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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
6TH AND WALNUT STREETS
PHILADELPHIA, PENNSYLVANIA 19106

In Reply Refer to Mail Code: 3RC20

MAR 15 1984

Thomas D. Leidy, Esquire
148 North 6th Street
Reading, PA 19601

Re: Longswamp Superfund Well Association -
Agreement and Articles of Incorporation

Dear Mr. Leidy:

Enclosed are revised copies of a proposed AGREEMENT AND RELEASE and ARTICLES OF INCORPORATION for the Longswamp Superfund Well Association. Please review these documents and, if they are satisfactory to you, have your clients execute them as soon as possible. Ideally, the Association should be formed within the next ten days so that EPA can transfer ownership of the water distribution system to the Association by the end of this month.

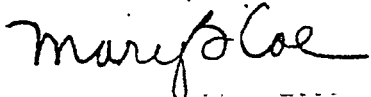
Please note that Article II, Section 2(b) of the AGREEMENT and Article V, Section 2(b) of the ARTICLES establish a limitation on the distance from the water distribution system within which a new member's property may be located. I have set this limitation at 1500 feet. I have no objection to your changing this distance so long as it falls within a range of 1200 feet to one mile. The distance should be great enough to permit the inclusion in the Association of other property owners in the vicinity of the contaminated wells but not so great as to include property owners whose distance from the system would make it impractical to hook them up to the system or would require operation of the system beyond its capability.

Also, please note that Article II, Section 2(b) of the AGREEMENT and Article V, Section 2(b) of the ARTICLES limit the number of property owners who can be members of the Association at one time. I have left a blank space for the number of owners. At the meeting on March 14, 1984 at the Van Elswyck residence, EPA explained to the prospective Association members the capacity of the wells, i.e., how many persons could be provided with how many gallons of water per day, based on a given number of well-pumping hours per day, at a rate of six gallons per minute. We also provided the group with graphs describing the relationship of these variables. Based on this information, the group can choose an upper limit on the number of properties which may be serviced by the system and support a membership in the Association. EPA recommends a minimum number of 10 properties. Assuming an average of five persons per property, this number of properties is well within the service capabilities of the system. A smaller number of permissible member properties would unduly restrict the number of persons who could benefit from this EPA - provided system.

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Please let me know if you have any questions regarding the enclosed documents.

Sincerely,



Mary B. Coe
Assistant Regional Counsel

Enclosures

cc: T. Massey
K. Zambito ✓

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AGREEMENT AND RELEASE

THIS AGREEMENT AND RELEASE, made this ____ day of _____, 1984, by, between and among the following persons, hereinafter referred to as "the parties":

BALLY BUILDING AND LOAN ASSOCIATION, of R.D. #1, Alburtis, Berks County, Pennsylvania, 18011;

AND

WAYNE VAN ELSWYCK and JOYCE VAN ELSWYCK (h/w), of R.D. #1, Box 356 4A, Macungie, Berks County, Pennsylvania, 18062;

AND

DONALD LEIBENSPERGER and BARBARA LEIBENSPERGER (h/w), of R.D. #1, Box 356 B4, Macungie, Berks County, Pennsylvania, 18062;

AND

LOUIS COOK and LINDA COOK (h/w), of 705 Ann Lois, Burleson, Texas, 76028.

W I T N E S S E T H :

WHEREAS, the parties hereto are the respective owners of certain properties situate in Macungie, Longswamp Township, Berks County, Pennsylvania, the particulars of which are set forth in Exhibit 1, attached hereto and incorporated herein by reference;

WHEREAS, the groundwater of said properties has been found by the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) to be unsafe for drinking water purposes; and

WHEREAS, it has been determined that the most practical means of providing an alternative source of clean water to these properties is to drill a well on nearby property owned by Harold Nusbaum and to transport water from said well across the properties of other property owners, including the properties of the parties described in Exhibit 1; and

WHEREAS, in order to effectuate the above-described water supply scheme it will be necessary to install, operate, maintain and otherwise manage a water distribution pipeline and ancillary equipment located in, on or beneath the properties described in Exhibit 1; and

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WHEREAS, the parties have determined that an association should be formed to carry out the above-described functions; and

WHEREAS, EPA has, at its own expense, drilled wells, installed pipeline and associated equipment and acquired easements necessary for establishment of a water distribution system for the properties described in Exhibit 1, and has expressed its intent to convey the above-described portions of the water distribution system to an association formed by the parties to operate, maintain and otherwise manage said system;

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants hereinafter set forth, and the further sum of One Dollar (\$1.00) to each in hand paid, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree among themselves as follows:

ARTICLE I CREATION OF ASSOCIATION

The parties shall form an association, in the form of a non-profit corporation under the laws of the Commonwealth of Pennsylvania, for the purposes of operating and maintaining a water distribution system to provide clean water for domestic residential use to the members of said association. The name of the association shall be the "Longswamp Superfund Well Association" and shall hereinafter be referred to as "the Association".

