

RESOLUTION 85-9

To Approve and Authorize the Execution of a Consent Decree in the United States District Court, Civil Action IP 83-9-C and IP-81-448-C (The City of Bloomington, et al, v. Westinghouse Electric Corporation and Monsanto Company)

WHEREAS, The United States of America, for the Administrator of the United States Environmental Protection Agency, as plaintiffs, the State of Indiana and its Environmental Management Board, as intervening plaintiffs, the City of Bloomington, and the Utilities Service Board of Bloomington, as plaintiffs, and Monroe County, as plaintiff, and Westinghouse Electric Corporation as defendant, by their respective attorneys have negotiated and reached agreement on the terms and conditions of a proposed Consent Decree to resolve pending litigation between the parties concerning PCB contamination in Monroe County and the City of Bloomington; and

WHEREAS, the general purpose of the activities to be performed pursuant to the Consent Decree is the excavation and removal of quantities of soils, solid waste, and other materials contaminated with polychlorinated biphenyls ("PCBs") and other associated materials from six sites in the Bloomington, Indiana, area, to construct an incinerator pursuant to the schedule set out in the Consent Decree, and to incinerate said materials in an incinerator in order to prevent and mitigate alleged threats to the public health, welfare, and the environment; and

WHEREAS, The City of Bloomington has sponsored a series of public meetings over the course of several weeks in order to allow for public input and public discussion of the issues raised by the Proposed Consent Decree; and

WHEREAS, it is in the best interests of the City of Bloomington to approve and execute the Consent Decree:

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, THAT:

The Consent Decree, (in the United States District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP 83-9-C and Civil Action No. IP 81-448-C, United States of America, Plaintiff, and The State of Indiana and The Environmental Management Board of the State of Indiana, Intervening Plaintiffs, v. Westinghouse Electric Corporation, Defendant and Third Party Plaintiff, v. Monsanto Company, Third Party Defendant, and The City of Bloomington, Indiana, the Utilities Service Board of Bloomington, Indiana, and Monroe County, Indiana, Plaintiffs, v. Westinghouse Electric Corporation and Monsanto Company, Defendants,) a copy of which Consent Decree is attached hereto and made a part hereof, is hereby Approved, and the Mayor is hereby authorized to execute said Consent Decree on behalf of the City of Bloomington.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 20 day of March , 1985.

Patricia A. Gross
PATRICIA GROSS, President
Bloomington Common Council

ATTEST:

Patricia Williams
PATRICIA WILLIAMS, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 21 day of March, 1985.

Patricia Williams
PATRICIA WILLIAMS, City Clerk

SIGNED and APPROVED by me upon this 21 day of March, 1985.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This Resolution approves and authorizes the Mayor to execute a Consent Decree to be filed in the United States District Court, Cause No. IP 83-9-C and IP 81-448-C, which Decree provides for the excavation and removal of quantities of soils, solid waste and other materials contaminated with polychlorinated biphenyls ("PCBs") and other associated materials from six sites in the Bloomington, Indiana area, and for the construction of an incinerator in order to incinerate said materials to prevent and mitigate alleged threats to the public health, welfare and environment.

Signed copies to:

County Comm (10)

Keoff Godner (5)

Legal

Mayor

Westinghouse

K85-9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 and)
)
 THE STATE OF INDIANA and)
 THE ENVIRONMENTAL MANAGEMENT)
 BOARD OF THE STATE OF INDIANA,)
)
 Intervening Plaintiffs,)
)
 v.)
)
 WESTINGHOUSE ELECTRIC)
 CORPORATION,)
)
 Defendant and Third)
 Party Plaintiff,)
)
 v.)
)
 MONSANTO COMPANY,)
)
 Third Party Defendant,)
)
 and)
)
 THE CITY OF BLOOMINGTON,)
 INDIANA, THE UTILITIES SERVICE)
 BOARD OF BLOOMINGTON, INDIANA,)
 and MONROE COUNTY, INDIANA,)
)
 Plaintiffs,)
)
 v.)
)
 WESTINGHOUSE ELECTRIC)
 CORPORATION and MONSANTO)
 COMPANY,)
)
 Defendants.)

