

COAKLEY LANDFILL GROUP PARTICIPATION AGREEMENT

THIS AGREEMENT is made and effective as of this 27th day of September, 1991, between and among the parties (hereinafter, the "Members") whose authorized representatives have executed this Agreement.

WHEREAS, the signatories of The Coakley Landfill Superfund Site PRP Group created under the terms of The Coakley Landfill Superfund Site PRP Group Organization Agreement have voted to terminate that organization agreement as of the effective date of this Agreement;

WHEREAS, the Members, subject to approval by the United States District Court, intend to enter into a Consent Decree with the United States and the State of New Hampshire (collectively, the "Governments") with respect to the first operable unit at the Coakley Landfill Superfund Site in North Hampton, New Hampshire (the "Site"). Pursuant to the proposed Consent Decree, the Members have agreed to perform certain work at the Site (the "Work") and to make certain payments to the Governments;

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the Site, the Members wish to establish a framework for complying with the terms of the Consent Decree and to cooperate among themselves in this effort;

NOW, THEREFORE, in consideration of the foregoing, the Members mutually agree as follows:

1. THE COAKLEY LANDFILL GROUP.

The Members hereby organize and constitute themselves as the Coakley Landfill Group (hereinafter, the "Group"). The Group consists of four classes of Members: (1) Municipal Members, (2) Generator Members, (3) Transporter Members and (4) Other Members. The individual Members in each class are shown in Attachment 1 which is attached hereto and incorporated by reference herein. Each Member whose authorized representative has executed this Agreement is a member of the Group.

2. PURPOSE AND PAYMENTS.

2.1. Purpose. It is the purpose of this Agreement that the terms hereof shall control the manner and means by which the Members will undertake to satisfy their obligations pursuant to, and to otherwise comply with, the terms of the Consent Decree. A copy of the Consent Decree is attached hereto as Attachment 2 and is incorporated by reference herein.

2.2. Payments. The Members agree to take all reasonably necessary actions to ensure that they comply with the Consent Decree, and to fund, as set out in Paragraphs 6 and 13, all costs

arising in connection with their undertakings, duties and obligations pursuant to the Consent Decree, including without limitation:

(a) satisfaction of the payment obligations as to the Governments' Future Response Costs and certain Oversight Costs as defined in the Consent Decree;

(b) funding of the Work in accordance with the Consent Decree;

(c) payment of any sums required by the Trustees pursuant to the Coakley Landfill Superfund Site Trust Agreement (the "Trust Agreement") entered into pursuant to the Consent Decree;

(d) payment of sums to the United States required by Section XVIII of the Consent Decree; and

(e) payment of project management and administrative costs, any stipulated or statutory penalties imposed pursuant to the Consent Decree, administrative costs of the Trust, administrative costs of the Group, legal fees of the Group and any other costs approved by the Group or Executive Committee as necessary to effectuate the purposes of this Agreement, by making payments in accordance with the provisions of Paragraph 6 hereof. Collectively, the costs in Paragraph 2.2(a)-(e) shall be referred to as "Shared Costs." No costs incurred by or on behalf of an individual Member or Members, and not on behalf of the Group, shall be a Shared Cost.

2.3. Financial Assurance. Each Member represents and warrants that it has, or has the ability to obtain in a timely manner, sufficient funds to pay at least the amount set forth in Attachment 5 and to make payments as and when required pursuant to the Consent Decree, the Trust Agreement and this Agreement. Each Member agrees that it will promptly advise the Group of any material change in its financial condition which will render any of its financial assurances in this Paragraph incomplete, inaccurate or otherwise ineffective.

2.4. (a) The Members agree to undertake their obligations hereunder, in dealing among themselves and in acting on behalf of the Group as a whole, fairly and in good faith to achieve the purposes of this Agreement.

(b) The Members shall cooperate with each other to effectuate the purposes of this Agreement, shall attempt to make decisions by consensus, and shall attempt to resolve any disputes among them through good faith negotiation.

3. ORGANIZATION AND PROCEDURES.

3.1. Committees. In order to carry out the purposes of this Agreement, the Members hereby establish two Committees, the Executive Committee and the Technical Committee. Each Member and any individual serving on behalf of any Member, agrees by virtue of such service, to maintain the privileged nature and confidentiality of all communications and proceedings of such committees or subcommittees; such obligation shall continue in the event such individual should leave the employ of or cease to represent such Member.

3.2. Authority to Decide. Except as provided in Paragraphs 4.6.b., 21 and the In-Kind Services provisions of Attachment 3, the Members shall act by and through the Executive Committee, provided that the Group reserves to itself the right at any time directly to authorize or require action to be undertaken pursuant to this Agreement in accordance with the voting requirements set forth in this Agreement.

3.3. Meetings. The Members may authorize, require or direct actions under this Agreement only at meetings duly held and called for such purpose, which meetings shall be called from time to time as determined necessary by the Executive Committee. Except as provided in Paragraph 4.6, meetings of the Group may be called for any purpose at any time by the City of Portsmouth, any Member of the Executive Committee or by any six Members of the Group. Meetings may be held by telephone conference.

3.4. Notice of Meetings. Whenever feasible, written notice of the time, place and purpose of any meeting of the Group shall be given to each Member entitled to vote at such meeting at least five (5) days and not more than thirty (30) days before the date of such meeting either personally or by mail or by other means of written communication, including facsimile, charges prepaid, addressed to each Member at the address appearing on the service list maintained by the Executive Committee. In the event a meeting is called on less than five (5) days' written notice, the Members calling the meeting shall make a reasonable effort to provide notice in fact to every Member.

3.5. Voting. Each Member shall have a vote ("Voting Power") as follows:

(a) Each Member shall have a vote weighted in accordance with the percentage share of the Member as set forth in Attachment 3 hereto;

(b) No Member may vote unless that Member has paid all financial contributions assessed, due and owing as of the last assessment made pursuant to this Agreement or the Trust Agreement prior to such meeting. Any Member having an assessment due and owing that remains unpaid at the time of the meeting may vote only upon payment of the full assessment prior to the vote; and

(c) Unless otherwise specified herein, all issues shall be decided by sixty-seven and seven tenths percent (67.7%) of the Voting Power of the Members as defined in this Paragraph.

3.6. Voting by Proxy. A Member eligible to vote at a Group meeting may assign in writing, using the form attached to this Agreement as Attachment 4 or one substantially similar thereto, its vote (in accordance with Paragraph 3.5 of this Agreement) to another Member eligible to vote at the meeting.

3.7. Quorum. Sixty-seven and seven tenth percent (67.7%) of the eligible Voting Power (as defined in Section 3.5 of this Agreement) of the Group shall be present in person or represented by proxy at any Group meeting.

4. EXECUTIVE COMMITTEE.

4.1. Executive Committee Members. The Executive Committee shall consist of three (3) Members. The Municipal, Generator and Transporter class shall each have one representative to serve on the Executive Committee selected by that class.

4.2. Enumerated Powers of the Executive Committee. The powers, duties and responsibilities of the Executive Committee shall include:

- (a) electing a Chairperson of the Executive Committee;
- (b) having the authority to enter into contracts on behalf of the Group as approved by the Executive Committee or the Group;
- (c) appointing subcommittees to handle specific matters delegated by the Executive Committee;
- (d) selecting common counsel or consultants to undertake tasks common to the Group effort, and coordinating, supervising and directing the activities of such persons, which persons may be representatives of Members;
- (e) negotiating with the Governments and other persons with respect to all matters relating to this Agreement;
- (f) providing notice that a Member is in default of its obligations under the Trust Agreement or this Agreement and recommending to the Group that litigation be commenced against said Member;
- (g) circulating to the Group substantive documents as the Executive Committee deems necessary in order to keep Members of the Group fully informed of activities pursuant to this Agreement;

(h) appointing Trustees for the Coakley Landfill Superfund Site Trust (the "Trust") and conducting all activities necessary for the operation of the Trust, including without limitation obtaining cost projections in accordance with the Trust Agreement;

(i) selecting a Project Coordinator, who shall have the responsibilities set forth in the Consent Decree;

(j) selecting, after consultation with the Technical Committee, and retaining, persons including, but not limited to, response action contractors, a project manager and an oversight contractor to perform or oversee the performance of the response action contractors to ensure the performance of the Members' obligations under the Consent Decree;

(k) approving, through its designees, invoices and bills for payment by the Trustee;

(l) instructing the Trustee to take action on behalf of the Group in accordance with the provisions of the Trust Agreement; and

(m) conducting such other activities as the Executive Committee deems necessary and proper to carry out the purposes of this Agreement and the obligations of the Members under the Consent Decree.