ARTICLE II MEMBERSHIP

It is hereby agreed, and the Articles of Incorporation or By-Laws of the Association shall provide that:

1. Each party hereto shall be a member of the Association and shall be bound by the terms of the Association's Articles of Incorporation and By-Laws for so long as such party is a record owner of property described in Exhibit 1, or until such party withdraws from membership in accordance with the provisions for withdrawal set forth in the Articles or By-Laws.

2. A person other than a party hereto shall become a member of the Association upon either:

- a. demonstrating to the Association that such person is a record owner of property described in Exhibit 1; or
- b. demonstrating to the Association that (1) such person is a record owner of residential property any portion

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of which is within 1500 feet of the water distribution pipeline or wells installed by EPA; (2) any necessary rights of way in, over, across and through such property, and any other property which lies between such property and a point along the water supply pipeline which can be connected to such property, has been or shall be created in favor of the Association, its heirs, successors and assigns, for the purposes and of the scope set forth in Article III of this Agreement; and (3) EPA has found that the groundwater of such property is unsafe for drinking water purposes,

provided, that the owners of no more than ten (10) properties described in Exhibit 1 or Section 2(b) of this Article shall be permitted to be members of the Association at any one time.

Each member, other than one who is a party hereto, shall be responsible for and bear the costs of connecting such member's property to the water distribution system.

For the purposes of (b)(2) of this Section, the Association shall not unreasonably refuse to accept a deed of other form of conveyance of an easement or right of way from a person attempting to qualify for membership in the Association if such person meets all of the remaining requirements for membership.

ARTICLE III RIGHT OF WAY

A person, other than a party hereto, who wishes to become a member of the Association shall convey to the Association, its heirs, successors and assigns, any necessary easements or rights of way, as described in Article II, Section 2. Such easements or rights of way shall be solely for the purposes of constructing, installing, operating, inspecting, maintaining, repairing, replacing, substituting, relocating and removing a water distribution pipeline and associated equipment to provide clean water for domestic residential use to the persons residing on members' properties. Said easements or rights of way shall include the following rights: (1) to enter upon and pass through any portion of the easement premises, in vehicles or otherwise, for any and all purposes necessary or convenient to the exercise of the rights granted herein; (2) to enter upon said easement premises or the servient properties for the purpose of reading water meters connected to the system; (3) to conduct studies and tests, take samples and perform inspections of any material within the easement premises; (4) to trim, cut, fell and remove any structures or obstacles, natural or man-made, from the premises, with the exception of any trees the circumference of which exceeds twelve (12) inches at the widest cross-section of the trunk, and to excavate and deposit earth, and temporarily place earth, materials and equipment, upon the easement premises, provided that the Association shall, to the greatest extent possible, restore the easement premises to the condition in which they

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existed immediately prior to the exercise of such rights; and (5) to designate any contractor, agent, assignee or employee of the Association to exercise the Association's rights hereunder.

The above-described rights of way shall be assignable together or separately and in whole or in part.

ARTICLE IV BENEFITS OF MEMBERSHIP

A member of the Association shall be entitled to have water for domestic residential use only delivered by the Association via the water distribution system to any property described in Exhibit 1 or Article II, Section 2(b) herein which is owned by that member

ARTICLE IV MAINTENANCE ASSESSMENT

Each member of the Association shall pay to the Association (1) annual assessments or charges and (2) special assessments for capital improvements, in accordance with the terms of the Association's Articles of Incorporation and By-Laws. The assessments levied by the Association shall be used exclusively for the purposes of ensuring the provision of clean water for domestic residential use to the properties owned by the members, including any reasonable costs incurred in connection with the exercise by the Association of the rights conferred hereby and the rights, powers and duties set forth in the Association's Articles of Incorporation and By-Laws. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, except as otherwise provided in this Article. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the owner's successor in title unless expressly assumed.

