



**TABLE OF CONTENTS**

I.	BACKGROUND .....	1
II.	JURISDICTION .....	3
III.	PARTIES BOUND .....	3
IV.	DEFINITIONS .....	3
V.	STATEMENT OF PURPOSE .....	6
VI.	TRANSFER OF SITE PROPERTY .....	6
VII.	PAYMENT OF PROCEEDS FROM TRANSFER OF SITE PROPERTY .....	11
VIII.	FAILURE TO COMPLY WITH CONSENT DECREE .....	14
IX.	OBLIGATIONS UNDER ADMINISTRATIVE ORDERS .....	17
X.	COVENANT NOT TO SUE BY THE UNITED STATES .....	17
XI.	RESERVATIONS OF RIGHTS BY THE UNITED STATES .....	18
XII.	COVENANTS NOT TO SUE BY ROCK SPRINGS .....	19
XIII.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION .....	20
XIV.	ACCESS AND INSTITUTIONAL CONTROLS .....	22
XV.	CERTIFICATION .....	26
XVI.	DISPUTE RESOLUTION .....	27
XVII.	NOTICES AND SUBMISSIONS .....	33
XVIII.	RELEASE OF NOTICE OF FEDERAL LIEN .....	34
XIX.	RETENTION OF JURISDICTION .....	34
XX.	INTEGRATION/APPENDICES/MODIFICATION .....	34

XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....	35
XXII SIGNATORIES/SERVICE .....	35
XXIII FINAL JUDGMENT .....	36

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

---

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 5:07-CV-164
	)	
NEWELL HOLDINGS DELAWARE, INC.,	)	Judge Stamp
and	)	
ROCK SPRINGS ENTERPRISES, INC.,	)	CONSENT DECREE
	)	
Defendants.	)	
	)	
	)	

---

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607(a), seeking reimbursement of costs incurred and to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the 8th and Plutus Streets Pottery Site in Chester, Hancock County, West Virginia ("the Site");

B. The United States has incurred over \$1,000,000.00 in costs of response action, and expects to continue to incur costs of response action, in connection with the Site;

C. The Complaint filed by the United States alleges that Newell Holdings Delaware, Inc., ("Newell Holdings") is liable to the United States pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2);

D. The Complaint also alleges that Rock Springs Enterprises, Inc. ("Rock Springs") is liable to the United States pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1);

E. Rock Springs does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint;

F. The United States has reviewed the Financial Information submitted by Rock Springs to determine the extent to which it is financially able to pay Response Costs incurred in connection with the Site. Based upon this Financial Information, the United States has determined that the Transfer of the Site Property and payment of the Net Sales Proceeds in reimbursement of Response Costs will not create an undue financial hardship on Rock Springs.

G. The United States and Rock Springs agree, and this Court, by entering this Consent Decree, finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Rock Springs. Rock Springs consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Rock Springs and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Rock Springs under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Financial Information" shall mean the information identified in the Declaration attached hereto in Appendix A.
- h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- i. "Newell Holdings Administrative Order on Consent" or "Newell Holdings AOC" shall mean the First Amended Administrative Settlement Agreement and Order by Consent for Removal Response Action, EPA Docket No. CERC-03-2004-0255DC, dated June 5, 2007.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and Rock Springs, Enterprises, Inc.

l. "Plaintiff" shall mean the United States of America.

m. "Response Costs" shall mean all costs of "response," as defined in 42 U.S.C. § 9601(25), including, but not limited to, direct and indirect costs, that the United States has incurred or will incur in connection with the Site.

n. "Rock Springs Administrative Order" shall mean the Administrative Order issued by EPA to Rock Springs and bearing the docket number Administrative Order CERC-03-2008-0414DC.

o. "Rock Springs Clean Air Act Order" shall mean the Administrative Compliance Order by EPA to Rock Springs Enterprises, Inc., issued on August 29, 2008 and bearing docket number CAA-03-2008-0420DA.

p. "Rock Springs Property" or "Site Property" shall mean an approximately 11-acre parcel of real property at the Site that is owned by Rock Spring Enterprises, Inc., as identified in the deed attached hereto as Appendix B, including any oil, gas, and mineral rights.

q. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

r. "Site" shall mean the 8th and Plutus Streets Pottery Site, which is located at or around 8<sup>th</sup> Street between Neptune and Plutus Avenues in Chester, Hancock County, West Virginia, and which includes the location of the former Taylor, Smith & Taylor Company



pottery-manufacturing facility, as well as areas adjacent thereto. A map of the Site is attached hereto as Appendix C.

