

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 11 1990

Pam Hayes
WV DNR
Division of Waste Management
1260 Greenbrier Street
Charleston, WV 25311

RE: JF and M

Dear Ms. Hayes:

Enclosed you will find a copy of an Administrative Order by Consent that EPA entered into with Appalachian Power Company pursuant to Section 106(a) of CERCLA. The Order requires Appalachian Power Company to conduct removal actions at the JF and M Site in Huntington, West Virginia. At the Site are over 1000 PCB capacitors that need to be properly decommissioned and a courtyard that contains PCB contaminated soils. If you assign a member of your staff to this Site, please have him or her coordinate the DNR's interest with, Enforcement Project Manager, Peter Kho.

If you have any questions, please contact Peter Kho. He can be reached at (215) 597-6680.

Sincerely,

Stephen R. Wassersug, Director
Hazardous Waste Management Division

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IN THE MATTER OF:	:	
	:	
JF & M Company Site	:	
	:	
Appalachian Power Company	:	Docket No. <u>III-90-13-DC</u>
	:	
RESPONDENT	:	
	:	
Proceeding Under Sections 106(a)	:	
and 122 of the Comprehensive	:	
Environmental Response, Compen-	:	
sation, and Liability Act of 1980	:	
(42 U.S.C. §§9606(a) and 9622) as	:	
amended by the Superfund	:	
Amendments and Reauthorization	:	
Act of 1986, Pub. L. No. 99-499,	:	
100 Stat. 1613 (1986)	:	

ADMINISTRATIVE ORDER BY CONSENT

The parties to this Administrative Order by Consent (Consent Order or Order) Appalachian Power Company (APC) and the United States Environmental Protection Agency (EPA), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION

1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9606(a) and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), (CERCLA), delegated to the EPA by Executive Order No. 12,580, 52 Fed. Reg. 2923 (1987), and further delegated to the Regional Administrators of EPA. This Order pertains to property located at 1628-1632 Eighth Avenue, Huntington, West Virginia. The property will hereinafter be referred to as "the Site" or "Site", and is further described in Section 3.3 below.

1.2 The Respondent, APC, agrees to undertake all actions required by the terms and conditions of this Consent Order.

1.3 The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 (NCP) and CERCLA.

1.4 The Respondent consents to and will not contest EPA jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site, as hereinafter defined, and to properly dispose of the hazardous substances located there.

III. FINDINGS OF FACT

Respondent neither admits nor denies the following Findings of Fact:

3.1 The Respondent is a corporation organized and existing under the laws of the Commonwealth of Virginia.

3.2 In 1974, the Respondent transferred title to approximately 1000 large high voltage capacitors that did contain or had contained dielectric fluid with polychlorinated biphenyls (PCBs) (PCB capacitors) to Robert Johnson, President of the JF & M Company of Huntington, West Virginia, a sole proprietorship owned and operated by Mr. Johnson. A large high voltage capacitor, as defined in 40 C.F.R. § 761.3 is a capacitor which contains 1.36 kilograms (kgs) or more of dielectric fluid, and which operates above 2,000 volts. JF & M is an active facility in the business of repairing and installing power centers used in coal mining operations.

3.3 The Site is located at 1628-1632 Eighth Avenue in a densely populated commercial/residential area of Huntington, Cabell County, West Virginia. Approximately 16,000 persons live within a one-mile radius. The property occupies about one-half acre and includes three adjoining buildings located on the eastern, southern and western edges of the property. The western edge building is currently an office, the building on the southern perimeter currently houses 1,200 PCB capacitors, some of which are leaking; and the eastern edge building is presently used as a workshop area. A courtyard is enclosed by these three buildings and a public alleyway. The Ohio River is located approximately three quarters of a mile away. (A map of the property is attached as Exhibit A).