Civil Action No. IP 83-9-C

JUDGE WILLIAM E. STECKLER

and

Civil Action No. IP 81-448-C

JUDGE S. HUGH DILLIN

CONSENT DECREE

**PROPOSED BLOOMINGTON-PCB CONSENT DECREE:
A CONDENSED VERSION AND OVERVIEW.**

GENERAL INTRODUCTION

On December 3, 1984, the United States Environmental Protection Agency, Region V; the State of Indiana; the City of Bloomington, Indiana; and the Westinghouse Electric Corporation announced the completion of negotiations leading to a detailed plan for the clean-up of PCB-contaminated sites in and around the Monroe County and Bloomington areas.

The clean-up program is embodied in a proposed Consent Decree intended to be filed with the United States District Court for the Southern District of Indiana. The 108-page Decree resolves two separate lawsuits -- one by the United States and the State, and one by the City -- brought against Westinghouse.

This synopsis generally follows the Decree's Table of Contents.

The parties to the proposed Consent Decree recognize the depth of public interest and concern about the remedial measures and incinerator contemplated by the settlement. The local units of government will conduct a series of public meetings to review and evaluate the Decree's provisions and to solicit public comment prior to taking any formal action on it.

Following local approval, the State of Indiana will conduct a public session of the Environmental Management Board prior to its formal action.

The United States Environmental Protection Agency, Region V, will conduct at least one public meeting on the Decree.

Assuming all necessary local and state approvals have been received, the Decree will then be lodged with the Federal District Court in Indianapolis, where an additional 30-day comment period will occur prior to any action by the Court.

The City of Bloomington urges citizens to express their comments and concerns about the Decree. Attendance and participation in the public sessions is encouraged. Written comments and questions may be submitted to the Office of the Mayor, P.O. Box 100, Bloomington, Indiana 47402.

N.B. -- This overview is intended as a synopsis of the Consent Decree. It is not a part of the Consent Decree and is not an official document. It does not include each and every detail of the Decree.

This overview was prepared by the City of Bloomington in order to highlight the general provisions of the Consent Decree. For the details of the proposed settlement and clean-up program, the reader is urged to read the Decree itself.

THE PARTIES

The proposed Consent Decree was negotiated by attorneys and technical personnel representing:

- The United States of America, and the U.S. Environmental Protection Agency;
- The State of Indiana, and specifically the Indiana Environmental Management Board;
- The City of Bloomington, Indiana, and the City's Utilities Service Board; and
- Westinghouse Electric Corporation.

During the negotiation process, it was determined to add an additional site -- the Anderson Road Landfill -- and therefore also to add Monroe County, Indiana as an additional party to the Consent Decree. See, Consent Decree, p. 1 [hereinafter all references are to the Consent Decree].

THE SITES

The sites covered by the Decree are:

- Neal's Landfill;
- Neal's Dump;
- Lemon Lane Landfill;
- Bennett's Dump;
- the Winston-Thomas Sewage Treatment Facility;
- Anderson Road Landfill;
- certain streams and creeks around some of the sites.

See, pp. 2-7, para. 3-4.

The Decree can be modified by the express written approval of the parties to address "any future discoveries of materials contaminated with PCBs in and around Monroe County." See, p. 15, para. 17.

PURPOSE AND SUMMARY OF ACTIVITIES

The general purposes of the activities to be performed under the Consent Decree are

- to excavate and remove quantities of soils, solid waste and other materials contaminated with PCBs and other associated materials from the six sites; and
- to construct an incinerator and to incinerate the materials in order to prevent and mitigate alleged threats to the public health, welfare and the environment.

The general duties of Westinghouse are:

- to excavate and remove the materials from the six sites;
- to remove sediment from certain streams and stream banks;
- to construct a federal, state and city approved high temperature incinerator to incinerate PCBs, associated hazardous wastes and solid waste in accordance with the requirements of federal, state and local law;
- to transport to the incinerator and incinerate the materials removed from the six sites;
- to dispose of the ash and other by-products of the incineration process, in accordance with the requirements of law;
- to perform certain interim remedial measures at the sites, including monitoring;
- to properly close and maintain each site after the PCB and other materials have been removed;

- to conduct post-closure monitoring at each site.

See, pp. 6-7, para. 4.

INCINERATOR OBLIGATIONS

Incinerator Design, Construction & Operation.

Westinghouse is to design, construct and operate a high temperature incinerator to destroy PCBs and materials contaminated with PCBs and any hazardous wastes or hazardous substances associated with those materials from the six sites.