s. "Transfer" shall mean any conveyance or transfer of any interest in the Rock Springs Property, or portion thereof, including, but not limited to, fee interest, leasehold interests, easements, assignments, licenses and mortgage interests.

t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is:

(a) for Rock Springs to facilitate a Transfer of the Site Property and to pay Net Sales Proceeds of the Transfer to the United States as provided for in Sections VI and VII, below, to resolve Rock Springs' alleged liability for Response Costs in connection with the Site as provided in the Covenant Not to Sue by the United States in Section X, and subject to the Reservations of Rights by United States in Section XI; and, (b) for Rock Springs to assure access to the Site for the purposes identified herein and to implement institutional controls in accordance with Section XIV of this Consent Decree to protect the integrity of the Response Action taken at the Site and to protect human health and the environment.

#### **VI. TRANSFER OF SITE PROPERTY**

5. Rock Springs agrees that it will not sell, assign, Transfer or exchange the Site except in accordance with the requirements of Sections VI and VII of this Consent Decree. Rock Springs hereby certifies that it does not own any real property other than parcels

identified in the deed attached hereto as Appendix B. These parcels are referred to hereinafter as the "Rock Springs Property" or the "Site Property."

6. Beginning on the date of entry of this Consent Decree, Rock Springs shall immediately undertake Best Efforts to Transfer the Site Property in accordance with the requirements of this Section VI of this Consent Decree. Nothing in this Consent Decree shall preclude Rock Springs from commencing the use of Best Efforts to Transfer the Site Property prior to the date of entry of this Consent Decree, provided that such efforts conform to the requirements of this Consent Decree. "Best Efforts," for purposes of this Consent Decree, shall include, at a minimum, the following:

(a) developing a marketing plan to include direct contact with prospective purchasers, advertisement of the sale of the Site Property in appropriate publications, and other solicitation of prospective purchasers as appropriate, provided that all such marketing of the Site Property includes notice of the land use restrictions set forth in the Environmental Covenant required by Section XIV (Access and Institutional Controls) of this Consent Decree;

(b) obtaining an objective, independent appraisal of the Site Property within ninety (90) days of entry of this Consent Decree. EPA may waive this requirement upon written request of Rock Springs. EPA's decision whether to waive the requirement for an appraisal is not subject to judicial or other review;

(c) implementing the marketing plan;

(d) responding to the reasonable inquiries of prospective purchasers;

- (e) maintaining the Site Property in a condition suitable for exhibition to prospective purchasers;
- (f) allowing the Site Property to be shown at all reasonable times;
- (g) assisting a broker, dealer, agent, or consultant in any other reasonable way requested in an effort to Transfer the Site Property at the highest price possible and in an expeditious manner; and
- (h) timely pay all real estate taxes and water and sewer assessments levied against the Site Property.

7. Rock Springs may enter into an agreement with an agent or custodian to act on behalf of Rock Springs to facilitate the marketing and Transfer of the Rock Springs Property.

8. Every six months following the date of entry of this Consent Decree, Rock Springs shall submit to EPA a report identifying all actions taken during the previous six months to Transfer the Rock Springs Property. Such reports shall be due within 30 days of the end of each six month period and are required to be submitted until all of the Site Property has been Transferred.

9. Rock Springs shall, within thirty (30) days of the date of entry of this Consent Decree, contract with a real estate broker, dealer, agent, or consultant licensed to do business in the State of West Virginia to assist Rock Springs in the Transfer of such property. Such contract shall require the real estate broker, dealer, agent, or consultant to follow the usual and normal practices for marketing real property, including, among other things, listing the Site Property, or

any portion thereof, in one or more real estate listing services regularly used by real estate agents, brokers, and others, and otherwise advertising the availability of such property to potential buyers. Neither Rock Springs nor any Related Parties shall act as a real estate broker, dealer, agent, or consultant. For purposes of this Paragraph, "Related Parties" includes Hans Dietz Apartments, Robert Dietz, Heidi Dietz, Christopher Dietz, and Daniel Dietz, the spouses and former spouses of the persons identified herein, the siblings of those persons identified herein, any offspring of the persons identified herein and their siblings, and the children of any offspring of the persons identified herein and their siblings, and any businesses in which any of the foregoing own more than a 5% interest in the business.

10. Rock Springs shall ensure that the listing agreement with the real estate broker, dealer, agent, or consultant provides that said broker, dealer, agent or consultant shall timely provide to EPA copies of all advertising published with respect to the Site Property, indicating when such advertising is/was displayed. Copies shall be considered timely if the copies arrive at EPA within the month such advertising is/was displayed.