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3.4 Respondent arranged for the disposal of the PCB capacitors described in paragraph 3.2 above at the Site and is a generator within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

3.5 On August 23, 1983, EPA TSCA inspector Scott McPhilliamy inspected the Site. Mr. McPhilliamy noted that dielectric fluid had leaked from several of the capacitors which were marked with nameplates indicating the presence of PCBs. He prepared a report on the inspection dated August 31, 1983.

3.6 Virtually all capacitors (large and small) manufactured prior to 1978 were filled with PCB fluid at a concentration near 100 percent. See 40 C.F.R. 37347 (August 25, 1982).

3.7 According to Subpart D of federal regulations relating to PCBs promulgated under authority of the Toxic Substances Control Act, 40 C.F.R. § 761.60, a spill or uncontrolled discharge of PCBs at concentrations of 50 ppm or greater constitutes the disposal of PCBs and therefore is subject to enforcement action pursuant to Section 15 of the Toxic Substances Control Act (TSCA) 15 U.S.C. § 2614.

3.8 On September 14, 1983 EPA's Technical Assistance Team (TAT), on behalf of EPA, inspected the Site and found one PCB transformer and 900 high voltage PCB capacitors, stored on a concrete pad unprotected from the weather. A PCB transformer, as defined in 40 C.F.R. § 761.3, is any transformer that contains 500 ppm PCB or greater. The EPA TAT also sampled some of the soils close to the concrete pad, as well as absorbent material that contained fluids that had leaked from the capacitors.

3.9 The sample results from EPA's September 14, 1983 inspection showed that the absorbent material had a PCB concentration of at least 170,000 ppm. Two soil samples from the courtyard also disclosed concentrations of 660 parts per million (ppm) and 700 ppm PCBs.

3.10 As a result of the EPA inspections in 1983, EPA issued an Administrative Complaint (EPA Docket Number, TSCA-III-057), pursuant to Section 16 of TSCA 15 U.S.C. § 2615 on March 21, 1984. After a hearing, a \$5,502.00 penalty was imposed by the Administrative Law Judge against JF & M. However, the penalty was to be mitigated to zero in exchange for proper disposal of the PCB items, as defined in 40 C.F.R. Section 761.3, and cleanup of the Site by JF & M.

3.11 On August 24, 1984 EPA-TAT again inspected the Site. The TAT found that the capacitors were leaking fluid and that rain water

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was flowing through the capacitors taking with it the absorbent that was used to cleanup leaking PCBs. The TAT also took soil samples from drainage areas at the Site where the PCB contaminated absorbent material had settled. In two soils samples taken from drainage areas on August 24, 1984 by EPA's TAT, PCBs were found in the soils in concentrations of 13,000 ppm and 140,000 ppm.

3.12 On May 20, 1985, sixty days after the Administrative Law Judge's Initial Decision on the Administrative Complaint described in paragraph 3.9 above, JF & M had failed to cleanup the Site and the penalty of \$5,502 was reinstated. This penalty remains unpaid.

3.13 On May 25, 1988, The West Virginia Department of Natural Resources (WVDNR), on behalf of EPA, conducted a Site Inspection at the JF & M Site to investigate the potential for proposing the Site to the CERCLA National Priorities List of hazardous sites. Several drums containing PCBs drained from transformers and capacitors were found along the fence in the courtyard, in addition to the estimated 900 capacitors described in paragraph 3.7 above. Sampling conducted by WVDNR showed PCB concentrations of up to 16,800 ppm in soils in the courtyard.

