



U. S. ENVIRONMENTAL PROTECTION AGENCY – REGION I
ONE CONGRESS STREET, SUITE 1100 (MAIL CODE SES)
BOSTON, MA 02114-2023

FEB 01 2005

VIA FAX AND FIRST CLASS MAIL

January 25, 2005

Peter M. Lawrence, Esq.
Barr, Sternberg, Moss
507 Main Street
Bennington, VT 05201

FEB 31 8 44 AM '05
ENVIRONMENTAL PROTECTION AGENCY

Re: Burgess Brothers Superfund Site/Institutional Controls

Dear Mr. Lawrence:

Under cover letter dated January 7, 2005, you submitted a revised draft of a Grant of Environmental Protection Easement and Declaration of Restrictive Covenants (the "Grant") for the Burgess Brothers Superfund Site.

Please be aware that EPA and the State of Vermont approve this draft of the Grant. As required by the Consent Decree for the Site, please have your client execute and record the Grant and the two plans. After recording, you should submit to both agencies a final updated and signed title report (updated through the date and time of recording and showing no new adverse interests). Also submit to both agencies a copy of the final recorded Grant with evidence of recording in both Bennington and Woodford.

Please record the Grant as soon as possible, but no later than February 11, 2005. Final title evidence and a copy of the final recorded Grant should be submitted to both agencies by March 1, 2005.

We appreciate your attention to this matter. Please call with any questions: 617-918-1893.

Sincerely,

John W. Kilborn
Senior Enforcement Counsel

cc: Cindy Catri (EPA)

BARR STERNBERG MOSS LAWRENCE SILVER
SALTONSTALL & SCANLON, P.C.

January 7, 2005

John W. Kilborn
U.S. Environmental Protection Agency
Region One, One Congress St.
Suite 11 (Mail Code SES)
Boston, MA 02114-2023

RECEIVED
MANAGEMENT
JAN 11 10 06 AM '05

Re: Burgess Brothers Superfund Site/Institutional Controls

Dear Mr. Kilborn:

Based on our conversation enclosed please find the revised Grant of Environmental Protection Easement and Declaration of Restrictive Covenants. Please contact our office once you have had a chance to review the changes and we will then contact Mr. Burgess to have him come in and sign the documents.

Also enclosed are the two (2) revised Title Opinions. The only changes made to these opinions were the tax amount updates and that they have been paid into 2005. Also we corrected 1(c) of the Woodford Title Opinion to correctly identify it as the Town of Woodford.

Thank you.

Sincerely,



Peter M. Lawrence

PML/tas
enclosure

cc: Geoff Siebel w/copies
Penny Burgess w/copies
Erick Titrud w/copies

PATRICIA A. BARR (1950-2003) ROLF M. STERNBERG* NEIL S. MOSS PETER M. LAWRENCE
DAVID F. SILVER* STEPHEN L. SALTONSTALL** ROBERT P. SCANLON MELANIE J. HOGG***

507 MAIN STREET BENNINGTON VERMONT 05201 802-442-6341 TELEFAX 802-442-1151
E-mail: mail@benningtonattorneys.com *Also admitted in New York **Also admitted in Massachusetts
*** Also Admitted in North Carolina

**GRANT OF
ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Grant of Environmental Protection Easement and Declaration of Restrictive Covenants ("Grant") is made this day of , 2005, by and between CLYDE G. BURGESS, JR., an individual owning property in the Towns of Bennington and Woodford, County of Bennington, State of Vermont (hereinafter, INCLUDING HIS HEIRS, SUCCESSORS, AND ASSIGNS, "Grantor"), and the SECRETARY OF THE AGENCY OF NATURAL RESOURCES OF THE STATE OF VERMONT (hereinafter, including its successors and assigns, "Grantee"), with a place of business in Waterbury, in the County of Washington and State of Vermont.

WITNESSETH:

2. WHEREAS, Grantor is the legal title holder in fee simple of a parcel of land located in the Towns of Bennington and Woodford, County of Bennington, State of Vermont, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property contains the Burgess Brothers Superfund Site (defined below), which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9605, placed on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989; and

4. WHEREAS, in a Record of Decision dated September 25, 1998 (the "ROD"), the Director of the Office of Site Remediation and Restoration, EPA Region 1, selected a remedial action for the Site that provides for the following actions (the "Remedial Action"):

- a. A multi-barrier cap over the former landfill area (as described in the ROD).
- b. A cap over the soils in the marshy area (as described in the ROD) located southeast of the landfill area.
- c. Hot spot treatment of the former lagoon cells within the landfill area using a soil-vapor extraction ("SVE") and air sparging system.
- d. Natural attenuation of contaminated groundwater beyond the area of influence of the SVE and air sparging system.

e. Institutional controls to prevent the use of contaminated groundwater, to protect the capped areas, and to inform future purchasers of the Property of the institutional controls;

f. Long-term monitoring of site groundwater, surface water, and sediments to evaluate the overall effectiveness of the remedy; and

g. A review of the Site every five years to ensure that the remedy continues to protect human health and the environment; and

5. WHEREAS, under the terms of a Consent Decree, dated September 9, 1999 entered into, by and between Grantor, Burgess Brothers, Inc., Eveready Battery Company, The Grantee, and the United States, Civil Action No. 2:99-cv-194 (the "Consent Decree"), Grantor, together with the other settling defendants named in the Consent Decree, agreed to perform the Remedial Action identified in the ROD in order to protect public health and welfare and the environment from the actual or threatened release of hazardous substances at or from the Site.