4.3. Separate Counsel. Notwithstanding that the Executive Committee may request common counsel to undertake discrete tasks common to the Group effort, each Member reserves the right to select and retain its own counsel to represent such Member on any matter.

4.4. Reports to the Group and Call for Group Meetings. The Executive Committee shall report its actions to the Group as may be necessary to keep the Group fully and timely informed of matters covered by this Agreement, and shall call meetings of the Group as determined necessary by the Executive Committee and refer to such meetings for a vote any matters which in the judgment of the Executive Committee should be referred or which are required to be referred to the Group under Paragraph 4.6.b.

4.5. Quorum. Two members of the Executive Committee, one of which must be a representative of the Municipal Class, shall be present or represented by proxy at any Executive Committee meeting.

4.6. Voting.

(a) The Executive Committee shall attempt to decide all issues by consensus. If a consensus cannot be reached, all issues shall then be decided by a majority vote of the Executive Committee. The Municipal Member of the Executive Committee shall

have two (2) votes, and each of the other members of the Executive Committee shall have one (1) vote.

(b) If a majority is not obtained, any member of the Executive Committee may call a meeting of the Group and the Group shall vote on the issue.

(c) Any member of the Executive Committee may assign its vote to another member of the Executive Committee to vote at the meeting using the form or a substantially similar form referred to in Paragraph 3.6 of this Agreement.

(d) No Member may serve on the Executive Committee unless that Member has cured any default prior to attending any meeting.

4.7. Compensation of Executive Committee. The Members of the Executive Committee shall serve as volunteers without compensation from the Group.

4.8. Call for, and Notice of, Meetings. The Executive Committee may authorize and direct actions only at meetings duly held and called for such purpose, which meetings shall be regularly called. Meetings of the Executive Committee may be called by any Member of the Committee. Whenever feasible, written notice of the time, place and purpose of any meeting of the Executive Committee shall be given to each Member on Attachment 3 at least five (5) days but not more than thirty (30) days before the date of such meeting either personally or by mail or by other means of written communication (including facsimile) with charges prepaid, addressed to said Member at the address appearing on the service list maintained by the Executive Committee. In the event a meeting is called on less than five (5) days' written notice, the Member calling the meeting shall make a reasonable effort to provide notice in fact to every Member. Meetings may be held by telephone conference. Any Group Member in good standing may attend the meetings of the Executive Committee.

4.9. Providing Members with Information. Upon request from any Member, the Executive Committee shall make available the files of the Executive Committee and all other records of the Group, including financial records, for inspection and, at that Member's expense, copying any reports or other written materials in connection with the Work or pursuant to the Trust Agreement or the Consent Decree.

4.10. Litigation Against Other Persons. The Executive Committee may recommend to the Group that a claim be asserted on behalf of the Members against other persons. No such claim may be asserted by common counsel under this Agreement without the consent of a sixty-seven and seven tenths percent (67.7%) of the Voting Power of the Group, and any Member may elect to decline participation in any such suit, and may, but need not, in lieu of

such participation assign its claims to the other parties. The cost of litigation shall not be a Shared Cost, but shall be borne only by those participating in the litigation. Any recovery shall be shared only by those participating in the litigation. Nothing in this Paragraph shall affect or impair the right of any Member to assert any claim in its own name and right against any person.

5. TECHNICAL COMMITTEE.

5.1. Technical Committee Members. The Technical Committee shall consist of any technically qualified representatives of Members who agree to participate actively on the Committee.

5.2. Powers of the Technical Committee. The powers and duties of the Technical Committee shall include:

(a) assisting the Executive Committee in overseeing the activities of any persons retained in connection with the matter;

(b) selecting a liaison representative to coordinate activities with the Executive Committee;

(c) electing a Chairperson of the Technical Committee;

(d) making recommendations to the Executive Committee concerning issues relating to the implementation of the Work at the Site; and

(e) recommending to the Executive Committee response action contractors, project coordinator and/or manager and an oversight contractor who will review technical data, studies and other materials related to the Site and oversee the activities of all response action contractors at the Site to ensure performance of the Members' obligations under the Consent Decree.

5.3. Compensation of Technical Committee Members. The members of the Technical Committee shall serve as volunteers without compensation from the Group.

5.4. Call for, and Notice of, Meetings. The Technical Committee may authorize and direct actions only at meetings duly held and called for such purpose, which meetings shall be regularly called. Meetings of the Technical Committee may be called by any Member of the Committee. Whenever feasible, written notice of the time, place and purpose of any meeting of the Technical Committee shall be given to each Member on Attachment 3 at least five (5) days but not more than thirty (30) days before the date of such meeting either personally or by mail or by other means of written communication with charges prepaid, addressed to said Member at the address appearing on the service list maintained by the Technical Committee. In the event a meeting is called on less than five (5) days' written notice, the

Members calling the meeting shall make a reasonable effort to provide notice in fact to every Member. Meetings may be held by telephone conference. The meetings of the Technical Committee shall be open to any Member.

6. ALLOCATION OF EXPENSES.

6.1. Initial Payment.

(a) Within thirty (30) days of the time it executes this Agreement, each Member, except Richard M. Philbrick Trucking, GTE Products Corporation, Goss Lincoln Mercury Isuzu, John Iafolla Co., New England Telephone & Telegraph Company, Post Machinery Company, Inc., Seacoast Volkswagen, Inc., J. Edwards, Inc., Gary W. Blake, Inc., Newington Midas Muffler Shops, Northern Utilities, Inc., Sanel Auto Parts, Inc., and United Technologies Corporation, shall contribute its percentage share of \$50,000 as set forth in Attachment 3 which is attached hereto and incorporated by reference herein.

(b) Within thirty (30) days of the time it executes this Agreement, Richard M. Philbrick Trucking shall pay ten thousand (\$10,000) dollars to the Trust. An additional thirty-four thousand (\$34,000) dollars shall be paid to the Trust on or before January 1, 1992. This contribution shall be its only obligation to make a payment under this Agreement.

(c) In addition to the contribution required by 6.1.(a), within forty (40) days of the effective date of this Agreement, the Members of the Generator Class shall jointly and severally pay \$250,000 to the Trust.

(d) Within thirty (30) days of the time it executes this Agreement, Mobil Oil Corporation shall pay \$86,000 to the Trust. If Mobil Oil Corporation makes this payment, the Generator Class' payment required by Paragraph 6.1.(c). shall be reduced by \$86,000. Notwithstanding any other provision of this Agreement, including without limitation Paragraph 13, this contribution shall be Mobil Oil Corporation's only obligation to make a payment under this Agreement. The Members agree that, as among themselves, Mobil shall have no further obligation to perform any work or to make any further payment pursuant to the Consent Decree.

6.2. Payments. Shared Costs, as defined in Paragraph 2.2 herein, shall be assessed by the Executive Committee in accordance with the percentage shares set forth in Attachment 3. All assessments shall be due and payable within thirty (30) days after receipt of notice thereof, unless said notice provides otherwise.

