring such property shall comply with the provisions of subparagraphs a-c above, with all obligations running from the closing date of the acquisition of any such parcel of property.

VI. DE MINIMIS CONSENT DECREE

11. In consideration of the covenants not to sue the Commonwealth of the De Minimis Settlors under the terms of the De Minimis Consent Decree, and except as specifically provided in Paragraph 12 of this Consent Decree, the Commonwealth covenants not to sue or to take administrative action against any of the De Minimis Settlors for any and all civil liability pursuant to Sections 107(a) or 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, state law or common law, relating to the Site. The covenants not to sue or to take administrative action of the Commonwealth shall take effect for the De Minimis Settlors upon their respective payments in

accordance with the De Minimis Consent Decree. These covenants not to sue extend to the De Minimis Settlors and do not extend to any other person.

12. The covenants by the Commonwealth set forth in Paragraph 11 above do not pertain to any matters other than those expressly specified therein. The Commonwealth reserves, and this Consent Decree is without prejudice to, all rights against the De Minimis Settlors with respect to all other matters, including, but not limited to:

a. claims based on failure to make the payments required by Section XIX (Reimbursement of Response Costs) and the De Minimis Consent Decree;

b. criminal liability;

c. liability for injury to, destruction of, or loss of natural resources for which there are federal trustees.

d. liability for response costs that have been or may have been incurred by the U.S. Department of Interior or U.S. Department of Agriculture in their role as natural resource trustees.

13. Nothing in this Section or the De Minimis Consent Decree shall affect the obligations of the Settling Parties or their successors or assigns to the Plaintiff under the terms of this Consent Decree, or the rights of the Plaintiff against the Settling Parties or their successors or assigns as provided or reserved under the terms of this Consent Decree.

VII. OBLIGATIONS OWED BY THE SETTLING PRIVATE PARTIES AND THE SETTLING FEDERAL AGENCIES TO EACH OTHER

14. The Settling Private Parties and the Settling Federal Agencies have set forth their obligations to each other

in the Settlement Agreement, which is incorporated herein by reference and made an enforceable part hereof.

VIII. PERFORMANCE OF THE WORK

15. Selection of Supervising Contractor.

a. All aspects of the IRP Work to be performed by Settling Private Parties pursuant to this Section or Sections IX, X, and XI (Additional Response Actions, EPA Periodic Review, and Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 15 days after the entry of this Consent Decree, Settling Private Parties shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the IRP Activities. EPA will issue a notice of disapproval or an authorization to proceed upon notification of the identity of the Supervising Contractor. EPA will not disapprove a proposed Supervising Contractor on the ground that the proposed Supervising Contractor is, or is affiliated with, a Settling Private Party or a De Minimis Settlor. If, at any time after a Supervising Contractor is approved, Settling Private Parties propose to change a Supervising Contractor, the Settling Private Parties shall again notify EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any IRP Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Settling Private Parties in writing and the Settling Private Parties shall then submit to EPA and the Commonwealth a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor that it disapproves and an authorization to proceed with respect to any of the other contractors. EPA will not disapprove a proposed Supervising Contractor on the ground that the proposed Supervising Contractor is, or is affiliated with, a Settling Private Party or a De Minimis Settlor. Settling Private Parties may select any contractor from that list that is not disapproved and shall notify EPA and the Commonwealth of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. All aspects of the BoRP Work to be performed by the Commonwealth pursuant to this Section or Sections IX, X, and XI (Additional Response Actions, EPA Periodic Review, and Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a Supervising Contractor or an agency or employee of the Commonwealth. The selection of a Supervising Contractor or agency or employee of the Commonwealth to serve in that capacity shall be subject to disapproval by EPA. Within 180 days prior to the scheduled completion of IRP Activities, the Commonwealth

shall notify EPA in writing of the name, title, and qualifications of any contractor, person, or agency proposed to direct and supervise the BoRP Work. EPA will issue a notice of disapproval or an authorization to proceed upon notification of the identity of the Supervising Contractor or agency or employee serving in that capacity. After EPA authorizes the BORP Work to proceed, the Commonwealth shall not replace the Supervising Contractor or agency or employee serving in that capacity without notifying EPA and obtaining a new authorization to proceed.

d. If EPA disapproves the contractor, person, or agency selected by the Commonwealth to supervise and direct the BoRP Work, EPA will notify the Commonwealth in writing. Within 30 days after receipt of EPA's disapproval, the Commonwealth shall submit to EPA a list of other contractors, persons, or agencies proposed by the Commonwealth to supervise the BoRP Work. EPA will provide written notice of the names of any contractor, person or agency that it disapproves and an authorization to proceed with respect to any of the other listed candidates. The Commonwealth may select any contractor, person or agency from that list that is not disapproved and shall notify EPA of its selection within 21 days of EPA's authorization to proceed.

e. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Private Parties or the Commonwealth from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling

Private Parties or the Commonwealth may seek relief under the provisions of Section XXI (Force Majeure) hereof.

16. Commonwealth IRP Obligations. Within 45 days after entry of this Consent Decree, the Commonwealth shall submit to EPA a work plan detailing the Commonwealth IRP Obligations (IRP Monitoring and Maintenance Plan). Upon approval of the IRP Monitoring and Maintenance Plan by EPA, the Commonwealth shall implement the plan. The fact that the IRP Monitoring and Maintenance Plan has not been submitted or approved shall not prevent the Commonwealth from performing its obligations under the AEA license for the Site.

17. Remedial Design

a. Within 60 days after EPA's issuance of an authorization to proceed to Settling Private Parties pursuant to Paragraph 15, Settling Private Parties shall submit to EPA and the Commonwealth a work plan for the design of the Initial Remedial Phase at the Site ("IRP RD Work Plan") or that portion of the work plan related to the leachate removal, solidification, and disposal. At the same time, Settling Private Parties shall also submit to EPA and the Commonwealth a health and safety plan for the IRP Remedial Design which conforms to the applicable Occupational Safety and Health Administration regulations including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth of Kentucky regulations relating to worker exposure to radiation. The health and safety plan shall specify a safety officer to ensure that work procedures are carried out in

accordance with state and federal health and safety requirements. Settling Private Parties shall submit the complete IRP RD Work Plan (or the remainder thereof, if they have submitted that portion of the IRP RD Work Plan related to leachate removal, solidification, and disposal) no later than 90 days following initiation of full scale leachate removal and solidification operations.

b. Within 60 days after EPA determines that trench stabilization criteria established in accordance with the SOW have been attained, the Commonwealth shall submit to EPA a work plan for the design of the FCP ("FCP RD Work Plan"). At the same time, the Commonwealth shall submit to EPA a health and safety plan for the FCP activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth regulations relating to worker exposure to radiation. To satisfy this requirement the Commonwealth may submit to EPA a supplemented version of the health and safety plan in effect for the Site under its AEA license. The FCP health and safety plan shall specify a radiation safety officer to ensure that work procedures are carried out in accordance with state and federal health and safety requirements.

c. The work plans specified in subparagraphs 17.a and 17.b above shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon their approval by

EPA, shall be incorporated into and become enforceable under this Consent Decree.

d. The IRP RD Work Plan shall include plans and schedules for implementation of all IRP Remedial Design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) IRP Remedial Design sampling and analysis plans including, but not limited to, an IRP Remedial Design Quality Assurance Project Plan in accordance with Section XI (Quality Assurance, Sampling and Data Analysis); (2) a preliminary IRP Remedial Design report; and (3) pre-final and final IRP Remedial Design reports. In addition, the IRP RD Work Plan shall include a schedule for completion of the IRP RA Work Plan.

e. The FCP RD Work Plan shall include, without being limited to, plans and schedules for completing: (1) design sampling and analysis plans, including but not limited to, an FCP Quality Assurance Project Plan in accordance with Section XI (Quality Assurance, Sampling, and Data Analysis); (2) an FCP preliminary Remedial Design report; and (3) FCP pre-final and final Remedial Design reports. In addition, the FCP RD Work Plan shall include a schedule for completion of the FCP RA Work Plan.

f. Upon approval of the IRP RD Work Plan and health and safety plans for all field activities by EPA, after a reasonable opportunity for review and comment by the Commonwealth, the Settling Private Parties shall implement the IRP RD Work Plan. Settling Private Parties shall submit to EPA

and the Commonwealth all plans, submittals and other deliverables required under the approved IRP RD Work Plan in accordance with the schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval).

g. Upon approval of the FCP RD Work Plan and health and safety plans for all field activities by EPA, the Commonwealth shall implement the FCP RD Work Plan. The Commonwealth shall submit to EPA all plans, submittals and other deliverables required under the approved FCP RD Work Plan in accordance with the schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval).

h. The IRP preliminary Remedial Design and FCP preliminary Remedial Design reports shall include, at a minimum, the following: (1) design criteria; (2) results of additional field sampling and pre-design work; (3) preliminary plans, drawings and sketches; (4) required specifications in outline form; and (5) a preliminary construction schedule.

i. The IRP pre-final and final Remedial Design reports shall include, at a minimum, those items specified in Section IV, Task II of the SOW, which include the following: (1) final plans and specifications; (2) a complete design analysis; (3) a final IRP construction schedule; and (4) a field sampling plan (directed at measuring attainment of Performance Standards).

j. The FCP pre-final and final Remedial Design reports shall include, at a minimum: (1) final plans and

specifications; (2) a complete design analysis; (3) a final FCP construction schedule; (4) a final overall construction cost estimate; and (5) a field sampling plan (directed at measuring attainment of Performance Standards).

18. Remedial Activities.

a. Concurrent with the submittal of the IRP final Remedial Design Report, Settling Private Parties shall submit to EPA and the Commonwealth a work plan for the performance of the IRP at the Site ("IRP RA Work Plan"). The IRP RA Work Plan shall provide for implementation of the IRP in accordance with the design plans and specifications in the IRP final Remedial Design Report. Upon its approval by EPA, the IRP RA Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time that they submit the IRP RA Work Plan, Settling Private Parties shall submit to EPA and the Commonwealth a Construction Health and Safety Plan/Contingency Plan for field activities required by the IRP RA Work Plan which conforms to the applicable Occupational Safety and Health Administration and Commonwealth requirements including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth regulations relating to worker exposure to radiation. The health and safety plan shall specify a safety officer to ensure that work procedures are carried out in accordance with state and federal health and safety requirements. In addition to the IRP Construction Health and Safety Plan/Contingency plan, Settling Private Parties shall submit, at the same time, an IRP Construction Management Plan and

an IRP Construction Quality Assurance Plan, both of which shall encompass the tasks detailed in the IRP RA Work Plan. The Settling Private Parties may submit that portion of the IRP final Remedial Design report pertaining to leachate removal, solidification, and disposal before the complete report is due if they also submit, at the same time, those portions of the IRP RA Work Plan, Construction Health and Safety Plan/Contingency Plan, IRP Construction Management Plan, and IRP Construction Quality Assurance Plan pertaining to leachate removal, solidification, and disposal.

b. The IRP RA Work Plan shall include, or be accompanied by, the following: (1) a detailed description of the IRP tasks to be performed and deliverables to be submitted to EPA; (2) the schedule for completion of the IRP; (3) a method for selecting contractors; (4) a schedule for developing and submitting other required plans for performing IRP Activities; (5) a method for implementing the IRP Construction Quality Assurance Plan; (6) a method for implementing the IRP Health and Safety Plan/Contingency Plan; (7) a method for implementing the IRP Construction Management Plan; (8) a description of the strategy for delivery of the IRP (Project Delivery Strategy); (9) the identity of the members of an "IRP Construction Project Team" and their qualifications; and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The IRP RA Work Plan also shall include a schedule

for implementing all IRP tasks identified in the IRP final Remedial Design report.

c. Within 180 days before scheduled completion of the IRP Activities, the Commonwealth shall submit to EPA a work plan for the performance of the IMP activities at the Site ("IMP Work Plan"). Upon its approval by EPA, the IMP Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time, the Commonwealth shall submit to EPA a health and safety plan for the IMP activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120, and Commonwealth regulations relating to worker exposure to radiation. To satisfy this requirement the Commonwealth may submit to EPA a supplemented version of the health and safety plan in effect for the Site under its AEA license. The IMP health and safety plan shall specify a radiation safety officer to ensure that work procedures are carried out in accordance with state and federal health and safety requirements. The IMP Work Plan shall include the following: (1) a preliminary list of tasks to be performed during the IMP and major deliverables to be submitted to EPA; (2) an IMP Sampling and Analysis Plan describing the projected sample collection and analytical activities; (3) a method for implementing the IMP Quality Assurance Plan; (4) a method for implementing the IMP Health and Safety Plan; (5) a tentative schedule for completion of the IMP and development and submittal

of IMP deliverables; (6) a tentative formulation of the IMP team along with methods for replacing IMP team members and roles and responsibilities of IMP team members; and (7) procedures and plans for the decontamination of equipment and disposal of contaminated materials.

d. Concurrent with the submittal of the draft FCP Final Remedial Design report, the Commonwealth shall submit to EPA a work plan for the performance of the FCP ("FCP RA Work Plan"). The FCP RA Work Plan shall provide for implementation of the FCP in accordance with the SOW, as set forth in the design plans and specifications in the FCP pre-final Remedial Design report, as modified and approved by EPA. Upon its approval by EPA, the FCP RA Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time that it submits the FCP RA Work Plan, the Commonwealth shall submit to EPA a FCP Construction Health and Safety Plan/Contingency Plan for field activities required by the FCP RA Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120 and Commonwealth regulations relating to worker exposure to radiation. In addition to the FCP Construction Health and Safety Plan/Contingency Plan, the Commonwealth shall submit, at the same time, a FCP Construction Management Plan and a FCP Construction Quality Assurance Plan, both of which shall encompass the tasks detailed in the FCP RA Work Plan.

e. The FCP RA Work Plan shall include, or be accompanied by, the following: (1) a detailed description of the FCP tasks to be performed and deliverables to be submitted to EPA; (2) the schedule for completion of the FCP; (3) a procedure for selection of the contractor; (4) a schedule for developing and submitting other required plans for performing the FCP RA Work plan; (5) a method for implementing the FCP Construction Quality Assurance Plan; (6) a method for implementing the FCP Construction Health and Safety Plan/Contingency Plan; (7) a method for implementing the FCP Construction Management Plan; (8) a description of the strategy for delivering the FCP (Project Delivery Strategy); (9) methods for developing, and tasks to be included in, the Institutional Control Work Plan and Operation and Maintenance Manual; (10) tentative formulation of the FCP Construction Project Team and a description of their qualifications; and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The FCP RA Work Plan also shall include a schedule for implementation of all FCP tasks identified in the FCP pre-final and final Remedial Design reports.

f. Upon approval of the IRP RA Work Plan specified in subparagraph 18.a. by EPA or that portion pertaining to leachate removal, solidification, and disposal, after a reasonable opportunity for review and comment by the Commonwealth, the Settling Private Parties shall implement the activities required under the plan. To the extent that title to

any facilities constructed as a result of the IRP Work or additional response actions under Section IX performed by or on behalf of the Settling Private Parties does not vest automatically in the Commonwealth by virtue of the Commonwealth's ownership of Site property, the Commonwealth shall, consistent with state law, take title to such facilities as the facilities are constructed. The Settling Private Parties shall submit to EPA for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval), with a reasonable opportunity for review and comment by the Commonwealth, all plans, submittals, or other deliverables required under the approved work plan in accordance with the schedule therein. Unless otherwise directed by EPA, the Settling Private Parties shall not commence physical on-Site activities prior to approval of the IRP RA Work Plan by EPA or that portion pertaining to leachate removal, solidification, and disposal.

g. Upon approval of the IMP Work Plan specified in subparagraph 18.c. by EPA, the Commonwealth shall implement the activities required under the IMP Work Plan. The Commonwealth shall submit to EPA for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval) all plans, submittals, or other deliverables required under the approved work plan in accordance with the schedule therein. In the event EPA has not approved the IMP Work Plan before Certification of Completion of the IRP, the Commonwealth shall undertake the activities specified in the IMP Work Plan it submitted to EPA

until EPA approves the IMP Work Plan unless directed not to do so by EPA.

h. Upon approval of the FCP RA Work Plan specified in subparagraph 18.d. by EPA, the Commonwealth shall implement the activities required under the plan. The Commonwealth shall submit to EPA all plans, submittals, or other deliverables required under the approved work plan in accordance with the schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, the Commonwealth shall not commence activities described in the proposed FCP RA Work Plan prior to approval of the FCP RA Work Plan.

19. Operation and Maintenance. Within 180 days before the scheduled completion of FCP construction, the Commonwealth shall submit to EPA a work plan for performance of the Institutional Control Period activities (Institutional Control Work Plan) along with the Institutional Control O & M Manual, as described in the SOW, which together shall describe the nature and timing of activities to be performed during the Institutional Control Period (ICP). The Commonwealth shall implement the Institutional Control Work Plan in accordance with the Institutional Control O & M Manual upon approval by EPA. Within 180 days before the scheduled completion of the ICP, the Commonwealth shall submit to EPA a work plan for performance of the Post-Institutional Control Period activities (Post-Institutional Control Work Plan), along with the Post-

Institutional Control O & M Manual, as described in the SOW, which together shall describe the nature and timing of activities to be performed during the Post-Institutional Control Period. The Commonwealth shall implement the Post-Institutional Control Work Plan in accordance with the Post-Institutional Control O & M Manual upon approval by EPA.

20. The portion of the Work performed by Settling Private Parties pursuant to this Consent Decree shall include the obligation to achieve the Construction Standards and Performance Standards applying to the IRP Work at the time of Certification of Completion of the IRP.