6. WHEREAS, pursuant to the terms of the Consent Decree, the Grantor agreed (i) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating and monitoring the Remedial Action; and (ii) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

7. WHEREAS, the following terms as used herein shall be defined as follows:

a. The "Environmental Restriction Area" shall mean that portion of the Property as described in Exhibit B and as shown on a plan titled "Burgess Brothers Groundwater Reclassification Boundary" dated April 12, 2004 by Sitelines to be recorded herewith.

b. The "Site" shall mean the Burgess Brothers Superfund Site, encompassing approximately three acres, located at RR #3 between Burgess Road and the Walloomsac Brook located in the Towns of Woodford and Bennington, Vermont, and described generally on the map attached as Appendix C.

c. The "Landfill Cap Area" shall mean that portion of the Property as described in Exhibit B and as shown on a plan titled "Burgess Brothers Superfund Site Landfill Perimeter Fence" dated November 12, 2004 by Sitelines to be recorded herewith.

8. WHEREAS, Grantor agrees to grant the following easements, rights, obligations, and restrictions, as more particularly set forth below, to the Grantee;

NOW, THEREFORE;

9. Grant: Grantor, on his behalf, and on behalf of his heirs, successors, and assigns, in consideration of the terms of the Consent Decree, does hereby subject the Property to the restrictions on use set forth below, and does remise, release and forever quit claim to the Grantee, and its successors and assigns, (i) the perpetual right to enforce said use restrictions, and (ii) an environmental protection easement of the nature and character, and for the purpose hereinafter set forth, with respect to the Property.

10. Purpose: The purpose of this instrument is to give the Grantee the right to limit certain uses of the Property to reduce the risk that contaminants on the Property may pose to human health and the environment and to give Grantee a right of access to the Property for the purposes described below.

11. Declaration of Restrictive Covenants: The following covenants, conditions, and restrictions apply to the use of the Environmental Restriction Area, run with the land, and are binding on the Grantor and all other persons. Grantor shall neither perform, nor suffer, allow or cause any other person to perform, any of the following activities or uses in, on, upon, through, over or under the Environmental Restriction Area:

a. No use shall be made that disturbs the integrity or performance of any of the layers of the cap, any surface water diversion systems or swales, the landfill gas collection system, the SVE and air sparging system, or any other structure or system for maintaining the effectiveness of the Remedial Action, whether in place now or in the future. No use shall be made that disturbs the function of any monitoring well or other system for monitoring any response action.

b. Groundwater shall not be used in any manner, including, but not limited to, use as a drinking water supply, and no water supply or other groundwater well shall be installed, except for groundwater monitoring wells installed pursuant to plans approved in writing in advance by Grantee and the EPA.

c. No excavation, digging, drilling, or other intrusive activity into or disturbance of the soil.

d. No use shall be made that in any manner would interfere with or adversely affect the integrity or protectiveness of the Remedial action.

e. The Environmental Restriction Area shall be used solely for industrial and commercial purposes, unless other uses are approved in writing in advance by Grantee and the EPA.

12. Permitted Uses: Grantor may perform, suffer, allow or cause any person to perform the following activities and uses in, on, upon, through, over or under the Property:

a. Notwithstanding the provisions of Paragraph 11.c, in the portion of the Property outside boundaries of the "Landfill Cap Area," Grantor is expressly permitted to (i) store or stage materials, including without limitation, soil, and (ii) to construct buildings on the surface grade that do not contain subsurface basements, provided such activities shall not violate any other restriction established hereunder or interfere with or adversely affect the integrity or protectiveness of the Remedial Action. Grantor shall give Grantee and EPA at least thirty (30) days advance written notice of the construction of any building in the Environmental Restriction Area.

b. Notwithstanding the provisions of Paragraph 11.c., Grantor is expressly allowed to conduct soil and groundwater sampling and monitoring, provided that such sampling and monitoring has been approved in advance by the EPA, with reasonable opportunity for review and comment by the Vermont Department of Environmental Conservation.

13. **Emergency Excavation:** If it becomes necessary to excavate a portion of the Environmental Restriction Area in response to an emergency such as fire or flood, the Restrictive Covenants of Paragraph 11 above, which would otherwise restrict excavation, shall be suspended with respect to such emergency excavation for the duration of such emergency, provided that Grantor:

a. Orally notifies the Grantees' Project Coordinator and EPA's Project Coordinator, or, in his or her absence, EPA's Alternate Project Coordinator (as such coordinators are described in the Consent Decree), or if both the EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I, of such emergency, as soon as possible, but not more than two hours after having learned thereof, to be followed with a written notice to the Grantee and the EPA; and

b. Limits the actual disturbance involved in such excavation to the minimum reasonable necessary to adequately respond to the emergency.

