

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
FRANKFORT DIVISION**

UNITED STATES OF  
AMERICA

Plaintiff,

v.

U.S. ECOLOGY, INC., *et al.*,

Defendants.

CASE NO. 3:95-cv-00058-JMH

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of October, 2012, I caused true and correct copies of the foregoing:

**Notice of Minor Modification To Consent Decree**

**Exhibit A to Notice of Minor Modification To Consent Decree**

to be served on the following parties, by placing said documents for delivery via U. S.

Mail, postage prepaid, addressed as follows:

As to the Settling Private Parties:

Lee B. Zeugin  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

and

Nicole L. Barkasi  
de maximis, inc.  
450 Montbrook Lane

Knoxville, TN 37922

As to the Commonwealth of Kentucky:

Bruce Scott, Commissioner  
Kentucky Department for Environmental Protection  
300 Fair Oaks Lane  
Frankfort, Kentucky 40601

and, to be served on the following parties, by placing the documents in interoffice mail, as follows:

As to the Settling Federal Agencies:

Chief  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Dated: October 17, 2012

Respectfully submitted,

/s/ Andrew W. Ingersoll  
ANDREW W. INGERSOLL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
United States Department of Justice  
P.O. Box 7611  
Washington, DC 20044  
(202) 305-0312 (telephone)  
andrew.ingersoll@usdoj.gov

Counsel for Plaintiff  
United States of America

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**Notice of Minor Modification  
To Consent Decree**

*NO ACTION REQUIRED*

Plaintiff the United States of America and Defendant the Commonwealth of Kentucky (the "Commonwealth") hereby file this Notice of Minor Modification to the Consent Decree entered by this Court on April 18, 1996. That Consent Decree (ECF No. 8) resolved liability arising out of contamination at the Maxey Flats Disposal Superfund Site (the "Site"), a low level radioactive waste site in Fleming County, Kentucky. In 1986, the United States Environmental Protection Agency ("EPA") placed the Site on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. 9601 *et seq.* (*id.* at Para. G), and, in 1991, EPA issued its Record of Decision (*id.* at para. K and at Appendix A) detailing the remedial action to be taken at the Site.

The actions contained in the Record of Decision became embodied in the Statement of Work ("SOW") appended to the Consent Decree (*id.* at Appendix B). Section III of that

document, titled "Remedy Components," addressed initial remedial measures to be taken at the site including, at Subsection C, "Access Control, Security and Notification." Among the measures to be taken to prevent inadvertent intrusion into the site is the establishment of a physical buffer zone through acquisition of adjacent property. (SOW at p. 16.) Additionally, Section IV of the SOW, titled "Interim Maintenance Period, Final Closure Period, and Associated Remedial Activities," specifies tasks to be completed for the remainder of the Site cleanup period, which is envisioned to last at least 100 years until completion. Included among the work is installation of a final cap and burial of remaining Site waste and debris. (SOW at p. 36.)

As shown in the "Modification to the Statement of Work for Remedial Design/Remedial Action, Maxey Flats Disposal Superfund Site, Fleming County, Kentucky," attached as Exhibit A hereto ("Agreement"), the Agreement modifies the SOW to reflect the acquisition, by the Commonwealth, of certain real property adjacent to the Site to effectuate the SOW's purposes of controlling site access, ensuring Site security, and to provide a soil borrow sources for construction of the final cap. The Agreement is needed because the original SOW did not specifically contemplate purchase of the three parcels to be purchased by the Commonwealth.

The Agreement is expressly authorized by the Consent Decree filed in this case, at Paragraph 146, that provides in part: "Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA and the Settling Parties that are performing or paying for the affected obligation after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification." Parties to the Consent Decree were provided notice of this filing, and therefore of the Agreement, consistent with Paragraph 140 of the Consent Decree, as shown in the attached Certificate of Service.

Notice of the Agreement is provided for the Court's information only. No action by the Court is requested or required.

Dated: October 17, 2012

Respectfully submitted,

/s/ Valerie K. Mann  
VALERIE K. MANN  
Trial Attorney  
ANDREW W. INGERSOLL  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
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Counsel for Plaintiff United States of America



# Exhibit A

Modification to the Statement of Work for RD/RA  
Maxey Flats Disposal Superfund Site  
Fleming County, Kentucky

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

**MODIFICATION TO THE**  
**STATEMENT OF WORK FOR REMEDIAL DESIGN/REMEDIAL ACTION**  
**MAXEY FLATS DISPOSAL SUPERFUND SITE**  
**FLEMING COUNTY, KENTUCKY**