21. The portion of the Work performed by the Commonwealth pursuant to this Consent Decree shall include the obligation to achieve the Construction Standards applicable to the BoRP and the Performance Standards.

22. Settling Parties acknowledge and agree that nothing in this Consent Decree, the SOW, the IRP RD or RA Work Plans, the IMP Work Plan, or the FCP RD or RA Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the work plans will achieve the Performance Standards. Moreover, compliance by Settling Defendants with their respective Work requirements shall not foreclose Plaintiff from seeking compliance with all other applicable terms and conditions of this Consent Decree, including but not limited to, the Performance Standards.

23. Settling Private Parties shall, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site, provide written notification to the EPA Project Coordinator of such shipment of Waste Material. In addition, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site to an out-of-state waste management facility, Settling Private Parties shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

a. The written notification shall include the following information, when available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Private Parties shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Private Parties prior to commencing IRP construction. Settling Private Parties shall provide the information required by subparagraph 23.a as soon as practicable after the receiving facility and state are determined and before the Waste Material is actually shipped.

24. The Commonwealth shall, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site, provide written notification to the EPA Project Coordinator of such shipment of Waste Material. In addition, prior to any off-Site shipment of Waste Material, other than analytical samples, from the Site to an out-of-state waste management facility, the Commonwealth shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

a. The written notification shall include the following information, when available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Commonwealth shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Commonwealth prior to commencing BoRP Activities. The Commonwealth shall provide the information required by subparagraph 24.a as soon as practicable after determining which facility and state will receive the Waste Material and before the Waste Material is actually shipped.

IX. ADDITIONAL RESPONSE ACTIONS

25. a. In the event that, prior to Certification of Completion of the IRP, EPA determines or the Settling Private Parties or Settling Federal Agencies propose that additional response actions are necessary to meet the Construction Standards or Performance Standards applicable to the IRP or to implement the IRP Activities, the Party that makes the determination or proposal shall notify the Project Coordinator for the other Parties.

b. In the event that, after Certification of Completion of the IRP but prior to ten years after Certification of Completion of the IRP, EPA determines or the Settling Private Parties or Settling Federal Agencies propose that additional response actions are necessary to meet the Performance Standards of the IRP due to a failure in the design or implementation of the IRP Work by the Settling Private Parties, the Party that makes the determination or proposal shall notify the Project Coordinator for the other Parties.

c. In the event that, prior to ten years after Certification of Completion of the IRP, EPA determines that a horizontal flow barrier (HFB) is necessary to prevent substantial ground water inflow, as determined by the criteria in the SOW and the criteria developed during the IRP Remedial Design, EPA shall notify the Project Coordinators for the Settling Private Parties and the Commonwealth. The design and implementation of the HFB shall be performed by the Settling Private Parties. All costs of

designing and installing the HFB shall be borne in the following manner: 70% by the Settling Private Parties and Settling Federal Agencies in the proportions specified in the Settlement Agreement, and 30% by the Commonwealth. The Settling Private Parties shall submit monthly invoices and available supporting cost documentation to the Commonwealth for payment of its 30% share of the costs, and the Commonwealth shall, as necessary, verify the amount of the costs incurred and shall make full payment of its share within 30 days after receipt of the invoice and available supporting cost documentation. In the event that the Commonwealth fails to pay an invoice within the thirty day period, the Commonwealth shall also be liable to the Settling Private Parties for interest on the unpaid balance calculated at the rate specified in Section 107(a) of CERCLA and accruing on a daily basis. The Commonwealth's obligation to pay its share of the HFB costs and any accrued interest thereon shall be enforceable by this Court upon application by the Settling Private Parties or the Settling Federal Agencies and, in any such enforcement proceeding, the Commonwealth may contest payment of such costs and interest only on the grounds that there is an accounting error or that the amount of the HFB cost is not supported by the invoice or other supporting cost documentation. The failure of the Settling Private Parties to receive payment from the Commonwealth or the Settling Federal Agencies shall not affect their obligation to construct the HFB.

26. Within 30 days of receipt of notice from EPA or Settling Private Parties pursuant to Paragraph 25 that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Private Parties shall submit for approval by EPA, after reasonable opportunity for review and comment by the Commonwealth, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 17 and 18. Upon approval of the plan pursuant to Section XIV (Submissions Requiring Agency Approval), Settling Private Parties shall implement the plan for additional response actions in accordance with the schedule contained therein.

27. Any additional response actions that Settling Private Parties or Settling Federal Agencies propose are necessary to meet the Construction Standards or Performance Standards or to implement the IRP-Activities shall be subject to approval by EPA, after reasonable opportunity for review and comment by the Commonwealth and, if authorized by EPA, shall be completed by Settling Private Parties in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XIV (Submissions Requiring Agency Approval).

28. Except as provided in Paragraphs 25-27 above, all other additional response actions required or proposed after Certification of Completion of the IRP shall be the financial responsibility of the Commonwealth and shall be performed pursuant to Paragraphs 29-31, below. These response actions

shall include construction of the HFB and response actions based upon a failure of design or implementation of the IRP if EPA's determination that such response actions are needed is made more than ten years after Certification of Completion of the IRP.

29. In the event that, after Certification of Completion of the IRP, EPA determines or the Commonwealth proposes that additional response actions are necessary to meet the Construction Standards or Performance Standards or to implement the Work, the Party that makes the determination or proposal shall notify the Project Coordinator for the other Party.

30. Within 30 days of receipt of notice from EPA or the Commonwealth pursuant to Paragraph 29 that additional response actions are necessary (or such longer time as may be specified by EPA), except as provided in Paragraphs 25-27, above, the Commonwealth shall submit for approval by EPA a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 17 and 18. Upon approval of the plan pursuant to Section XIV (Submissions Requiring Agency Approval), the Commonwealth shall implement the plan for additional response actions in accordance with the schedule contained therein.

31. Any additional response actions that the Commonwealth proposes are necessary to meet the Construction Standards or Performance Standards or to implement the Work shall be subject to approval by EPA and, if authorized by EPA, shall be

completed by the Commonwealth in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XIV (Submissions Requiring Agency Approval).

32. Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary. Such a dispute shall be resolved pursuant to Section XXII (Dispute Resolution) of this Consent Decree.

33. Notwithstanding the provisions of Paragraph 32, neither EPA's initial determination under Paragraph 25.b that a failure in the design or implementation of the IRP Work is the cause of additional response actions nor the absence of such a determination shall be subject to judicial review or dispute resolution. The Settling Parties may invoke the procedures of Paragraph 34, however, to allocate among themselves the costs of certain additional response actions that are required in the 10 year period after Certification of Completion of the IRP.

34. Regardless of EPA's initial determination under Paragraph 25.b, the Settling Private Parties' and Settling Federal Agencies' responsibility under this Consent Decree to pay for response actions under this Section (other than the horizontal flow barrier) that are required in the 10 year period after Certification of Completion of the IRP shall be limited to the costs attributable to a failure in the design or implementation of the IRP Work. The following procedures shall apply for determining the responsibilities of the Settling

Private Parties and Settling Federal Agencies or the Commonwealth to pay for response actions under this Section required within 10 years following Certification of Completion of the IRP. In any proceeding under this Paragraph, a preliminary determination by EPA to seek performance from the Settling Private Parties, Settling Federal Agencies, or the Commonwealth shall have no evidentiary weight. The preliminary determination by EPA shall initiate a 30-day period of informal negotiation between a designee of the Chairman of the Maxey Flats Steering Committee, a designee of the Secretary of the Cabinet for Natural Resources and Environmental Protection, and a designee of the Settling Federal Agencies. In the event that an informal negotiation does not result in a settlement, an aggrieved party may move this Court to resolve the dispute by filing a motion setting forth the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The other parties may file a response to the motion. In the proceeding before this Court, the Court will: (1) determine the extent to which the payment of costs or damages or the performance of additional response activities is attributable, in whole or in part, to the responsibilities imposed on the Settling Private Parties and Settling Federal Agencies due to a failure in the design or implementation of the IRP Work or is otherwise the financial responsibility of the Commonwealth; and (2) order the Commonwealth, the Settling Private Parties and the Settling Federal Agencies to pay the

costs of any shares of responsibility that may be allocated to them or to provide any other appropriate relief.

X. EPA PERIODIC REVIEW

35. Until Certification of Completion of the IRP, Settling Private Parties shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

36. After Certification of Completion of the IRP, the Commonwealth shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

37. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Parties and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of any review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region IV, or his or her delegate, will determine in writing whether further response actions are appropriate.

38. If, prior to Certification of Completion of the IRP, the Regional Administrator, EPA Region IV, or his or her delegate, determines that information received, in whole or in

part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the IRP is not protective of human health and the environment, Settling Private Parties shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the Covenants Not to Sue set forth in Section XXIV. Settling Private Parties shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VIII (Performance of the Work) and shall implement the plan approved by EPA. Settling Private Parties may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute (1) EPA's determination that implementation of the IRP Work is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Private Parties' liability for the further response actions requested is reserved in Paragraphs 121, 122, or 124 or otherwise not barred by the Covenants Not to Sue set forth in Section XXIV.

39. If, after Certification of Completion of the IRP, the Regional Administrator, EPA Region IV, or his delegate, determines that information received, in whole or in part, during any review conducted pursuant to Section 121(c) of CERCLA, indicates that the Work is not protective of human health and the environment, and determines that any further response actions are appropriate, the Commonwealth shall undertake any further

response actions EPA has determined are appropriate, unless its liability for such further response actions is barred by the Covenants Not to Sue set forth in Section XXIV. The Commonwealth shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VIII (Performance of the Work) and shall implement the plan approved by EPA. The Commonwealth may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute (1) EPA's determination that implementation of the Work is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Commonwealth's liability for the further response actions requested is reserved in Paragraphs 122 or 124 or is otherwise not barred by the Covenants Not to Sue set forth in Section XXIV.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

Settling Private Parties.

40. Settling Private Parties shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objectives Process for Superfund (Interim Final Guidance)," (EPA/540/G-93/071); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such

guidelines upon notification by EPA to Settling Private Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Private Parties shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and the EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (dated April 1, 1986). If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Private Parties shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Private Parties in implementing this Consent Decree. In addition, Settling Private Parties shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPPs for quality assurance monitoring. Settling Private Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Inorganic Analyses)" and the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Organic Analyses)" and all revisions thereto,

including any amendments made thereto during the course of the implementation of this Decree. Settling Private Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

41. Upon request, Settling Private Parties shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling Private Parties shall notify EPA and the Commonwealth, as appropriate, not less than 21 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the Commonwealth deem necessary. Upon request, EPA and the Commonwealth shall allow the Settling Private Parties to take split or duplicate samples of any samples taken as part of Plaintiff's oversight of Settling Private Parties' implementation of the Work.

42. Settling Private Parties shall submit to EPA and the Commonwealth two copies of the results of all validated sampling and/or tests or other data obtained or generated by or on behalf of Settling Private Parties with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

Commonwealth.

43. The Commonwealth shall use quality assurance, quality control, and chain of custody procedures for all samples

in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objectives Process for Superfund (Interim Final Guidance)," (EPA/540/G-93/071); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, the Commonwealth shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and the EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (dated April 1, 1986). If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. The Commonwealth shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by the Commonwealth in implementing this Consent Decree. In addition, the Commonwealth shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPPs for quality assurance monitoring. The Commonwealth shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all

analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Inorganic Analyses)" and the "U.S. EPA Contract Laboratory Program Document No. OLM02.0 (for Organic Analyses)" and all revisions thereto, including any amendments made thereto during the course of the implementation of this Decree. The Commonwealth shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

44. Upon request, the Commonwealth shall allow split or duplicate samples to be taken by EPA and other Settling Parties or their authorized representatives. When such a request is made, the Commonwealth shall give the requesting Party at least two weeks notice of the day and time of the next sampling event. In addition, EPA and other Settling Parties shall have the right to take any additional samples that they deem necessary. Upon request, EPA shall allow Settling Parties to take split or duplicate samples of any samples taken as part of the EPA's oversight of the Commonwealth's implementation of the Work.

45. The Commonwealth shall submit to EPA two copies of the results of all validated sampling and/or tests or other data obtained or generated by or on behalf of the Commonwealth with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise. All sampling results, tests,

and/or data obtained by or on behalf of the Commonwealth that are subject to the Open Records Act shall be available to the Settling Parties upon request.

46. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XII. ACCESS

47. Commencing upon the date of lodging of this Consent Decree, the Commonwealth agrees, without condition, qualification, or payment of any fee, cost, or charge, and subject only to the health and safety plan developed pursuant to the SOW in effect at the time access is required, to provide the Settling Private Parties and their representatives, contractors, and subcontractors, and the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any property to which access is required for the implementation of this Consent Decree (to the extent access to the property is controlled by the Commonwealth) for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring or implementing the Work;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations relating to

contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site.

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXVIII (Retention of Records); and

g. Assessing compliance by Settling Defendants with this Consent Decree.

The Commonwealth may raise disputes concerning its obligations under this Section in accordance with Section XXII (Dispute Resolution).

48. To the extent that the Site or any other property to which access is required for implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants as well as for the United States and its representatives, including, but not limited to, EPA and its contractors, as necessary to effectuate their respective obligations under this Consent Decree. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Such access shall include, but is not limited to, acquiring the "buffer zone," as described in the SOW. The Commonwealth shall obtain and hold title to the buffer zone. Settling Private

Parties shall fund the acquisition of the buffer zone as specified in the SOW up to a total cost of $750,000. In the event the acquisition price for the buffer zone as specified in the SOW exceeds $750,000, the Commonwealth shall pay any amount above $750,000. If any access required to complete the Work is not obtained within 45 days of the date of entry of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. In the event the United States determines that the Settling Defendants have been unable to obtain access, the United States may, as it deems appropriate, assist the Settling Defendants in obtaining access. Settling Private Parties shall reimburse the United States, in accordance with the procedures in Section XIX (Reimbursement of Response Costs), for the costs incurred by the United States in obtaining access, but Settling Private Parties' obligation to pay for the buffer zone and reimburse EPA's costs hereunder shall not exceed $750,000. In the event that the cost of paying for the buffer zone and reimbursing EPA hereunder exceeds $750,000, the Commonwealth shall pay all additional costs incurred for the buffer zone or by the United States in obtaining access.

49. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XIII. REPORTING REQUIREMENTS

Settling Private Parties

50. In addition to any other requirement of this Consent Decree, Settling Private Parties shall submit to EPA and the Commonwealth during performance of the IRP two copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all validated results of sampling and tests and all other data received or generated by Settling Private Parties or their contractors or agents in the previous month; (c) identify all work plans, and other plans and deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the IRP Work, and a description of efforts

made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Private Parties have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of EPA's revised Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Private Parties shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the entry of this Consent Decree until the issuance of the Certification of Completion of the IRP. If requested by EPA, the Parties shall also provide briefings for EPA to discuss the progress of the Work.

51. Settling Private Parties shall notify EPA of any material change in the schedule described in the required progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

52. Upon the occurrence of any event during performance of the Work that Settling Private Parties are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), or Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants or contaminants, Settling Private Parties shall, within 24 hours of the onset of such event, orally notify the EPA Project

Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator) or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region IV, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

53. Within 20 days of the onset of such an event, Settling Private Parties shall furnish to Plaintiff a written report, signed by the Settling Private Parties' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto and shall comply with Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants, or contaminants. Within 30 days of the conclusion of such an event, Settling Private Parties shall submit a report setting forth all actions taken in response thereto.

54. Settling Private Parties shall submit seven copies of all plans, reports, and data required by the SOW, the IRP RD and RA Work Plans or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Private Parties shall simultaneously submit two copies of all such plans, reports and data to the Commonwealth.

Commonwealth.

55. In addition to any other requirement of this Consent Decree, the Commonwealth shall submit to EPA every six months during performance of the BoRP two copies of written progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous six month period; (b) include a summary of all validated results of sampling and tests and all other data received or generated by the Commonwealth or its contractors or agents in the previous six month period; (c) identify all work plans, and other plans and deliverables required by this Consent Decree completed and submitted during the previous six month period; (d) describe all actions including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six month period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the BoRP Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that the Commonwealth has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of EPA's revised Community Relations Plan during the previous six month period and those to

be undertaken in the next six month period. The Commonwealth shall submit these progress reports to EPA by the thirtieth day of every six month period following the entry of this Consent Decree until the issuance of the Certification of Completion of the BoRP. If requested by EPA, the Parties shall also provide briefings for EPA to discuss the progress of the Work.

56. The Commonwealth shall notify EPA of any change in the schedule described in the required progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

57. Upon the occurrence of any event during performance of the Work that the Commonwealth is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), or Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants or contaminants, the Commonwealth shall, within 24 hours of the onset of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator) or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region IV, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

58. Within 20 days of the onset of such an event, the Commonwealth shall furnish to Plaintiff a written report, signed by the Commonwealth's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto and shall comply with Kentucky statutory and regulatory requirements for the notification of releases of hazardous substances, pollutants, or contaminants. Within 30 days of the conclusion of such an event, the Commonwealth shall submit a report setting forth all actions taken in response thereto.

59. The Commonwealth shall submit seven copies of all plans, reports, and data required by the SOW, the BoRP Work Plans or any other approved plans to EPA in accordance with the schedules set forth in such plans.

60. All reports and other documents submitted by Settling Defendants to EPA (other than the required progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the respective Settling Defendants.

XIV. SUBMISSIONS REQUIRING AGENCY APPROVAL

Settling Private Parties.

61. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in

part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Private Parties modify the submission; or (e) any combination of the above.

62. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 61(a), (b), or (c), Settling Private Parties shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to their right to invoke the dispute resolution procedures set forth in Section XXII with respect to the modifications or conditions made by EPA. If such submission has a material defect and EPA modifies the submission to cure the deficiencies pursuant to Paragraph 61(c), EPA retains its right to seek stipulated penalties, as provided in Section XXIII.

63. a. Upon receipt of a notice of disapproval pursuant to Paragraph 61, Settling Private Parties shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Except as provided in Paragraph 67, below, any stipulated penalties applicable to the submission, as provided in Section XXIII, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 61.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 61, Settling Private Parties shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission that does not depend upon the disapproved portion for implementation. Implementation of any non-deficient portion of a submission shall not relieve Settling Private Parties of any liability for stipulated penalties under Section XXIII.

64. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Private Parties to correct the deficiencies, in accordance with the preceding Paragraphs. EPA shall also have the right to amend or develop the plan, report or other item. Settling Private Parties shall implement any such plan, report, or item as amended or developed by EPA subject only to their right to invoke the procedures set forth in Section XXII (Dispute Resolution).

65. If, upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Private Parties shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Private Parties invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXII (Dispute Resolution) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and

accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIII (Stipulated Penalties).

66. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

67. Notwithstanding the foregoing provisions of this Section, EPA will not unilaterally modify a deficient initial submittal unless it has first given the Settling Private Parties one opportunity to correct the deficiency. Stipulated penalties shall not accrue during the period provided to Settling Private Parties in this Paragraph to correct deficiencies in an initial submittal if EPA determines that the initial submittal was made in good faith and was timely.

Commonwealth.

68. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified

conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Commonwealth modify the submission; or (e) any combination of the above.

69. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 68 (a), (b), or (c), the Commonwealth shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to its right to invoke the dispute resolution procedures set forth in Section XXIII with respect to the modifications or conditions made by EPA. If such submission has a material defect and EPA modifies the submission to cure the deficiencies pursuant to Paragraph 68(c), EPA retains its right to seek stipulated penalties, as provided in Section XXIII.

70. a. Upon receipt of a notice of disapproval pursuant to Paragraph 68, the Commonwealth shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Except as provided in Paragraph 74, below, any stipulated penalties applicable to the submission, as provided in Section XXIII, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 68.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 68, the Commonwealth shall

proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission that does not depend upon the disapproved portion for implementation. Implementation of any non-deficient portion of a submission shall not relieve the Commonwealth of any liability for stipulated penalties under Section XXIII.

71. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Commonwealth to correct the deficiencies, in accordance with the preceding Paragraphs. EPA shall also have the right to amend or develop the plan, report or other item. The Commonwealth shall implement any such plan, report, or item as amended or developed by EPA subject only to the Commonwealth's right to invoke the procedures set forth in Section XXII (Dispute Resolution).

72. If, upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, the Commonwealth shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Commonwealth invokes the dispute resolution procedures set forth in Section XXII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXII (Dispute Resolution) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall

accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXIII (Stipulated Penalties).

73. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

74. Notwithstanding the foregoing provisions of this Section, EPA will not unilaterally modify a deficient initial submittal unless it has first given the Commonwealth an opportunity to correct the deficiency. Stipulated penalties shall not accrue during the period provided to the Commonwealth in this Paragraph to correct deficiencies in an initial submittal if EPA determines that the initial submittal was made in good faith and was timely.

XV. PROJECT COORDINATORS

75. Within 15 days of entry of this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five

working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinators shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinators shall not be attorneys for any of the Parties in this matter. Settling Defendants' Project Coordinators may assign other representatives, including other contractors, to serve as Site representatives for oversight of performance of daily operations during Remedial Activities.

76. Plaintiff may designate other representatives, including, but not limited to, EPA employees and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when he/she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material. EPA

shall use its best efforts to avoid or minimize any work stoppage ordered under this Consent Decree.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

77. Settling Private Parties. Within 30 days of entry of this Consent Decree, Settling Private Parties shall establish and maintain financial security of at least $18 million, in one of the following forms:

a. A surety bond guaranteeing performance of the IRP Work;

b. One or more irrevocable letters of credit;

c. A trust fund;

d. A guarantee to perform the IRP Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Private Parties; or

e. A demonstration that one or more of the Settling Private Parties satisfies the requirements of 40 C.F.R. § 264.143(f).

78. If the Settling Private Parties seek to demonstrate financial assurance as set forth in Paragraph 77 through a guarantee by a third party, Settling Private Parties shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Private Parties seek to demonstrate financial assurance by means of the corporate guarantee or financial test pursuant to Paragraph 77.d or 77.e,

they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided by the Settling Private Parties pursuant to this Section are inadequate, Settling Private Parties shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 77 of this Consent Decree. Settling Private Parties' inability to demonstrate financial ability to complete the IRP Work shall not excuse performance of any activities required under this Consent Decree.

79. Obligations of the Commonwealth, DOE and DOD.

a. Pursuant to Paragraph 82.b of this Decree, in the event of any action or occurrence after Certification of Completion of the IRP which causes or threatens to cause a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Commonwealth shall immediately take all appropriate action to prevent, abate or minimize such release or threat of release, and to give such notifications as set forth in Paragraph 82.b.

b. Pursuant to Paragraph 39 of this Consent Decree, the Commonwealth shall, after Certification of Completion of the IRP, perform any further response actions EPA determines are appropriate in the event that EPA's review conducted pursuant

the failure of the Commonwealth to perform its obligations under the Consent Decree due to lack of funds or for any other reason, or as the result of remedy (including design and/or implementation) failure, or the failure of O & M. The Parties agree that they intend the term "catastrophic emergency" as used in this Section to be read strictly and narrowly, in light of the purpose of the Parties that assistance be provided under the terms of this Paragraph only in the event of a truly catastrophic emergency.

(2) Periodic Review. The assistance described below shall also be made available in the event that, after Certification of Completion of the IRP, the Commonwealth is required by EPA to perform further response actions under Section X of this Consent Decree (EPA Periodic Review), and the further response actions are the direct result of a change in performance criteria applied to the Site, other than the Performance Standards, due to new federal regulations or policy. The assistance described below shall not be made available in the event that the Commonwealth is required to perform (i) any further response actions pursuant to Section IX (Additional Response Actions) based on any reason specified therein, including that the Work does not meet Performance Standards or (ii) any further response actions pursuant to Section X (EPA Periodic Review) because EPA determines that the remedy as designed or implemented is not sufficiently protective of human health or the environment based on additional site-specific data.

to Section 121(c) of CERCLA indicates that the Work is not protective of human health or the environment.

c. Pursuant to the terms of this Paragraph, the United States Department of Energy ("DOE") and the United States Department of Defense ("DOD") agree to provide certain financial assistance to the Commonwealth in particular circumstances arising after the Certification of Completion of the IRP. The assistance, to be described below, shall be provided by DOE and DOD only in the following circumstances (the "Circumstances"):

(1) Emergency Response: The assistance to be described below shall be made available by DOE and DOD in the event of a catastrophic emergency after Certification of Completion of the IRP which presents an immediate threat to the public health or welfare or the environment as the result of the release or threatened release of Waste Material from the Site requiring appropriate action pursuant to Paragraph 82.b. "Catastrophic emergency" shall mean an emergency which cannot be prevented by due diligence on the part of the Commonwealth, such as a natural disaster which affects the Site, including but not limited to, an earthquake, high winds, tornado, landslide, or forest fire. The term "catastrophic emergency" shall also include emergencies resulting from unforeseeable human cause which cannot be prevented by due diligence on the part of the Commonwealth, including but not limited to, vandalism, act of war, arson, or insurrection. The term "catastrophic emergency" specifically does not include emergencies that are the result of

the failure of the Commonwealth to perform its obligations under the Consent Decree due to lack of funds or for any other reason, or as the result of remedy (including design and/or implementation) failure, or the failure of O & M. The Parties agree that they intend the term "catastrophic emergency" as used in this Section to be read strictly and narrowly, in light of the purpose of the Parties that assistance be provided under the terms of this Paragraph only in the event of a truly catastrophic emergency.

(2) Periodic Review. The assistance described below shall also be made available in the event that, after Certification of Completion of the IRP, the Commonwealth is required by EPA to perform further response actions under Section X of this Consent Decree (EPA Periodic Review), and the further response actions are the direct result of a change in performance criteria applied to the Site, other than the Performance Standards, due to new federal regulations or policy. The assistance described below shall not be made available in the event that the Commonwealth is required to perform (i) any further response actions pursuant to Section IX (Additional Response Actions) based on any reason specified therein, including that the Work does not meet Performance Standards or (ii) any further response actions pursuant to Section X (EPA Periodic Review) because EPA determines that the remedy as designed or implemented is not sufficiently protective of human health or the environment based on additional site-specific data.

The Commonwealth, DOE and DOD agree that they intend that the Circumstances under which assistance will be rendered as set forth below are to be read strictly and narrowly.

d. Trust Fund.

(1) Within 180 days after the entry of the Consent Decree, the Commonwealth will establish a trust under an agreement the specific terms of which must be approved in advance by DOE, DOD and EPA ("Trust Agreement"). The Trust shall be administered by a trustee approved in advance by DOE, DOD and EPA. The corpus of the Trust shall include two separate interest-bearing accounts. One account (the "Emergency Account"), shall be used exclusively for Work performed in accordance with paragraph 79.c for catastrophic emergencies and periodic reviews until completion of the IMP. The Commonwealth shall fund the account initially with $2 million and fully fund the account as set forth in 79.d.(3), below. A second account ("the Capital Account") shall be established with $3 million, to be used to fund the cost of the FCP and any capital construction projects required of the Commonwealth by EPA that are not "catastrophic emergencies" or Work required pursuant to periodic review under subparagraph c of this Paragraph. The corpus of the Fund shall be invested in an appropriate fashion so that interest or other appropriate return on investment is earned on the amount placed in the Fund.

(2) If the Commonwealth is unable to establish the Trust Agreement within 180 days of entry of this Consent Decree

because it is unable to procure the services of an approved trustee within that time period (which shall include inability to finalize the terms of the Trust Agreement with the trustee), the Commonwealth shall promptly notify the United States, and shall include in that notification a summary of the steps the Commonwealth has taken to attempt to obtain a trustee. If the United States determines that the Commonwealth has been unable to obtain a trustee within this time period and has made reasonable efforts to do so, the United States may grant an appropriate extension of time to the Commonwealth to allow it to obtain a trustee. Whether or not the United States grants an extension to the Commonwealth to obtain a trustee, if the Trust Agreement is not established within 180 days after entry of this Consent Decree, the Commonwealth shall establish the Emergency Account and the Capital Account with the balances required in subparagraph 79.d.(1), plus interest on the balances that shall begin to accrue 180 days after entry of this Consent Decree and stop accruing on the date the accounts are funded, at the rate specified for investments of the Hazardous Substances Superfund established pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

(3) Beginning July 1, 1996, the Commonwealth shall add $500,000, adjusted for inflation, per fiscal year to the Emergency Account (or $1 million, adjusted for inflation, per Commonwealth legislative session), until a total of $7 million, adjusted for inflation (see Subparagraph 79.m below), has been placed into the Emergency Account by the Commonwealth. The

Commonwealth may pay these amounts into the Emergency Account in advance of this schedule.

e. In the event of the occurrence of one of the Circumstances, the Commonwealth shall use the balance of the Emergency Account to fund the additional work before DOE and DOD are obligated to provide any financial assistance under this Section. If the Commonwealth performs the Work, then the Commonwealth may be reimbursed from the Emergency Account for costs, including in-kind services. In-kind services must be documented in accordance with federally approved audit procedures and approved by DOE and DOD.

f. After the Commonwealth has expended either the amounts in the Emergency Account, or $2 million, adjusted for inflation, whichever sum is greater, and after any other funding which might be available to the Commonwealth for such purposes has been expended (such as federal emergency relief funds or other grants), then DOE and DOD agree to provide up to $10 million, adjusted for inflation, per Event, to fund additional activities performed by the Commonwealth as the result of an occurrence of the Circumstances. If the Commonwealth performs work required as a result of the occurrence of one of the Circumstances, documented costs incurred in performing the work may be credited toward the Commonwealth's $2 million share. If DOD and DOE expend $10 million, adjusted for inflation, per Event as provided hereunder, any remaining costs will be borne by the Commonwealth. An "Event" shall mean that body of additional work

required as the result of an occurrence of the Circumstances. If a single body of work is required to respond to one or more of the Circumstances, that body of work shall be considered one Event.

g. The Commonwealth shall be required to perform any activities required as the result of the occurrence of the Circumstances and neither DOD or DOE nor the Settling Private Parties shall have an affirmative obligation to perform or fund such activities, except as expressly required of DOD or DOE in this Paragraph.

h. DOE and DOD shall share in any payments required of them under this Paragraph in proportion to their respective shares under Attachment 1 of the Settlement Agreement. Any such assistance is subject to the availability of appropriated funds, and is subject to the Anti-Deficiency Act. In the event either DOE or DOD is unable to provide assistance because of a lack of appropriated funds, the other shall not be obliged to fund the share of such assistance that would otherwise be required of the Party unable to provide the funds.

i. If the Commonwealth and DOE or DOD have any dispute about the interpretation or application of the terms of this Paragraph, including but not limited to whether one of the Circumstances has occurred, then the disputing parties shall enter into the following dispute resolution process:

(1) The disputing party shall serve a written statement of the disputed issue on the other party to the

dispute. The other party shall serve a written response to the disputing party within five days after actual receipt of the disputing party's written statement.

(2) The parties to the dispute shall enter into a good-faith informal negotiation period for at least five days, which may be extended by agreement of the disputing parties.

(3) At the expiration of the informal negotiation period, one or more of the disputing parties may move the Court to resolve the dispute. The disputing parties shall request that the Court give expedited consideration of the dispute. The parties shall provide the Court with written submissions, and the parties may request an evidentiary hearing. Discovery shall be strictly limited to the specific issues in dispute and shall be expedited pursuant to Court order. A decision of the Court shall be appealable to the extent provided by law.

(4) Neither DOE nor DOD shall be required to expend funds pursuant to this Section during the dispute resolution period.

j. The purpose of the Capital Account is to assure adequate funding for capital construction projects that may be required by EPA during the BoRP. The Commonwealth shall not use the Capital Account for routine maintenance and monitoring activities. The Commonwealth shall maintain a minimum of $3 million, adjusted for inflation, in the Capital Account at all times until the completion of the IMP.

k. The Trust Agreement may provide that the balance of the Emergency Account and the Capital Account may be used by the Commonwealth to perform its obligations to implement the FCP. The use of the Emergency Account for funding the implementation of the FCP shall discharge all of the obligations of DOE and DOD under this Paragraph. Monies remaining in the accounts after Certification of Completion of the BoRP shall revert to the Commonwealth.

l. In the event EPA determines that the Commonwealth has substantively failed to perform any portion of the BoRP, unless otherwise excused or modified by EPA, the Commonwealth agrees that any funds provided by DOE or DOD pursuant to this Paragraph shall be subject to repayment by the Commonwealth to the United States, and DOE and DOD reserve their rights to seek such repayment from the Commonwealth.

m. The phrase "adjusted for inflation" as used in this Section shall mean increased by the amount of the annual increase in the "Consumer Price Index, All Items, All Cities," ("Index") as published by the United States Department of Labor, beginning upon the date of the first revision of the Index following entry of this Consent Decree. If the Index ceases to exist, the most similar official index in effect at the time the adjustment for inflation is calculated shall be used.

n. The Commonwealth's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XVII. CERTIFICATION OF COMPLETION

80. Completion of the IRP.

a. Within 90 days after Settling Private Parties and Settling Federal Agencies conclude that the IRP Activities have been fully performed, the Construction Standards and Performance Standards have been achieved, and the design and implementation of the IRP Activities is such that the Performance Standards are expected, under then existing conditions, to be attained in the future, Settling Private Parties shall schedule and conduct a pre-certification inspection to be attended by Settling Private Parties, Settling Federal Agencies, EPA, and the Commonwealth. If, after the pre-certification inspection, the Settling Private Parties and Settling Federal Agencies believe that the IRP Activities have been fully performed, the Construction Standards and Performance Standards have been achieved, and that the design and implementation of the IRP Activities is such that the Performance Standards are expected, under then existing conditions, to be attained in the future, the Settling Private Parties shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XIV (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Private Parties' Project Coordinator or Supervising Contractor shall state that the IRP Activities have been completed in full satisfaction of the requirements of this Consent Decree as

reflected in the SOW. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Private Party, the Settling Private Parties' Project Coordinator, or the Settling Private Parties' Supervising Contractor:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If EPA fails to respond to the report within 120 days, the request for Certification of Completion shall be deemed to have been rejected and the Settling Private Parties may challenge such rejection under Section XXII (Dispute Resolution); and the Settling Federal Agencies may challenge such rejection pursuant to the Memorandum of Understanding between EPA and the Settling Federal Agencies that governs disputes related to this Consent Decree (the "MOU"). If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that the IRP Activities or any portion thereof have not been completed in accordance with this Consent Decree, that the Construction Standards and Performance

Standards have not been achieved, or that the design and implementation of the IRP Activities is such that the Performance Standards are not expected, under then existing conditions, to be attained in the future, EPA will notify Settling Private Parties, the Commonwealth, and Settling Federal Agencies in writing of the activities that must be undertaken to qualify for Certification of Completion of the IRP. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Private Parties to submit a schedule to EPA for approval pursuant to Section XIV (Submissions Requiring Agency Approval). Settling Private Parties shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, and after a reasonable opportunity for review and comment by the Commonwealth, that the IRP Activities have been fully performed in accordance with this Consent Decree, that the Construction Standards and Performance Standards have been achieved, and that the Performance Standards are expected, under then existing conditions, to be attained in the future, EPA will so certify in writing to Settling Private Parties and Settling Federal Agencies. This certification shall constitute Certification of

Completion of the IRP for purposes of this Consent Decree, including, but not limited to, Section XXIV (Covenants Not to Sue by Plaintiff). Certification of Completion of the IRP shall not change Settling Private Parties' and Settling Federal Agencies' remaining obligations under this Consent Decree.