(a) All contributions toward the Governments' Oversight Costs shall be assessed as any other Shared Cost according to the percentage shares set forth in Attachment 3,

except that such assessments against the Transporter Members shall be reduced by \$44,000 to reflect the payment by Richard M. Philbrick Trucking. That reduction shall be applied to each Transporter Member proportionate to its percentage share in Attachment 3.

(b) The first assessment other than that required by Paragraph 6.1(a) against Generator Members, and, if the first such assessment is less than \$250,000, any subsequent assessments, shall be reduced by a total of \$250,000 to reflect the payment made by the Generator Members pursuant to Paragraphs 6.1.(c) and (d).

(c) The Municipal Members may contribute in-kind services in lieu of a contribution toward Shared Costs only as provided in the In-Kind Services provisions of Attachment 3.

(d) If the Town of New Castle executes this Agreement and pays to the Trust before June 1, 1992, its share of the Shared Costs, as determined by the Municipal Members, the next assessment against the Municipal Members shall be reduced pro rata by the amount paid by the Town of New Castle. The contribution of the Town of New Castle shall be its only obligation to make a payment under this Agreement.

6.3. Federal PRPs' Share. Under the terms of the Consent Decree, the Federal PRPs will pay \$5.25 million into the Trust upon entry of the Consent Decree. After the \$5.25 million payment is made by the Federal PRPs, that money shall be used to pay Shared Costs.

6.4. Accounting for Funds. The Executive Committee shall provide to the Members from time to time, but at least annually, a formal accounting of monies received, spent, and obligated, and a final accounting upon the termination of the Agreement. Any Member shall have the right to inspect and audit, at its own expense, the books and records of the Group.

6.5. Purpose of Funds. All monies provided by Members pursuant to this Agreement shall be used solely for the purposes of this Agreement and shall not be considered as payment for any fines, penalties, or monetary sanctions. Except as provided in Attachment 3 hereto, stipulated penalties assessed pursuant to the Consent Decree shall be a Shared Cost and allocated in accordance with Section 6 of this Agreement.

7. THE COAKLEY LANDFILL SUPERFUND SITE TRUST.

7.1. Establishment of the Trust. Each Member shall act to establish the Coakley Landfill Superfund Site Trust by promptly executing the Trust Agreement. The Trust Agreement shall contain adequate financial controls, including provisions for appropriate bonding and adequate protection for Members of the Group.

7.2. Initial Payment. The unused portion of the Member's payments made pursuant to Paragraph 6.1 shall be placed into the Trust.

7.3. Payments. All assessments, except assessments for stipulated penalties under the Consent Decree, shall be used to fund the Trust.

7.4. Interest. Except as provided in Paragraph 47 of the Consent Decree, all interest on the Trust shall be used to pay Shared Costs.

8. WAIVER OF CONFLICT OF INTEREST

In the event that the Executive Committee retains common counsel, each Member agrees that: (1) it will not claim or assert that, based solely on said counsel's past or present representation of a Member, said counsel has a conflict of interest in performing legal services authorized by the Executive Committee and arising out of the Site, unless the Member notifies the Executive Committee of the claimed conflict within twenty (20) days of receiving notice of intent to hire said counsel; (2) it will not claim or assert that, based solely on said counsel's representation of the Group under the terms of this Agreement, said counsel has a conflict of interest in connection with any representation of any other person or entity in a matter pending as of the date of receiving notice of intent to hire said counsel, unless the Member notifies the Executive Committee of the claimed conflict within twenty (20) days of receiving said notice; (3) it will not claim or assert that, based solely on said counsel's representation of the Group under the terms of this Agreement, said counsel has a conflict of interest in any future representation of any person or entity unless the subject matter relating to said representation arises out of or is connected to the Coakley Landfill Superfund Site and involves or could involve any facts or information obtained from the Member during the term of this Agreement; (4) in the event that any conflict develops in the performance of work authorized by the Executive Committee by said counsel and the legal services authorized by any Member that has retained that counsel, the Member consents to that counsel's continued performance of the work authorized by the Executive Committee.

9. CONFIDENTIALITY.

9.1. Shared Information. From time to time, the Members may elect to disclose or transmit to each other, directly or through common counsel, such information as each Member, counsel or technical consultant retained for the Group deems appropriate for the sole and limited purpose of coordinating activities that are necessary and proper to carry out the purposes of this Agreement. Shared information may be disclosed to or transferred, among the Members orally or in writing or by any other appropriate means of communication. The Members intend

that no claim of work product privilege, joint defense privilege, or other privilege be waived by reason of participation or cooperation pursuant to this Agreement. Nothing in this Agreement, however, shall prevent or in any way limit a Member from seeking or obtaining such information from another Member in discovery or testimony in any litigation or other proceeding.

9.2. Preservation of Privilege. Information disclosed by the Members to counsel appointed by the Executive Committee to perform specified work may be disclosed to any other Member, and each Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of effectuating the purposes of this Agreement. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product immunity or any other privilege. Nothing in this Agreement, however, shall prevent or in any way limit a Member from seeking or obtaining such information from another Member in discovery or testimony in any litigation or other proceeding.

9.3. Confidentiality of Shared Information.

(a) Each Member agrees that shared information received from any other Member or its counsel, technical consultant, or common counsel pursuant to this Agreement shall be held in strict confidence by the receiving Member and by all persons to whom confidential information is revealed by the receiving member pursuant to this Agreement, and that such information shall be used only in connection with conducting such activities as are necessary and proper to carry out the purposes of this Agreement. Nothing in this Agreement, however, shall prevent or in any way limit a Member from seeking or obtaining such information from another Member in discovery or testimony in any litigation or other proceeding.

(b) Shared information that is exchanged in written or in document form and is intended to be kept confidential may, but need not, be marked "Confidential" or with a similar legend. If such information becomes the subject of an administrative or judicial order requiring disclosure of such information by a Member, where the information will be unprotected by confidentiality obligations, the Member may satisfy its confidentiality obligations hereunder by notifying the Member that generated the information or, if the information was generated by counsel appointed by the Executive Committee to perform specified work or by a technical consultant, by giving notice to said counsel or consultant and to the Executive Committee;

(c) Each Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any shared information or who participates in work on common projects or who otherwise assists any counsel or technical consultant in connection with this Agreement, is familiar with

the terms of this Agreement and complies with such terms as they relate to the duties of such person;

(d) Except as provided in Paragraphs 9.1, 9.2 and 9.3(a), the Members intend by this Section to protect from disclosure all confidential information and documents shared among any Members or between any Member and counsel appointed by the Executive Committee or any technical consultant to the greatest extent permitted by law regardless of whether the sharing occurred before execution of this Agreement and regardless of whether the writing or document is marked "Confidential";

(e) The confidentiality obligations of the Members under this Section shall remain in full force and effect, without regard to whether actions arising out of the Site are terminated by final judgment, and shall survive the termination of this Agreement. The provisions of this Section shall not apply to information which is now or hereafter becomes public knowledge without violation of this Agreement, or which is sought and obtained from a Member pursuant to applicable discovery procedures and not otherwise protected from disclosure;

(f) Upon termination, documents or other physical materials containing confidential information provided by such Members to the Executive Committee or anyone retained by the Executive Committee, or other Members, shall be promptly returned to such Member together with all copies thereof.

9.4 New Hampshire Right to Know Law. The Members acknowledge the legal obligation of the Municipal Members to comply with the New Hampshire Right to Know Law (RSA 91-A). The Members recognize that, in those instances when Paragraphs 9.1-9.3, or any other provisions of this Agreement conflict with the Right to Know Law, and shared information becomes the subject of a request under the Right to Know Law requiring disclosure of such information by a Municipal Member, the Municipal Member may satisfy its confidentiality obligations under this agreement by giving notice a) to the Chairperson of the Executive Committee and b) to the Member that generated the information or, if the information was generated by counsel appointed by the Executive Committee to perform specified work or by a technical consultant. Notification to a Member, counsel or technical consultant need only be given if such Member, counsel or technical consultant can reasonably be identified as the source of such information or document.