The incinerator must be designed, constructed and operated in compliance with all applicable federal, state and local laws and regulations, including, but not limited to the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act and the Resource, Conservation and Recovery Act. See, p. 8, para. 6.

See also, p. 78, para. 100, where all activities undertaken by Westinghouse under the Decree must be in accordance with all applicable local, state and federal laws, regulations and permits.

Performance Guarantee.

Of special note is that Westinghouse guarantees that the incinerator will perform in compliance with the applicable laws and regulations. This guarantee includes an obligation to undertake all redesign, repair or rebuilding which might be necessary to achieve the required performance. See, p. 8, para. 6.

Federal/State Permits and City Plan Approval.

The incinerator plans are not complete, and the parties have not been able to fully evaluate the technical aspects of the specific incinerator to be built in Bloomington by Westinghouse.

Recognizing this, Westinghouse is required to obtain all necessary federal and state permits necessary to construct and operate the incinerator. The Consent Decree does not alter the federal and state permitting requirements or procedures. See, pp. 79-80, para. 101 and 102.

In addition, Westinghouse is required to submit its technical plans for the design and performance of the

incinerator and for ash disposal to the City for its separate approval.

The City may impose additional, more stringent requirements than contained in the plans, if the City determines that they are necessary to prevent an unreasonable risk of injury to human health or the environment. See, p. 8-11, para. 7.

For general provisions on Approval Authority, see, pp. 74-75, paras. 93-95.

Independent Local Monitoring.

The incinerator performance during both test burns and regular operation is to be monitored by an independent testing organization. The testing organization will be retained by the City of Bloomington, but paid for by Westinghouse. Both Westinghouse and the City must approve the organization's technical competence. See, p. 11, para. 8.

This testing is in addition to the monitoring which is required under federal and state regulations.

The City may require Westinghouse to perform continuous monitoring of operating conditions at the incinerator, including but not limited to continuous monitoring of temperature and dwell time (the time material remains inside the incinerator). See, p. 11, para. 9.

Westinghouse also is to install and maintain, at its expense, devices outside the incinerator site which continuously display incinerator operating conditions determined by the City to be related to health and safety. Ibid.

General Incinerator Design.

Generally the high temperature incinerator will consist of the following:

- two 150 ton per day units;
- minimum 300 day per year operation;
- capability to handle up to 220 tons per day of municipal solid waste;
- on-site storage facilities for up to 600 tons of municipal solid waste separate from storage facilities for the materials removed from the six sites;

- necessary associated facilities for pollution control devices; ash collection; buildings; roadways; landscaping; and other facilities necessary to insure the safe and efficient operation of the high temperature incinerator.

Westinghouse is to use its best efforts to incinerate all of the excavated materials within 11 years of receiving the required permits to commence incineration. In any event, incineration must be completed within 15 years from receipt of the permits.

See, pp. 11-13, para. 10-13.

Municipal Solid Waste Supply by City and County.

As more fully highlighted below, the City and County shall each, through ordinances, direct that municipal solid waste generated within the City and County be delivered to the incinerator site for use as a fuel source for the high temperature incinerator.

Neither the nondelivery of solid waste by the City/County nor Westinghouse's inability to use the solid waste as a fuel relieves Westinghouse of its obligation to incinerate the materials from the six sites.

Westinghouse is required to use a supplementary fuel supply (such as gas, oil, coal or other conventional fuel) to operate the high temperature incinerator in accordance with the permits and plan approvals. See, p. 14, para. 15; pp. 17-21, para. 23-34.

Incinerator Site.

The City will convey to Westinghouse a site of approximately 15 acres for the incinerator. The site proposed in the Consent Decree is located on land owned by the City adjacent to the City's Dillman Road Wastewater Treatment Plant on Indiana State Highway 37-South. See, p. 15, para. 19; Exhibit 12.

SOLID WASTE SUPPLIED BY THE CITY AND COUNTY

Local Ordinances.

Both the City and County undertake to pass ordinances which will require that all municipal solid waste generated in the City and County will be delivered to the incinerator site. See, p. 18, para. 25.

Nonburnables and Ancillary Landfill.

Certain items are not to be delivered to the incinerator, such as car bodies and "white goods" (i.e. refrigerators, stoves, etc.).

The County is to maintain an ancillary landfill for disposal of these white goods and nonhazardous wastes inappropriate for incineration. See, pp. 18-19, para. 27. This landfill may be the present Anderson Road Landfill or some other suitable area. See, p. 20, para. 31.