3.14 On November 7, 1989, EPA-TAT again investigated the Site. The investigation found that since EPA's inspection in May 1988, Mr. Johnson had built a roof over the area where the capacitors were located. Mr. Johnson reports that he did this in response to the TSCA Initial Decision described in paragraph 3.9 above. During this investigation the TAT and the EPA On-Scene Coordinator (OSC) identified approximately 1200 PCB high voltage capacitors each of which contains one to two gallons of PCB dielectric fluid, ten 55 gallon drums containing PCBs that had been drained from transformers, five 55 gallon drums of leaking PCB capacitors and contaminated soils, three 55 gallon drums of an oil and water mixture which are believed to be contaminated with PCBs and six transformers, one of which contains approximately 75 gallons of fluid containing PCBs and five which may each contain approximately 15-20 gallons of fluid containing PCBs. The TAT also collected grab samples from the courtyard, a six inch core sample next to the drums of PCBs in the courtyard, two samples in an alleyway behind the Site, and other samples from a floor drain that eventually drains into the Ohio River and soil adjacent to the backyard gate of the closest residence.

3.15 The sample results from EPA's November 7, 1989 investigation showed the presence of PCBs in concentrations ranging from 200 to 1200 ppm in grab samples from the courtyard at the Site. In the six inch core sample adjacent to the drums of PCB contaminated fluid a PCB concentration of 200 ppm was identified; in the public alleyway PCBs were found in concentrations of 42 ppm and 200 ppm; in the floor drain, sludge with a PCB concentration of 110 ppm was found and in soils adjacent to the backyard gate of

the closest residence a PCB concentration of 14 ppm was found.

3.16 The Site is partially enclosed by a fence on the northern edge. The Site is bordered on the south by a public sidewalk on Eighth Avenue, on the north by a public alleyway, and on the east and west by vacant lots with private residences within 100 feet on either side of the facility. Access to the area is unrestricted through the public alleyway described in paragraph 3.3 above. Surface runoff from the Site is handled by a municipal storm sewer which is directed into the Ohio River.

3.17 PCBs are designated as a hazardous substance (as defined in Section 101(14) of CERCLA) because they are listed at 40 C.F.R. Section 302.4. PCBs have been found to be carcinogenic in experimental studies with test animals and are a suspected human carcinogen. PCBs may enter the body via skin absorption, ingestion and inhalation and bioaccumulate in human and animal tissue in concentrations greater than exposure levels. PCBs can cause liver damage, skin pigmentation and chloracne and are toxic to aquatic life. Moreover, in the past year there have been 12 fires of unknown origin in the vicinity of the JF & M Site. When exposed to heat or flames, PCBs can create dioxins; some of which are known carcinogens, mutagens and/or teratogens, and are several orders of magnitude more toxic than PCBs.

3.18 After reviewing all relevant information, on January 8, 1990, EPA On-Scene Coordinator, Jerry Saseen, in accordance with 40 C.F.R. § 300.65 determined that the PCBs on-Site pose a number of hazards to public health and the environment, including the following:

i. an actual or potential threat of exposure to hazardous substances or pollutants or contaminants by nearby populations, animals, or food chains;

ii. an actual or potential threat of contamination of drinking water supplies or sensitive ecosystems;

iii. an actual or threatened release of hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers;

iv. an actual or potential threat of high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface;

v. increased likelihood of further release and migration of hazardous substances or pollutants or contaminants as a result of substantial rainfall;

vi. a threat of fire or explosion; and

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vii. an increasing potential threat to public health, welfare and the environment as a consequence of the exhaustion of all other appropriate Federal or State response and enforcement mechanisms.

IV. CONCLUSIONS OF LAW

Respondent neither concedes nor contests the following Conclusions of Law:

4.1 The JF & M Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

4.2 The Respondent is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

4.3 PCBs are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14) because they are listed in 40 C.F.R. § 302.4. PCBs have been disposed of at the Site, and are currently present there.

4.4 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

4.5 The Respondent arranged for disposal of hazardous substances with Mr. Robert Johnson, the owner and operator of JF & M Company, and is liable under Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3) for cleanup of the Site.

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors, and assigns and

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upon all persons, contractors and consultants acting under or for either the Respondent, or EPA or any combination thereof. No change in ownership or corporate or partnership status of the Respondent will in any way alter the status of the Respondent or its responsibilities under this Consent Order.