10. DENIAL OF LIABILITY.

This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any Member, by Members as among themselves or by any other person not a Member. Moreover, nothing in this Agreement,

including without limitation any percentage share, shall be construed to represent any Member's equitable share or in any way bind any Member to pay the same or similar share in any future settlement regarding the Second Operable Unit or any other settlement regarding the Site. However, nothing in this Paragraph 10 is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Agreement against any party to this Agreement.

11. INSURANCE.

The Members do not intend hereby to make any agreement that will prejudice any Member with respect to its insurers and, by entering into this Agreement, anticipate that the actions taken pursuant to this Agreement will benefit such insurers. If any insurer makes any claims that any aspect of this Agreement provides a basis for rejection or limitation of coverage of a Member, the Group will attempt, consistent with the objectives of this Agreement, to return any Member subject to such claim to a position that is satisfactory to such insurers.

12. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Member without the prior written consent of the Executive Committee.

13. ALLOCATION IN THE EVENT OF DEFAULT.

Any Member which has failed to satisfy any payment obligation under Paragraph 6 in a timely manner shall be in default under this Agreement. If a defaulting member has not cured a default within thirty (30) days of notice by the Executive Committee, the defaulting Member shall be obligated to pay immediately the full remaining balance of its share of all past and estimated future Shared Costs as determined by the Executive Committee.

(a) In the event that the defaulting Member has not cured the default within thirty (30) days of receipt of notice of default by the Executive Committee, the unpaid balance and all future assessments of the defaulting Member shall be paid by the other Members of its class on a pro rata basis (e.g., if a Generator Member defaults, the amount for which it is in arrears as well as any future assessments which may be required under Paragraph 6 shall be paid by the remaining Members of the Generator class according to the Generators' percentages on Attachment 3 adjusted for the defaulting Generator Member(s)). The Executive Committee shall immediately notify of and assess against the others Members of the defaulting Member's class the unpaid balance, which shall then be paid within thirty (30) days of receipt of such notice. In the event that all Members of a

class are in default, the unpaid balance and all future assessments of the defaulting Members shall be assessed against the remaining Members on a pro rata basis.

(b) Any Member or Members which are required to pay a defaulting Member's (s') share shall be indemnified by the defaulting Member(s) for the amounts paid on its behalf with interest, and any costs associated with obtaining indemnification including attorneys fees. Any Member(s) shall be indemnified by the defaulting Member(s) for any damages including stipulated penalties resulting from the default. Members not obligated to pay a defaulting Member's share shall cooperate with the other Members who have to pay said Member's share in obtaining indemnity for said payments.

(c) If the Members of the class of any defaulting Member(s) fail to cure the default as required herein, each Member of the class, including any Member of a class which is assigned a zero percentage on Attachment 3, shall be jointly and severally liable for, and indemnify and hold harmless all other Members from, any and all costs, damages and expenses for the defaulting Members' share.

14. ADVICE OF COUNSEL.

No Member, or representative or counsel for any Member, has acted as counsel for any other Member with respect to such Member entering into this Agreement, except as expressly engaged by such Member with respect to this Agreement, and each Member represents that it has sought and obtain any appropriate legal advice it deems necessary prior to entering into this Agreement.

No Member or its representative serving on any committee or subcommittee shall act as legal counsel or legal representative of any other Member, unless expressly retained by such Member for such purpose, and except for such express retention, no attorney/client relationship or fiduciary relationship is intended to be created between representatives on the Executive Committee and the Members.

15. WAIVER AND RELEASE OF LIABILITY.

15.1. Waiver and Release. Except as expressly provided in Attachment 3, no Member or its representative serving on any committee or subcommittee shall be liable to any Member for any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment incurred or arising as a result of any acts or omissions taken or made pursuant to this Agreement.

15.2. Survival. This Section 15 shall survive the termination of this Agreement.

16. INDEMNIFICATION.

16.1. Indemnification. Except as expressly provided in Attachment 3, each Member agrees to indemnify, defend and hold harmless any Member and its representative (s) from and against any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment (collectively "liability") which in any way relates to the good-faith performance of any duties under this Agreement by any Member or its representative (s) on behalf of the Executive Committee, Technical Committee, Project Coordinator, Subcommittee or the Group, including, but not limited to, any liability arising from any contract, agreement or instructions to the Trustees signed by the Member or its representative(s) at the request of the Executive Committee or the Group. Except for payment of legal fees as incurred, this indemnification shall not apply to any liability arising from a criminal conviction where the Member or its representative(s) had reasonable cause to believe that the conduct in question was unlawful.

16.2. Shared Cost. Payments under this Section shall be a Shared Cost in accordance with Paragraph 6.2 hereof, and shall be allocated among the Members.

16.3. Survival. This Section 16 shall survive the termination of this Agreement.

17. COVENANT NOT TO SUE.

17.1. Covenant. In consideration of the mutual undertakings in this Agreement, each Member covenants not to sue the other Members or their officers, directors, employees or agents with respect to any claims or liabilities concerning the matters covered by the Consent Decree, except for any claims relating to the enforcement of this Agreement or any claims expressly reserved pursuant to the Consent Decree. The Members expressly reserve the right, jointly and severally, to take such actions as may be necessary to collect or compel the payment by any other Member of any amounts due and payable pursuant to this Agreement, the Trust Agreement or the Consent Decree.

17.2. Survival. This Section 17 shall survive the termination of this Agreement.

18. NOTICE.

All notices, bills, invoices, reports, and other communications with a Member shall be sent to the representative designated by the Member of said Member's signature page of this Agreement. Each Member shall have the right to change its representative upon ten (10) days' written notice to the Chairperson of the Executive Committee.

19. EFFECTIVE DATE.

The effective date of this Agreement shall be the date first stated above.

20. TERMINATION.

(a) Unless the parties agree otherwise, this Agreement shall terminate and have no further effect in the event that: (1) the City of Portsmouth fails to execute, authorize and ratify the Consent Decree or this Agreement by the date set forth in Paragraph 110 of the Consent Decree; or (2) the Town of North Hampton or the Town of Newington fails to execute, authorize and ratify the Consent Decree or this Agreement by the date set forth in Paragraph 110 of the Consent Decree.

(b) If this Agreement is terminated because of a failure of the City of Portsmouth or Towns of North Hampton or Newington to execute, authorize or ratify the Consent Decree or this Agreement, the unused payments made under Paragraph 6.1. and all interest earned thereon shall be refunded to each Member in an amount proportionate to that Member's contribution under Paragraph 6.1. to the entire amount collected under that Paragraph.

(c) If the Consent Decree is not entered, this Agreement shall be binding and shall govern the Group's fulfillment of its obligations, if any, under Section 6(e) of the Consent Decree. If the Group does not have any obligations under Section 6(e) of the Consent Decree, the unused payments made under Paragraph 6.1., and all interest earned thereon, shall be refunded to each Member in an amount proportionate to that Member's contribution under Paragraph 6.1. to the entire amount collected under that Paragraph.

(d) Except provided above, this Agreement shall terminate upon the termination of the Consent Decree. Except as provided in Paragraphs 20.(b) and 20.(c), upon termination of this Agreement, all funds remaining in the Trust Fund established pursuant to Paragraph 7 shall be refunded to each Member assigned a percentage in Attachment 3 in amount proportionate to that Member's percentage in Attachment 3.