ARTICLE V RESTRICTION ON USE OF WATER

The water which will be provided by the Association shall be for domestic residential use only. No member shall grant, sell or convey water provided by the Association to any other person who is not a member of the Association, nor shall any member permit the diversion or removal of said water from such member's property except in the event of an emergency.

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ARTICLE VI
RELEASE OF CLAIMS AGAINST EPA

In specific consideration for EPA's efforts to provide an alternative source of water for the benefit of the parties, as described above, and intending to be legally bound hereby, each party hereto voluntarily and knowingly releases EPA, its heirs, successors and assigns, from any and all claims, demands, rights or causes of action of whatsoever kind and nature, known and unknown, which that party may now or in the future have against EPA, arising from or incidental to the construction, installation, operation, inspection, maintenance, removal and/or replacement of any part of the water distribution system referred to herein.

ARTICLE VII
WARRANTY OF TITLE

Each party hereto warrants that such party is the owner of the property which such party is described as owning in Exhibit 1.

ARTICLE VIII
EXECUTION IN COUNTERPARTS

This Agreement and Release may be executed in counterparts by each of the parties hereto and need not be executed by all parties at the same time. The aggregate of all executed counterparts shall constitute the Agreement and Release. The covenants, restrictions, conditions and easements set forth herein shall become effective on the date of execution of the last such counterpart to be executed.

ARTICLE IX
RECORDING

This Agreement and Release shall be recorded in the Office of the Recorder of Deeds for the County of Berks, Commonwealth of Pennsylvania.

ARTICLE X
SEVERABILITY

If any provision of this AGREEMENT AND RELEASE is declared invalid by any tribunal, the remaining provisions shall not be affected thereby and shall remain in full force and effect as if the invalid provision had never been a part hereof.

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IN WITNESS WHEREOF, the undersigned, being the parties herein,
and intending to legally bind themselves, their heirs, successors and
assigns hereby, have set hereunto their hands and seals this ____ day
of _____, 1984.

BALLY BUILDING AND LOAN ASSOCIATION

BY: _____ (Date) _____

ATTEST: _____

(Date)

Wayne Van Elswyck (Date) _____

Joyce Van Elswyck (Date) _____

Donald Leibensperger (Date) _____

Barbara Leibensperger (Date) _____

Louis Cook (Date) _____

Linda Cook (Date) _____

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ARTICLES OF INCORPORATION
LONGSWAMP SUPERFUND WELL ASSOCIATION

In compliance with the requirements of the Pennsylvania Non-profit Corporation Law of 1972, 15 PA. CONS. STAT. §§ 7301 - 7990, the undersigned have this ____ day of _____, 1984, voluntarily associated themselves together for the purpose of forming a nonprofit corporation, and do hereby certify:

ARTICLE I
NAME

The name of the corporation, hereinafter referred to as the "Association", is the Longswamp Superfund Well Association.

ARTICLE II
REGISTERED OFFICE

The registered office of the Association is:

c/o Joyce Van Elswyck
R.D. #1, Box 356 4A
Macungie, Pennsylvania 18062

ARTICLE III
ORGANIZATION

The Association is organized pursuant to the Pennsylvania Nonprofit Corporation Law, 15 PA. CONS. STAT. §§ 7301 - 7990. The Association shall be organized on a non-stock basis. The Association does not contemplate pecuniary benefit or gain, incidental or otherwise.

ARTICLE IV
PURPOSES AND POWERS OF THE ASSOCIATION

The association shall have the authority to exercise any and all powers, rights and privileges which a nonprofit corporation organized under the Pennsylvania Nonprofit Corporation Law of 1972 may now or hereinafter have and which are consistent with the requirements of Section 528 of the Internal Revenue Code, 26 U.S.C. § 528, and regulations thereunder at 26 C.F.R. §§1.528-1 to 1.528-10, for treatment as a "homeowners association."

Without limitation of the foregoing, the Association is specifically authorized to:

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1. operate, maintain and otherwise manage a water distribution system, consisting of wells, pumps, pipeline and associated structures and equipment, which will provide clean water for domestic residential use to persons residing on certain properties owned by members of the Association;
2. to fix, levy, collect and enforce payment of all charges and assessments pursuant to the terms of these Articles and the By-Laws of the Association, and to pay all expenses in connection therewith and all offices and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
3. to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
4. to borrow money, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
5. to execute drafts and negotiable instruments, and to open accounts at any financial institution;
6. to contract for the inspection, maintenance, repair and replacement of the wells, pumps, pipes, tanks and ancillary equipment of the water distribution system;
7. to employ the services of an accountant and legal counsel;
8. to indemnify and hold harmless the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA) against all claims, suits, costs, losses and expenses arising from the construction, installation, operation, inspection, maintenance, repair, removal or replacement of any part of the water distribution system; and
9. to release EPA from all claims which the Association may now or in the future have against EPA, whether known or unknown, arising from or incidental to the activities or events described in Paragraph 8.