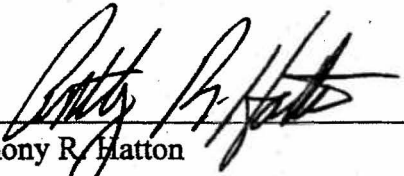
1. On April 18, 1996, the United States, on behalf of the United States Environmental Protection Agency (EPA), entered into a Consent Decree with the Commonwealth of Kentucky (“the Commonwealth”) for the Remedial Design/Remedial Action at the Maxey Flats Disposal Superfund Site (Site), *United States v. U.S. Ecology, Inc., et al.*, Civil Action No. 95-58 (E.D. Ky), under which the Commonwealth agreed to perform and finance certain aspects of the Work including the “Balance of Remedial Phase” (BoRP) in accordance with the Consent Decree and Statement of Work (SOW).
2. Section IV of the Consent Decree defines the BoRP as that portion of the remedy for the Site described in Tasks IV and V of Section IV of the SOW, attached as Appendix B to the Consent Decree, and which is equivalent to the tasks comprising the “Interim Maintenance Period” (IMP) and “Final Closure Period” (FCP) as described in the Record of Decision (ROD). The Consent Decree further defines the FCP as that portion of the remedy described in Section IV, Task IV.B. of the SOW and identified as the Final Closure Period in the ROD.
3. Pursuant to Section XXXIV Paragraph 146 of the Consent Decree, modifications to the SOW that do not materially alter the document may be made by written agreement between EPA and the Settling Parties that are performing or paying for the affected obligation after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification.
4. Pursuant to Paragraph 146 of the Consent Decree, EPA and the Commonwealth hereby modify the SOW as follows:
  - a. Figure 1 as attached to this Modification is hereby appended to the SOW as page 61.
  - b. The second page of the “Table of Contents” to the SOW is modified after the last line reading “Summary of Major Deliverables” to add the following line:  
**“Figures ..... 61”**



- c. Section III (REMEDY COMPONENTS), Paragraph C.1.b. on page 16 in the SOW is modified to add the following underlined text: “Acquisition and establishment of a buffer zone adjacent to the Site, as described more fully in Section 10.0 of the ROD, **and acquisition of the three land parcels identified on Figure 1 as the ‘Proposed Properties’ numbered parcels 1, 2, and 3;**”
  - d. The first full paragraph on page 35 in the SOW following the heading “Task IV - Interim Maintenance Period, Final Closure Period, and Associated Remedial Activities” is modified to add the following underlined text: “The remainder of the selected remedy includes the Interim Maintenance Period and Final Closure Period, collectively referred to as the Balance of Remedial Phase (BoRP). The BoRP contains two separate and distinct periods of action: 1) an Interim Maintenance Period (IMP), which commences upon issuance of the Certificate of Completion for the IRP and ends when EPA concludes, in consultation with the Commonwealth, that the trench stabilization criteria have been achieved. The IMP includes initial cap maintenance, trench leachate management, installation of a horizontal flow barrier, if necessary, and site maintenance and monitoring; and, 2) a Final Closure Period (FCP), which commences upon EPA determination that the trench stabilization criteria, as defined in the IMP Work Plan, have been achieved and concludes when EPA issues the Certificate of Completion for the BoRP. The FCP includes installation of the final cap, burial of remaining Site waste and debris, **and the Commonwealth’s acquisition of the three additional land parcels identified on Figure 1 as the ‘Proposed Properties’ numbered parcels 1, 2, and 3 for purposes of access control, Site security, and for soil borrow source for construction of the final cap.**”
5. All terms and conditions of the Consent Decree and SOW, except as modified herein, shall continue in full force and effect.
  6. By executing this Modification, the Commonwealth acknowledges that it has had reasonable opportunity to review and comment on the modifications to the SOW as described in Paragraph 4 above.
  7. The Effective Date of this Modification shall be the date upon which EPA has fully executed this Modification.

THE UNDERSIGNED PARTY enters into this Modification to the Statement of Work, Appendix B to the Consent Decree for Remedial Design/Remedial Action at the Maxey Flats Disposal Superfund Site, Fleming County, Kentucky, Civil Action No. 95-58 (E.D. Ky, April 18, 1996).

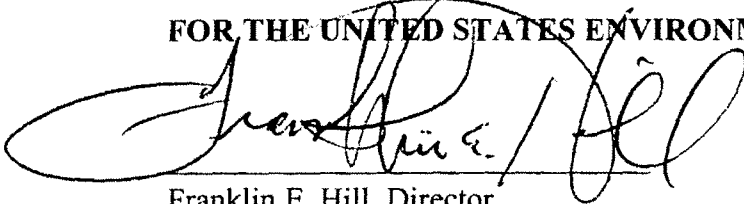
**IT IS SO AGREED:  
FOR THE COMMONWEALTH OF KENTUCKY**

  
\_\_\_\_\_  
Anthony R. Hatton  
Director of Division of Waste Management  
Kentucky Energy and Environment Cabinet

8/28/12  
Date

THE UNDERSIGNED PARTY enters into this Modification to the Statement of Work, Appendix B to the Consent Decree for Remedial Design/Remedial Action at the Maxey Flats Disposal Superfund Site, Fleming County, Kentucky, Civil Action No. 95-58 (E.D. Ky, April 18, 1996).