Tipping Fees.

Westinghouse is to receive a tipping fee from any dumpers at the incinerator, including the City and County. The fee is to be no more than the tipping fee charged by the County for disposal at the County's licensed landfill.

In addition, Westinghouse may also charge an additional fifty cents per ton to produce a nonhazardous ash. See, pp. 20-21, para. 32.

ASH DISPOSAL

Ash Disposal Facility Options.

Westinghouse has three facility options by which to dispose of the ash generated by the incinerator.

Option One. Dillman Road drying beds and landfill.

The City currently has a licensed sludge handling facility at the Dillman Road Treatment Plant. At its option, Westinghouse may dispose of nonhazardous ash from the incinerator in the sludge drying beds and landfill.

If this option is used, Westinghouse will pay the City all operating and administrative costs associated with the permitting and operating of the ash disposal at those facilities.

In addition, Westinghouse shall incinerate all of the sludge previously deposited in those drying beds and landfill, at no charge to the City.

The State and Federal governments must also approve this option. See, p. 22, para. 35.

Option Two. City/County ash disposal facility. The City and /or County will provide an ash disposal facility, again, at Westinghouse's option. See, p. 22, para. 36.

If this option is selected, Westinghouse will pay the City and/or County the full capital, operating and administrative costs associated with the license, construction and operation of the facility. See, p. 23, para. 37.

Option Three. Westinghouse ash disposal facility. Westinghouse may, at its expense, construct and operate its own licensed solid waste disposal facility for the ash. See, p. 23, para. 38.

Ash Requirements.

In order to dispose of the ash, the ash must meet certain nonhazardous requirements:

- it must be tested and determined to be nonhazardous as determined by federal and state regulations for classifying nonhazardous waste;
- the PCB concentration in the ash must be less than 1 part per million; and
- it must meet any additional requirements imposed by the City as part of the City's technical plan review.

See, p. 23, para. 39.

In the event the ash cannot be rendered nonhazardous, Westinghouse cannot dispose of the ash at either the Dillman Road facility, at any other facility provided by the City and/or County, or at the incinerator site. Such disposal must occur at a facility licensed by the state and federal governments to accept such wastes. See, p. 24, para. 41.

REMOVAL MEASURES

Excavation of materials from the various sites is to occur according to a plan to be submitted to the federal, state and city governments for their review and approval.

The plan is to include excavation procedures, transportation plans, safety plans, decontamination protocols and implementation schedules. See, p. 26, para. 45.

Exhibits are attached to the Consent Decree (and available for public inspection) which graphically depict the horizontal and vertical limits of removal which is to occur at each of the sites. See, p. 24, para. 42.

All materials removed from the sites are to be incinerated. Material not suitable for incineration (e.g., engine blocks, car bodies) are to be otherwise disposed of as approved by the federal, state and city governments. See, p. 25, para. 43.

Neal's Landfill.

Westinghouse is to excavate and transport all solid waste materials from Neal's Landfill. See, Exhibit 9.

In addition, a two-foot "buffer zone" perpendicular to the remaining surface following this excavation will be removed. In those areas where there is less than two feet remaining, the "buffer zone" removal is to bedrock.

The best estimate of materials to be removed at this site is 320,000 cubic yards.

There are five identified sinkholes in Neal's Landfill. These receive additional removal up to 2,000 cubic yards.

See, pp. 27-28, para. 46.

Lemon Lane Landfill.

The first step of excavation at Lemon Lane Landfill will be all solid waste materials down to and including the 1958 level of deposit. (Lemon Lane was used as a municipal dump prior to 1958; however, Westinghouse did not open its Bloomington plant until 1958.) See, Exhibits 7 and 11.

Once the initial removal is completed, Westinghouse shall conduct a sampling program across the site to identify materials contaminated with PCBs in concentrations equal to or greater than 50 parts per million. These materials will then be excavated and transported for incineration.

Anticipating that there will still be solid waste in the dump, but otherwise uncontaminated with PCB, Westinghouse will then remove a three-foot "buffer zone" across the site. In those areas where less than three feet remain, the "buffer zone" removal will be to bedrock.

The best estimate of the minimum removal from Lemon Lane is 176,000 cubic yards.

See, pp. 28-29, para. 47.

Bennett's Dump.