6.2 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order, and shall condition such contracts on compliance with the terms and conditions of this Order.

6.3 Each of the undersigned representatives of Respondent certifies that he or she is fully authorized to enter into the terms of this Order and to execute and legally bind Respondent to this Consent Order.

VII. NOTICE TO THE STATE

7.1 Notice of issuance of this Order has been given to the State of West Virginia, pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

VIII. WORK TO BE PERFORMED

8.1 All actions taken under this Order shall be accomplished in a manner which complies with the requirements of all applicable local, state and Federal laws and regulations, as required by the NCP, including but not limited to EPA's Toxic Substances Control Act (TSCA) 15 U.S.C. Section 2601 ~~et seq.~~ and regulations promulgated thereunder.

8.2 Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), Respondent is ordered to and hereby agrees to commence and complete performance of the following measures within the time periods specified.

8.3 Within ten (10) business days of the effective date of this Order, Respondent shall retain a qualified contractor to conduct the necessary response activities identified in this Order. Prior to the initiation of Site work, Respondent shall notify EPA in writing regarding the identity and qualifications of the person or persons who will be primarily responsible for carrying out the terms of this Order. All supervisory personnel, contractors and/or subcontractors performing cleanup activities at the Site shall meet the necessary Occupational Safety and Health Administration (OSHA) requirements as defined in 29 C.F.R. §1910.120. The supervisory personnel, contractors, and subcontractors are subject to approval by EPA. EPA may

disapprove the use of any supervisory personnel, contractor and/or subcontractor if EPA believes they are not qualified to perform the response work. In the event of a disapproval by EPA, Respondent shall notify EPA within five (5) days of receipt of EPA disapproval of the supervisory personnel, contractor or subcontractor who will replace the one disapproved by EPA.

8.4 Within ten (10) business days of the effective date of this Order, Respondent shall submit a Work Plan (WP) to the EPA for immediate response measures to be implemented at the Site and shall include a schedule of operations for expeditious performance of the work. The WP shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below. The following are the minimum specific actions that are to be detailed in the WP:

a. A Site Health and Safety Plan (Safety Plan) to protect the health of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the work specified herein;

b. A plan to maintain site security;

c. A plan to overpack all capacitors, and properly prepare for shipment in accordance with Department of Transportation (DOT) drums and transformers on-Site, within 14 days from the effective date of this Order or 10 days after approval of the Work Plan, whichever is later;

d. A plan to identify, segregate and deliver for proper disposal to an EPA-approved disposal facility the capacitors on-Site, any drums of PCB transformer fluid and drums containing fluids or debris contaminated with PCBs within 60 days of entering into this Order or 30 days after EPA approval of the Work Plan, whichever is later;

e. A plan to identify the full extent and depth of PCB contamination in the capacitor storage area floor, courtyard and public alleyway behind the JF & M Site, to be executed within 60 days of approval of the WP; (See Exhibit A)

f. A plan to excavate and dispose of any soils or materials contaminated with PCBs on-Site and off-Site identified as a result of the sampling to be conducted pursuant to subparagraph (e) above, within 60 days of receiving the sampling results. All cleanup levels should be at least as stringent as the levels identified in the TSCA PCB Spill Cleanup Policy, 40 C.F.R. Part 761 Subpart G;

g. A plan to remove and properly dispose of or treat contaminated water and materials, including but not limited to that which is generated as a result of cleanup activities on-Site;

h. A plan to perform an effectiveness of removal sampling survey to confirm that contaminant levels are not present above levels set forth in EPA's PCB Spill Cleanup Policy or a less stringent level if agreed to by EPA pursuant to the approval

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provisions of this Consent Order;

i. A plan and schedule for the additional removal of PCB contamination if necessary after receipt of the effectiveness of removal sampling survey;

j. Obtain a Hazardous Waste Generator Identification Number;

k. A plan to reclaim the excavated areas of the Site;
and

1. An expeditious schedule for implementation of the WP.

8.5 The EPA shall review the WP and notify the Respondent of EPA's approval or disapproval of the WP. In the event of disapproval, the EPA shall specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the WP to EPA within five (5) business days of receipt of EPA disapproval. Approval, disapproval and/or modification by EPA of the subsequent WP submission shall be according to the provisions of Paragraph 8.9 below.