This provision shall not waive liability for release of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

14. **Environmental Protection Easement:** Grantor hereby grants to the Grantee an irrevocable, permanent, and continuing right of access at all reasonable times to the Property for the purpose of:

- a. Implementing, monitoring, and/or maintaining the Remedial Action;
- b. Verifying any data or information submitted to the United States or the Grantee;
- c. Conducting investigations relating to contamination at or near the Site;

- d. Obtaining samples;
- e. Assessing the need for, planning, monitoring, or implementing response actions other than the Remedial Action at or near the Site;
- f. Conducting periodic reviews of the activities performed pursuant to the Consent Decree including, but not limited to, reviews required by CERCLA and the National Contingency Plan ("NCP").
- g. Assessing compliance with this Grant, the Consent Decree, or any state or federal environmental laws or Regulations; and
- h. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Grant or the Consent Decree.

Grantee and EPA shall give reasonable notice to Grantor prior to accessing the Property, except in the case of emergencies.

15. Reserved Rights of Grantor: Grantor hereby reserves unto himself, and his heirs, successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

16. Nothing in this document shall limit or otherwise affect the EPA's, or the Grantee's, rights of entry and access or to issue orders or take response actions to the extent provided by law or regulation or in the Consent Decree.

17. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

18. Amendment, Modification, and Release: This Grant may be amended, modified, or released only by written agreement between Grantor and the Grantee, after a reasonable opportunity for review and comment by EPA, in accordance with CERCLA and the NCP, to the extent applicable. Grantor may submit to EPA and the Grantee a proposal for modifying or withdrawing the Restrictive Covenants or any portion thereof. Said proposal shall demonstrate that the Restrictive Covenants contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Restrictive Covenants may be modified, or terminated in whole or in part, in writing by written agreement between Grantor and the Grantee, but only with written concurrence of the EPA.

The Grantee shall issue a written decision with an explanation of the reasons for the approval, modification, or denial of such petition. If requested by the Grantor, such writing shall be executed by Grantee in recordable form. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.

19. Notice Requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 2005, RECORDED IN THE LAND RECORDS OF THE TOWNS OF BENNINGTON AND WOODFORD ON _____, 2005, IN BOOK _____, PAGE _____, AND IN BOOK _____, PAGE _____, RESPECTIVELY, IN FAVOR OF, AND ENFORCEABLE BY, THE STATE OF VERMONT.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

20. Enforcement: The Grantee shall be entitled to seek any relief available at law or equity in enforcing this instrument including, without limitation, damages and specific performance. Any injunctive relief obtained could include, without limitation the issuance of an order to modify or remove any improvements constructed in violation of the restrictions set forth in this instrument. All reasonable costs and expenses of the Grantee, including, but not limited to, attorney's fees, incurred in any action to enforce the terms of this instrument shall be borne by the Grantor or its successors in interest to the Property. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including, without limitation, CERCLA, which remedies the Grantee fully reserves. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

21. Damages: Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the Remedial Action, to the public or to the environment protected by this instrument.

22. Waiver of Certain Defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

23. Covenants: Grantor hereby covenants to and with the Grantee that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

24. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by overnight mail or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor:

Clyde Burgess, Jr.
c/o Burgess Brothers, Inc.
RR # 3, Box 1130
Bennington, VT 05201

To Grantee:

Commissioner
Vermont Department of Environmental
Conservation
103 South Main Street
Waterbury, VT 05761-0404
Attn: Burgess Brothers Superfund Site

To EPA:

Ronald Jennings
EPA Project Coordinator
U. S. Environmental Protection Agency
Suite 1100 - Mail Code HBT
One Congress Street
Boston, MA 02114

RE: Burgess Brothers Superfund Site

25. General Provisions:

a. Controlling Law: The interpretation and performance of this instrument shall be governed by the laws of the State of Vermont.

b. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability: If any provision of this instrument, or the application of it to any person, or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. No Forfeiture: Nothing contained herein shall result in a forfeiture or reversion of Grantor's title in any respect.

e. Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor," wherever used herein, and any pronouns used in place thereof, shall include the person named at the beginning of this document, identified as "Grantor" and his heirs, successors, successors-in-title, and assigns. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall include the Secretary of the Agency of Natural Resources of the State of Vermont and its successors and assigns. The rights of the Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

f. Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions of a party occurring during its ownership shall survive transfer.

g. Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

IN WITNESS WHEREOF, CLYDE BURGESS, JR., has executed this instrument the day and year first above written.

CLYDE BURGESS JR.

In the presence of:

Witness

STATE OF VERMONT
COUNTY OF BENNINGTON ss

On this _____ day of _____, 2005 personally appeared Clyde Burgess, Jr., signer and sealer of the foregoing written conveyance and acknowledged the same to be his free act and deed.

Before me,

Notary Public

My Commission Expires: _____

Attachments:

- Exhibit A -
- Exhibit B -
- Exhibit C -

- Legal Description of the Property
- Description of the Environmental Restriction Area
- Description of the Site

Exhibit A

Legal Description of the Property

Being all and the same lands and premises conveyed to Clyde G. Burgess, Jr. by virtue of a Quit Claim Deed from Clyde D. Howe and Lorraine Howe dated November 7, 1988 and recorded on December 1, 1988 in Book 28, Page 82 of the Woodford, Vermont Land Records and recorded December 5, 1988 in Book 0-276, Page 40 of the Bennington Land Records. The lands and premises are more particularly described as follows:

1. Land and premises in Bennington and Woodford lying alongside Burgess Road, being all the land and premises described as the "FIRST PARCEL" in the Warranty Deed from Nellie E. Burgess to Clyde G. Burgess, Clyde G. Burgess, Jr., and Clyde D. Howe, dated December 1, 1954, and recorded in the Bennington Land Records at Book 0-138 Page 23 and recorded February 3, 1955 in Book 21, Page 121-122 of the Woodford Land Records.