As with the other sites, the initial removal is specified in an exhibit attached to the Decree. See, Exhibits 2 and 3.

Following this removal, Westinghouse will excavate and transport for incineration all solid waste plus an additional two feet of soil perpendicular to the remaining surface, as a "buffer zone." Large quarried limestone blocks will not be removed.

The best estimate of the volume of materials to be removed from this site is 55,000 cubic yards.

See, pp. 29-30, para. 48.

The Winston-Thomas Sewage Treatment Facility.

The water from the tertiary lagoon will be removed and treated, and then discharged to the Dillman Road Sewage Treatment Plant. This discharge must meet local and state requirements.

After the water is removed, the sludge in the lagoon will be excavated for incineration. An additional six inches of material from the sides and bottom of the lagoon will be removed as a "buffer zone"; except in one more contaminated area, where the "buffer zone" is to be ten inches.

The sludge drying beds and some abandoned lagoons are also to be excavated, together with an additional two-foot "buffer zone."

The trickling filter media is to be removed and cleaned. The organic material cleaned from the filter media will be incinerated, and the media itself returned to the filter bed, which will then be covered by a compacted clay cover. See, p. 39, para. 56.

The solid waste in the digester tanks will be removed. The tanks and pipes are to be flushed and cleaned by high pressure.

All excavated materials and flushings will be incinerated. The best estimate of the volume of materials to be removed from this site is 50,000 cubic yards. See, pp. 30-32, para. 49; Exhibit 10.

Neal's Dump.

As with the other sites, the initial removal will be as specified in the Exhibit attached to the Decree. See, Exhibit 8. Following this removal there will also be a removal of a two-foot "buffer zone."

The best estimate of the volume of materials to be excavated from this site is 14,000 cubic yards.

See, p. 32, para. 50.

Stream Sediment Removal.

The streams from which materials will be removed are:

- Conard's Branch;
- Richland Creek;
- Stout's Creek;
- Clear Creek; and
- Salt Creek.

Removal is to be accomplished through the use of a hydrovacuum, and the lengths of the streams and the amount of materials to be removed from each stream is limited by the Decree. The removed material will be stored and later incinerated.

It is anticipated that the stream removal will occur during the period of May through September following entry of the Decree.

Following the stream removal, sampling and analyses are to occur to develop baseline data which will be used to determine whether additional stream removal must occur after closure of each of the sites. This subsequent stream removal, if it must occur, is also limited in volume.

See, pp. 32-36, para. 51.

It should also be noted that monitoring will occur at each site following removal, which is more fully discussed below.

CLOSURE

No later than six months prior to completion of excavation at a given site, Westinghouse will submit a plan detailing the closure, post-closure activities, and implementation schedule for that site. These plans must be reviewed and approved by the United States, State and City. See, p. 36, para. 52.

The Decree specifies certain activities which are to be undertaken during closure, including closure to a specified grade; surface water and drainage control; establishment of a vegetative cover; and maintenance of fencing and signs. See, pp. 37-38, para. 53.

Clay caps also are to be installed at Lemon Lane Landfill, Neal's Landfill, and on the trickling filter bed at the Winston-Thomas Facility. See, pp. 38-39, paras. 54-57.

POST-CLOSURE ACTIVITIES

As noted above, post-closure activities are to be included in the closure plans. The Decree also states that Westinghouse will maintain the soil covers and vegetation to prevent erosion; continue to prevent surface water run-on and run-off at the sites; submit annual status reports; and maintain the fencing and signs until the end of the post-closure period. See, pp. 39-40, para. 58.

INTERIM REMOVAL AND REMEDIAL MEASURES

Neal's Landfill.

At the Neal's Landfill the water flow from two springs and a seep will be collected and treated. The Decree provides that this treatment is to be accomplished by a "Lamella"-type sediment collection system or by activated carbon filtration.

The Decree sets out the circumstances and conditions under which this treatment is to continue or be terminated. Any sediment collected will be stored and incinerated.

See, pp. 41-45, para. 59(a).

Bennett's Dump.

A portion of Stout's Creek is to be posted. Capacitors exposed on the surface of the site are to be removed and stored for incineration. The existing clay cap is to be maintained and an additional clay cap is to be installed over a portion of the site. See, pp. 46-48, para. 59(b).

Lemon Lane Landfill.