8.6 Within five (5) business days of receipt from EPA of written approval of the WP, the Respondent shall begin implementation of the WP in accordance with the WP and the schedule therein, and shall further conduct and complete the actions required in the WP in accordance with the approved WP and schedule therein.

8.7 Beginning (14) fourteen calendar days subsequent to the date of receipt of EPA approval of the WP and continuing until EPA advises Respondent that the work is complete, the Respondent shall provide EPA with a progress report for each preceding 14 day period. The progress reports shall include, at a minimum: 1) a description of the actions that have been taken toward achieving compliance with this Order; 2) a description of all data anticipated and activities scheduled for the next 14 days; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the work plan made in accordance with Section XVIII to this Order, during the reporting period.

8.8 Documents, including work plans, reports, sampling results and other correspondence to be submitted pursuant to this Order shall be sent certified or express mail to the EPA Project Coordinator, designated pursuant to Paragraph 9.1.

8.9 All reports, plans, specifications, schedules and attachments required by this Order are subject to EPA approval and shall be incorporated into this Order upon approval by EPA. In the event that EPA disapproves any required submission, EPA shall specify the deficiencies in writing. Within five (5) business days of receipt of EPA disapproval, Respondent shall

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amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA retains the right to submit its own modifications to the Respondent and require the Respondent to implement such modifications, or to perform the response action and seek reimbursement of its costs from Respondent and/or take any other action authorized by law. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments or non-compliance with EPA-submitted modifications in the case of subsequent disapprovals as specified in this paragraph shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance shall be made by EPA.

8.10 Respondent shall provide to EPA upon request any and all information resulting from and/or pertaining to action taken by Respondent pursuant to this Order including, but not limited to, analytical data, Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), identities of treatment, storage and/or disposal facilities used, identities of transporters used, and identities of any contractors and subcontractors used. Nothing herein shall be interpreted as limiting the inspection authority of EPA under Federal law.

8.11 Within ten (10) calendar days of the completion of all of the actions required in the approved WP, Respondent shall submit a written report to EPA detailing the actions taken, and notifying EPA of such completion. EPA shall inspect the Site for adequacy of Respondents' performance of such actions. EPA shall notify Respondent, in writing, of any deficiencies and the actions required to correct these deficiencies at the Site. Such required actions shall be consistent with the NCP and all applicable Federal laws or regulations. Respondent shall take the necessary corrective measures to address any deficiencies identified by EPA.

8.12 Respondent shall not remove any waste materials from the Site, except in conformance with the terms of this Order and any applicable Federal, state or local laws or regulations.

IX. DESIGNATED PROJECT COORDINATORS

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9.1 On or before the effective date of this Consent Order, EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. The Respondent shall notify EPA of its designated Project Coordinator no later than

five (5) days after the effective date of this Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators by Certified mail.

9.2 The Project Coordinator for EPA is:

Peter Kho
U.S. Environmental Protection Agency
Removal Enforcement and Title III Section
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-9800

The designated Project Coordinator for Respondent is:

Thomas C. Schmaltz, Ph.D.
Appalachian Power Company
Environmental Affairs Department
P.O. Box 2021
Roanoke, VA 24022

9.3 EPA and the Respondent shall each have the right to change their respective Project Coordinator(s). Such a change shall be accomplished by notifying the other party in writing at least five (5) days prior to the change.