21. AMENDMENTS.

This Agreement may be amended only by a vote of at least sixty-seven and seven tenths percent (67.7%) of the Voting Power of the Members. However, Sections 2.2, 2.3, 3.5, 3.7, 4.6, 4.10, 6, 9, 10, 13, 21 and any part of Attachment 3 other than the In-Kind Services provisions of this Agreement may be amended only by a unanimous vote of 100% of the Voting Power of the Members. Amendment of the In-Kind Services provisions of Attachment 3 shall require a vote of seventy and two tenths (70.2%) of the Voting Power. In any event, the provisions of Sections 15, 16,

17, and 21 cannot be amended to limit the effective of Sections 15, 16, or 17 with respect to acts or omissions taken or made prior to such amendment.

22. SEPARABILITY.

If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

23. ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding of the Members with respect to its subject matter and supersedes any previous contemporaneous communications or agreements written or oral entered into with respect to the Coakley Landfill Superfund Site. No statement made by any of the Members or any of their representatives in negotiating this Agreement shall be construed to be a representation or warranty relied upon by the Parties in entering in this Agreement.

24. APPLICABLE LAW.

For purposes of enforcement or interpretation of the provisions of the Agreement, the Members agree that the laws of the State of New Hampshire shall apply to this Agreement as an agreement made and to be fully performed within the State of New Hampshire, and further agree not to contest personal jurisdiction in the State or Federal Court of New Hampshire with respect to litigation brought for such purposes.

25. SEPARATE DOCUMENTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

Dated: _____

Member: _____

By: _____
(Signature)

(Name and Title)

Designated Representative For Receipt of Notice and Invoices:

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Additional Representative For Receipt of Notice and Invoices:

Name: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

MUNICIPAL MEMBERS

City of Portsmouth
Town of North Hampton
Town of Newington

GENERATOR MEMBERS

Booth Fisheries Corporation	Newington Midas Muffler
Custom Pools, Inc.	Shops
J. Edwards, Inc.	Northern Utilities, Inc.
Erie Scientific Company	Pike Associates, Inc.
Division of Fybron	Post Machinery Company, Inc.
Gary W. Blake, Inc.	Public Service Company of New
Goss Lincoln Mercury Isuzu	Hampshire
GTE Products Corporation	K.J. Quinn & Co., Inc.
Gypsum Haulage, Inc.	S&H Precision Manufacturing
Jet-Line Services, Inc.	Co., Inc.
John Iafolla Company, Inc.	Sanel Auto Parts, Inc.
K mart Corporation	Seacoast Volkswagen, Inc.
Mobil Oil Corporation	Simplex Wire and Cable Company
Montgomery Ward & Co.,	United Technologies
Incorporated	Corporation
New England Telephone &	
Telegraph Company	

TRANSPORTERS

Browning-Ferris Industries of
New Hampshire, Inc. and Seacoast
Trucking and Moving Co.
Waste Management of Maine, Inc. and
Waste Management of New Hampshire,
Inc.

OTHERS

Richard M. Philbrick Trucking

MUNICIPAL MEMBERS (63.077%)

City of Portsmouth (53.553%) 551
 Town of North Hampton (4.062%) 463
 Town of Newington (5.462%) 463

~~53.553~~
~~4.062~~
~~5.462~~
~~63.077~~

GENERATOR MEMBERS (20%)

Booth Fisheries Corporation (5.03%)
 Custom Pools, Inc. (0.481%)
 J. Edwards, Inc. (0%)
 Erie Scientific Company
 Division of Fybron (1.389%)
 Gary W. Blake, Inc. (0%)
 Goss Lincoln Mercury Isuzu (0%)
 GTE Products Corporation (0%)
 Gypsum Haulage, Inc. (0.302%)
 Jet-Line Services, Inc. (4.241%)
 John Iafolla Company, Inc. (0%)
 K mart Corporation (0.481%)
 Mobil Oil Corporation (0%)
 Montgomery Ward & Co., Incorporated (2.219%)
 Newington Midas Muffler Shops (0%)

New England Telephone and Telegraph Co. (0%)
 Northern Utilities, Inc. (0%)
 Pike Associates, Inc. (0.302%)
 Post Machinery Company, Inc. (0%)
 Public Service Company of New Hampshire (1.978%)
 K.J. Quinn & Co., Inc. (0.302%)
 S&H Precision Manufacturing Co., Inc. (0.302%)
 Sanel Auto Parts, Inc. (0%)
 Seacoast Volkswagen, Inc. (0%)
 Simplex Wire and Cable Company (2.973%)
 United Technologies Corporation (0%)

TRANSPORTERS (16.923%)

Browning-Ferris Industries of New Hampshire, Inc. and Seacoast Trucking and Moving Co. (12.308%)
 Waste Management of Maine, Inc. and Waste Management of New Hampshire, Inc. (4.615%)

Did
not
sign

IN KIND SERVICES

(a) In partial fulfillment of their obligations under this Agreement, the Members have agreed that the Municipal Members may propose to perform the following tasks required by the Consent Decree:

- (1) road grading and construction;
- (2) site survey / site access / site map;
- (3) Site Security Plan and its implementation;
- (4) operation and maintenance of the cap;
- (5) barrow excavation;
- (6) operation and maintenance of the gas collection system;
- (7) operation and maintenance of portions of groundwater maintenance system;
- (8) administrative and support services with respect to the performance of the work; and
- (9) administrative and support services with respect to the operation of the Trust.

(b) For each of the tasks enumerated above which are performed, the Municipal Member(s) performing the task is entitled to a credit against its (their) next assessment, or, if there is to be no further assessments, reimbursement from the Trust for the value of the tasks performed.

(c) The basis of determining the value of each task shall be agreed upon by the Executive Committee in writing in advance, or if necessary by the Group by a seventy and two tenths percent (70.2%) of the Voting Power as defined in Paragraph 3 of this Agreement and shall be stated therein. If a value cannot be determined by a vote of the Executive Committee or the Group, the task shall be performed by a non-Member, who shall be promptly selected by the Group. In determining a value for a task or selecting the non-Member for the task, the Members shall act in good faith and in a manner consistent with the interests of the Group.

(d) The Municipal Members may decide not to perform any of the enumerated tasks provided that they notify the other Members that they do not intend to do so in a timely manner that does not interfere with the ability of the Group to perform the task as required by the Consent Decree.

(e) The Municipal Members may propose additional tasks they wish to perform. If approved by the Executive Committee in writing in advance, or if necessary by the Group by a seventy and two tenths percent (70.2%) of the Voting Power as defined in Paragraph 3 of this Agreement, the Municipal Members may perform these additional tasks and receive a credit for the value of such performance; provided, however, that the process for determining the value shall be that stated herein.

(f) The approval for the enumerated tasks or any task proposed by the Municipal Member(s) shall also address the responsibility of the Municipal Member(s) to reimburse any other Members for any stipulated or statutory penalties, damages or the cost of redoing the task to the extent that such penalties, damages or costs, result from the inadequacy or untimeliness of the Municipal Member's (s') performance. If approval is not obtained for a task or a value determined for a task, the task shall be performed by a non-Member who shall be promptly selected by the Group. In approving a task, determining a value for it or selecting the non-Member for the task, the Members shall act in good faith and in a manner consistent with the interests of the Group.

COAKLEY LANDFILL SUPERFUND SITE
VOTING PROXY

I, the duly authorized representative of _____, (hereinafter the "Member") do hereby grant the Proxy of the Member to _____ is hereby authorized and empowered to vote for said Member and in said Member's name and stead at such meeting (and at any adjournment thereof) on any issue, except for those issues listed below, put to a vote in accordance with the Coakley Landfill Group Participation Agreement. For those issues noted below, _____ has no authority on behalf of the Member and must abstain from voting on the Member's behalf.