The powers described in Paragraphs 2 through 9 of these Articles shall be exercised exclusively in furtherance of the purposes described in Paragraph 1, which shall be the primary purposes of this Association.

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ARTICLE V
MEMBERSHIP

1. A person who is a record owner of a property described in Exhibit 1 hereto shall be a member of the Association for so long as such person is a record owner of any such property or until such person withdraws from membership in accordance with the procedures for withdrawal set forth in the By-Laws.

2. A person other than one described in Paragraph 1 above shall become a member of the Association upon:

- a. demonstrating to the Association that such person is a record owner of a property described in Exhibit 1; or
- b. demonstrating to the Association that (1) such person is a record owner of a property any part of which is located within 1500 feet of the water distribution pipeline or wells installed by EPA; (2) any necessary rights of way in, over, across and through such property and any other property which lies between such property and a point along the water supply pipeline which can be connected to such property has been created in favor of the Association, its heirs, successors and assigns, for the purposes and of the scope set forth in Exhibit 2 hereto, which is incorporated herein by reference; and (3) EPA has found that the groundwater on such property is unsafe for drinking water purposes.

Notwithstanding the foregoing, at no time shall the owners of more than _____ () of the properties described in Exhibit 1 or Section 2(b) of this Article be permitted to be members of the Association.

A member other than one who is an incorporator of the Association shall be responsible for and bear the costs of connection of that member's property to the water distribution system, unless otherwise provided by the Association.

For the purposes of (b)(2) above, the Association shall not unreasonably refuse to accept a deed or other form of conveyance of an easement or right of way from a person attempting to qualify for membership who meets the remaining requirements for membership. withdraws from membership.

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ARTICLE VI
VOTING RIGHTS

A member shall be entitled to one vote for each property owned by such member which is entitled to receive water from the water distribution system. When more than one member owns any such property, the vote for such property shall be exercised as the members who own such property shall among themselves decide, but in no event shall more than one vote be cast with respect to any one property.

ARTICLE VII
BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors, ___ in number, who need not be members of the Association. The number of Directors may be changed by amendment of these Articles.

At the first annual meeting the members of the Association shall elect ___ director(s) for a term of ___ year(s), and ___ director(s) for a term of ___ year(s); and at each annual meeting thereafter, the members shall elect ___ director(s) for a term of year(s).

ARTICLE VIII
OFFICERS

The members of the Association shall meet annually to elect the following Officers who shall have the following authority and perform the following duties in addition to those which may be set forth in the By-Laws:

1. President/Chief Executive Officer - shall read the members' water meters and assess each member his/her/ its pro-rata share of the operation and maintenance costs for the water distribution system, any capital expenses made in connection with the water distribution system, and any other expenses for which a member may be assessed consistent with these Articles, the By-Laws and the Pennsylvania Nonprofit Corporation Law.
2. Secretary/Treasurer - shall keep minutes of all meetings of the members, Directors and Officers and shall invest the funds of the Association in investments approved by the Association in the manner provided in the Association's By-Laws. The Secretary/ Treasurer shall also prepare and file any federal, state and local tax returns of other reports required by law to be filed, and shall provide each member with a statement of that members taxable income from the Association.

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ARTICLE IX
BY-LAWS

The members of the Association may adopt, amend and repeal By-Laws for the Association.

ARTICLE X
MEETINGS OF THE MEMBERSHIP

The members of the Association shall meet once a month for the first twelve months after incorporation. Thereafter, the membership shall meet quarterly on the first day of February, May, August and November, unless notice to the contrary is served by the Secretary/Treasurer upon each member at the member's record address at least 10 days prior to the date on which the meeting would otherwise have taken place.

ARTICLE XI
NOTICES

Each member of the Association shall provide the Secretary/Treasurer with the member's current address, which shall be recorded by the Secretary/Treasurer. Any written notices required by these Articles or the By-Laws to be served on a member shall be served by sending the notice to the member's record address via first class mail, or by telegram, or by personal delivery, unless such notice or form of notice is waived by that member.

ARTICLE XII
QUORUM

The presence of members entitled to cast at least a majority of the votes which all members are entitled to cast shall constitute a quorum.