2. Land and premises in Woodford, lying along the Bennington/Woodford boundary, being all the land and premises, conveyed to Clyde Burgess, Sr. and Clyde Burgess, Jr. by Warranty Deed dated May 24, 1958 and recorded in the Woodford Land Records at Book 21 Page 283.

Exhibit B

Legal Metes and Bounds Description of the Environmental Restriction Area from a plan titled Burgess Brothers Groundwater Reclassification Boundary dated April 12, 2004 by Sitelines.

Beginning at an iron rod set in the southwest corner of the Groundwater Reclassification Boundary (GRB) S 22° 56' W 46.8' from a 4" circular concrete bound 5' up, said iron rod. Is easily located on the easterly side of the access road to the site and 20'+/- from the centerline of said road;

Thence N 00° 13' W 211.4' on the easterly side of the road to an iron rod set in stones 20'+/- from the center of the road;

Thence N 62° 02' E 147.5' to an iron rod set;

Thence N 24° 58' E 806.5' to a white plastic pipe labeled P-06 in the northwesterly corner of the GRB;

Thence S 63° 24' E 478.7' passing through monitoring well W-01B to an iron rod set in the northeast corner of the GRB;

Thence S 22° 13' W 846.9' to monitoring well W-24T in the southeasterly corner of the GRB;

Thence S 84° 51' W 234.0' to monitoring well W-28T;

Thence S 84° 52' W 219.5' to monitoring well W-29T;

Thence N 77° 47' W 129.1 to the point and place of beginning, containing 11.73 acres more or less. This environmental restriction area is the same area as the Class IV ground water reclassification area.

The following is a Legal Metes and Bounds Description of the Landfill Cap Area, which is shown on the Survey Map dated November 12, 2004 from SITELINES, which survey map describes the metes and bounds description of the Landfill Perimeter Fence which encloses the Landfill Cap Area:

Beginning at a point the southwest corner of the fenced area marked by a metal fence post corner in the chain link fence, said point being S 37° 54' 10" W 60.9' from monitoring well WO6D and S 54° 10' 55" W 99.1' from monitoring well WO4B;

Thence the following courses all along the chain link fence:

N 38° 49' 21" W 37.03' to a bend in the fence;

Thence N 29° 24' 13" W 68.58' to a gate in the fence;

Thence N 09° 54' 55" W 20.60' to the end of a gate in the fence;

Thence N 26° 02' 59" E 35.74' to a bend in the fence;

Thence W 01° 27' 10" E 126.70' to a bend in the fence;

Thence N 06° 40' 05" W 58.56' passing through a gate in the fence to the southeast corner of a building.

Thence N 04° 36" W 24.32' along the southeasterly edge of said building to the northeast corner of said building;

Thence N 03° 05' 37" W 5.63' through a gate in the fence to a bend in the fence;

Thence N 15° 46' 41" E 89.64' to a bend in the fence;

Thence N 00° 05' 13" W 151.68' to a corner in the fence;

Thence N 46° 43' 42" W 44.74' to a corner in the fence;

Thence N 24° 45' 17" E 26.33' to a corner in the fence, the northerly most corner of the fence;

Thence S 80° 00' 54" E 139.21' to a bend in the fence;

Thence N 68° 54' 18" E 94.66' to a corner in the fence;

Thence S 38° 13' 40" E 16.58' to a bend in the fence;

Thence S 50° 15' 05" E 167.83' to a corner in the fence the easterly most corner of the fence;

Thence S 44° 15' 08" W 82.47' to a bend in the fence;

Thence S 11° 01' 53" W 18.30' to a bend in the fence;

Thence S 29° 48' 16" W 89.42' to a bend in the fence;

Thence S 20° 08' 51" W 176.31' to a bend in the fence;

Thence S 09° 12' 41" E 43.65' to a corner in the fence;

Thence S 36° 53' 35" W 152.14' to a bend near a gate;