Capacitors exposed on the surface will be removed and stored for incineration. The slope running along the landfill's southern edge is to be stabilized, and certain areas covered. Water ponding and erosion is to be controlled. See, pp. 46-47, para. 59(c).

The Winston-Thomas Facility.

The tertiary lagoon will continue to be pumped to prevent overflow, in accordance with the presently operating program. Existing warning signs and fencing is to be maintained by Westinghouse. See, p. 47, para. 59(d).

The Anderson Road Landfill.

The area and volume of the PCB materials at the Anderson Road Landfill is such that all removal measures to be undertaken at this site will occur during the interim removal period. The exhibits attached to the Decree outline the areas to be removed. See, Exhibit 1.

As with the other sites, there will also be additional material removed as a "buffer zone."

The excavated materials will be stored at the Winston-Thomas Facility until they can be transported to the incinerator for disposal.

The area will then be closed and capped consistent with the other closure provisions.

See, pp. 48-49, para. 59(e).

INTERIM STORAGE OF MATERIALS CONTAINING PCBs

The Winston-Thomas Facility is to be used as an interim storage facility by Westinghouse. The storage is to continue until such time as the materials can be transported to the incinerator for destruction, not to exceed one year after incineration commences. See, p. 50, para. 61; p. 51, paras. 62-63.

The Decree outlines requirements for the buildings and/or structures used for the interim storage. Ibid.

The storage facilities must be regularly inspected and reports filed with the United States, State and City. See, p. 50, para. 61; p. 52, para. 64.

In the event that Westinghouse chooses to remove the sludge from the tertiary lagoon at Winston-Thomas before incineration begins, it must submit a plan for its removal and storage, which must be approved. See, p. 51, para. 63.

Westinghouse will pay the City a total of \$900,000 as rental for the Winston-Thomas Facility for its use as this interim storage facility. The payments will be made over a period of three years. See, p. 52, para. 65.

GROUNDWATER MONITORING PROTOCOL

These provisions of the Consent Decree outline a program for monitoring groundwater around the Neal's Landfill, Neal's Dump; Lemon Lane Landfill; Bennett's Dump and the Winston-Thomas Facility.

The monitoring commences four months following entry of the Decree, and generally continues for five years after site closure, and possibly for thirty years, depending on certain conditions. See, p. 53-54, para. 70; pp. 64-66, paras. 79-81.

The purposes of the monitoring is to:

- refine knowledge of the hydrogeological conditions at the sites;
- monitor the sites before the remediation work to determine PCB baseline data; and
- confirm the adequacy of the remedial work and demonstrate the acceptability of the final conditions at the sites.

Water Well User Survey.

Westinghouse will conduct a water well user survey to identify the location of private wells currently used for commercial or residential purposes within approximately a one-mile radius from Neal's Landfill, Lemon Lane Landfill, the Winston-Thomas Facility and Bennett's Dump.

Well owners will be notified of the survey, and a sample will be taken for PCB from those identified wells. This data will be used to determine subsequent testing and other activities, as discussed below.

On-Site/Off-Site Monitoring Wells.

Monitoring wells are to be installed on each of the sites. The number of wells is established in Exhibit 13. The location will be fixed by a plan to be approved by the parties.

Off-site monitoring wells will also be installed, in three tiers, within an approximately one-mile radius of each of the above-designated sites, except Neal's Dump. "Tier One" wells are within a 1000-foot radius of the site; "Tier Two" within 1000-2500 feet; and "Tier Three" within 2500-5000 feet from the individual site.

Monitoring around the sites is based on analysis from these on-site/off-site wells. Depending on testing results, increased monitoring may or may not be required.

See, pp. 55-62, paras. 74-77.

Alternative Potable Water Supply Source.

The Consent Decree establishes a detection level for PCB analysis in the monitoring program of 0.1 part per billion (ppb). See, p. 54, para. 71(a). This detection level is used as a triggering mechanism for additional sampling and analyses. See, p. 62, para. 78.

If, after a short series of samples and analyses at the off-site wells, it is determined that the PCB concentration at the Tier One, Two or Three monitoring wells is equal to or greater than the detection level of 0.1 ppb, Westinghouse will, with the consent of the private well owner, provide a permanent alternative potable water supply source to all private well users within a hydrologic zone of influence of the affected well or wells. See, p.63, para. 78(b).

The alternative supply may be by either connection to a public water supply system, or by providing a carbon or equivalent treatment system at the user's residence or establishment. Ibid.