9.4 The EPA-designated Project Coordinator and/or EPA's On-Scene Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. §300.65(b). The absence of the EPA Project Coordinator or On-Scene Coordinator from the Site shall not be cause for the stoppage or delay of work. 900919

X. QUALITY ASSURANCE

10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

11.1 To the extent that property wherein activities must be undertaken pursuant to the terms and conditions of this Order is presently owned or controlled by parties other than Respondent to this Consent Order, the Respondent will use its best efforts to obtain Site access arrangements from the present owners within five (5) days of the effective date of this Order. Such agreements shall provide reasonable access for EPA, and the Respondent and their authorized representatives, including for those activities outlined in 11.2 below. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA, within five (5) days of the failure to obtain access. The Respondent shall also notify EPA of all efforts to obtain such agreements. EPA may then take steps to provide such access.

11.2 EPA and/or its authorized representatives shall have the authority to enter and freely move about the Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection or information gathering authority of EPA under Federal law.

XII. DISPUTE RESOLUTION

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12.1 If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action.

12.2 EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this section XII.

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

13.1 For each day or portion thereof that the Respondent fail(s) to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substance Superfund. Checks shall be addressed to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

Payment shall be made by cashier's or certified check within thirty calendar days of receipt of demand pending the outcome of dispute resolution. A copy of the transmittal letter shall be sent to the EPA Project Coordinator. A copy of the transmittal letter and check shall be sent to: EPA Region III Hearing Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

13. Stipulated penalties shall accrue in the amount of \$3,000 per calendar day per violation. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order.

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XIV. FORCE MAJEURE

14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such

notification shall be made verbally as soon as possible but not later than two (2) days after any such delay or anticipated delay and in writing no later than seven (7) days after any Respondent becomes aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent if appropriate, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

14.2 Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, that cannot be overcome by due diligence, the schedule affected by the delay shall be extended for a period necessary to complete the work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

14.3 Failure of the Respondent to comply with the notice requirements of paragraph 14.1 above shall constitute a waiver of the Respondent's right to invoke the benefits of this section with respect to that event.

14.4 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Paragraph XII of this Consent Order, "Dispute Resolution". 00222

14.5 The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid and minimize delay.

XV. RESERVATION OF RIGHTS

15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights and defenses it may have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and the imposition of statutory penalties.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of work performed by the Respondent and reserves its right to request or require that the Respondent perform response actions in addition to those required by this Order. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred.

XVI. OTHER CLAIMS

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

16.3 By consenting to the issuance of this Consent Order the Respondent waives any claim to reimbursement it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

XVII. OTHER APPLICABLE LAWS

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17.1 All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations, as

required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

18.1 The effective date of this Consent Order shall be the date on which a signed copy is received by Respondent.

18.2 This Consent Order may be amended by mutual agreement of EPA, and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the WP and schedule approved pursuant to this Order may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII "Delay in Performance and Stipulated Penalties", above. Determinations of non-compliance shall be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

100224

19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out

activities pursuant to this Order.

XX. REIMBURSEMENT OF COSTS

20.1 After the completion of the work required pursuant to this Consent Order, EPA shall submit to Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents, or contractors in connection with EPA's oversight of the work to be done by Respondent and its contractors under the terms of this Consent Order. Respondent is not obligated to pay any oversight costs which are inconsistent with the NCP.

20.2 Respondent shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the EPA Hazardous Substances Superfund. Checks shall specifically reference the Site and shall be addressed as specified in Section XIII of this Order.

XXI. CERTIFICATION OF COMPLIANCE

21.1 Any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Consent Order, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondents' compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by a responsible official of Respondent.

21.2 The certification of the Respondents required by paragraph 21.1 of this Consent Order shall be in the following form:

"I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete to the best of my knowledge following thorough inquiry."

100225

Signature: _____
Name(print): _____
Title: _____

XXII. CALCULATION OF TIME

22.1 Any reference to "days" in this Order shall mean calendar

days, unless otherwise specifically provided herein.