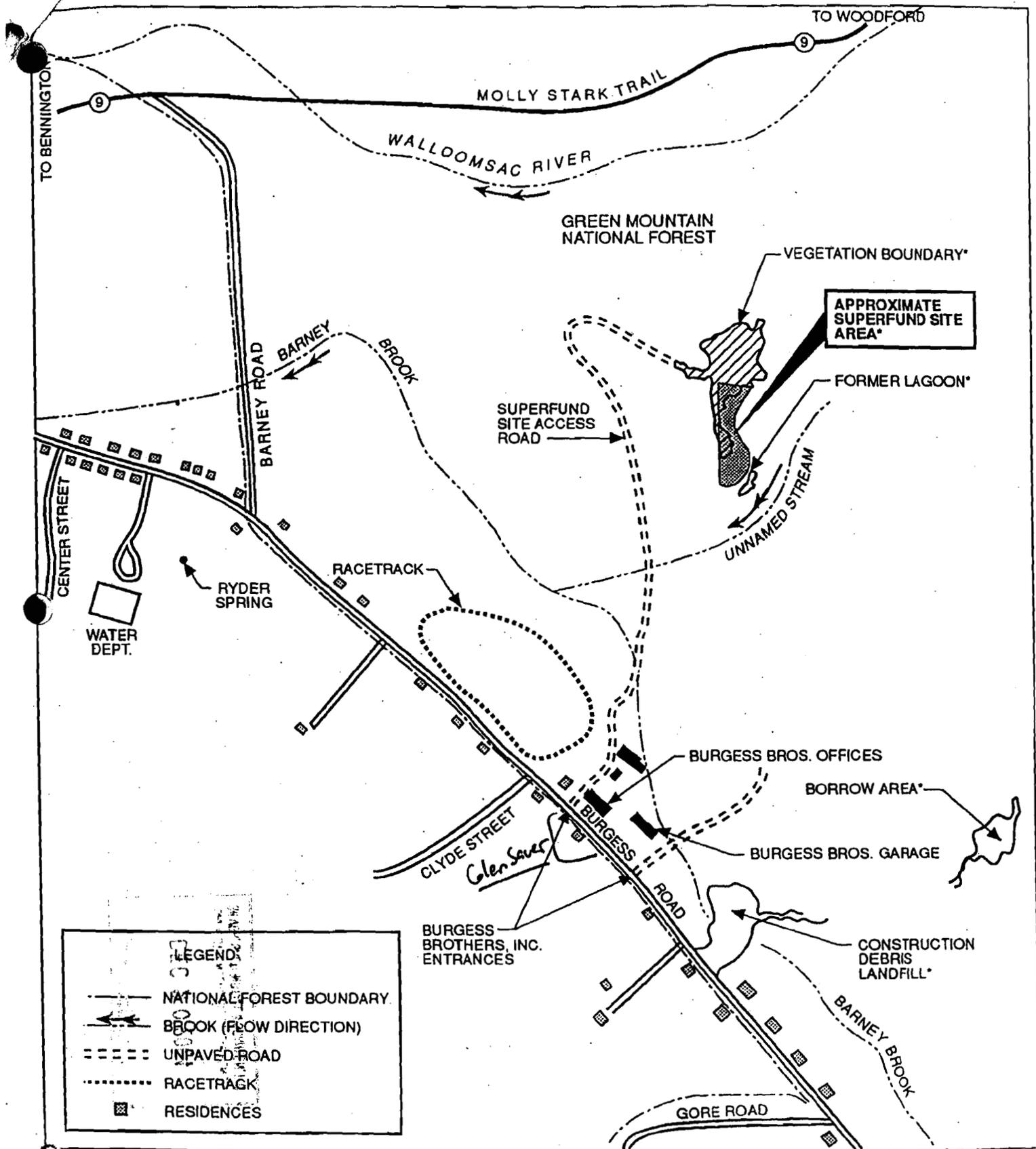
Thence S 51° 20' 02" W 84.65' to the point and place of beginning containing 3.26 acres more or less.

Exhibit C

Description of the Site

The Burgess Brothers Superfund Site is located in the towns of Woodford and Bennington, Bennington County, Vermont between Burgess Road and the Walloomsac Brook. The Site consists of approximately three acres located in the northeastern section of an approximate 60-acre parcel which is owned by Clyde Burgess, Jr. The Site includes the Former Landfill Area (approximately two acres), within which existed two former disposal lagoons. To the south of the Former Landfill Area is the Marshy Area and an unnamed tributary to Barney Brook. The Green Mountain National Forest borders the Site to the north. The primary land use in the vicinity of the Site is undeveloped forest. A more complete description of the Site can be found in Section 1 of the July 1996 Remedial Investigation Report, and attached hereto.

FIGURE 2. SITE MAP OF THE BURGESS BROTHERS SUPERFUND SITE AND SURROUNDING AREA



NOTE:
THIS SITE MAP IS COMPILED FROM AVAILABLE SOURCES INCLUDING USGS 7.5 MINUTE TOPOGRAPHIC QUADRANGLES.

* LOCATION INTERPRETED FROM AERIAL PHOTOS 1981

ATTORNEY'S FIRST REPORT AND OPINION ON TITLE

RECORD OWNER: CLYDE G. BURGESS, JR.

PROPERTY LOCATION: 1246 Burgess Road, Bennington, VT

PROPERTY DESCRIPTION: See attached Exhibit A

The following first opinion and report on the title of record owner to the above described Property is based on an examination of the appropriate records, as indexed, of the Town of Bennington by Jon Gramhofer, Esq. at the request of this office. It is furnished in connection with a request by the U.S. Environmental Protection Agency "EPA" and as part of a grant of Environmental Protection Easement and Declaration of Restrictive Covenants to the SECRETARY OF THE AGENCY OF NATURAL RESOURCES OF THE STATE OF VERMONT.

This opinion is addressed solely to matters affecting record title to the Property. In providing it, we have assumed that at the time of our examination of title, all documents theretofore delivered to the municipal clerk had been correctly and completely indexed, and that all oral statements made to us by government officials with respect to the status and content of public records were correct and complete. We also have assumed, without independent verification, the genuineness of all signatures, the due authorization of all recorded documents and instruments affecting record title to the Property, and the enforce ability of all such documents and instruments in accordance with their terms.