The Decree specifies a timetable for these actions, as well as the provision of a temporary potable water supply until the permanent supply can be provided.

In the event that a permanent alternative water supply is provided, Westinghouse may then terminate the monitoring at the affected offsite well.

REPORTING AND RECORDKEEPING

Progress reports are to be submitted by Westinghouse to the EPA, Justice Department, State of Indiana, City of Bloomington, and Monroe County. See, pp. 66-68, paras. 83-84.

The various governmental agencies have authority to enter the various sites to inspect documents, monitor the progress of work, collect samples or for any other purpose to assure compliance with the Decree.

Westinghouse must keep all records relating to the project for at least five years after completion of the incineration. The various governments also have access to all design, construction, and operational records and documents. Westinghouse also is provided access to the various sites.

See, pp.68-70, para. 85-89.

All data and information submitted by Westinghouse to the U.S., State, City or County shall be available to the public unless identified as confidential by Westinghouse, in

accordance with Federal or State law. Sampling results, monitoring data, hydrological or geological information submitted by Westinghouse shall not be considered confidential. See, p. 95, para. 121.

ON SCENE COORDINATOR

The United States may designate an On Scene Coordinator (OSC) for the sites and areas to observe and monitor the progress of the activities. The OSC has various powers, and the Consent Decree also sets a procedure by which the parties may challenge OSC actions, if necessary.

See, pp. 70-73, paras. 90-92.

FINANCIAL SECURITY, INSURANCE,
COVENANT, WAIVER, REIMBURSEMENT OF EXPENSES
and INDEMNITY

Financial Security.

In the event that the consolidated net worth of Westinghouse declines by fifty percent any time prior to the completion of the activities under the Decree, Westinghouse shall provide security in an amount equal to 125 percent of the estimated net cost to complete the activities. The security is to be in the form of a performance bond, surety bond, letter of credit or cash bond, at Westinghouse's option. See, p. 75, para. 98.

Insurance.

Westinghouse is to obtain various forms of insurance coverage including workers' compensation, third-party liability, and property damage. See, pp. 76-78, paras. 97-99.

Covenant Not To Sue.

Conditioned on Westinghouse's compliance with the Decree, the United States, State, City and County covenant (or promise) that they will not bring any civil or administrative action against Westinghouse for (1) any claim alleged in their respective lawsuits or (2) any claim arising under federal, state or local laws intended to protect the environment, relating to:

- the past disposal or discharge of PCBs at the sites covered by the Decree (excluding certain portions of Anderson Road Landfill and Bennett's Dump);

- the release or threatened release of PCBs from the sites (excluding certain

portions of Anderson Road Landfill and Bennett's Dump);

- the past disposal, discharge or release of PCBs at or from the specific areas of Anderson Road and Bennett's covered by the Decree;

- the release or threatened release of hazardous substances other than PCBs from the excavated portions of the sites, but not hazardous substances which are discovered after the effective date of the Decree in portions of the sites not excavated; and

- activities which Westinghouse performs in compliance with the Consent Decree, but excluding performance in a manner which violates standards of care imposed by law.

See, pp. 82-83, para. 111(a).

In the event the Court were to determine that Westinghouse has failed to perform its obligations, the Covenant Not To Sue becomes null and void, except with respect to those sites as to which Westinghouse has performed its obligations. In that event, the federal, state and local governments may seek further relief. See, p. 84, para. 111(b).

The Covenant is not intended to be a release, and any claims against any person or entity not a party to the Decree are not release. Monsanto Company is not a party to the Decree, and both the City and Westinghouse reserve any claims they may have against Monsanto. See, p. 84, para. 111(c); p. 89, para. 114(g).

Waiver of Claims.

Westinghouse agrees not to assert any claim it might have to seek payment or compensation from the Hazardous Substances Response Trust Fund (Superfund). Westinghouse does, however, have the right to pursue other persons (except the parties to the Decree) with respect to any other hazardous waste generators for contribution to the remedial actions undertaken by Westinghouse. See, p. 87, para. 114(a).

Each party waives any claims it might have against the other parties. It should be noted, however, that these waivers are specific to only those portions of each site which are covered by the Decree. So, for instance, claims

relating to areas of Bennett's Dump not identified in Exhibits 2 and 3 are not waived. See, pp. 87-89, para. 114(b-e). Nor are claims to as yet undiscovered sites waived.