**IT IS SO AGREED:  
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

A large, stylized handwritten signature in black ink, appearing to read "Franklin E. Hill".

Franklin E. Hill, Director  
Superfund Division  
U.S. EPA Region 4

9/19/2012

Date

## ATTACHMENTS

**Figure 1: Map of “Proposed Properties” Parcels 1, 2 and 3**

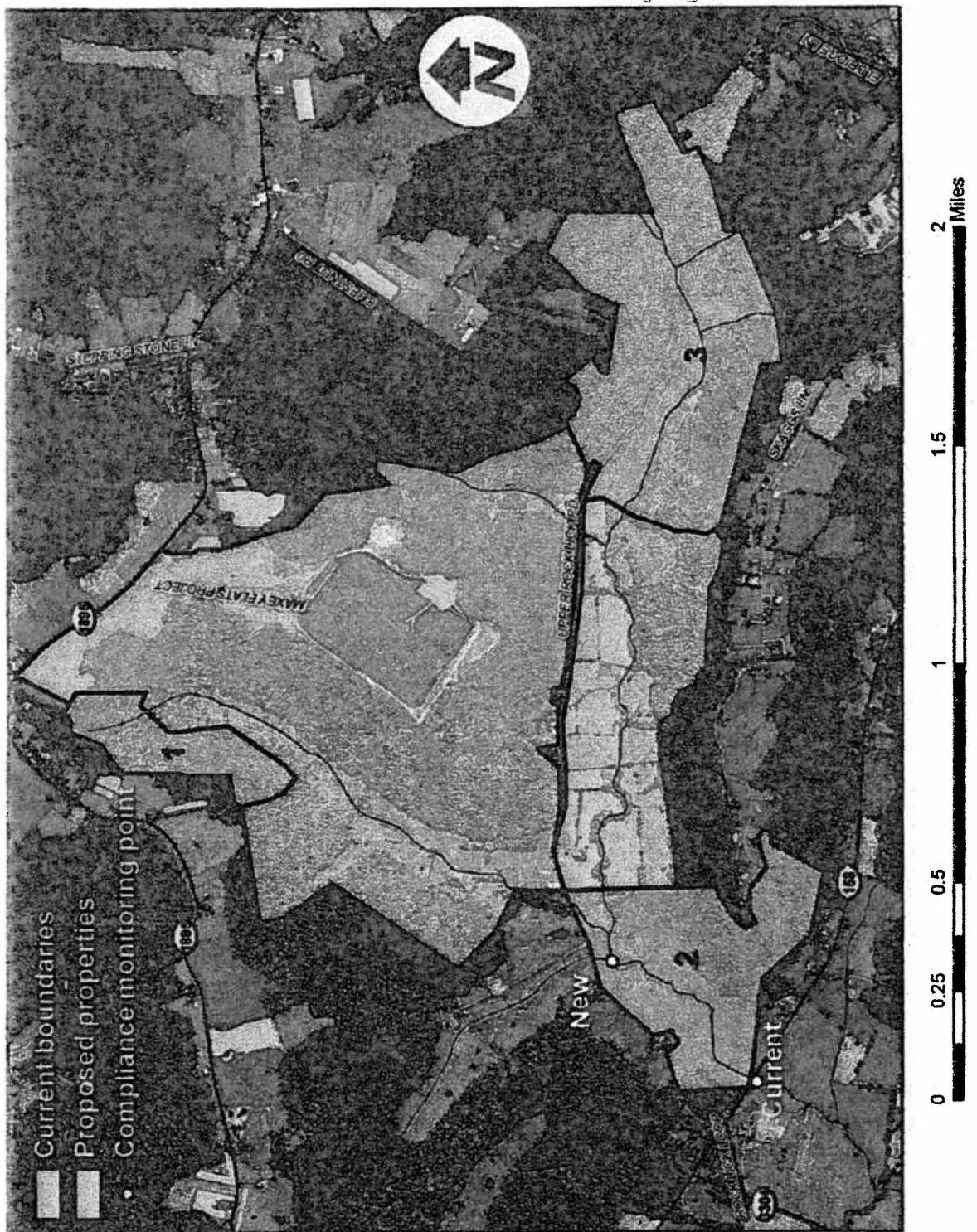


FIGURE 1