Based upon the foregoing and in reliance thereon, it is my opinion that, except as set forth below, on the effective date of this report the title of the record owner is a marketable title in fee simple: Clyde G. Burgess, Jr. by virtue of a Quit Claim Deed from Clyde D. Howe and Lorraine Howe dated November 7, 1988 and recorded December 5, 1988 in Book 0-276, Page 40 of the Bennington, Vermont Land Records.

1. MUNICIPAL CHARGES: (Unless otherwise indicated, these are based on oral verification by the appropriate municipal officer.)

- a. Assessed Valuation: \$176,400; Parcel ID #09.01.20.00
- b. Taxes for the fiscal period: Based on estimated assessment of \$176,400.00 for tax year 4/1/04 - 6/30/05= \$4,503.14; paid through 6/30/05.
- c. Delinquent Taxes: Town of Bennington: None
- d. Street, Curb and Sidewalk assessments: None

e. Water Liens: None

f. Electricity Liens: - None of record

g. Sewer Assessments: None

h. Fire District, School District or other Municipal Liens or Assessments: Fire District Tax of: \$139.36, paid.

2. MORTGAGES: N/A

3. ATTACHMENTS AND LIENS: None of Record

4. EASEMENTS AND RIGHTS OF WAY:

- Right of way granted by virtue of Warranty Deed from Clyde G. Burgess to Glen E. Sauer, which deed is dated January 7, 2003 and recorded January 8, 2003 in Book 390, Page 49 of the Bennington Land Records.
- Vermont Waste Water Permit #WW-8-0623 as recorded in Book, Page 18 of the Bennington Land Records.
- Town of Bennington Subdivision Permit #02-303 as referenced in a Warranty Deed from Clyde G. Burgess to Glen E. Sauer, which deed is dated January 7, 2003 and recorded January 8, 2003 in Book 390, Page 49 of the Bennington Land Records.
- Utility easements of record as recorded in three deeds which are recorded in the following books and pages: Book 0-354, Page 119 recorded on July 21, 1999 in the Bennington Land Records; Book 0-359, Page 200 recorded on March 24, 2000 in the Bennington Land Records; Book 0-388, Page 48 recorded on November 5, 2002 in the Bennington Land Records.

5. PROTECTIVE COVENANTS; OTHER RESTRICTIONS OF RECORD:

- Subject to the zoning bylaws of the Town of Bennington, Vermont.

6. LAND LEASE RENT: None of Record

7. COMPLIANCE WITH BOARD OF HEALTH SUBDIVISION REGULATIONS:

NOTE: Except to the extent specifically identified above, the undersigned has not undertaken any investigation whatsoever with respect to whether the Property and each component thereof as originally constructed or subsequently modified, with or without permits identified above, or the applicable laws, rules and regulations, ordinances and

orders. The permits identified above include numerous findings of fact, conclusions of law, exhibits, plans and other documents related to and referenced in the permits and the permits contain technical requirements to be satisfied prior to, during and after construction, many of such matters can only be determined by a physical inspection of the Property. The undersigned did not conduct such a physical inspection, nor is such inspection part of the title examiners obligation. A full review of all those matters requires knowledge and skills in engineering, architecture and other professions outside of the legal profession. The undersigned states no opinion and makes no report or certification with respect to such matters. If you require additional information regarding compliance with the permits, you should contact the undersigned or your own counsel to discuss additional procedures and investigations which may be available at extra cost.

8. OBJECTIONS TO TITLE; REMARKS: NONE

9. EXCEPTIONS - This report does not cover: and this opinion is subject to:

- a. Rights or claims of parties in possession of all or any portion of the Property.
- b. Mechanics' or Materialmen's Liens not recorded
- c. All applicable or effect of any laws, ordinances, bylaws, rules, regulations or plans of the United States, the State of Vermont or any subdivisions, agencies or departments thereof relating to whether the Property contained or is located within an area designed as a wetland or public waters. We offer an opinion only as to whether or not the Property is located within a federally designated flood zone.
- d. Matters which would be disclosed by a physical examination, environmental audit, or an accurate survey of the Property, including in particular public highway easements, easements appurtenant to adjacent lands arising from any subdivision of lands without provision for adequate access thereto, the availability or adequacy of public or private utilities and services or the description or physical location of the boundaries of the Property.
- e. Matters contained in records of probate, bankruptcy or other courts; the records of births, marriages, divorces or deaths; or the records of the formation, existence, registration or status of any entity which is a party to any document affecting the title to the Property.
- f. Special assessments or liens, if any, not shown of record.
- g. Rights claimed in lands and premises forming the alleged homelands of certain American Indian or Indian tribes and nations including, but not limited to the Abenaki Indian Nation, arising out of aboriginal rights. The Property may be a part of the lands claimed. Claims have been made to certain lands and premises in northern and western Vermont, but the rights of the claimants have not been finally adjudicated.
- h. Anything of record recorded prior to the date of origin of this search or subsequent to the date this search was completed.
- i. Taxes or assessments against the Property, if any, currently or hereafter assessed (none of which are delinquent on the date hereof).
- j. Any untrue, inaccurate or misleading statements contained or referred to in any recorded documents or public records.