Member: _____

Date: _____

By: _____
(Name and Title)

Issues for which this proxy is not granted:

1. _____
2. _____
3. _____

\$10,407,805⁰⁰

4

MUNICIPAL MEMBERS (\$10.07 million)

City of Portsmouth (\$8.83^{5,415} million)
 Town of North Hampton (\$670,230)
 Town of Newington (\$901,230) ³⁴⁵

GENERATOR MEMBERS (\$3.3 million)

Booth Fisheries Corporation (\$829,950)
 Custom Pools, Inc. (\$79,365)
 J. Edwards, Inc. (0)
 Erie Scientific Company
 Division of Fybron (\$229,185)
 Gary W. Blake, Inc. (0)
 Goss Lincoln Mercury Isuzu (0)
 GTE Products Corporation (0)
 Gypsum Haulage, Inc. (\$49,830)
 Jet-Line Services, Inc. (\$699,765)
 John Iafolla Company, Inc. (0)
 K mart Corporation (\$79,365)
 Mobil Oil Corporation (0)
 Montgomery Ward & Co., Incorporated (\$366,135)
 Newington Midas Muffler Shops (0)
 New England Telephone & Telegraph Company (0)
 Northern Utilities, Inc. (0)
 Pike Associates, Inc. (\$49,830)
 Post Machinery Company, Inc. (0)
 Public Service Company of New Hampshire (\$326,370)
 K.J. Quinn & Co., Inc. (\$49,830)
 S&H Precision Manufacturing Co., Inc. (\$49,830)
 Sanel Auto Parts, Inc. (0)
 Seacoast Volkswagen, Inc. (0)
 Simplex Wire and Cable Company (\$490,545)
 United Technologies Corporation (0)

TRANSPORTERS (\$2.79 million)

Browning-Ferris Industries of
 New Hampshire, Inc. and Seacoast
 Trucking and Moving Co. (\$2.03 million)
 Waste Management of Maine, Inc. and
 Waste Management of New Hampshire,
 Inc. (\$760,000)

Corrected
 sheet to
 follow
 10/15/01



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

September 25, 1991

BY FEDERAL EXPRESS

Re: Coakley Consent Decree

Dear Addressees:

Enclosed is the final version of the Consent Decree and Scope of Work in this matter. The original signature pages should be returned to me by close of business Friday, September 27. If you are unable to provide the original signature page, a faxed signature page is acceptable provided the original signature page is received by this office within a reasonable time thereafter.

Please note that pursuant to our agreement that Section XXIV (Covenants Not to Sue by Plaintiffs), Paragraph 89, be consistent with the national model consent decree, the clause, "prior to Certification of the Remedial Action." has been added to the end of the two sentences referring to Paragraph 88 (i) and (ii). Paragraph 89 is now consistent with the national model.

If you have any questions, please feel free to call me.

Sincerely,

Cindy Catri

Cynthia E. Catri
Assistant Regional Counsel

Enclosure

cc: Elizabeth Yu, Esq., DOJ

RECEIVED SEP-26 1991



Coakley Landfill
September 25, 1991
Page 2

Addressees:

Chuck Holtman, Esq. for State of New Hampshire
E. Tupper Kinder, Esq. for City of Portsmouth
Mark Beliveau, Esq. for Town of North Hampton
John Ahlgren, Esq. for Town of Newington
Seth Jaffe, Esq. for Booth Fisheries and New England Telephone
David Jones, Esq. for Waste Management
Robert Gulley, Esq. for BFI
Donna Kolar (for BFI)
George Frisbee
Russ Randle, Esq. for Erie Scientific
Sherry Young, Esq. for Public Service of New Hampshire
Ron Spritzer, Esq., DOJ for Settling Federal Agencies
Eugene Short, President, Custom Pools
Raymond Blanchard, Esq. for Edwards Toyota
Eve H. Oyer, Esq. for F.A. Gray
Joseph H. Delehant, Esq. for GTE Products Corporation
Richard Nelson, Esq. for Gary Blake, Inc.
Thomas M. Keane, Esq. for Goss Lincoln Mercury
Peter J. Griffin, President for Great Bay Marine, Inc.
Kevin P. Hallquist, Esq. for Gypsum Haulage
William F. Gross for Imperial Cleaners of Portsmouth, NH
Ron Cook Esq. for Jet-Line
Ralph R. Woodman, Jr., Esq. for John Iafolla Company, Inc.
Martin C. Pentz, Esq. for K. J. Quinn & Co., Inc. (By Courier)
Thomas R. Fredericks, Esq. for K Mart Corporation
James J. Kupka, Esq. for Montgomery Ward & Co., Inc.
Lisa Rodensky, Esq. for Newington Midas Muffler
Mr. John Snown, President, North Utilities
Dean K. Bouffard for Pike Associates/MAACO
Daniel S. Coolidge, Esq.. for Post Machinery Company, Inc.
George Hall, Esq. for S & H Precision Manufacturing Co.
Tom Burack, Esq. for Sanel Auto Parts
Tom Fiore, Esq. for Seacoast-Volkswagen, Inc.
John McIntyre, President, Simplex Wire
Ken Gray, Esq., for United Technologies
Peter Saari, Esq. for Wayne's Auto Body, Inc.
Gary Holmes, Esq. for Richard Philbrick Trucking



CITY OF PORTSMOUTH

Municipal Complex, P.O. Box 628
Portsmouth, New Hampshire 03802-0628
(603) 431-2000 ext. 211
FAX (603) 427-1526

Legal Department

Robert P. Sullivan,
City Attorney

Kathleen M. Dwyer,
Assistant City Attorney

Sharon A. Cuddy,
Assistant City Attorney

September 27, 1991

Robert Sanoff, Esquire
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109

Re: Coakley Participation Agreement

Dear Mr. Sanoff:

Please find enclosed the signature page of the Consent Decree executed by the City of Portsmouth and a cover letter to Attorney Catri, which should be forwarded with the signature page.

Also enclosed is the signature page of the Participation Agreement. The signature is subject to the conditions expressed therein and the additional condition that the Participation Agreement is executed by the Towns of North Hampton and Newington by January 30, 1992 as provided in the Consent Decree.

Very truly yours,

Robert P. Sullivan,
City Attorney

RPS:bh

Enclosures



CITY OF PORTSMOUTH

Municipal Complex, P.O. Box 628
Portsmouth, New Hampshire 03802-0628
(603) 431-2000 ext. 211
FAX (603) 427-1526

Legal Department

Robert P. Sullivan,
City Attorney

Kathleen M. Dwyer,
Assistant City Attorney

Sharon A. Cuddy,
Assistant City Attorney

September 27, 1991

Cynthia E. Catri,
Assistant Regional Counsel
United States Environmental Protection Agency
Region 1 - J.F. Kennedy Building
Boston, Massachusetts 02203-2211

Re: Coakley Consent Decree

Dear Ms. Catri:

Please find enclosed the signed signature page to the Consent Decree executed by the City of Portsmouth. The signature is subject to the conditions expressed therein and the additional conditions:

A) That all Settling Defendants execute the Consent Decree, and;

B) That the Consent Decree be amended to reflect the final negotiated terms agreed to by the parties.

Very truly yours,

Robert P. Sullivan
City Attorney

RPS:bh

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Portsmouth, New Hampshire, et. al., relating to the Coakley Landfill Superfund Site.

FOR City of Portsmouth
City of Portsmouth, New Hampshire

*see below

Date: 9/27/91

[Signature]
Name: Kenneth R. Mahony

Title: City Manager, City of Portsmouth, N.H.