11. Rock Springs agrees to provide EPA and DOJ, at the addresses specified in Paragraph 49 of this Consent Decree, with a copy of any offer to purchase or otherwise Transfer the Site Property, or any portion thereof, within forty-eight (48) hours of receipt of any such offer. If EPA does not object to the proposed Transfer within twenty (20) Days of EPA's receipt of the offer to purchase or Transfer the Site Property, Rock Springs may proceed with execution of a contract for Transfer on the terms identified in the offer. In the event that any material term of the offer is modified after being provided to EPA, Rock Springs must

submit the modification to EPA within five (5) Days of the date the modification is proposed. If EPA does not object to the proposed modification within twenty (20) Days of EPA's receipt of the proposed modification, Rock Springs may proceed with the contract for Transfer on the modified terms. Rock Springs shall receive no fee for its efforts to Transfer the Site Property. Rock Springs agrees to close the Transfer of the Site Property within the time period established in the contract for the Transfer of the Site Property, unless otherwise agreed to in writing by Rock Springs and EPA.

12. Auction of Site Property. Rock Springs shall have three and one-half (3 ½) years from the date of entry of this Consent Decree to Transfer the Site Property using Best Efforts as described in Paragraph 6 of this Consent Decree. EPA, in its non-reviewable discretion, may extend the three and one-half year period upon written request from Rock Springs. Any such extension of the three and one-half year period must be in writing and signed by the Parties. If Rock Springs is unable to Transfer the Site Property within the three and one-half year period, and any extensions thereof pursuant to this Paragraph 12, Rock Springs agrees to auction the Site Property to the highest bidder. Rock Springs agrees to engage a professional auctioneer and to publicize the auction fully, by means of daily advertisements in local newspapers for twenty-one (21) Days preceding the auction, as well as by all other appropriate and customary means for auctioning of real property in the Chester, WV, area. Any reasonable costs of an auction of the Site Property under this Paragraph 12 of this Consent Decree shall be considered closing costs pursuant to Paragraph 15 of this Consent Decree.

**VII. PAYMENT OF PROCEEDS FROM TRANSFER OF SITE PROPERTY**

13. At least twenty (20) Days before any Transfer of the Site Property by Rock Springs, Rock Springs shall notify EPA of the proposed Transfer with a written notice describing the property to be Transferred, the identity of the purchaser, the terms of the Transfer, including the estimated closing costs, the consideration to be paid, a copy of the Transfer agreement, and the name and address of the title company or other entity conducting the closing.

14. In the event of a Transfer of the Site Property, Rock Springs shall continue to be bound by all of the terms and conditions, and subject to all of the benefits, of this Consent Decree, unless this Consent Decree is modified in accordance with Section XX.

15. Upon the Transfer of the Site Property, Rock Springs shall pay to the United States seventy-five percent (75%) of the Net Sales Proceeds from the Transfer of the Site Property in accordance with the provisions of Paragraphs 18 and 19 of this Consent Decree. The Net Sales Proceeds from the Transfer of the Site Property shall be calculated by subtracting from the purchase price the following costs:

- (a) the real estate broker, dealer, agent, or consultant's fee or commission (including advertising costs), if any, up to a maximum of six (6) percent of the purchase price ;
- (b) required recording fees normally paid by seller in West Virginia;
- (c) required transfer taxes normally paid by seller in West Virginia;
- (f) reasonable attorney fees related solely to the closing on the Transfer of the Site Property.

16. Rock Springs shall make all necessary arrangements with the title company or other entity conducting the closing on any Transfer of the Site Property, or portion thereof, to pay to the United States seventy-five percent (75%) of the Net Sales Proceeds under this Paragraph 16 as soon as practicable after the closing, but no later than five (5) Days after the date of closing. Payment shall be made by EFT in accordance with the instructions provided in Paragraph 19 of this Consent Decree. Until the wire transfer of funds is completed in accordance with the requirements of Paragraphs 18 and 19 of this Consent Decree, seventy-five percent (75%) of the Net Sales Proceeds shall be held in an escrow account for the benefit of the EPA Hazardous Substance Superfund by the title company or other entity conducting the closing. In the event there is any dispute with regard to the closing costs and the Net Sales Proceeds, the disputed portions of the funds shall be held in escrow for the benefit of the Parties pending resolution of the dispute. Any undisputed closing costs shall be paid to the appropriate party at the time of closing. Undisputed portions of the Net Sales Proceeds shall be paid to the EPA Hazardous Substance Superfund in accordance with the EFT instructions in Paragraph 19 of this Consent Decree.