k. The status of lease land rents.

l. No inquiry or investigation has been conducted, and no certification or representation is made, concerning any activities which could or might result in forfeitures of a right, title and interest in the premises to the United States of America for any violation under the Comprehensive Drug Abuse Prevention Control Act of 1970, as amended, or to any other party pursuant to bankruptcy, insolvency, or fraudulent conveyance or similar laws.

m. The status of lease land rents.

n. The potential application of the Vermont Land Use and Development Law (10 V.S.A. ch. 151) and the Environmental Protection Rules to the Property by reason of activity constituting "Development" (as that term is defined in 10 V.S.A. §6001(3)) or "Subdivision" as that term is defined in 10 V.S.A. §6001(19)), by any "Person" (as that term is defined in 10 V.S.A. §6001(14)) resulting in (a) the creating of ten or more lots within any continuous period of five years by a Person other than the specifically identified persons appearing in the chain of title to the Property, or (b) any other basis for a claim of jurisdiction by the Environmental Board based on the activities of any Person other than a person specifically named in the chain of title to the Property.

o. The contents of or effect of records which existed at the time of our inquiry directed to the governmental officials named above which were not filed in the official file kept by such government officials regarding the Property at the time of our inquiry.

This report and opinion refer to and apply so far back as November 23, 1954 and are effective down to the 27th day of December, 2004.



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SCHEDULE A

Being all and the same lands and premises as conveyed to Clyde G. Burgess, Jr. by virtue of a Quit Claim Deed from Clyde D. Howe and Lorraine Howe dated November 7, 1988 and recorded December 5, 1988 in Book 0-276, Page 40 of the Bennington, Vermont Land Records and recorded December 1, 1988 in Book 28, Page 82 of the Woodford Land Records. The lands and premises are more particularly described as follows:

Being Land and premises in Bennington and Woodford lying along side Burgess Road, being all the land and premises described as the "FIRST PARCEL" in the Warranty Deed from Nellie E. Burgess to Clyde G. Burgess, Clyde G. Burgess, Jr., and Clyde D. Howe, dated December 1, 1954, and recorded in the Bennington Land Records at Book 0-138, Page 23.

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ATTORNEY'S FIRST REPORT AND OPINION ON TITLE

RECORD OWNER: CLYDE G. BURGESS, JR.

PROPERTY LOCATION: Woodford, VT

PROPERTY DESCRIPTION: See attached Exhibit A

The following first opinion and report on the title of record owner to the above described Property is based on an examination of the appropriate records, as indexed, of the Town of Woodford by Jon Gramhofer, Esq. at the request of this office. It is furnished in connection with a request by the U.S. Environmental Protection Agency "EPA" and as part of a grant of Environmental Protection Easement and Declaration of Restrictive Covenants to the SECRETARY OF THE AGENCY OF NATURAL RESOURCES OF THE STATE OF VERMONT.

This opinion is addressed solely to matters affecting record title to the Property. In providing it, we have assumed that at the time of our examination of title, all documents theretofore delivered to the municipal clerk had been correctly and completely indexed, and that all oral statements made to us by government officials with respect to the status and content of public records were correct and complete. We also have assumed, without independent verification, the genuineness of all signatures, the due authorization of all recorded documents and instruments affecting record title to the Property, and the enforce ability of all such documents and instruments in accordance with their terms.

Based upon the foregoing and in reliance thereon, it is my opinion that, except as set forth below, on the effective date of this report the title of the record owner is a marketable title in fee simple: Clyde G. Burgess, Jr. by virtue of a Quit Claim Deed from Clyde D. Howe and Lorraine Howe dated November 7, 1988 and recorded on December 1, 1988 in Book 28, Page 82 of the Woodford Vermont Land Records.

1. MUNICIPAL CHARGES: (Unless otherwise indicated, these are based on oral verification by the appropriate municipal officer.)

a. Assessed Valuation: Parcel 1: 61 acres \$49,400.00; Parcel ID #00.00.65
Parcel 2: 60 acres \$48,800.00; Parcel ID #00.00.66

b. Taxes for the fiscal period: 1) Based on \$49,400.00 for tax year 4/1/04 - 3/31/05 = \$736.46; paid through 3/31/05; 2) Based on \$48,800.00 for tax year 4/1/04 - 3/31/04 = \$727.51; paid through 3/31/05.

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- c. Delinquent Taxes: Town of Woodford: None
- d. Street, Curb and Sidewalk assessments: None
- e. Water Liens: None
- f. Electricity Liens: - None of record
- g. Sewer Assessments: None
- h. Fire District, School District or other Municipal Liens or Assessments: Nothing other than listed above.

2. MORTGAGES: N/A

3. ATTACHMENTS AND LIENS: None of Record

4. EASEMENTS AND RIGHTS OF WAY:

- VT EPA Potential Hazardous Waste Site Assessment as recorded in Book 28, Page 55 of the Woodford Land Records.
- Right of First Refusal Option Agreement to Callanan Industries, Inc. dated July 1997 and recorded in Book 32, Page 214 of the Woodford Land Records.
- Utility easement to CVPS and NET&T as recorded in Book 30, Page 381 of the Woodford Land Records.