81. Completion of the Remedial Action.

a. Within 90 days after the Commonwealth concludes that the BoRP Activities have been fully performed and the Construction Standards and Performance Standards have been achieved, the Commonwealth shall schedule and conduct a pre-certification inspection to be attended by EPA and the Commonwealth. If, after the pre-certification inspection, the Commonwealth believes that the BoRP Activities have been fully performed and the Construction Standards and Performance Standards have been achieved, it shall submit a written report requesting certification to EPA for approval, pursuant to Section XIV (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Commonwealth's Project Coordinator or Supervising Contractor shall state that the BoRP Activities have been completed in full satisfaction of the requirements of this Consent Decree as reflected in the SOW. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible official of the Commonwealth or the Commonwealth's Project Coordinator or Supervising Contractor:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If EPA fails to respond to the report within 120 days, the request for Certification of Completion shall be deemed to have been rejected and the Commonwealth may challenge such rejection under Section XXII (Dispute Resolution). If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the BoRP Activities or any portion thereof have not been completed in accordance with this Consent Decree or that the Construction Standards and Performance Standards have not been achieved, EPA will notify the Commonwealth in writing of the activities that must be undertaken to complete the BoRP Activities and achieve the Construction Standards and Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Commonwealth to submit a schedule to EPA for approval pursuant to Section XIV (Submissions Requiring Agency Approval). The Commonwealth shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to the Commonwealth's right to invoke the

dispute resolution procedures set forth in Section XXII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, that the BoRP Activities have been fully performed in accordance with this Consent Decree and that the Construction Standards and Performance Standards have been achieved, EPA will so certify in writing to the Commonwealth. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIV (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect the Commonwealth's remaining obligations under this Consent Decree.

XVIII. EMERGENCY RESPONSE

82. a. Settling Private Parties. In the event of any action or occurrence prior to Certification of Completion of the IRP which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Private Parties shall, subject to the provisions of Paragraph 83, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Private Parties shall notify the EPA Emergency

Response Section, Region IV. Settling Private Parties shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer in accordance with all applicable provisions of applicable health and safety plans, contingency plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Private Parties fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Private Parties and Settling Federal Agencies shall reimburse EPA for all costs of the response action which are not inconsistent with the NCP pursuant to the procedures set forth in Paragraph 84.c of Section XIX (Reimbursement of Response Costs) within 90 days after being billed by EPA for such costs.

b. Commonwealth. In the event of any action or occurrence after Certification of Completion of the IRP which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Commonwealth shall, subject to the provisions of Paragraph 83, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Commonwealth shall notify the EPA Emergency Response Section, Region IV. The Commonwealth shall take such actions in consultation with EPA's Project

Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the applicable health and safety plans, contingency plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Commonwealth fails to take appropriate response action as required by this Section, and EPA takes such action, the Commonwealth shall reimburse EPA for all costs of the response action which are not inconsistent with the NCP pursuant to the procedures set forth in Paragraph 84.c of Section XIX (Reimbursement of Response Costs) within 90 days after being billed by EPA for such costs.

83. Except as provided in Section XXIV (Covenants Not to Sue by Plaintiff), nothing in the preceding Paragraphs or in this Consent Decree shall be deemed to limit any authority of Plaintiff and EPA to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. In the event that Plaintiff sues the Settling Defendants or EPA takes administrative action against Settling Parties other than to enforce this Consent Decree, the Settling Parties reserve all their rights, causes of action, or defenses arising under CERCLA or any other law.

XIX. REIMBURSEMENT OF RESPONSE COSTS

84. a. Within 120 days after entry of this Consent Decree, Settling Private Parties and Settling Federal Agencies

shall cause to be paid to the United States an amount equal to the volumetric percentage attributable to the De Minimis Settlors, as set forth in Exhibits 1 and 4 of the De Minimis Consent Decree, times $5.8 million (EPA's estimated past response costs as of the June 30, 1992 special notice letter), plus $5 million dollars. Settling Private Parties and Settling Federal Agencies shall also cause to be paid to the United States an amount equal to any additional volumetric percentage attributed to De Minimis Settlors for which payment is made to the Maxey Flats De Minimis Trust pursuant to Paragraph 26 of the De Minimis Consent Decree, times $5.8 million dollars, within 120 days after such payment is made to the Maxey Flats De Minimis Trust. The payments made under this Paragraph shall be in full satisfaction of Settling Private Parties' and Settling Federal Agencies' obligation to reimburse Past Response Costs and pay Future Response Costs.

b. Payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing United States Attorney's Office (U.S.A.O.) file number _____, EPA Region IV Site/Spill ID number "G1", and DOJ case number 90-11-2-211A. Payment shall be made in accordance with instructions provided by EPA to the Settling Private Parties and Settling Federal Agencies upon execution of the Consent Decree. Any EFTs received at the U.S. Department of Justice lockbox bank after 4:00 p.m. (eastern time) will be credited on the next business day. The Settling Private

Parties shall send a record of the EFT to the United States as specified in Section XXIX (Notices and Submissions).

c. For costs incurred by the United States pursuant to Sections XVIII and XII (Emergency Response and Access) and Paragraph 126 of Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff), EPA will invoice the Settling Parties who are liable for such costs under this Consent Decree. The invoice will include a summary of the costs prepared by EPA, including direct and indirect costs incurred by EPA and its contractors in the form of an EPA "SCORES" report or its equivalent. Settling Parties may request documentation which supports items listed in the cost summary. A request for supporting documents must be made within 30 days of receipt of an invoice from EPA. Settling Parties shall make all payments within 90 days of Settling Parties' receipt of each invoice, except as otherwise provided in Paragraph 84.d. However, if Settling Parties request documents supporting the SCORES report, payment shall be made within 60 days after receipt of the documents from EPA or 90 days after receipt of the invoice, whichever is later. Settling Private Parties shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund" and referencing Site/Spill ID # G1 and DOJ case number 90-11-2-211A. The requirement to use a certified check for payment shall not apply to the Settling Federal Agencies or the Commonwealth. Settling Parties shall forward payment to the

United States Environmental Protection Agency, Region IV, Attention: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384 and shall send copies of the checks for payment to the United States as specified to Section XXIX (Notices and Submissions).

d. Settling Parties may contest payment of any cost under Paragraph 84.c if they determine that EPA has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the invoice or any requested supporting documents and must be sent to the United States pursuant to Section XXIX (Notices and Submissions). Any such objection shall specifically identify the contested costs and the basis for objection. In the event of an objection, the Settling Parties shall, within the 90-day period, pay all uncontested costs to EPA in the manner described in Paragraph 84.c. Simultaneously, Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Kentucky and remit to that escrow account funds equivalent to the amount of the contested cost. The requirement to deposit funds in an escrow account shall not apply to the share of the contested costs payable by the Settling Federal Agencies. Settling Defendants shall send to the United States, as provided in Section XXIX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested costs, and a copy of the

correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the dispute resolution procedures in Section XXII. If the United States prevails in the dispute, within 5 days of the resolution of the dispute, Settling Parties shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 84.c. If Settling Defendants prevail concerning any aspect of the contested costs, the Settling Parties shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 84.c, and Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for these costs.

e. In the event that the Settling Parties do not make the payments required by Paragraph 84.a within 120 days of the effective date of this Consent Decree or the payments required by Paragraph 84.c are not made within 90 days of the Settling Parties' receipt of the invoice, or 60 days after

receipt of supporting documentation that has been requested pursuant to Paragraph 84.c, whichever is later, Settling Parties which are liable for such costs shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on the costs required in Paragraph 84.a shall begin to accrue on the effective date of the Consent Decree. The interest on costs required by Paragraph 84.c shall begin to accrue on the date of the Settling Parties' receipt of the bill. Interest shall accrue at the rate specified through the date of payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Parties' failure to make timely payments under this Section.

XX. INDEMNIFICATION AND INSURANCE

Settling Private Parties.

85. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Private Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Private Parties hereby indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Private Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities

pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Private Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Private Parties agree to pay the United States all costs the United States incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Private Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States, including the Settling Federal Agencies, shall not be held out as a party to any contract entered into by or on behalf of Settling Private Parties in carrying out activities pursuant to this Consent Decree. Neither the Settling Private Parties nor any such contractor shall be considered an agent of the United States, including the Settling Federal Agencies.

86. Settling Private Parties waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Private Parties and any person for performance of IRP Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Private Parties shall indemnify

and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Private Parties and any person for performance of IRP Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

87. No later than 15 days before commencing any on-site Work, Settling Private Parties shall secure, and shall maintain until the completion of the IRP Work, comprehensive general liability, occurrence-based, insurance with limits of ten million dollars, combined single limit, naming as additional insured the United States. No later than 15 days before commencing any on-site IRP Work, Settling Private Parties shall secure, and shall maintain until EPA's Certification of Completion of the Initial Remedial Phase pursuant to Paragraph 80 of Section XVII (Certification of Completion), automobile liability insurance with limits of $500,000, naming as additional insured the United States. In addition, for the duration of the IRP Work performed by Settling Private Parties, Settling Private Parties shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the IRP Work on behalf of Settling Private Parties in furtherance of this Consent Decree. Prior to commencement of the IRP Work under this Consent Decree, Settling Private Parties shall provide to EPA certificates of such

insurance and a copy of each insurance policy. Settling Private Parties shall resubmit such certificates and copies of policies during each year of their performance of the IRP Work on the anniversary of the effective date of this Consent Decree. If Settling Private Parties demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Settling Private Parties need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

Commonwealth.

88. The United States does not assume any liability by entering into this agreement or by virtue of any designation of the Commonwealth as EPA's authorized representative under Section 104(e) of CERCLA. The Commonwealth hereby indemnifies, saves and holds harmless, to the extent not prohibited by law, the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of the Commonwealth, its employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Commonwealth as EPA's authorized representative under Section 104(e) of CERCLA. Further, the

Commonwealth agrees to pay the United States all costs the United States incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of the Commonwealth, its employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of the Commonwealth carrying out activities pursuant to this Consent Decree. Neither the Commonwealth nor any such contractor shall be considered an agent of the United States.

89. The Commonwealth waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between the Commonwealth and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Commonwealth shall indemnify and hold harmless, to the extent not prohibited by law, the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement with the Commonwealth and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

90. For the duration of the Work performed by the Commonwealth, the Commonwealth shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing the Work on behalf of the Commonwealth in furtherance of this Consent Decree.

XXI. FORCE MAJEURE

91. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Parties or of any entity controlled by such Settling Parties whose performance is delayed, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree, despite such Settling Parties' best efforts to fulfill the obligation. The requirement that such Settling Parties exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards, or increased costs.

92. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling

Party whose performance is delayed shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region IV, within 48 hours of when the Settling Party first knew or should have known that the event might cause a delay. Within five business days thereafter, the Settling Party shall provide in writing to EPA an explanation and description of the reasons for the delay; the obligations and deadlines the Settling Party claims are affected by the delay; the anticipated duration of the delay; actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Party's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Party, such event may cause or contribute to an endangerment to public health, welfare or the environment.. The Settling Party shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. The Settling Party shall supplement this written statement with new information, statements, or plans as they become available. Failure to comply with the above requirements shall preclude the Settling Party from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of a

circumstance of which their contractors or subcontractors had or should have had notice.

93. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Party in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Party in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

94. A Settling Defendant which invokes the dispute resolution procedures set forth in Section XXII to dispute EPA's determination under Paragraph 93 shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were

exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 91 and 92, above. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XXII. DISPUTE RESOLUTION

95. a. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism available to Settling Defendants to resolve disputes arising under or with respect to this Consent Decree between the United States (excluding the Settling Federal Agencies) and the Settling Defendants. The provisions of the MOU shall govern disputes between EPA and the Settling Federal Agencies under or with respect to this Consent Decree. Notwithstanding the provisions of CERCLA §§ 121 and 122, 42 U.S.C. §§ 9621 and 9622, Settling Defendants agree that the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes concerning the scope of the obligations under this Consent Decree or the implementation of this Consent Decree, and the standards, requirements, criteria or limitations to which the remedial action must conform, and that the only relief which will be sought by the Settling Defendants in dispute resolution will be a determination of the obligation in dispute and not the recovery of civil or stipulated penalties. However, the procedures set

forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

b. Notwithstanding any provision in this Consent Decree, the following governs the serving of a Notice of Dispute (as described in Paragraph 96) or filing a motion for judicial review (as described in Paragraph 98.c or 99.a):

(1) A Settling Defendant may not serve a Notice of Dispute or file a motion for judicial review concerning the performance of ongoing, on-site Work if it is not obligated to perform the Work in dispute, except that any Settling Defendant may dispute EPA's Certification of Completion of the IRP and Certification of Completion of the Remedial Action. This provision shall not affect the Commonwealth's ability to raise disputes regarding its access obligations under Section XII or regarding EPA's determination concerning the need for a horizontal flow barrier.

(2) A Settling Defendant may not serve a Notice of Dispute or file a motion for judicial review concerning a plan, report, or other item that it is not obligated to submit to EPA under this Consent Decree, except to dispute EPA approval of the following deliverables or modifications thereof:

(a) IRP RD Work Plan or a portion thereof;

(b) IRP Sampling and Analysis Plan;

(c) IRP Health and Safety Plan;

(d) IRP Quality Assurance Project Plan;

(e) IRP Prefinal and Final Remedial Design reports;

(f) IRP RA Work Plan or a portion thereof;

(g) IRP Construction Health and Safety Plan;

(h) IRP Construction Quality Assurance Plan;

(i) IRP Construction Management Plan;

(j) Deliverables associated with the horizontal flow barrier that are required within the ten years after Certification of Completion of the IRP;

(k) IMP Work Plan;

(l) IMP Sampling and Analysis Plan;

(m) IMP Quality Assurance Plan;

(n) IMP Health and Safety Plan;

(o) FCP Work Plan;

(p) FCP Sampling and Analysis Plan;

(q) FCP Health and Safety Plan;

(r) FCP Quality Assurance Project Plan;

(s) FCP Prefinal and Final Remedial Design reports;

(t) FCP RA Work Plan;

(u) FCP Construction Health and Safety Plan/Contingency Plan;

(v) FCP Construction Management Plan;

(w) FCP Construction Quality Assurance Plan.

96. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute, including any affected Settling Defendant. The dispute shall be

considered to have arisen when one Settling Defendant sends the other Parties written notice of the dispute (Notice of Dispute). The Settling Defendant who serves the Notice of Dispute shall be called the "disputing Settling Defendant." The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless EPA and the disputing Settling Defendant agree in writing to extend the time period. A Settling Defendant may not serve a Notice of Dispute contesting EPA approval of a deliverable listed in Paragraph 95.b, or a modification thereof, unless the Notice of Dispute is served within 15 days of EPA approval.

97. a. In the event that the disputing Settling Defendant and EPA cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, the disputing Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on EPA and the other Settling Parties a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, argument, or opinion supporting that position and any supporting documentation relied upon by the disputing Settling Defendant. The Statement of Position shall specify the disputing Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 98 or 99.

b. Within 14 days after receipt of the disputing Settling Defendant's Statement of Position, EPA will serve on the disputing Settling Defendant and all other Settling Parties its Statement of Position, including, but not limited to, any factual data, analysis, argument, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 98 or 99. Within 14 days after receipt of the disputing Settling Defendant's Statement of Position, any other Settling Defendant may serve on EPA and the disputing Settling Defendant a Statement of Position, including but not limited to any factual data, analysis, argument, or opinion supporting its position, and all supporting documentation.

c. If there is disagreement between EPA and the disputing Settling Defendant as to whether dispute resolution should proceed under Paragraph 98 or 99, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if a Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 98 and 99.

98. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record

under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute under this Consent Decree by Settling Parties regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. When appropriate, EPA may allow a Settling Defendant to submit a supplemental Statement of Position or the Settling Federal Agencies to submit statements or other documents.

b. The Director of the Waste Management Division, EPA Region IV, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 98.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 98.c and 98.d.

c. Any administrative decision made by EPA pursuant to Paragraph 98.b shall be reviewable by this Court,

provided that a motion for judicial review is filed by a Settling Defendant with the Court and served on all Settling Parties and EPA within 10 days of receipt of EPA's decision. The motion for judicial review shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States and any other Settling Defendant may file a response to the motion for judicial review.

d. In proceedings on any dispute governed by this Paragraph, the Settling Defendant(s) disputing EPA's decision shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 98.a.

99. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of the Settling Defendants' Statement of Position submitted pursuant to Paragraph 97, the Director of the Waste Management Division, EPA Region IV, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the

Settling Defendants unless, within ten days of receipt of the decision, a Settling Defendant files with the Court and serves on the Parties a motion for judicial review setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States or any other Settling Defendant may file a response to the Settling Defendant's motion for judicial review.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

100. a. The invocation of the dispute resolution procedures of this Section shall not extend, postpone, or affect in any way any obligation of the Settling Parties under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties related to the disputed obligation shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 117. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Consent Decree, except as provided in Paragraphs 67, 74, or 100.b.

b. When a Settling Defendant serves a Notice of Dispute or files a motion for judicial review contesting EPA approval of a deliverable listed in Paragraph 95 or a modification thereof that the Settling Defendant is not obligated to submit to EPA, EPA shall extend by the length of the dispute any deadline that depends on approval of the disputed portions of the deliverable or modification. Unless such Settling Defendant prevails in the dispute, such Settling Defendant shall be liable for stipulated penalties applying to the disputed deliverable or modification as set forth in Section XXIII as if it were obligated to submit the deliverable or modification and had failed to do so, except that stipulated penalties shall begin to accrue on the date such Settling Defendant served the Notice of Dispute or filed the motion for judicial review, whichever is earlier, and stop accruing on the date the dispute is withdrawn or otherwise concluded.

101. The sole procedures for determining the relative responsibility of the Settling Parties to pay for additional response actions performed under Section IX (Additional Response Actions) during the first 10 years after Certification of Completion of the IRP are found at Paragraph 34 of Section IX.

102. The sole procedures for determining the responsibility of the United States Department of Energy and the United States Department of Defense to provide certain financial assistance to the Commonwealth under Section XVI (Assurance of

b. When a Settling Defendant serves a Notice of Dispute or files a motion for judicial review contesting EPA approval of a deliverable listed in Paragraph 95 or a modification thereof that the Settling Defendant is not obligated to submit to EPA, EPA shall extend by the length of the dispute any deadline that depends on approval of the disputed portions of the deliverable or modification. Unless such Settling Defendant prevails in the dispute, such Settling Defendant shall be liable for stipulated penalties applying to the disputed deliverable or modification as set forth in Section XXIII as if it were obligated to submit the deliverable or modification and had failed to do so, except that stipulated penalties shall begin to accrue on the date such Settling Defendant served the Notice of Dispute or filed the motion for judicial review, whichever is earlier, and stop accruing on the date the dispute is withdrawn or otherwise concluded.

101. The sole procedures for determining the relative responsibility of the Settling Parties to pay for additional response actions performed under Section IX (Additional Response Actions) during the first 10 years after Certification of Completion of the IRP are found at Paragraph 34 of Section IX.

102. The sole procedures for determining the responsibility of the United States Department of Energy and the United States Department of Defense to provide certain financial assistance to the Commonwealth under Section XVI (Assurance of

Ability to Complete Work) are found at Paragraph 79.i of Section XVI.

103. Except as otherwise provided in Paragraphs 101 and 102, enforcement of the Consent Decree by a Settling Party against another Settling Party or resolution of a dispute between one or more Settling Parties regarding their respective obligations under the Consent Decree are governed by Section XXXI (Retention of Jurisdiction) and general principles of law.

XXIII. STIPULATED PENALTIES

Settling Private Parties.

104. Settling Private Parties shall be liable for stipulated penalties in the amounts set forth in Paragraphs 105-107 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXI (Force Majeure). The Commonwealth may instead be liable to the United States for the stipulated penalties set forth in Paragraphs 105-107 as provided in Paragraph 100.b of Section XXII (Dispute Resolution). "Compliance" by Settling Private Parties shall include completion of the IRP Work under this Consent Decree or any work plan or other plan approved under this Consent Decree for IRP Work identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

105. a. The following stipulated penalties shall be payable per violation per day by the Settling Private Parties or the Commonwealth to the United States for any noncompliance identified in subparagraph 105.b below:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$3,000	15th through 30th day
$5,000	31st day and beyond

b. Failure to timely or adequately comply with the following requirements of this Consent Decree:

(1) Submittal and, if necessary, modification of any and all draft and final IRP RD and RA Work Plans;

(2) Submittal and, if necessary, modification of the final IRP Remedial Design report;

(3) Hiring a Supervising Contractor.

106. a. The following stipulated penalties shall be payable per violation per day by Settling Private Parties or the Commonwealth to the United States for any noncompliance identified in subparagraph 106.b, below:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$2,500	31st day and beyond

b. Failure to timely or adequately comply with the following requirements of this Consent Decree:

(1) Submittal of and, if necessary, modification of, any IRP RD and RA deliverables not identified in Paragraph 105.b;

(2) Payment of all monies required to be paid pursuant to Section XIX (Reimbursement of Response Costs);

(3) Submittal and, if necessary, modification of any Work Plans for further response actions pursuant to Sections IX and X (Additional Response Actions and EPA Periodic Review), hereof;

(4) Failure to achieve any other major scheduled milestones identified under the approved IRP RA Work Plan.

107. Settling Private Parties or the Commonwealth shall be liable for stipulated penalties of $250 per violation for each day of non-compliance with requirements of this Consent Decree or the SOW, other than those specified in the prior subparagraphs, which are due by a deadline approved by EPA.

Commonwealth.

108. The Commonwealth shall be liable for stipulated penalties in the amounts set forth in Paragraphs 109-111 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXI (Force Majeure). Settling Private Parties may instead be liable to the United States for the stipulated penalties set forth in Paragraphs 109-111 as provided in Paragraph 100.b of Section XXII (Dispute Resolution). "Compliance" by the Commonwealth shall

include completion of the BoRP Work and Commonwealth IRP Obligations under this Consent Decree or any work plan or other plan approved under this Consent Decree for BoRP Work or Commonwealth IRP Obligations identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

109. a. The following stipulated penalties shall be payable per violation per day by the Commonwealth or the Settling Private Parties to the United States for any noncompliance identified in Subparagraph 109.b below:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$3,000	15th through 30th day
$5,000	31st day and beyond

b. Failure to timely or adequately comply with the following requirements of this Consent Decree:

(1) Submittal and, if necessary, modification of any and all draft and final BoRP work plans;

(2) Hiring of a Supervising Contractor or designating an agency or employee(s) to serve the equivalent function;

(3) Providing access as required by Section XII.

110. a. The following stipulated penalties shall be payable per violation per day by the Commonwealth or the Settling Private Parties to the United States for any noncompliance identified in subparagraph 110.b, below:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$2,500	31st day and beyond

b. Failure to timely or adequately comply with the following requirements of this Consent Decree:

(1) Submittal of and, if necessary, modification of, any deliverables identified in the EPA-approved BoRP work plans;

(2) Recording of Consent Decree and Notice in Registry of Deeds and notifying EPA of property transfers;

(3) Submittal and, if necessary, modification of any work plans for further response actions pursuant to Sections IX and X (Additional Response Actions and EPA Periodic Review), hereof.

(4) Failure to achieve any other major scheduled milestones identified under the approved BoRP work plans.

(5) Timely establishment of the Trust Fund required by Paragraph 79.

111. The Commonwealth or the Settling Private Parties shall be liable for stipulated penalties of $250 per violation

for each day of non-compliance with requirements of this Consent Decree or the SOW, other than those specified in the prior subparagraphs, which are due by a deadline approved by EPA.

112. The penalty amounts set forth in paragraphs 109 - 111 above shall be increased annually, beginning in January of the year following entry of the Consent Decree, by the amount of annual increase in the "Consumer Price Index, All Items, All Cities," as published by the United States Department of Labor, or, if the Consumer Price Index does not exist, the most similar official index in effect at the time the penalties are imposed.

Settling Defendants

113. All penalties imposed by this Section shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

114. Following EPA's determination that a Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give the Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

115. All penalties owed to the United States under this Section shall be due and payable within 30 days of a Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless the Settling Defendant invokes the Dispute Resolution procedures under Section XXII (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to

U.S. Environmental Protection Agency
Region IV
Attention: Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

and shall reference the EPA Region IV Site/Spill ID number (which is "G1" for this Site) and DOJ Case Number 90-11-2-211A. Copies of checks paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to the United States as provided in Section XXIX (Notices and Submissions).

116. The payment of penalties shall not alter in any way Settling Defendants' respective obligations to complete the performance of the Work required under this Consent Decree.

117. Penalties shall continue to accrue as provided in Paragraph 113 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below.

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

118. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 114 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it

is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA.

c. EPA may, in its unreviewable discretion, forgive all or a portion of any stipulated penalties which accrue pursuant to this Section, considering the good faith efforts of the respective Settling Parties to comply, or such other factors as EPA deems appropriate.

119. No payments made under this Section which are penalties under Section 169 of the Internal Revenue Code shall be tax deductible for federal tax purposes.

XXIV. COVENANTS NOT TO SUE OR TAKE ADMINISTRATIVE ACTION BY PLAINTIFF

120. a. Settling Private Parties and Settling Federal Agencies. In consideration of the actions that will be performed and the payments that will be made by the Settling Private Parties and Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 122 and 124 of this Section, the United States covenants not to sue or to take administrative action against Settling Private Parties, and EPA covenants not to take administrative action against Settling Federal Agencies, pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. With respect to liability for Past Response Costs, Future Response Costs, IRP Remedial Design, IRP Activities, additional response actions required pursuant to Sections IX and XII (Additional Response Actions and Access), BoRP Remedial Design, BoRP Activities, Commonwealth IRP Obligations, and O & M, these covenants not to sue or take

administrative action shall take effect upon receipt by EPA of the payments required by Section XIX (Reimbursement of Response Costs). With respect to all other liability under Sections 106 and 107(a) of CERCLA relating to the Site, these covenants not to sue or take administrative action shall take effect upon Certification of Completion of Remedial Action pursuant to Paragraph 81 of Section XVII. These covenants not to sue or take administrative action are conditioned upon the complete and satisfactory performance by Settling Private Parties and Settling Federal Agencies of their obligations under this Consent Decree. These covenants not to sue or take administrative action extend only to the Settling Private Parties and Settling Federal Agencies and do not extend to any other person.

b. Commonwealth. In consideration of the actions that will be performed by the Commonwealth under the terms of the Consent Decree, and except as specifically provided in Paragraphs 122 and 124 of this Section, the United States covenants not to sue or to take administrative action against the Commonwealth pursuant to section 106 of CERCLA relating to the Site for performance of IRP Work and BoRP Work upon Certification of Completion of the Remedial Action. These covenants not to sue are conditioned upon the complete and satisfactory performance by the Commonwealth of its obligations under this Consent Decree. These covenants not to sue extend only to the Commonwealth and do not extend to any other person.

121. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel Settling Private Parties or Settling Federal Agencies (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the IRP:

(1) conditions at the Site, previously unknown to EPA are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information, together with any other relevant information, indicate that performance of the IRP Work is not protective of human health or the environment.

122. United States' Post-Certification Reservations.

a. Settling Private Parties and Settling Federal Agencies. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel Settling Private Parties and Settling Federal Agencies (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs

of response if, subsequent to Certification of Completion of the IRP:

(1) conditions at the Site, previously unknown to EPA are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information, together with other relevant information, indicate that performance of the IRP Work is not protective of human health or the environment.

b. Commonwealth. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel the Commonwealth to perform further response actions relating to the Site if, subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that performance of the Work is not protective of human health or the environment.

123. For purposes of Paragraph 121, the information and the conditions known to EPA shall include only that

information and those conditions set forth in the Record of Decision for the Site and the administrative record which serves as a basis for the Record of Decision. For purposes of Paragraph 122.a, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record which serves as the basis for the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the IRP. For purposes of Paragraph 122.b, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record which serves as the basis for the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of Remedial Action.

124. General Reservations of Rights. The covenants not to sue or take administrative action set forth above do not pertain to any matters other than those expressly specified in Paragraph 120.a and 120.b. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Parties to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the combined area of the Site and the contiguous area within which Site-derived contaminants exist as evidenced in the administrative record which serves as a basis for the remedy selection decision for the Site;

c. liability for damages for injury to, destruction of, or loss of natural resources for which there are United States natural resources trustees;

d. liability for response costs that have been or may be incurred by the United States Department of the Interior or the United States Department of Agriculture in their role as a natural resources trustee;

e. criminal liability; and

f. liability for violations of federal or state law which occur during or after the implementation of the Remedial Activities.

125. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Commonwealth for recovery of response costs related to the Site that the United States has incurred and will incur in the future.

126. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XXII

(Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such disputes shall be resolved on the administrative record. If EPA performs the IRP Work or any portion thereof, the Settling Private Parties and Settling Federal Agencies shall reimburse the United States for costs incurred by the United States in performing the IRP Work pursuant to this Paragraph in accordance with the payment procedures set forth in Paragraph 84.c of Section XIX (Reimbursement of Response Costs). If EPA performs the BoRP Work or any portion thereof, the Commonwealth shall reimburse the United States for costs incurred by the United States in performing the BoRP Work pursuant to this Paragraph in accordance with the payment procedures set forth in Paragraph 84.c of Section XIX (Reimbursement of Response Costs).

127. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXV. COVENANTS BY SETTLING DEFENDANTS

128. a. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund

(established pursuant to the Internal Revenue Code, 26 U.S.C. §9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law or any claims arising out of response activities at the Site. The Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants' plans or activities) after entry of this Consent Decree that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in any statute other than CERCLA. Settling Defendants also reserve, and this Consent Decree is without prejudice to, actions against the Hazardous Substances Superfund for reimbursement of costs incurred by the Settling Defendants as a result of performing obligations not imposed on them by the terms of this Consent Decree, if those obligations have been performed in compliance with an administrative order issued under Section 106 of CERCLA after entry of this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

b. The covenants not to sue and reservations between Settling Private Parties and Settling Federal Agencies contained in Sections 5 and 7 of the Settlement Agreement are incorporated by reference herein and are made an enforceable part of this Consent Decree.

c. In consideration of the payments made, obligations undertaken, and covenants provided by the Settling Private Parties and Settling Federal Agencies under this Consent Decree, the Commonwealth covenants not to sue Settling Private Parties and Settling Federal Agencies for any and all civil liability pursuant to CERCLA, state law, and common law relating to the Site, including any liability for Past Response Costs, Future Response Costs, BORP Work, response costs previously incurred by the Commonwealth, natural resource damage claims of the Commonwealth (which shall not affect any rights the United States may have as a natural resource trustee), and response costs which are incurred by the Commonwealth to perform its obligations under Sections IX, X, XII, XVII, XVIII, XX, XXVIII, and XXXIII (Additional Response Actions, EPA Periodic Review, Access, Certification of Completion, Emergency Response, Indemnification and Insurance, Retention of Records, and Community Relations). The Commonwealth further covenants not to sue the Settling Private Parties or Settling Federal Agencies for civil liability, if any, arising from their conduct prior to entry of the Consent Decree relative to the Site under the AEA, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act (all as amended) or any state law or regulation implementing such federal statutes or covering the same Waste Materials or media as such federal statutes. The covenant by the Commonwealth is subject to the following reservations: (1) any

disputes raised under Paragraphs 101, 102 or 103 of this Consent Decree or raised in any of the procedures referred to in those Paragraphs; (2) actions against the Settling Private Parties or Settling Federal Agencies as a result of paying for or performing obligations not imposed on the Commonwealth by the terms of this Consent Decree (other than payment of Past Response Costs or Future Response Costs); and (3) actions by the Commonwealth against U.S. Ecology specifically to resolve disputes under or to enforce the Agreed Order of Settlement dated July 7, 1994 in U.S. Ecology, Inc. v. Bradley, Case No. 88-72, and entered in the United States District Court for the Eastern District of Kentucky, Frankfort Division, on July 14, 1994. This covenant not to sue is conditioned upon compliance by Settling Private Parties and Settling Federal Agencies with their respective obligations under this Consent Decree.

d. In consideration of the obligations undertaken and covenants provided by the Commonwealth under this Consent Decree, the Settling Private Parties and Settling Federal Agencies covenant not to sue the Commonwealth for any and all civil liability under Sections 107 or 113 of CERCLA, state law, and common law relating to the Site, including any liability for Past Response Costs, Future Response Costs, IRP Work, response costs previously incurred by the Settling Private Parties or Settling Federal Agencies, and response costs which are incurred by the Settling Private Parties or Settling Federal Agencies to perform their respective obligations under Sections IX, X, XII,

XVII, XVIII, XX, XXVIII, and XXXIII (Additional Response Actions, Periodic Review, Access, Certification of Completion, Emergency Response, Indemnification and Insurance, Retention of Records, and Community Relations). The covenants by Settling Private Parties and Settling Federal Agencies are subject to the following reservations: (1) any disputes raised under Paragraph 101, 102 or 103 of this Consent Decree, or raised in any of the procedures referred to in those Paragraphs; (2) actions against the Commonwealth as a result of the Settling Private Parties or the Settling Federal Agencies paying for or performing obligations not imposed on them by the terms of this Consent Decree; (3) actions against the Commonwealth by the United States on behalf of DOE and DOD to recover amounts expended by them pursuant to Paragraph 79; and (4) actions by U.S. Ecology against the Commonwealth specifically to resolve disputes under or to enforce the Agreed Order of Settlement dated July 7, 1994 in U.S. Ecology, Inc. v. Bradley, Case No. 88-72, and entered in the United States District Court for the Eastern District of Kentucky, Frankfort Division, on July 14, 1994. This covenant not to sue is conditioned upon compliance by the Commonwealth with its obligations under this Consent Decree.

e. With respect to any of the claims reserved in this Paragraph, in the Settlement Agreement, or in Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff), each Settling Party agrees not to assert the running of any statute of limitations, laches, or similar bars or

defenses to any action arising out of or related to the Site filed against it by another Settling Party or by EPA; provided, however, that any Settling Party may assert such a defense that was available to it on the date of lodging of this Consent Decree and has not been tolled by agreement of the Parties.

XXVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

129. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto except for the claims by the Commonwealth against the De Minimis Settlors that are subject to the Commonwealth's covenant not to sue set forth in Section VI of this Consent Decree.