Address: 1 Junkins Ave. - P.O. Box 628
Portsmouth, NH 03802-0628

Tel. No.: (603) 431-2000

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert P. Sullivan
Title: City Attorney
Address: Portsmouth Municipal Complex
1 Junkins Ave. - P.O. Box 628
Portsmouth, NH 03802-0628

Tel. No.: (603) 431-2000, Ext. 204

*The above signature of Kenneth R. Mahony, City Manager of the City of Portsmouth is provided without the authorization of the Portsmouth City Council and therefore is of no legal effect and not binding on the City of Portsmouth unless authorized and ratified by vote of the City Council after public notice and hearing in accordance with the provisions of the Charter of the City of Portsmouth and the laws of the State of New Hampshire. The signature of Mr. Mahony is provided for the sole purpose of evidencing his intent to present this document to the City Council for its consideration.

[Signature]
103

Kenneth R. Mahony

IN WITNESS WHEREOF, the Members hereto, which may be by and through their appointed counsel, enter into this Agreement. ~~Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.~~

*(see below)

Dated: September 27, 1991

Member: City of Portsmouth

By: (Name and Title)

Kenneth R. Mahony, City Manager

Designated Representative For Receipt of Notice and Invoices:

Name: Robert P. Sullivan, City Attorney

Address: Portsmouth Municipal Complex
1 Junkins Ave. - P.O. Box 628
Portsmouth, NH 03802-0628

Telephone Number: (603) 431-2000, Ext. 204

Facsimile Number: (603) 427-1526

*The above signature of Kenneth R. Mahony, City Manager of the City of Portsmouth is provided without the authorization of the Portsmouth City Council and therefore is of no legal effect and not binding on The City of Portsmouth unless authorized and ratified by vote of The City Council after public notice and hearing in accordance with the provisions of the Charter of the City of Portsmouth and the Laws of the State of New Hampshire. The signature of Mr. Mahoney is provided for the sole purpose of evidencing his intent to present this document to The City Council for its consideration.

Kenneth R. Mahony

** TRANSMIT CONFIRMATION REPORT **

Journal No. : 003
Receiver : 916174827347
Transmitter : PORTSMOUTH CITY HALL
Date : Sep 27,91 15:49
Time : 02'28
Mode : NORM
Document : 05 Pages
Result : O K

KIRKPATRICK & LOCKHART

ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2400

TELEPHONE (617) 261-3100
FACSIMILE (617) 261-3175

HARRISBURG, PA
MIAMI, FL
PITTSBURGH, PA
WASHINGTON, D.C.

WRITER'S DIRECT DIAL NUMBER

617-261-3125

September 26, 1991

VIA TELEFAX

Cynthia E. Catri, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 1
JFK Federal Building, RCV
Boston, MA 02203

Elizabeth Yu, Esq.
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Coakley Landfill Superfund Action

Dear Ms. Catri and Ms. Yu:

This letter is submitted on behalf of the private PRPs, including the municipalities, the generator group, and the transporters, that have been negotiating in good faith with EPA to resolve the claims relating to the remediation of the Coakley Landfill Site. We received from you this morning a copy of the proposed consent decree with a direction that executed signature pages be returned to you by the close of business tomorrow. In sections dealing with the Federal PRPs, the proposed consent decree incorporates the language proposed by the DOJ attorneys representing the Federal PRPs. As we advised Betty Yu yesterday, the private PRPs could not agree to that language by the 3:00 p.m. deadline imposed by the Federal PRPs' attorneys. This is to advise you that the language proposed by the Federal PRPs is unacceptable.

As you know, the private PRPs and the Federal PRPs agreed upon terms of a settlement in August. Then the private PRPs proceeded to negotiate an agreement in principle with EPA, which agreement is reflected in sections of the proposed consent decree other than those sections relating to the Federal PRPs. During the course of the negotiations with EPA, when the private PRPs substantially compromised their position, they proceeded in reliance upon the terms of the deal struck with the Federal PRPs. In a very practical sense the terms of the settlement with the

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Cynthia E. Catri, Esq.
Elizabeth Yu, Esq.

Federal PRPs made it possible for the private PRPs to make the concessions that EPA insisted upon and to negotiate among themselves a formula to raise the funds needed for the cleanup that EPA is requiring. I am sure that you understand that had we known then that the terms ultimately insisted upon by the Federal PRPs would be materially different from the terms that they agreed to last August, we would have proceeded quite differently in the negotiations with the Federal PRPs and EPA.

As you know, under the terms originally agreed to by the Federal PRPs and the PRPs, the Federal PRPs were to pay \$5 million upfront and, in addition, were to pay a percentage share of 12 to 16 percent-- the exact percentage was to be negotiated -- of the PRPs' response costs in excess of \$28 million. About two weeks ago, shortly before the announced deadline for submission of executed signature pages, Mike Rowe, the DOJ attorney for the Federal PRPs, advised us that GAO had a problem with the form of settlement -- specifically, the commitment to pay a percentage of an unspecified sum. Although informal discussions ensued, we did not receive a specific proposal from Mike Rowe until last Friday, September 19. Rowe then proposed that the Federal PRPs "cash out" their share of costs in excess of \$28 million and, in addition, receive a substantial rebate in the event that groundwater remediation was not implemented at the site. In exchange for a "cash out" of their liabilities for Operable Unit 1, the Federal PRPs offered the private PRPs \$300,000; the amount of the rebate insisted upon is \$2.75 million.

Please understand that the proposal of a multimillion dollar rebate was a total shock to the PRPs. Nobody had made any suggestion of such a rebate at any time previously. Mike Rowe says that he used the word rebate during a single negotiating session in July. He may have done so -- although none of our representatives recalls his doing so -- but everybody, including Mike himself, agrees that there never was any discussion as to the amount or terms of a rebate. You and Mike knew that we were negotiating with EPA on the expressly stated assumption that we had a "done deal" with the Federal PRPs assuming that we reached a settlement with EPA. If, as the Federal PRPs now tell us, the matter of a rebate was then a dealbreaker, why didn't they tell us so back then rather than springing it on us on the eve of a deadline for finalization of the consent decree?

Everyone also agrees that there had been no discussion of the Federal PRPs' cashing out for a token payment of \$300,000; on the contrary, the deal was that the Federal PRPs would stay on the risk for their fair share of cost overruns. As you both know, there is a substantial body of experience with cashout settlements, and it is well recognized that it is not reasonable

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Cynthia E. Catri, Esq.
Elizabeth Yu, Esq.

to ask EPA or anyone else to accept the risks attendant with a cashout absent a very substantial cash premium. A \$300,000 premium for a 12 to 16 percent share of a cleanup estimated in the ROD to cost \$21.8 million just cannot be squared with the magnitude of premiums that EPA itself has demanded in similar cases. Moreover, as you know, it is unheard of for cashout PRPs to receive a rebate, as the Federal PRPs have demanded here.

As we see it, the remaining open issues are (1) whether the Federal PRPs will be entitled to a covenant releasing them from five year review and (2) whether interest on the amount to be rebated is to run from the date of payment or from the date of certification of completion. On the first point, the Federal PRPs are asking for a protection that we understand EPA is unwilling to give to the other settling PRPs. If EPA is willing to release the other settlements parties from five year review, then we have no objection to the release of the Federal PRPs as well. In no event should EPA accede to the Federal PRPs' demands for preferential treatment on this point.

On the issue of interest, the private PRPs already have come more than halfway by agreeing to a substantial rebate and by agreeing further to pay some interest. The demand for interest from the date of payment into the PRP trust fund not only is unfair but it threatens to interfere in a very practical way with the PRPs' intended funding of the project. It has been no secret that the PRPs counted on using the Federal PRPs' upfront contribution to fund upfront obligations, thus alleviating the effect of settlement on cash flow of the settling PRPs. The new terms threaten to require the PRPs to escrow over half of the Federal PRPs' monies that would otherwise be used to pay upfront expenses, in order to assure its availability in the event of a rebate.