XXIII. TERMINATION AND SATISFACTION

23.1 The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed.

BY: H. E. Rhodes, Jr.
Name: H. E. Rhodes, Jr.
Title: Vice President, Operations
Appalachian Power Company

DATE: March 29, 1990

BY: Edwin B. Erickson
Edwin B. Erickson
Regional Administrator
Region III
U.S. Environmental Protection Agency

DATE: April 10, 1990

100226

EXP. A

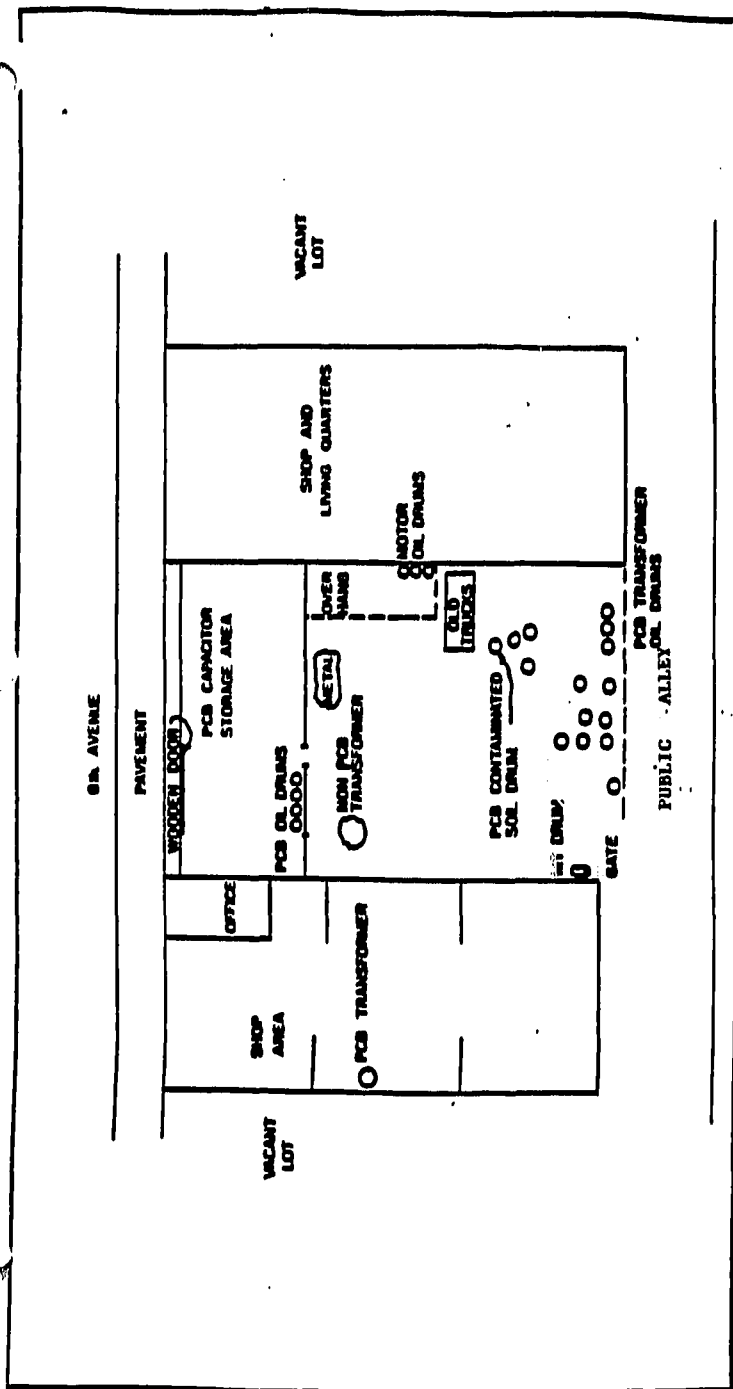


FIGURE-2



SITE SKETCH
JFB M CO.
(NO SCALE)

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