In the absence of a quorum at a regular meeting at which Directors or Officers are to be elected, the Directors and Officers then in office shall remain in office until such time as a quorum is present at a regular quarterly meeting, at which time elections shall be held.

ARTICLE XIII
LIMITATION ON CORPORATE ACTIVITIES

None of the activities of the Association shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, nor shall this Association participate or intervene in any political campaign on behalf of any candidate for public office.

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ARTICLE XIV
TERM OF EXISTENCE

The term of existence of the Association shall be perpetual.

ARTICLE XV
DISSOLUTION

The Association may be voluntarily dissolved upon the affirmative vote of members representing no less than 75% of the voting power of the Association.

ARTICLE XVI
AMENDMENT OF ARTICLES

Amendment of these Articles shall require the affirmative vote of members representing no less than 75% of the voting power of the Association.

ARTICLE XVII
SEVERABILITY

If any provision of these ARTICLES OF INCORPORATION is declared invalid by any tribunal, the remaining provisions shall not be affected thereby and shall remain in full force and effect as if the invalid provision had never been a part hereof.

ARTICLE XVIII
EXECUTION IN COUNTERPARTS

These Articles may be executed in counterparts by each of the incorporators hereof and need not be executed at the same time. The aggregate of all executed counterparts shall constitute the Articles.

IN WITNESS WHEREOF, for the purpose of forming this Association under the laws of the Commonwealth of Pennsylvania, we, the undersigned, constituting the incorporators of this Association, have executed these Articles of Incorporation this ____ day of _____, 198_.

, Incorporator

, Incorporator

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EXHIBIT 1
INITIAL MEMBERSHIP PROPERTIES

1. All that certain lot or piece of ground known as Lot No. 3 in Glen Arc Subdivision of Longswamp Township, Berks County, Pennsylvania located at the intersection of Benfield Road and Walker Street, said plan of lots being recorded in Plan Book Volume 35, Page 19, Berks County Records.
2. All that certain lot or piece of ground known as Lot No. 4 in Glen Arc Subdivision of Longswamp Township, Berks County, Pennsylvania located at the intersection of Benfield Road and Walker Street, said plan of lots being recorded in Plan Book Volume 35, Page 19, Berks County Records.
3. All that certain lot or piece of ground known as Lot No. 5 in Glen Arc Subdivision of Longswamp Township, Berks County, Pennsylvania located at the intersection of Benfield Road and Walker Street, said plan of lots being recorded in Plan Book Volume 35, Page 19, Berks County Records.
4. All that certain lot or piece of ground known as Lot No. 6 in Glen Arc Subdivision of Longswamp Township, Berks County, Pennsylvania located at the intersection of Benfield Road and Walker Street, said plan of lots being recorded in Plan Book Volume 35, Page 19, Berks County Records.

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EXHIBIT 2
TERMS AND PURPOSES OF EASEMENT

The easement referred to in the foregoing ARTICLES OF INCORPORATION shall be for the purposes of constructing, installing, operating, inspecting, maintaining, repairing, replacing, substituting, relocating and removing a water distribution pipeline in, over, across and through the property described in Exhibit 1 hereto.

Without limitation of the foregoing, the easement shall include the following specific rights:

1. to enter upon and pass through any portion of the easement premises, in vehicles or otherwise, for any and all purposes necessary or convenient to the exercise of the rights described herein;
2. to conduct studies and tests, take samples and perform inspections of any material within the easement premises;
3. to trim, cut, fell and remove from the easement premises any trees, shrubbery, plantings and other vegetation, with the express exception of any trees the trunk circumference of which exceeds twelve (12) inches, measured at the widest cross-section of the trunk, and to remove any structures and obstacles, natural or man-made, from the easement premises in order to exercise the rights described herein, and to excavate and deposit earth, and temporarily place materials and equipment, upon the easement premises, provided that grantee shall, to the fullest extent possible, restore the premises to the condition in which they existed immediately prior to the exercise of such rights; and
4. to designate any contractor, agent, assignee or employee of the grantee to exercise the rights of grantee described herein.

Grantor shall retain the right to use and enjoy the easement premises to the fullest extent possible without unreasonable interference with the exercise by grantee of the rights described herein.

The easement shall be possessed and enjoyed by grantee, its heirs, successors and assigns for so long as the water distribution pipeline and any appurtenances thereto are operated and maintained by grantee, its heirs, successors and assigns.

The easement shall be assignable together or separately and in whole or in part.

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