It is the sense of private PRPs that the Federal PRPs have been trying to take advantage of EPA's deadline for the PRPs' settlement of this case as a club to coerce the PRPs to accept otherwise unacceptable changes in the terms of settlement announced by the Federal PRPs. It is also our sense that EPA is allowing the Federal PRPs to take advantage of EPA's deadlines to obtain a sweetened deal. Despite the patent impropriety and unfairness of this, the private PRPs have yielded to the Federal PRPs' demands for a package of a cashout, an insubstantial premium for the risks of cost overruns, and a multimillion dollar rebate. We have done this solely in the interest of salvaging the settlement.

It was neither fair nor reasonable for the Federal PRPs to ask the private PRPs to yield on the changes in the terms of the deal in the first place, but nonetheless we have acceded to

KIRKPATRICK & LOCKHART

Cynthia E. Catri, Esq.
Elizabeth Yu, Esq.

virtually all of the Federal PRPs' demands, in the interest of a settlement. In fairness, we should not be asked to make the further concessions insisted upon by the Federal PRPs. It is the Federal PRPs that now must show reasonableness and fairness.

We ask you to preserve the settlement in which you and we have invested such time and effort by insisting that the Federal PRPs act fairly, reasonably, and honorably by withdrawing their demands for a covenant from the private PRPs broader than the covenant the private PRPs are receiving from EPA and for interest from date of payment.

Sincerely,



David M. Jones
On behalf of the Coakley PRPs

cc: Ronald Spritzer, Esq.
Tupper Kinder, Esq. ✓
Robert Gulley, Esq.
Robert Sanoff, Esq.
Sherilyn B. Young, Esq.
K. Anne Lloyd, Esq.

COOK & MOLAN, P. A.
ATTORNEYS AT LAW

100 HALL STREET
P. O. BOX 1464
CONCORD, NH 03302-1464

TEL 603 225-3323
FAX 603 225-8930
800-439-3369
(NH ONLY)

RONALD E. COOK*
RICHARD E. MOLAN**
THOMAS F. HERSEY**
GLENN R. MILNER†
SHAWN J. SULLIVAN***
K. ANNE LLOYD**

ADMITTED NH AND RI*
ADMITTED NH**
ADMITTED NH, MA AND ME***
ADMITTED NH AND MA†
ADMITTED ME††

OF COUNSEL
PHILIP L. MERRILL††

MAINE OFFICE
6 SUMMER STREET
P. O. BOX 429
HALLOWELL, ME 04347-0429

TEL 207 623-2677
FAX 207 623-2498

September 27, 1991

Robert S. Sanoff, Esquire
FOLEY, HOAG, ELIOT
One Post Office Square
Boston, MA 02109

VIA TELEFLEX
AND MAIL

E. Tupper Kinder, Esquire
NELSON, KINDER, MASSEAU & GORDON, PC
99 Middle Street
PO Box 1510
Manchester, NH 03105

Robert L. Gulley, Esquire
SIDLEY & AUSTIN
1722 Eye Street, NW
Washington, DC 20006

RE: Coakley Landfill
Jet-Line Services, Inc.

Gentlemen:

As I have discussed with each of you, Jet-Line wants to have the option to participate in in-kind services along with the municipalities. In addition to the nine (9) enumerated tasks found in Attachment 3(a) to the Global Participation Agreement, Jet-Line would like the option of providing, among others, the following services: Sampling and Chemical Analysis; Waste Disposal Services; Design and Construction of Remedial Action Plan; and On-site Safety. While we realize that the Participation Agreement cannot be amended at this time, as some parties have already signed it, Jet-Line would like written assurances from representatives of the other PRPs that Jet-Line's

participation in in-kind services will not be opposed and, in fact, will be supported, as appropriate, in the Executive Committee process.

You may draft your own letter to this effect or you may counter-sign this one, indicating your concurrence with this proposal. Thank you for your anticipated cooperation.

Very truly yours,



K. Anne Lloyd

KAL/r1b

cc: Neal Drawas
Russell Randle, Esquire
Karen Emery, Esquire (mail only)
Brian Moroze, Esquire (mail only)
Jim Kupka, Esquire (mail only)



U.S. Department of Justice

Washington, D.C. 20530

Sept. 30, 1991

Tupper Kinder, Esq.
Nelson, Kinder, Mosseau, and Gordon
99 Middle St.
P.O. Box 1510
Manchester, N.H.
03105

Re: Coakley Landfill Superfund Action

Dear Mr. Kinder:

As we have discussed, the settlement of CERCLA counterclaims against the United States in this case is to be satisfied through certification of the Decree by the Department of Justice to the U.S. General Accounting Office for payment from the permanent judgment appropriation established at 31 U.S.C. § 1304 (the "judgment fund"). The Department of Justice does not control the timing of GAO's review or the timing of the actual payment from the Judgment Fund. Since no judgment is final for payment purposes until entry of the decree by the Court, in the normal course our certification package is not sent to GAO until after decree entry.

In this instance, consistent with our commitment to expedite payment of this judgment, we will seek pre-entry GAO approval by forwarding the certification package at the time of lodging the Consent Decree and will also request expeditious review by GAO, so that actual payment may occur as soon as possible after entry of the Decree by the Court. It is our goal and expectation that payment can be made within thirty (30) days after entry.

Of course, as with all settlements with the United States, this decree still must be approved in its entirety by the Assistant Attorney General of the Environment and Natural Resources Division prior to lodging, and undergo public comment prior to entry by the Court.

Barry M. Hartman
Acting Assistant Attorney
General
Environment and Natural
Resources Division

By: 

J. Steven Rogers
Environmental Defense Section
Environment and Natural
Resources Division
U.S. Dept. of Justice
P.O. Box 23986
Washington, D.C. 20026
(202) 514-2219

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SETH D. JAFFE

September 30, 1991

BY TELECOPIER

PRIVILEGED/CONFIDENTIAL

Robert L. Gulley
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

David Jones
Kirkpatrick & Lockhart
One International Place
Boston, MA 02110

Re: Coakley Landfill Site Group Agreement

Dear Robert and David:

I write to confirm your release of the condition which you placed on delivery of signature pages of BFI and Waste Management to EPA in connection with the participation of Gypsum Haulage in the Coakley settlement. Furthermore, I confirm our understanding that the generator group has responsibility for making up the shares of any generators listed on Attachment 1 to the Coakley Site Group Generator Agreement, but that the non-generator members agree that all generators listed on Attachment 1 shall be considered members of the generator group, i.e., if they are permitted to join the settlement at a later date, any sums paid by such persons will go solely to the generator group. Similarly, any sums later obtained through litigation or settlement from generators listed in Attachment 1 who do not settle will be the sole property of the generator group.

Very truly yours,


Seth D. Jaffe

Enclosure

cc: Tupper Kinder, Esq.
Major Performing Generators

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ROBERT S. SANOFF

September 30, 1991

BY HAND

Cynthia E. Catri, Esq.
United States Environmental
Protection Agency
Office of Regional Counsel (RCV-23)
J.F. Kennedy Federal Building
Boston, MA 02203

Re: Coakley Landfill Superfund Site;
Generator Good Faith Offer

Dear Ms. Catri:

Enclosed please find signature pages to the Coakley Landfill
Superfund Site Consent Decree from the following persons:

Booth Fisheries Corporation
Custom Pools Inc.
Erie Scientific Company
Gary W. Blake, Inc.
GTE Products Corporation
Jet-Line Services, Inc.
K.J. Quinn & Co., Inc.
K Mart Corporation
Mobil Oil Corporation
Montgomery Ward & Co., Incorporated
New England Telephone & Telegraph Company
Newington Midas Muffler Shops
Northern Utilities Inc.
Pike Associates, Inc.
Post Machinery Company, Inc.
Public Service Company of New Hampshire
Sanel Auto Parts, Inc.
Seacoast Volkswagen, Inc.
S&H Precision Mfg. Co., Inc.
Simplex Wire & Cable Company
United Technologies Corporation