

American Household, Inc.



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October 7, 2004

Joan Johnson

3RC41

U.S. EPA Region III

1650 Arch Street

Philadelphia, PA 19103 --2029

Lori Kier

3 RC20

U.S. EPA Region III

1650 Arch Street

Philadelphia, PA 19103 - -2029

Re: Emergency Administrative Order On Consent - SDWA -03—2003-0301

Dear Ms. Johnson and Ms. Kier:

Pursuant to our telephone conversation of October 4, 2004, I am writing to provide additional detail with respect to the efforts Sunbeam Products Inc. has made to obtain access to the [REDACTED] South property.

[REDACTED] South had been identified as a potential site for a new municipal well and access was necessary to perform necessary pump tests to confirm its suitability.

As stated in my letter of September 15, 2004, on September 2, 2003, American Household, on behalf of Sunbeam, and the Borough of Bally entered into an access agreement with Benchmark Developers Group and [REDACTED] (co-owners of the property referenced in the access agreement). The purpose of this agreement was to conduct geophysical investigations and to subsequently install a test groundwater well on what is commonly known as the "[REDACTED] South" property. The access agreement had an expiration date of May 2, 2004.

Access was terminated in a letter, dated June 29, 2004, from [REDACTED] counsel for Benchmark Developers Group advising Sunbeam that it would not extend the access agreement. The letter specifically stated that Benchmark Group and the [REDACTED] family "...have chosen not to participate any further in ...efforts to locate a water supply."

After telephone conversations and meetings described in my September 15 letter, Mr. [REDACTED], the principal of Benchmark Developers, advised he would provide access and we sent to him a draft access agreement, attached hereto. Our counsel made several attempts to speak with his counsel regarding the agreement, but got no response. Despite his earlier agreement to cooperate in reaching an access agreement, in a subsequent telephone conversation, Mr. [REDACTED] specifically stated he would not proceed unless the Washington Township "was on board" and he would not consider another access agreement until we had a commitment from the Township that they approved.

Bally communicated with the Township and suggested a meeting. We participated in the meeting among

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██████████ the Township of Washington, the Township Authority, and the Borough of Bally.

The Borough and the Township have a water supply agreement whereby the Borough supplies the Township with water at a rate that is less than Bally charges its own consumers. In addition, the water supply area is referenced in the agreement but the reference is unclear and there was no map attached to the agreement. Bally suggested to the Township that this was an opportunity to clear up the ambiguities in the water supply agreement and renegotiate the water rate for at least a portion of the supply area. The Township indicated that it was also interested in additional sewage capacity, which it obtains from Bally.

During the meeting, it became clear that there were a number of issues which, although extraneous to the issue of access to the site, were impacting positions. In addition, Township supervisors stated that there needed to be sufficient water supplied by the Borough (and therefore Sunbeam) for any future development the Township implemented. Supervisors also expressed concern about redundancy, and other issues which we have been discussing with the Borough. At one point during the meeting, a supervisor suggested the Township would not necessarily sign off on the well location unless all their concerns were addressed. Finally, Mr. ██████████ stated that although he would provide access for the pump test, he would not commit to a permanent access agreement in the event the pump test was successful. Mr. ██████████ has not requested monetary payment for access. However, he has made it clear that there will be conditions, payments or other recompense if the site is selected. He did not identify his requirements. He stated he would not sign the access agreement we had sent to him, which includes a provision for good faith negotiations of a permanent access agreement if the pump test is successful.

Immediately following the meeting, Borough representatives, AHI and Sunbeam discussed the implication of the positions taken by the Township and Mr. ██████████. All parties were concerned that, if the pump test were successful, there would be substantial delay in moving forward in order to negotiate with Mr. ██████████ and the Township the issues of permanent access and other unknown requirements. There was consensus that a more expeditious way of proceeding would be to locate alternative sites for the pump test, and negotiate access agreements that would minimize delay once a well site was found.

Arcadis has identified several potential well sites, and provided that information to the Borough. The Borough has begun to communicate with the landowners in an effort to obtain access to the properties. We are working with the Borough to facilitate this process.

American Household and Sunbeam are committed to completing the FFS as quickly as possible, and to providing the Borough with clean water. Pursuing the ██████████ South property, with all the open and unstated issues raised Mr. ██████████ and the Township present the potential for substantial delays, if not necessitating a future search for alternative sites because of the scope of the demands.

The Borough has recognized these issues and is supportive of the alternative approach of locating additional sites for testing.

AHI and Sunbeam have used their "best efforts" to acquire access to ██████████ South and have been unsuccessful for the long term. We believe that the approach now being followed of identifying additional sites of property owners who do not have the concerns of a major real estate developer will be the most expeditious approach to complying with the terms of the Order.

If you have any questions, please do not hesitate to call me.

Very truly yours,

Lorelei Joy Borland

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PROPERTY ACCESS AGREEMENT

This Property Access Agreement ("Agreement") entered into this ____ day of _____, 2004 by and among Sunbeam Products, Inc. ("Sunbeam"), the Borough of Bally ("Bally"), and _____ ("Owner").