Westinghouse reserves the right to demonstrate to the Court that there exists a more cost-effective method of remedying the PCB contamination of the sites by reason of technological developments affecting PCB disposal.

Such method, however, must achieve a level of PCB removal and destruction equal to or greater than the destruction level required by the incinerator, and it must be able to be accomplished as expeditiously and in a manner as environmental sound as the method provided by the Decree.

Westinghouse has the burden of establishing such other method meets these requirements, and must also obtain all necessary permits and approvals for it.

See, p. 90, para. 114(i).

Reimbursement of Expenses.

Westinghouse will reimburse the federal government for expenses incurred by the U.S. in the amount of \$1,000,000.

Westinghouse will reimburse the City of Bloomington for previous assistance rendered to Westinghouse in the course of the Consent Decree negotiations in the amount of \$250,000.

See, p. 91, paras. 115-116.

Indemnity.

Westinghouse agrees to indemnify, defend and hold the City and County harmless from and against any and all claims brought against the City or County for:

- personal injuries or physical damage to property resulting from the incinerator, incinerator site, or other activities encompassed by the Decree;

- personal injuries or physical damage to property resulting from past, present or future exposure to, contamination by or transportation of PCBs at, to or from the sites; and

- economic injuries resulting from the City or County's approval or performance of the Consent Decree, unrelated to any

personal injury or physical damage to property.

The indemnity does not apply to City or County liability which is premised on certain conduct or activity by the City or County, which are enumerated in the Decree.

See, pp. 96-98, para. 122.

PERMITS AND CONSTRUCTION SCHEDULE

The Consent Decree outlines a schedule for submission of permit applications and the construction of the incinerator and remedial clean-up activities.

The permitting of the incinerator will occur over two stages -- first as a solid waste incinerator, and then as a hazardous waste incinerator under the Toxic Substances Control Act and the Resource, Conservation and Recovery Act.

Solid waste permit applications must be submitted within six months of entry of the Decree, and the hazardous waste permit applications within 17 months of the Decree's entry. The plan approvals of the federal, state and city governments must be obtained for both the solid waste and hazardous waste aspects of the incinerator.

Construction schedules are tied to permit issuance.

See, pp. 79-82, paras. 101-110.

DISPUTE RESOLUTION

The Decree establishes a procedure by which disputes among the parties may be resolved. The Decree encourages resolution of disputes first through informal discussions, but also provides for submission of disputes to the Court. See, p. 86, paras. 112-113.

The Court retains jurisdiction for the purposes of enforcing, interpreting or modifying the terms of the Decree. See, p. 103, para. 137.

DELAY OR PREVENTION OF PERFORMANCE

There may be events which arise from causes beyond the control of Westinghouse which (1) delay the performance required by the Decree or (2) make it legally impossible for substantial performance of the incinerator obligations or the removal or disposal obligations. Such events are termed "force majeure" events, or simply "force majeure."

The Decree, however, provides that certain actions or subjects shall not be considered "force majeure":

- increased costs or expenses of the project;

- technical infeasibility or Westinghouse's failure to apply for any required permit or approvals;

- technical or economic feasibility of constructing and operating an incinerator to incinerate and destroy PCBs;

- technical or economic feasibility of excavating and removing materials contaminated with PCBs from the sites;

- technical or economic feasibility of the interim remedial measures and closure and post-closure measures; and

- technical or economic feasibility of any other activities required of Westinghouse under the Decree.

If a delay occurs, whether it is due to a "force majeure" event or not, notice must be given to the other parties. A process also exists whereby the parties may stipulate to an extension of time for the performance, or otherwise resolve a dispute about the delay before the Court.

See, pp. 92-94, paras. 117-119.

GENERAL PROVISIONS

The Decree contains 13 paragraphs which cover items not readily assignable to any other specific section of the Decree. Among other things, there are provisions which incorporate the exhibits as a part of the Decree; require samples and analyses to be performed according to EPA protocols and in accordance with chain of custody procedures; and reserve enforcement remedies such as contempt, to the United States, State, City and County.

See, pp. 99-103, paras. 124-136.

TERMINATION

The Consent Decree shall terminate when the United States, State and City have provided Westinghouse with a written notice that all of Westinghouse's responsibilities and obligations have been satisfactorily completed, and that all payments due have been paid. See, p. 103, para. 138.