130. With regard to claims for contribution against Settling Parties for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Parties are entitled to such protection from contribution actions or claims as provided by CERCLA Sections 113(f)(2), 42 U.S.C. § 9613(f)(2). As to all Settling Parties except for the Commonwealth, the

matters addressed in this Consent Decree are liability arising under Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613, relating to the Site, including liability for Past Response Costs; Future Response Costs; IRP Work and BoRP Work; response costs previously incurred by the Settling Private Parties Settling Federal Agencies, or the Commonwealth; natural resource damage claims of the Commonwealth; and response costs incurred by the Settling Private Parties, Settling Federal Agencies, or the Commonwealth to perform their respective obligations under Sections IX, X, XII, XVII, XVIII, XX, XXVIII, and XXXIII (Additional Response Actions, Periodic Review, Access, Certification of Completion, Emergency Response, Indemnification and Insurance, Retention of Records, and Community Relations). As to the Commonwealth, the matters addressed in this Consent Decree are liability arising under Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613, relating to the Site for IRP Work and BoRP Work; response costs previously incurred by the Settling Private Parties, Settling Federal Agencies, and the Commonwealth; and response costs incurred by the Settling Private Parties, Settling Federal Agencies, and the Commonwealth to perform their respective obligations under Sections IX, X, XII, XVII, XVIII, XX, XXVIII, and XXXIII (Additional Response Actions, Periodic Review, Access, Certification of Completion, Emergency Response, Indemnification and Insurance, Retention of Records, and Community Relations), but not including liability for any response costs incurred by

EPA or the United States Department of Justice which the Commonwealth is not specifically required to reimburse under this Consent Decree. Notwithstanding the provisions of this Section or CERCLA, a Settling Party is not entitled to and will not claim contribution protection on behalf of itself or its indemnitees for the claims reserved in Sections XXIV, XXV, or XVI ("Covenants Not to Sue or Take Administrative Action by Plaintiff", "Covenants by Settling Defendants", and "Assurance of Ability to Complete Work") and the Settlement Agreement or in the event that a Settling Party is not in compliance with its obligations under this Consent Decree.

131. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

132. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

133. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief,

recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIV (Covenants Not to Sue or Take Administrative Action by Plaintiff).

XXVII. ACCESS TO INFORMATION

134. Settling Parties shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, validated sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Parties shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

135. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or

information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Parties that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Parties.

b. Settling Parties may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Parties assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Parties. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

136. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVIII. RETENTION OF RECORDS

137. Until 10 years after the Settling Private Parties' receipt of EPA's notification pursuant to Paragraph 80.b of Section XVII (Certification of Completion), each Settling Party shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Settling Parties shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work for the same period of time.

138. At the conclusion of this document retention period, Settling Parties shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the Commonwealth, Settling Parties shall deliver any such records or documents to EPA or the Commonwealth. The Commonwealth shall continue to preserve any or all such documents if requested to do so by the United States. The Settling Parties

may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Parties assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Parties. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

139. Each Settling Party hereby certifies, individually, that it has not knowingly altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXIX. NOTICES AND SUBMISSIONS

140. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other

document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Decree. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA and the Settling Parties, respectively.

As to the United States, on behalf of EPA:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-2-211A

and

Director, Waste Management Division
United States Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
Re: EPA ID # G1

As to EPA:

Felicia Barnett
Maxey Flats Project Coordinator
United States Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
Re: EPA ID # G1

As to the Settling Private Parties:

Lee B. Zeugin
2000 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20006

and

Gary E. Parker
De Maximus, Incorporated
Cedar Avenue Business Center
103 North 11th Avenue
Suite 210
Saint Charles, Illinois 60174

As to the Settling Federal Agencies:

Chief
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

As to the Commonwealth of Kentucky:

Russell Barnett
Deputy Commissioner
Commonwealth of Kentucky
Natural Resources and Environmental
Protection Cabinet
Frankfort Office Park
18 Reilly Road
Frankfort, Kentucky 40601

XXX. EFFECTIVE DATE

141. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXI. RETENTION OF JURISDICTION

142. This Court retains jurisdiction over the subject matter of this Consent Decree and the Settling Parties for the duration of the performance of the terms and provisions of this

Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXII (Dispute Resolution) hereof. The Settling Parties agree that the respective obligations undertaken by each of the Settling Parties are intended to benefit each of the other Settling Parties and may be enforced by the Settling Parties against each other subject to any applicable procedures and limitations in Section XXII (Dispute Resolution). In an enforcement action by one Settling Party against another Settling Party that does not proceed under Section XXII, a Settling Party shall not seek relief that compels the Plaintiff or EPA to perform any action or refrain from performing any action, or that supplants, constrains, or imposes conditions upon EPA's authority under CERCLA and this Consent Decree to take response actions or to determine the need for or appropriateness of the Work or response action to be performed under the Consent Decree or under CERCLA at the Site. Notwithstanding the provisions of CERCLA Sections 121 and 122, 42 U.S.C. §§ 9621 and 9622, Settling Parties agree that the relief sought by a Settling Party in any such enforcement action against another Settling Party will not include the recovery of civil or stipulated penalties.

XXXII. APPENDICES

143. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the Settlement Agreement.

"Appendix D" is the complete list of Settling Federal Agencies.

"Appendix E" is the complete list of Settling Private Parties.

"Appendix F" is the map of the Site.

XXXIII. COMMUNITY RELATIONS

144. Settling Parties shall propose to EPA their participation in the Revised Community Relations Plan developed by EPA. EPA will determine the appropriate role for the Settling Parties under the Plan. Settling Parties shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Parties shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXIV. MODIFICATION

145. Schedules specified in this Consent Decree or documents approved pursuant to this Consent Decree for implementation of the Work may be modified by agreement of EPA

and the Settling Parties that are subject to the schedule. All such modifications shall be made in writing.

146. No material modifications shall be made to the SOW without written notification to and written approval of the United States on behalf of EPA, the Settling Parties that are performing or paying for the affected obligation, and the Court. Prior to providing its approval to any modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA and the Settling Parties that are performing or paying for the affected obligation after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification.

147. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

148. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to entry of the Consent Decree if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling

Parties consent to the entry of this Consent Decree without further notice.

149. If for any reason the Court should fail to enter this Consent Decree or the De Minimis Consent Decree as lodged with the Court, this agreement is voidable at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXVI. SIGNATORIES/SERVICE

150. Each undersigned representative of a Settling Party to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. The Secretary of the Kentucky Cabinet for Natural Resources and Environmental Protection certifies that he is fully authorized pursuant to statute and the Constitution of the United States and the Commonwealth of Kentucky to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Commonwealth to this document.

151. Each Settling Private Party and the Commonwealth hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

152. The signature of a Settling Private Party shall also constitute execution by such Party of the Settlement Agreement if the signing Party is a party to the agreement.

153. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 18th DAY OF April, 1996.

Joseph M. Hood
United States District Judge

SETTLING PRIVATE PARTIES

Allied Signal
Amax, Inc.
Arkansas Power & Light Co.
Atcor, Inc.
Atlantic Richfield Co. (for itself and NUMEC)
Babcock and Wilcox co. (for itself and NUMEC)
Battelle Memorial Institute
Boston Edison Company
Carolina Power & Light Co.
Chem-Nuclear Systems, Inc.
Combustion Engineering, Inc.
Commonwealth Edison Company
Consolidated Edison Co. of New York, Inc.
Consumers Power Co.
Dow Chemical Co.
E. I. duPont de Nemours & Co.
General Dynamics Co.
Ingalls Shipbuilding
Iowa Electric Light & Power Co.
Jersey Central Power & Light Co.
Metropolitan Edison Co.
Minnesota Mining & Manufacturing Co.
NDL Organization, Inc.
New York Power Authority
New News Shipbuilding/Newport News Industrial Corp.
Niagra Mohawk Power Corp.
NL Industries, Inc.
Northeast Utilities Service Co.
Nuclear Fuel Services, Inc.
Nuclear Metals, Inc.
PECO Energy Co.
Rochester Gas & Electric Corp.
Safety Light Corp. (for U.S. Radium Corp.)
Saxton Nuclear Experimental Station
SmithKline Beecham Corp.
Union Carbide Corp.
US Ecology, Inc. (for Nuclear Engineering Co.)
Vermont Yankee Nuclear Power Co.
Virginia Power
Westinghouse Electric Corp.
Whittaker Corporation
X-Ray Industries, Inc.

NON-FEDERAL DE MINIMIS SETTLORS

A&H Truck Line, Inc.
Abbott Laboratories
Academy of Natural Sciences
Aeronca, Inc.
Aeroprojects, Inc.
Air Reduction Co. (The BOC Group)
Airco Alloys & Carbide (The BOC Group)
Aircraft Armaments (AAI Corp.)
Alabama A&M University
Aladdin Industries
Albert Einstein Medical Center
Alexander Blain Memorial Hospital
Aliquippa Hospital
Allegheny General Hospital
Altoona Hospital
Aluminum Co. of America
American Can Co.
American Cast Iron Pipe Co.
American Enka (AKZO Nobel)
American Machine & Foundry
American Oncologic Hospital
American Red Cross
Amoco
Anchor Dyeing & Finishing Co.
Applied Science Laboratories
Armco Steel
Ashland Chemical Co.
Ashland Petroleum Co.
Associated Radiologists, Inc.
Associated Transport (ANR Freight)
AT&T (for Western Electric)
Atlantic City Hospital
Atomic Disposal (ADCO Services)
Auburn University
B. F. Goodrich Co.
Baltimore Gas & Electric Co.
Baptist Memorial Hospital (FL)
Baptist Memorial Hospital (TN)
Barnesville Hospital Assoc.
BASF Corp.
Bashline Hospital
Batesville Manufacturing Co. (Gencorp Aerojet)
Bausch & Lomb
Bay Medical Center
Bethany Medical Center
Bethesda Hospital (Cincinnati)
Bethesda Hospital (Zanesville)
Bethlehem Steel Corp.
Bowater Carolina Corp.
Bowling Green State University
Bowman Gray School of Medicine
Braddock General Hospital
Brown University
Bryn Mawr College
Buckeye Cellulose Corp.
Budd Co.
Bulova Watch Co., Inc.
Campbell Soup Co.
Campbellsville College
Carnegie Institution of Washington
Carnegie Mellon University
Carolinas VA Nuclear Power
Carson-Newman College
Case Western Reserve University
Caterpillar Inc.
Catholic University of America
CBS, Inc.
Central State Hospital
Centre College
CGER Medical Cooperation & Illinois Masonic Hospital
Champion Spark Plug
Charleston Memorial Hospital
Chemetron Chemicals
Chestnut Hill Hospital
Chevron Corporation
Children's Hospital (Columbus, OH)
Children's Hospital of Phila.
Christ Hospital (James N. Gamble Institute)
Cincinnati General Hospital
Cincinnati Milacron
Citizens General Hospital
Clemson University
Cleveland Metro General Hospital
Clevite Corporation (Gould Electronics)
Coatsville Hospital (Brandywine Hospital)
Colgate Palmolive Co.
College of William & Mary
Columbia University
Commonwealth of Pennsylvania
Community Hospital of Roanoke Valley
Community Methodist Hospital
Cooper Airmotive
Dairyland Power
Dover General Hospital
Dow Corning Corp.
Drexel University
Duke University
Duplin General Hospital
Duquesne University
Eaton Corporation
East Kentucky Paving
Electronucleonics, Inc. (Pharmacia, Inc.)

Eli Lilly & Co.
Emory University
Ethyl Corporation
Exxon Research & Engineering
F.C. Smith Clinic
Fansteel, Inc.
Fels Research Institute (Samuel S. Fels Fund)
Ferro Corporation
Florida A&M University
Florida Dept. of Transportation
Florida State University
Ford Motor Co.
Fordham University
GAF Corporation
General Motors Corp.
George Washington University Hosp.
Georgetown University Hospital
Georgia Institute of Technology
Gilman Paper Co.
Girdler Chemical
Good Samaritan Hosp. (Lexington, KY)
Good Samaritan Hosp. (Zanesville, OH)
Goodyear Tire & Rubber Co.
Grandview Hospital
Greene Memorial Hospital
Hahneman University
Hamilton Watch
Hammermill Paper Co. (International Paper)
Hartford Hospital
Haverford College
Henry Ford Hospital
Hillcrest Hospital
Honeywell, Inc.
Howard University
Humble Oil
Hurley Hospital
Huyck Felt (BTR Inc.)
IIT Research Institute
Incarnate Word Hospital
Indiana & Michigan Electric
Indiana State University
Indiana University-Bloomington
Industrial Process Co.
Institute for Cancer Research
Institute of Gas Technology
International Harvester (Navistar Int'l Transportation Corp.)
Interstate Uniform Services
Jackson Memorial Hospital
Jeanes Hospital
Jefferson Medical College
Jewish Hospital (Louisville, KY)
Jewish Hospital of St. Louis
Johns Hopkins University/Johns Hopkins Hospital/Johns Hopkins Health System
Johnson Controls, Inc.
Johnston Willis Hospital
Kenyon College
Kerr-McGee Corp.
Kettering Research Laboratory
Kimberly-Clark Corp.
King's Daughters' Hospital
Koppers Co., Inc. (Beazer East, Inc.)
Laboratory Equipment Co.
Lankenau Hospital
Lee Hospital
Leeds & Northrup
Lehigh University
Lenoir Memorial Hospital
Lockheed Martin
Lorillard Inc.
Louisiana State University
Lutheran Hospital of Indiana, Inc.
Lycoming College
Maine Yankee Atomic Power Co.
Mallinckrodt Inc.
Mankato State University
Margaret R. Pardee Memorial Hosp.
Martin Marietta Corp.
Massachusetts Institute of Tech.
May Institute for Medical Research of the Jewish Hospital-Cincinnati
McDonnell Douglas
Medical College of Pennsylvania
Medical College of Virginia
Memphis State University
Menorah Medical Center
Merck & Co.
Mercy Catholic Medical Center
Mercy Hospital (Coon Rapids)
Mercy Hospital (Pittsburgh)
Metcut Research Associates
Methodist Evangelical Hospital
Miami Valley Hospital
Miami University
Michigan State University
Miles, Inc.
Miriam Hospital
Missouri Baptist Hospital
Molins Machine
Monsanto
Montefiore Hospital
Morris Cafritz Hospital (Greater Southeast Community Hospital)
Morrison-Knudsen, Inc.
Mother Frances Hospital
Mt. Sinai Medical Center (OH)
Nalle Clinic
National Distillers (Quantum Chemical Corp.)

National Spectographic Lab (Rexham Corp.)
Nebraska Public Power District
North Hills Passavant Hospital
Northern States Power
Norton Children's Hospital
Nuclear Environmental Engineering (The GNI Group, Inc.)
Nuclear Pharmacy (Syncor International)
Nuclear Radiation Developments
Nuclear Sources & Services, Inc.
Occidental Chemical Corp.
Ohio Agricultural Research & Dev. Center
Ohio State University
Ohio University
Ohmart Corp.
Oklahoma Department of Environmental Quality
Oklahoma Medical Research Foundation
Old Colony Dayton Envelope Co. (International Paper)
Omaha Public Power District
Ortec, Inc.
Our Lady of Mercy Hospital (Mercy Hospital Anderson)
Overnight Transportation
Oxy USA (Cities Service Oil & Gas Co.)
Owens-Corning Fiberglas
Owensboro-Daviess County Hospital
Parke Davis & Co.
Parkson Corporation
Parkvale Savings Bank
Penn Central Corporation
Pennsylvania Hospital
Pennsylvania State University
Pennwalt Corp.
Penrose Cancer Hospital
Phillips Petroleum
Picker International
PPG Industries, Inc.
Proctor & Gamble
Purdue University
Pyrotronics (Borg-Warner Security Corp.)
R. A. Miller Electronic Corp. (RAM Electronics, Inc.)
R. G. Thomas & Associates
Radiac Research Corp.
Reid Memorial Hospital
Rensselaer Polytechnic Institute
Research Triangle Institute
Retreat Hospital
Reynolds Metals Co.
Rhode Island Nuclear Science Ctr
A. H. Robins Co., Inc.
Roche Biomedical Laboratories
Rockford College
Roger Williams General Hospital
Rogue Valley Memorial Hospital
Roswell Park Memorial Institute
Rutgers University
St. Anthony's Medical Center (KY)
St. Anthony's Medical Center (IL)
St. Francis Hospital
St. Jude's Hospital
St. Louis Testing Laboratory
St. Louis University
St. Thomas Hospital
Saginaw General Hospital
Sandusky Memorial Hospital
Schlumberger Ltd.
Sealed Power Technologies (SPX Corp.)
Searle Diagnostic Lab
Shadyside Hospital
Smith's Transfer
Solitron Devices, Inc.
South Hills Health Systems
Southeastern General Hospital
Speedring Corp. (Rexham Corp.)
Standard Oil
Standard Steel
State University of New York
Sterling Winthrop Research Inst.
Stevens Institute of Technology
Suburban Community Hospital
Swift & Co.
Systems Research Labs (Arvin Industries, Inc.)
Tampa General Hospital (Hillsborough Hospital Authority)
Tennessee Eastman Co.
Texas Instruments, Inc.
Texas Nuclear Corp.
Textron
Theodore R. Schwalm, Inc.
Thomas More College
Thomas Jefferson University
Time, D.C.
Timken Mercy Medical Center
Todd Shipyards Corp.
Tool Steel Gear & Pinion Co. (Xtek, Inc.)
Tri-State Industrial Laundry
TRW, Inc.
Troxler Electronic Lab
Tulane University
UNC Inc.
United Technologies Corp.
U.S. Industrial Chemicals (Quantum Chemical Corp.)
University of Alabama

University of Arkansas
University of Chicago
University of Cincinnati
University of Connecticut
University of Detroit
University of Florida
University of Illinois at Urbana
University of Maryland
University of Miami
University of Michigan
University of Notre Dame
University of Oklahoma
University of Pennsylvania
University of Pittsburgh
University of Rhode Island
University of South Carolina
University of Tennessee
University of Texas
University of Virginia
University of Wisconsin-Madison
Upjohn Company
Vanderbilt University
Victoreen, Inc. (Div. of United Technologies Corp.)
VIMS
Virginia Baptist Hospital
W. R. Grace & Co.
Wagner Electric
Ward Trucking Corp.
Warner Lambert Co.
Warren Teed (Rohm & Haas)
Washington-Jefferson College
Washington University
Wayne State University
Welding Engineering
Welborn Clinic
West Penn Hospital
West Virginia University
Western Baptist Hospital
Weyerhaeuser
Wheeling Hospital
Wilkes College
William H. Rorer, Inc. (Rhone-Poulenc Rorer Pharmaceuticals, Inc.)
William S. Merrell Co. (Marion Merrell Dow Inc.)
William W. Backus Hospital
Wisconsin Electric Power Co. (for Wisconsin Michigan Power Co.)
Wisconsin Public Service Corp.
Wistar Institute
Wittenberg University
Woolrich Woolen Mills
Yale University
Yankee Atomic

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 7

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 7. Identify what person or entity currently owns FCWA's water line that was disconnected in 1997?