5. PROTECTIVE COVENANTS; OTHER RESTRICTIONS OF RECORD:

- Subject to the zoning bylaws of the Town of Woodford, Vermont.

6. LAND LEASE RENT: None of Record

7. COMPLIANCE WITH BOARD OF HEALTH SUBDIVISION REGULATIONS:

NOTE: Except to the extent specifically identified above, the undersigned has not undertaken any investigation whatsoever with respect to whether the Property and each component thereof as originally constructed or subsequently modified, with or without permits identified above, or the applicable laws, rules and regulations, ordinances and orders. The permits identified above include numerous findings of fact, conclusions of law, exhibits, plans and other documents related to and referenced in the permits and the permits contain technical requirements to be satisfied prior to, during and after construction, many of such matters can only be determined by a physical inspection of

the Property. The undersigned did not conduct such a physical inspection, nor is such inspection part of the title examiners obligation. A full review of all those matters requires knowledge and skills in engineering, architecture and other professions outside of the legal profession. The undersigned states no opinion and makes no report or certification with respect to such matters. If you require additional information regarding compliance with the permits, you should contact the undersigned or your own counsel to discuss additional procedures and investigations which may be available at extra cost.

8. OBJECTIONS TO TITLE; REMARKS: NONE

9. EXCEPTIONS - This report does not cover: and this opinion is subject to:

- a. Rights or claims of parties in possession of all or any portion of the Property.
- b. Mechanics' or Materialmen's Liens not recorded
- c. All applicable or effect of any laws, ordinances, bylaws, rules, regulations or plans of the United States, the State of Vermont or any subdivisions, agencies or departments thereof relating to whether the Property contained or is located within an area designed as a wetland or public waters. We offer an opinion only as to whether or not the Property is located within a federally designated flood zone.
- d. Matters which would be disclosed by a physical examination, environmental audit, or an accurate survey of the Property, including in particular public highway easements, easements appurtenant to adjacent lands arising from any subdivision of lands without provision for adequate access thereto, the availability or adequacy of public or private utilities and services or the description or physical location of the boundaries of the Property.
- e. Matters contained in records of probate, bankruptcy or other courts; the records of births, marriages, divorces or deaths; or the records of the formation, existence, registration or status of any entity which is a party to any document affecting the title to the Property.
- f. Special assessments or liens, if any, not shown of record.
- g. Rights claimed in lands and premises forming the alleged homelands of certain American Indian or Indian tribes and nations including, but not limited to the Abenaki Indian Nation, arising out of aboriginal rights. The Property may be a part of the lands claimed. Claims have been made to certain lands and premises in northern and western Vermont, but the rights of the claimants have not been finally adjudicated.
- h. Anything of record recorded prior to the date of origin of this search or subsequent to the date this search was completed.
- i. Taxes or assessments against the Property, if any, currently or hereafter assessed (none of which are delinquent on the date hereof).
- j. Any untrue, inaccurate or misleading statements contained or referred to in any recorded documents or public records.
- k. The status of lease land rents.
- l. No inquiry or investigation has been conducted, and no certification or representation is made, concerning any activities which could or might result in forfeitures of a right, title and interest in the premises to the United States of America for any violation under the Comprehensive Drug

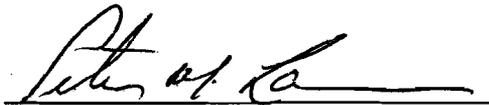
Abuse Prevention Control Act of 1970, as amended, or to any other party pursuant to bankruptcy, insolvency, or fraudulent conveyance or similar laws.

m. The status of lease land rents.

n. The potential application of the Vermont Land Use and Development Law (10 V.S.A. ch. 151) and the Environmental Protection Rules to the Property by reason of activity constituting "Development" (as that term is defined in 10 V.S.A. §6001(3)) or "Subdivision" as that term is defined in 10 V.S.A. §6001(19)), by any "Person" (as that term is defined in 10 V.S.A. §6001(14)) resulting in (a) the creating of ten or more lots within any continuous period of five years by a Person other than the specifically identified persons appearing in the chain of title to the Property, or (b) any other basis for a claim of jurisdiction by the Environmental Board based on the activities of any Person other than a person specifically named in the chain of title to the Property.

o. The contents of or effect of records which existed at the time of our inquiry directed to the governmental officials named above which were not filed in the official file kept by such government officials regarding the Property at the time of our inquiry.

This report and opinion refer to and apply so far back as November 23, 1954 and are effective down to the 28th day of December, 2004.



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SCHEDULE A

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1. Land and premises in Bennington and Woodford lying alongside Burgess Road, being all the land and premises described as the "FIRST PARCEL" in the Warranty Deed from Nellie E. Burgess to Clyde G. Burgess, Clyde G. Burgess, Jr., and Clyde D. Howe, dated December 1, 1954, and recorded in the Bennington Land Records at Book 0-138 Page 23 and recorded February 3, 1955 in Book 21, Page 121-122 of the Woodford Land Records..

2. Land and premises in Woodford, lying along the Bennington/Woodford boundary, being all the land and premises, conveyed to Clyde Burgess, Sr. and Clyde Burgess, Jr. by Warranty Deed dated May 24, 1958 and recorded in the Woodford Land Records at Book 21 Page 283.

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