WHEREAS, Sunbeam, a subsidiary of American Household, Inc., is performing a focused feasibility study to identify water supply alternatives for the Bally public water supply system;

WHEREAS, Sunbeam and Bally desire access to the site described in the attached Exhibit A ("Site") for the purposes of investigating the suitability of the Site as the location for a new water supply well system for Bally ("New Well") and, if appropriate, constructing the New Well.

WHEREAS, the activities that constitute the necessary or appropriate work to locate, construct and obtain government approvals for the New Well (collectively the "Work") include, but are not limited, to the following:

- a. geophysical investigation activities including sound wave generation (sledgehammer on metal plate, shotgun charge or similar means) and measurement, and small-diameter borehole advancement to bedrock surface (any borehole created will be completely filled with a bentonite/soil mixture to surface level grade);
- b. installation of a test groundwater well;
- c. installation of the New Well including, without limitation, a borehole, any necessary additional observation or monitoring points, and associated equipment, structures, access and utilities; and
- d. such sampling, tests or other activities as may be required to obtain permits or approvals from any and all governmental agencies with jurisdiction over the New Well;

WHEREAS, a contractor of Sunbeam, ARCADIS G&M, Inc., together with its employees, subcontractors, agents and affiliates ("ARCADIS"), and possibly other contractors or subcontractors of Sunbeam or Bally (collectively with ARCADIS the "Contractors"), have or will be retained to perform the Work at the Site and are granted access to the Site pursuant to the terms of this Agreement;

WHEREAS, Owner is the legal owner of the property identified in Exhibit "A", including the Site, and has the legal authority to grant access as provided in this Agreement;

WHEREAS, Owner desires to facilitate the development of a new drinking water source for the Bally public water supply system and the selection of a location for the New Well by providing access to the Site as provided in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Sunbeam, Bally, and Owner agree as follows:

Site Access. Owner hereby grants permission to Sunbeam, Bally and their respective parent, subsidiary and affiliated corporations, municipal authorities, agents and Contractors, including, but not limited to, ARCADIS, to enter the Site and perform the Work.

Future Agreement. If the New Well is constructed at the Site and Sunbeam, Bally, another governmental entity or an assignee of the foregoing seek to operate the New Well, Owner agrees to negotiate in good faith with the Parties to this Agreement and the operator of the New Well an appropriate agreement allowing the persons identified in paragraph 1 above, and the operator and its contractors, continuing site access, and providing for the permanent operation and maintenance of the New Well in a manner that will satisfy all applicable legal requirements.

Term. Site access as provided in paragraph 1 of this Agreement shall commence on the date of this Agreement and terminate upon completion of the construction of the New Well and the issuance of all required permits and other government approvals relating to the New Well, or upon a determination by Sunbeam not to construct a New Well or not to locate the New Well on the Site. The remaining provisions

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of this Agreement shall survive the expiration of the Term of this Agreement.

Release. As consideration for being afforded access to the Site, Sunbeam and Bally hereby waive, release and discharge Owner from all claims, causes of action, or demands that Sunbeam or Bally now has or may hereafter accrue on account of or in any way growing out of any and all known and unknown, or seen and unforeseen bodily and personal injuries or property damage and the consequences thereof resulting, or which may result, from the presence of Sunbeam, Bally or its agents and Contractors, including, but not limited to, ARCADIS, upon the Site or the use of any equipment or procedures while on, entering or leaving the Site. Claims arising out of any hazardous site conditions known to Owner but not disclosed to Sunbeam, Bally or their agents or Contractors and/or negligence or willful misconduct of Owner are excluded from this Release.

Data and Reports. Owner understands and agrees that Sunbeam, Bally or their respective agents or Contractors, including but not limited to ARCADIS, do not have any obligation or duty to disclose to Owner any information, data, reports or findings resulting from any activities or investigations on the Site.

Cooperation and Communication. Owner agrees to cooperate with Sunbeam and Bally by providing them upon request with access to information available to Owner related to the suitability of the Site as the location of the New Well or to other present or potential groundwater needs in the vicinity of the Site.

Assignability. Owner agrees that Sunbeam and/or Bally may assign their rights and obligations under this Agreement to an affiliated entity without notice to or approval from Owner. This Agreement shall be binding on any assignee of Sunbeam or Bally and on any assignee, purchaser or transferee of any of the rights of Owner with respect to the Site. Owner agrees that before assigning, selling or transferring any of its rights with respect to the Site it will first notify the assignee, purchaser or transferee of this Agreement and secure such person's written commitment to be bound by this Agreement.

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

Entire Agreement. This Agreement is the entire agreement of the undersigned parties with respect to the subject matter hereof, and all prior discussions, drafts, and writings are specifically superceded by this Agreement.

IN WITNESS WHEREOF, Sunbeam, Bally, and Owner have caused this Agreement to be properly executed by authorized officials as of the date written above:

OWNER:

By:

Its: _____

Sunbeam Products, Inc.

By:

Its:

Borough of Bally

By:

Its:

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