Response 7. That is a good question. The RELEASE executed by FCWA on May 28, 1997 in consideration of the sum of $35,000.00 released the Commonwealth of Kentucky and its agencies, the United States of America and its agencies and departments, and the Settling Private Parties and the Non-Federal *De Minimus* Settlors who were signatories to the Consent Decre. See Exhibit 7-A.

FCWA has abandoned the disconnected line.

Copies of the correspondence pertaining to the $35,000.00 paid from the Superfund funds to FCWA to disconnect the line are attached as Exhibit 7-B.

Exhibit 7-A

RELEASE

In consideration of the sum of thirty five thousand dollars ($35,000.00), the undersigned, on behalf of the **Fleming County Water Association**, its legal representatives, agents, successors, and assigns, releases the **Commonwealth of Kentucky and its agencies, the United States of America and its agencies and departments, and the Settling Private Parties and the Non-Federal *De Minimis* Settlors who were signatories to the Consent Decree entered in Civil Action No. 95-58, styled *United States v. US Ecology, et al.*,** (a list of whom is attached), their respective agents, successors, assigns, officers, directors, shareholders, employees, attorneys, guarantors, sureties, and any persons acting on their behalf, from any and all injuries, losses, damages, liabilities, costs, expenses, attorney fees, defenses, claims, actions, causes of action, suits, debts, promises, demands, or agreements, of whatever nature or kind, known or unknown, whether based in law or equity under federal, state, or common law, including any claim for penalties, punitive damages, or exemplary damages, that the **Fleming County Water Association** ever had or now has or that anyone claiming through or under the **Fleming County Water Association** may have or claim to have which was raised or asserted or could have been raised or asserted by the **Fleming County Water Association** against the parties named

above, including, but not limited to any and all claims arising out of, by reason of, or in any way related to the acquistion of property by or on behalf of the parties named above pursuant to the terms of the Consent Decree entered in Civil Action No. 95-58, the subsequent alleged loss of customers and/or revenue by the **Fleming County Water Association,** and the cost of installation and/or abandonment of piping, connections, cut-offs, and all other associated labor, equipment, and materials necessary to supply water to the area within a two mile radius of the state-owned property at the Maxey Flats Superfund Site, it being expressly understood that acceptance of this sum is in full accord and satisfaction of a disputed claim and that the payment of said sum is not an admission of liability.

5-28-97
DATE

J.E. Smith, Jr., President
Fleming County Water
Association

Exhibit 7-B

Fleming County Water Association

P.O. Box 327 • Flemingsburg, KY 41041

Office: (606) 845-398
Fax: (606) 845-398
1-800-845-398

150'564'5576

April 11, 1995

Mr. Mike Williamson
National Resources Protection Cabinet
Office of Legal Services
5th Floor Capital Plaza Tower
Frankfort, KY 40601

Re: Purchase of Portion of Upper Rock Lick Water Lines

Dear Mr. Williamson:

The Maxey Flat Construction (#2408) Project was started in 1985. Funding for the project included a loan from FmHA in the amount of $505,000.00 and additional funding from an ARC Grant in the amount of $295,000.00 for a total project of $800,000.00 - of which $82,330.00 of the grant funds were returned (not by choice) making the total cost of the project $717,670.00.

There were 84 new customers added to the existing system with 14 of those customers being in the Rock Lick - Drip Springs area. My best information shows we will lose the income from 10 of the water services in that area which will amount to $220.39 per month for an average water use of 40,700 gallons per month. The water in the Rock Lick area is purchased from Rowan Water, Inc., at $1.21 Per 1,000 gallons = $49.2447. Our loan is financed for a period of 40 years and payments started in 1986. We have a loan balance of 31 years left to pay. Cumulative interest for a 5% loan for 40 years is 133,112.64%.

Please find below all costs pertaining to the Maxey Flat Project #2408:

Total Project Cost.....$717,670.00 /84 Customers = $8,543.69 ea.

Cost Per Customer.....$ 8,543.69 x 10 Customers =$85,436.90
(Plus Interest)

Est. Lost Income.....$220.39 per mo. x 12 mos.=$ 2,644.68 pr yr.

$ 2,644.48 x 31 yrs = $81,985.08
Less Water Costs - 18,319.88

Total $ 63,665.20

Estimated cost to retire unused portion of lines in the Rock Lick - Drip Springs Area, install blow-offs, gate valves, remove unused meter services, cap old unused parts of lines is $1,500.00.

We also extimate the extra expense for maintenance is over $16.00 per day. We will continue having the same expense without the income. That area is isolated from the rest of our system because of the Maxey Flat disposal site. To better explain, we have a master meter at Sharkey off Ky 158. It is about 9.75 miles to this meter from a meter we read each day on Ky 1895 or Maxey Flat Road and that is about 19.50 miles at an estimated 45 minutes at 7 days per week. For an extimated extra expense of $5,840.00 per year ($16.00 x 365 days = $5,840.00).

Also, please find enclosed a copy of a letter from Steve Miller, Buffalo Trace Area Development District, helping to explain how and where the ARC Funds were used. Any time you use ARC grants the Davis-Bacon Act applies to the prevailing wage rate causing the bid to come in about 25% higher than it would normally be. And in this case because we got a good bid ARC demanded $82,330.00 be refunded.

After you have reviewed the above information, would you please let us know what you think would be an equitable reimbursement for the loss of this part of our system?

If any further information is required, please advise.

Sincerely,

Gene Jett
Superintendent
FCWA

GJ/ww

PHILLIP J. SHEPHERD
SECRETARY

BRERETON C. JONES
GOVERNOR

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
OFFICE OF LEGAL SERVICES
E. DOUGLAS STEPHAN
GENERAL COUNSEL
FIFTH FLOOR, CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
TELEPHONE: 502/564-5576
TELEFAX: 502/564-6131

May 22, 1995

Mr. Gene Jett, Superintendent
Fleming county Water Association
P.O. Box 327
Flemingsburg, Kentucky 40601

Re: Rock Lick/Drip Springs water lines

Dear Mr. Jett:

Thank you for your April 11, 1995 letter regarding the possibility of the Commonwealth of Kentucky purchasing a portion of the water lines which were extended to serve customers in the Rock Lick/Drip Springs area of Fleming County bordering the Maxey Flat Project. As we discussed during our recent telephone conversation, your letter has been distributed to those persons in the Cabinet who will make the final determination regarding your proposal. A copy has also been forwarded to the general counsel for the Maxey Flats Steering Committee, Mark Weisshaar, and this matter has been discussed with him on a preliminary basis.

As you are aware, based on your many years of public service, government moves at a very deliberate pace. Therefore, no determination has been made yet regarding your proposal. However, I have been asked to request from you a specific dollar amount which the Fleming County Water Association will consider as adequate to cover the losses which you refer to in your letter. Please be as specific as possible and provide as much documentation as you can in support. Once you have provided this information, the Cabinet will be in a much better position to determine what can be done.

I appreciate your continued patience and will look forward to your response. As always, if you have any questions, please do not hesitate to contact me.

Sincerely,

Charles M. Williamson

Charles M. Williamson

SUIT, McCARTNEY & PRICE
ATTORNEYS AT LAW
207 COURT SQUARE
FLEMINGSBURG, KENTUCKY 41041

FILE COPY

MARVIN W. SUIT
FRANK H. McCARTNEY
PATRICK E. PRICE
JOHN C. PRICE

PHONE 606-849-2338
FAX 606-845-8701

June 29, 1995

Charles M. Williamson
Natural Resources and Environmental
Protection Cabinet
Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, KY 40601

Re: Rock Lick/Drip Springs water lines

Dear Mr. Williamson:

The Board of Directors of Fleming County Water Association, Inc. asked me to answer your letter to Gene Jett, Superintendent , dated May 22, 1995, wherein you asked for a specific dollar amount to cover the losses caused by the states' taking of land including our water lines and customers in the above referenced area in Fleming County, Kentucky.

I look at this situation the same as where one utility company would buy part of the services, lines and customers of another utility and the costs and losses incurred in such a sale. Therefore, I submit the following:

In Mr. Jett's letter of April 11, 1995, he outlined the Total Project Cost of $717,670 and divided it by the total of new customers (84) served to be a cost of $8,543.69 each. Mutilplying this cost by 10 (now 11) customers, he came out with a figure of $85,436.90. But now the number is 11, so the apportioned cost would be $93,980.59. On top of this is the cost to the association of retiring the unused lines in this area which is estimated to be $1,500.00.

Another expense to FCWA will be the expense of maintaining this line which remains. A daily cost is the reading of a master meter which serves this area at an estimated cost of over $16.00 per day with the loss of income from these 11

members. The loss of revenue-profit as calculated by Mr. Jett in his April 11, 1995 letter was estimated to be $63,665.20 over the next 31 years.

An ongoing and final cost to the association will be the interest expense associated with the 13% (84/11 = 13%) of the $505,000. Loan from Farmers Home Administration at 5% for a period of 40 years. Thirteen percent of $505,000.00 is $65,650.00. This leaves them with an amount of $55,964.61 interest to pay over the next 30 years without these services to produce income. (See attached Approximate Payment Schedule for this calculation.)

All totaled, the cost and loss to Fleming County Water Association is determined to be the sum of $213,625.40. Of this amount, the water association is willing to settle their claim for the amount of $125,000.00.

Enclosed with this letter are documents prepared by Mr. Jett to substantiate the information given above.

SUIT, McCARTNEY & PRICE
ATTORNEYS AT LAW
207 COURT SQUARE
FLEMINGSBURG, KENTUCKY 41041

MARVIN W. SUIT
FRANK H. McCARTNEY
PATRICK E. PRICE
JOHN C. PRICE

PHONE 606-849-2338
FAX 606-845-8701

November 7, 1995

Mike Williamson
Ky. Division of Waste Management
14 Reilley Road
Frankfort, KY 40601

RE: Rock Lick/Drip Springs Water Lines of Fleming County Water Association taken with the Maxey Flats Land Acquisition

Dear Mike:

I know that we are ploughing new ground in the legal considerations involved in the taking out of use the water lines of the Fleming County Water Association in the Maxey Flat land acquisition.

When we met on August 23rd, in addition to our suggested methods of paying them for the loss of use of their lines and their member/customers as outlined in my letter of June 29th, I suggested that perhaps we could use the formula used by electric utilities when they acquired the lines of another.

This formula is as follows:

(1) The reproduction cost new of the acquired lines, less depreciation computed on a straight line basis over a period of 40 years.

(2) An amount equal to the cost of construction any necessary facilities to reintegrate the system; and

(3) An amount, payable each year for a period of (in this case) 31 years, equal to the sum of the monthly average income from the members in the affected area.

This are essentially the methods which we discussed at our meeting but the letter from Mr. Pratt which I received last week offered to pay only the lower of the two elements [which would be (1) and (3) above]. We are suggesting that both (1) and (3) are items of damages to our system and (2) is the actual cost of isolating and re-routing the remaining lines as necessary.

As outlined before, item (1) is the sum of $51,140.00
Less 9 years depreciation out of 40 = 11,506.50
BALANCE - $39,633.50

Item (2) - Estimated - $1,500.00

Item (3) -Assuming a minimum monthly bill of (presently) $11.48 (average is-$22.04) = $126.28 per month for 12 months.....%1,515.36
x 31 years
$46,976.16

Total of the three would be: $39,633.50
1,500.00
46,976.16
$88,109.66

This is the amount which they would consider fair under the circumstances.

Sincerely,

Marvin W. Suit

MWS/mc

PHILLIP J. SHEPHERD
SECRETARY

BRERETON C. JONES
GOVERNOR

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
FRANKFORT OFFICE PARK
14 REILLY ROAD
FRANKFORT, KENTUCKY 40601

October 23, 1995

Mr. Gene Jett, Superintendent
Fleming County Water Association
P. O. Box 327
Flemingsburg, Kentucky 41041

RE: Rock Lick/Drip Springs Water Lines

Dear Mr. Jett:

This letter is a follow up to your letter of April 11, 1995, Mr. Suit's letter of June 29, 1995 and our meeting on August 23, 1995 regarding the Fleming County Water Association's request for compensation for loss of revenue due to the purchase by the Commonwealth of property surrounding the Maxey Flats Disposal Site for use as a buffer zone. The Department for Environmental Protection has completed an evaluation of your request for cost reimbursement.

Notwithstanding the legal basis or lack thereof for your request and in recognition of the extenuating circumstances which led to the water line extension 10 years ago, the Department considers any compensation which may be justified to be a part of the acquisition costs resulting from the purchase of the buffer zone. The Department considers the least costly of the following two proposals to represent fair and just compensation:

1) An amount to establish an annuity over thirty one (31) years that will generate a monthly income equivalent to the projected lost customer monthly income.

2) The cost of the installation of eight thousand five hundred (8,500) feet of 3" water line less depreciation.

The Cabinet will need additional information in order to arrive at an exact figure under either of the proposals listed above. Furthermore, this position is contingent upon concurrence and participation with the Maxey Flats Steering Committee.

If you have any questions regarding this matter, please feel free to contact me at (502) 564-6716, ext. 223.

Sincerely,

Jeffrey W. Pratt, P.E., Manager
Superfund Branch
Division of Waste Management

c: Russ Barnett
Mike Williamson
Marvin Suit

JAMES E. BICKFORD
SECRETARY

PAUL E. PATTON
GOVERNOR

COMMOMWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
FRANKFORT OFFICE PARK
14 REILLY RD
FRANKFORT KY 40601

February 8, 1996

Marvin Suit
Suit, McCartney & Price
207 Court Square
Flemingsburg, Kentucky 41041

RE: Rock Lick/Drip Springs
Water Line, Fleming County

Dear Mr. Suit:

Your letter to Mr. Williamson dated November 7, 1995 has been routed to me for response. In your letter you propose that compensation be provided to cover the cost of water line extension and future revenue, plus a small cost for isolating the subject line from the rest of the system. The Department does not consider this an appropriate basis or amount for compensation. As stated in our letter of October 20, 1995 the Department considers compensation for either, 1) the cost of the line installation (less depreciation) or 2) an amount that could be placed in an annuity to generate monthly revenue for 31 years the most responsible and reasonable basis for establishing an amount of compensation that may be considered.

However, the Department would like to resolve this matter in a timely manner and, therefore, submits for your final consideration of compensation the amount of $35,000. Payment of this amount is contingent upon concurrence from the Maxey Flats Steering Committee.

As outlined previously, the Department considers any potential compensation to be a part of the buffer zone acquisition costs. As set forth in the Maxey Flats Consent Decree, the cost of buffer zone acquisition are to be borne by all of the settling parties. Accordingly, any future correspondence regarding the subject water line should be directed to Mark Weishear, lead counsel for the Maxey Flats Steering Committee at the address listed below:

Hunton & Williams
2000 Pennsylvania Avenue, N.W.
Suite 9000
Washington, D.C. 20006

Should you have any questions regarding this matter please feel free to contact me at (502) 564-6716 ext. 223.

Sincerely,

Jeffrey W. Pratt, P.E., Manager
Superfund Branch
Division of Waste Management

JWP/pbw

c: Russ Barnett
Mike Williamson

FILE COPY

SUIT, McCARTNEY & PRICE
ATTORNEYS AT LAW
207 COURT SQUARE
FLEMINGSBURG, KENTUCKY 41041

MARVIN W. SUIT
FRANK H. McCARTNEY
PATRICK E. PRICE
JOHN C. PRICE

PHONE 606-849-2338
FAX 606-845-8701

February 29, 1996

Jeffrey W. Pratt, P.E.
Superfund Branch
Division of Waste Management
Frankfort Office Park
14 Reilly Road
Frankfort, KY 40601

RE: Rock Lick/Drip Springs
Water Line of Fleming County Water Association

Dear Mr. Pratt:

I presented your letter dated February 8, 1996 to the Board of Directors of the Fleming County Water Association at their meeting yesterday. They were disappointed in the amount of the offer of $35,000.00, but in an attempt to settle the matter and move on to others business, they agreed to accept the $35,000.00 if payment can be made in a timely fashion. I interpret this as meaning within 90 days, not 6 months to a year.

Let me know the time frame in which payment can be expected.

Sincerely,

Marvin W. Suit

MWS/mc

Office of Legal Services

5th Floor, Capital Plaza Tower
Frankfort, Kentucky 40601
(502) 564-5576
Fax: (502) 564-6131

FAX TRANSMISSION COVER SHEET

Date: *May 5, 1997*

To: *Marvin W. Suit*

Fax: *(606) 845-8701*

Re: *Fleming County Water/Maxey Flats*

Sender: *Larry T. Moscoe*

YOU SHOULD RECEIVE 8 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (502) 564-5576.

Attached is a proposed Release regarding any potential claims that the Fleming County Water District against the PRPs at the Maxey Flats site. If this Release is acceptable to you and your client, we can set up a meeting within the next 2-3 weeks in order to get the check to you and have the Release signed. Sorry for the delay on this.

RELEASE

In consideration of the sum of thirty five thousand dollars ($35,000.00), the undersigned, on behalf of the **Fleming County Water Association**, its legal representatives, agents, successors, and assigns, releases the **Commonwealth of Kentucky and its agencies, the United States of America and its agencies and departments, and the Settling Private Parties and the Non-Federal *De Minimis* Settlors who were signatories to the Consent Decree entered in Civil Action No. 95-58, styled *United States v. US Ecology, et al.*,** (a list of whom is attached), their respective agents, successors, assigns, officers, directors, shareholders, employees, attorneys, guarantors, sureties, and any persons acting on their behalf, from any and all injuries, losses, damages, liabilities, costs, expenses, attorney fees, defenses, claims, actions, causes of action, suits, debts, promises, demands, or agreements, of whatever nature or kind, known or unknown, whether based in law or equity under federal, state, or common law, including any claim for penalties, punitive damages, or exemplary damages, that the **Fleming County Water Association** ever had or now has or that anyone claiming through or under the **Fleming County Water Association** may have or claim to have which was raised or asserted or could have been raised or asserted by the **Fleming County Water Association** against the parties named

above, including, but not limited to any and all claims arising out of, by reason of, or in any way related to the acquistion of property by or on behalf of the parties named above pursuant to the terms of the Consent Decree entered in Civil Action No. 95-58, the subsequent alleged loss of customers and/or revenue by the **Fleming County Water Association**, and the cost of installation and/or abandonment of piping, connections, cut-offs, and all other associated labor, equipment, and materials necessary to supply water to the area within a two mile radius of the state-owned property at the Maxey Flats Superfund Site, it being expressly understood that acceptance of this sum is in full accord and satisfaction of a disputed claim and that the payment of said sum is not an admission of liability.

DATE

J.E. Smith, Jr., President
Fleming County Water
Association

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 8

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 8. Provide a copy of all contracts, agreements, or other documents that evidence FCWA's release or transfer of its water line in 1997.

Response 8. A copy of the **RELEASE** is attached hereto as Exhibit 8. Also attached is the INVOICE submitted to Hon. Mark Weishear in Washington, DC, dated January 15, 1997, to the SuperFund Land Acquisition-Maxey Flats/Rock Lick/Drip Springs, which states:

"**Taking of the water lines and customers** of the Fleming County Water Association, Inc., in the Rock Lick/Drip Springs area of Fleming County, Kentucky, based on the depreciated cost of the 8.500 feet of three (3) inch lines which were nine (9) years old in 1995...

... #35,000."

The ordinary reading of this invoice would indicate that FCWA was being paid for the "taking of the water lines and

customers." If someone "takes" something of value from you for a consideration, then you no longer own it. At least, that has been the understanding of FCWA.

Exhibit 8

RELEASE

In consideration of the sum of thirty five thousand dollars ($35,000.00), the undersigned, on behalf of the **Fleming County Water Association**, its legal representatives, agents, successors, and assigns, releases the **Commonwealth of Kentucky and its agencies, the United States of America and its agencies and departments, and the Settling Private Parties and the Non-Federal *De Minimis* Settlors who were signatories to the Consent Decree entered in Civil Action No. 95-58, styled *United States v. US Ecology, et al.*,** (a list of whom is attached), their respective agents, successors, assigns, officers, directors, shareholders, employees, attorneys, guarantors, sureties, and any persons acting on their behalf, from any and all injuries, losses, damages, liabilities, costs, expenses, attorney fees, defenses, claims, actions, causes of action, suits, debts, promises, demands, or agreements, of whatever nature or kind, known or unknown, whether based in law or equity under federal, state, or common law, including any claim for penalties, punitive damages, or exemplary damages, that the **Fleming County Water Association** ever had or now has or that anyone claiming through or under the **Fleming County Water Association** may have or claim to have which was raised or asserted or could have been raised or asserted by the **Fleming County Water Association** against the parties named

above, including, but not limited to any and all claims arising out of, by reason of, or in any way related to the acquistion of property by or on behalf of the parties named above pursuant to the terms of the Consent Decree entered in Civil Action No. 95-58, the subsequent alleged loss of customers and/or revenue by the **Fleming County Water Association,** and the cost of installation and/or abandonment of piping, connections, cut-offs, and all other associated labor, equipment, and materials necessary to supply water to the area within a two mile radius of the state-owned property at the Maxey Flats Superfund Site, it being expressly understood that acceptance of this sum is in full accord and satisfaction of a disputed claim and that the payment of said sum is not an admission of liability.

5-28-97
DATE

J.E. Smith, Jr., President
Fleming County Water
Association

FILE COPY

January 15, 1997

Hon. Mark Weishear
Hunton & Williams
2000 Pennsylvania Avenue, N.W.
Suite 9000
Washington, D. C. 20006

RE: SuperFund Land Acquisition- Maxey Flats/Rock Lick/Drip Springs
Fleming County Water Association, Inc. -Water Line,
Flemingsburg, Fleming County, Kentucky 41041

I N V O I C E:

Taking of the water lines and customers of the Fleming County Water Association, Inc. in the Rock Lick/Drip Springs area of Fleming County, Kentucky based on the depreciated cost of the 8,500 feet of three (3) inch lines which were nine (9) years old in 1995...

.....$35,000.00

cc:
Larry Mascoe, Attorney
Natural Resources Cabinet
Commonwealth of Kentucky
Fifth Floor, Capital Plaza Tower
Frankfort, Ky. 40601

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 9

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 9. State whether FCWA has a utility easement for properties situated along the disconnected portion of its water line near the Maxey Flats site.

Response 9. All easements necessary to install the water line along Rock Lick Road were obtained in 1985 before laying the line and they are still of record in the Fleming County Clerk's Office.

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 10

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 10. Provide all copies of all documents that indicate FCWA is prohibited from construction of a water line along Rock Lick Creek Road to serve 1860 Rock Lick Creek Road.

Response 10. The response above in 4.a.b and 5.a.b.c covers this item.

There are no specific documents directed to the FCWA prohibiting the construction of a water line along Upper Rock Lick Road to serve 1860 Rock Lick Road. Representatives from the Kentucky Division of Waste Management and Natural Resources and Environmental Protection Cabinet contacted FCWA in early 1995 advising them that their water line in the buffer zone had to be disconnected due to possible contamination from the Maxey Flat Waste Disposal Site above the water line.

Meetings, telephone conferences and letters resulted from the claim of damages by FCWA due to the disconnection of 8,500

feet of three-inch water line and the loss of service to nine or ten members purchasing water from FCWA.

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

COMMISSION STAFF'S FIRST INFORMATION REQUEST DATED 9/09/10

REQUEST 11

RESPONSIBLE PERSON: EUGENE JETT, SUPERINTENDENT

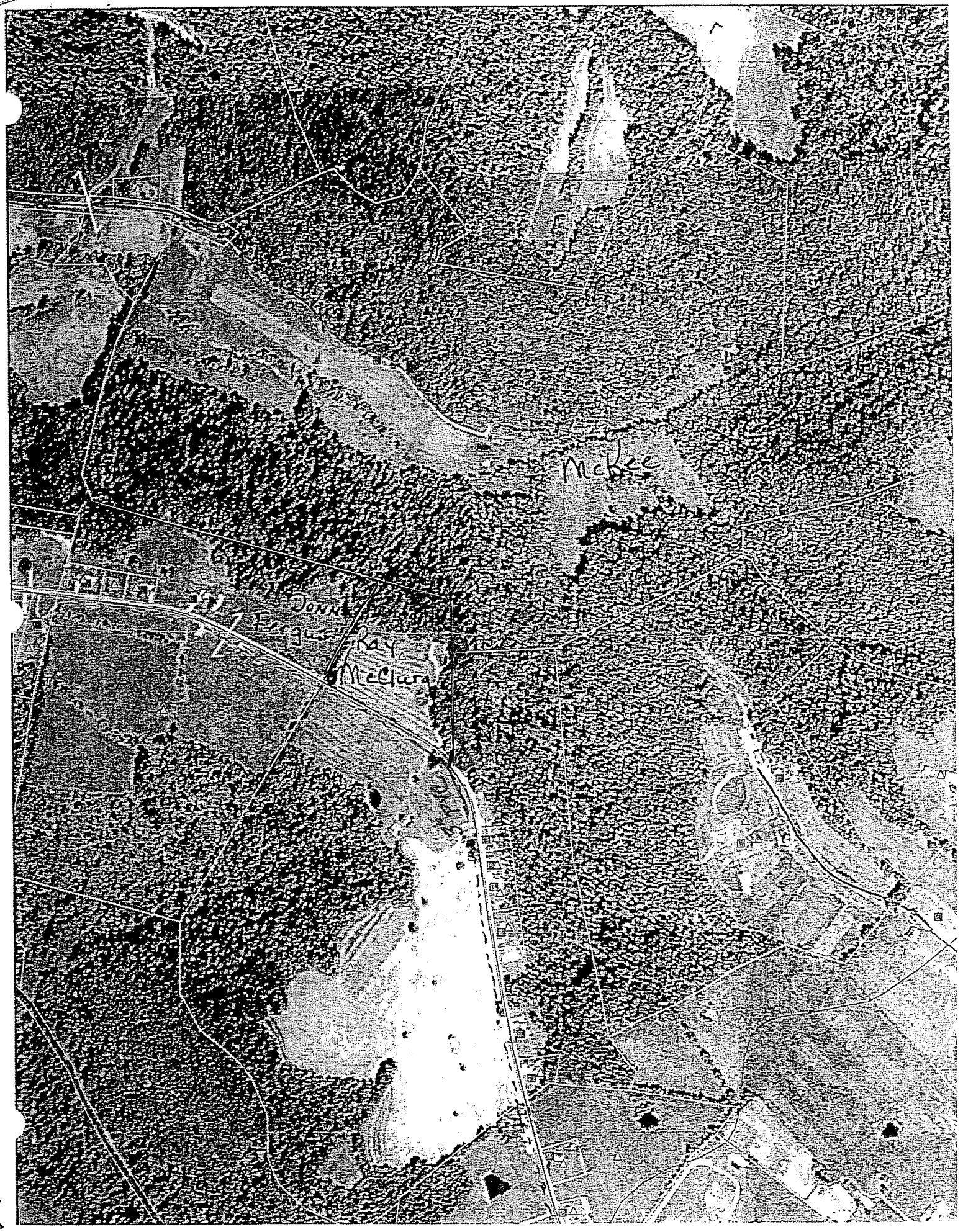
COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 11. Provide a map depicting how FCWA proposes to serve 1860 Rock Lick Creek Road from Skaggs Lane. Include or describe the size of the meter and its placement.

Response 11. **The drawing is on the attached page.**

The best route would be through the land of Willie Gregory, a distance of approximately 700 feet to the land of the subject McKee land. (Gregory wants $15,000.00 for the easement). We would install a 2 inch service line and a 5/8 inch meter.

We would pay for the first fifty (50) feet.



1" 660' PER FT.

FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

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REQUEST 12

RESPONSIBLE PERSON: EUGENE JETT, SUPERINTENDENT

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 12. Identify and estimate all costs for constructing a line from FCWA's distribution main on Skaggs Lane to serve 1860 Rock Lick Creek Road.

Response 12.

Easement-$15,000.00

750 feet of 2 inch line laid with materials included-$7,500.00
(Through Gregory land and 50 feet into McKee Land)

Conn then could take the line to any point on the McKee land that he desires.

Total Estimate-$22,500.00

FLEMING COUNTY WATER ASSOCIATION

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REQUEST 13

RESPONSIBLE PERSON: EUGENE JETT, SUPERINTENDENT

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 13. Explain to what extent FCWA has discussed with landowners long Skaggs Lane the granting of an easement to FCWA in order to serve 1860 Rock Lick Creek Road.

Response 13.

DONNA FERGUSON: She said to grant an easement to serve Wilmer Conn would be no less than $50,000.00. He has been trespassing on my land and I don't want to accommodate him.

RAY McCLURG: Never been able to get into contact with him.

WILLIE GREGORY: Mr. Gregory says that a few years ago he offered to sell Wilmer Conn 10 to 12 acres for $23,000.00 that would give him access from the Scaggs Road to the McKee land, but he has not come forward with the money. Mr. Gregory says that he would take no less than $15,000.00 for an easement to go through his land to serve Wilmer Conn.

FLEMING COUNTY WATER ASSOCIATION

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FLEMING COUNTY WATER ASSOCIATION

PSC CASE NO. 2010-00049

FIRST SET OF INFORMATION REQUESTS RESPONSE

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REQUEST 14

RESPONSIBLE PERSON: MARVIN W. SUIT, ATTORNEY

COMPANY: FLEMING COUNTY WATER ASSOCIATION

Request 14. Identify when the water line that originally served 1860 Rock Lick Road was constructed and how that project was funded.

Response 14. This water line was part of a Maxey Flat Extension project of 1985 and was constructed in 1985-86 at a total cost of $717,670 to serve 84 new customers. By an Order of the Kentucky Public Service Commission in Case No. 9250, dated July 8, 1985, a certificate of public convenience and necessity was granted with financing, including a grant of $295,000 from the Appalachian Regional Commission, a grant of $345,000 from the Farmers Home Administration, an FMHA Loan of $146,000 for 40 years at an interest rate of 7.375%, and a local contribution of $14,000 from applicants for service in the project area. (Copy of Order attached as Exhibit 14)

Exhibit 14

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF FLEMING COUNTY WATER ASSOCIATION, INC., A NON-PROFIT CORPORATION OF 205 COURT SQUARE, FLEMINGSBURG, FLEMING COUNTY, KENTUCKY 41041, FOR (1) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AUTHORIZING AND PERMITTING SAID WATER ASSOCIATION TO CONSTRUCT ADDITIONAL WATER DISTRIBUTION SYSTEM LINES TO SERVE WATER TO 84 NEW MEMBERS OF THE ASSOCIATION; (2) APPROVAL OF THE PROPOSED PLAN OF FINANCING OF SAID PROJECT	)	CASE NO. 9250

O R D E R

The Fleming County Water Association, Inc., ("Fleming Water") filed an application on December 27, 1984, for authorization to construct an $800,000 water improvements project and approval of its financing for this project. Fleming Water's financing includes a grant of $295,000 from the Appalachian Regional Commission ("ARC"), a grant of $345,000 from the Farmers Home Administration ("FmHA"), an FmHA loan of $146,000, and a local contribution of $14,000 from applicants for service in the project area. The FmHA loan will be secured by a promissory note for a 40-year period at an interest rate of 7.375 percent per annum.

The proposed construction will provide service to 95 additional customers in the Maxey Flats area of Fleming

County, Kentucky. Drawings and specifications for the proposed improvements as prepared by Watkins and Associates, Inc., of Lexington, Kentucky, ("Engineer") have been approved by the Division of Water of the Natural Resources and Environmental Protection Cabinet. Construction bids were received May 24, 1985.

FINDINGS AND ORDERS

The Commission, after consideration of the application and evidence of record and being advised, is of the opinion and finds that:

1. Public convenience and necessity require that the construction proposed in the application and record be performed and that a certificate of public convenience and necessity be granted.

2. The proposed construction consists of approximately 20 miles of 8-, 4- and 3-inch diameter pipelines and related appurtenances to serve 95 additional customers. The low bid totaled $405,017, which will require about $800,000 after allowances are made for fees, contingencies, other indirect costs and additional construction being considered.

3. Fleming Water should obtain approval from the Commission prior to performing any additional construction not expressly certificated by this Order.

4. Any deviations from the construction herein approved which could adversely affect service to any customer should be subject to the approval of this Commission.

5. The financing secured by Fleming Water for this project will be needed to pay for the work herein approved and recommended. Fleming Water's financing plan should, therefore, be approved.

6. Fleming Water should furnish duly verified documentation of the total cost of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction is substantially completed. Said construction costs should be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Water Utilities prescribed by this Commission.

7. Fleming Water's contract with its Engineer should require the provision of full-time resident inspection under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering. This supervision and inspection should insure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

8. Fleming Water should require the Engineer to furnish a copy of the "as-built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the date of substantial completion of this construction.

IT IS THEREFORE ORDERED that Fleming Water be and it hereby is granted a certificate of public convenience and necessity to proceed with the proposed construction project as set forth in the drawings and specifications of record herein.

IT IS FURTHER ORDERED that Fleming Water's plan for financing its construction work in the amount of $800,000 with grants from ARC and FmHA and a loan from FmHA be and it hereby is approved.

IT IS FURTHER ORDERED that Fleming Water shall obtain approval from the Commission prior to performing any additional construction.

IT IS FURTHER ORDERED that Fleming Water shall comply with all matters set out in Findings 4 through 8 as if the same were individually so ordered.

Nothing contained herein shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the financing herein authorized.

Done at Frankfort, Kentucky, this 8th day of July, 1985.

By the Commission

ATTEST:

Forest M. Skaggs
Secretary