17. At the same time that Rock Springs pays the Net Sales Proceeds from the Transfer of the Site Property to the United States, Rock Springs shall provide EPA and DOJ with an accounting identifying the purchase price, the Net Sales Proceeds, and each item subtracted from the purchase price to obtain the "Net Sales Proceeds" amount. Rock Springs shall not subtract from the purchase price any costs not actually paid by the seller. Rock Springs shall not subtract from the purchase price any costs paid to Related Parties. For purposes of this Paragraph,

“Related Parties” includes Hans Dietz Apartments, Robert Dietz, Heidi Dietz, Christopher Dietz, the shareholders of Rock Springs, the spouses and former spouses of the shareholders, the siblings of the shareholders, any offspring of the shareholders and their siblings, and the children of any offspring of the shareholders and their siblings, and any businesses in which any of the foregoing own more than a 5% interest in the business.

18. Within thirty (30) Days of any auction as required by Paragraph 12 of this Consent Decree, Rock Springs shall deliver to EPA the “Net Proceeds from the Auction” and shall provide EPA with a copy of all documentation of conveyance. “Net Proceeds from the Auction” shall mean, for the purpose of this Paragraph, the gross proceeds from the auction of the Site Property, or any portion thereof, minus the costs of Transfer, including attorney’s fees, auctioneer’s fees, or commissions. Rock Springs’ payment of the Net Proceeds from the Auction pursuant to this Paragraph 18 shall be made in accordance with the requirements of Paragraph 19 of this Consent Decree.

19. Payments required to be made pursuant to the terms of this Consent Decree shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2008-v-00015, the EPA Region and Site Spill ID Number A3N9, and DOJ Case Number 90-11-3-09297. Payment shall be made in accordance with instructions provided to Rock Springs by the Financial Litigation Unit of the U.S. Attorney’s Office in the Northern District of West Virginia following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.



20. At the time of payment, Rock Springs shall send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions) and to:

Docket Clerk (3RC00)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Barbara Borden (3PM30)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

The total amount of Response Costs to be paid pursuant to this Consent Decree shall be deposited in the 8th and Plutus Streets Pottery Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

**VIII. FAILURE TO COMPLY WITH CONSENT DECREE**

21. Interest on Late Payments. If Rock Springs fails to make any payment required by this Consent Decree by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment and shall be paid by Rock Springs.

22. Stipulated Penalty.

a. If any amount due under this Consent Decree is not paid by the required due date, Rock Springs shall be in violation of this Consent Decree and shall pay, as a stipulated

penalty, in addition to the Interest required by Paragraph 21, above, \$1,000.00 per violation per day that such payment is late.

b. If Rock Springs fails to comply with any other deadline or obligation imposed on it by this Consent Decree, Rock Springs shall pay to EPA, as a stipulated penalty, \$1,000.00 per violation per day for each day that performance is late or such deadline or obligation is not met.

c. Stipulated penalties are due and payable within thirty (30) Days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number A3N9, and DOJ Case Number 90-11-3-09297, and shall be sent to:

United States Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

d. At the time payment is made under this Paragraph, Rock Springs shall send notice that payment has been made to EPA and DOJ in accordance with Section XVII (Notices and Submissions) and to:

Docket Clerk (3RC00)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

Barbara Borden (3PM30)  
United States Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Rock Springs of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

23. If the United States brings an action to enforce this Consent Decree, Rock Springs shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

24. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Rock Springs' failure to comply with the requirements of this Consent Decree.

25. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Rock Springs from payment as required by Sections VI (Transfer of Site Property), Section VII (Payment of Proceeds from Transfer of Site Property), and Section VIII (Failure to Comply with Consent Decree) or from performance of any other requirements of this Consent Decree.

**IX. OBLIGATIONS UNDER ADMINISTRATIVE ORDERS**

26. Defendant Newell Holdings has been performing work at the Site pursuant to the Newell Holdings Administrative Order on Consent. Nothing in this Consent Decree shall abrogate or excuse Newell Holdings' ongoing obligations under the Newell Holdings Administrative Order on Consent.

27. Nothing in this Consent Decree shall abrogate or excuse Rock Springs' ongoing obligations under the Rock Springs Administrative Order. Nothing in this Consent Decree shall abrogate or excuse Rock Springs' obligations under the Rock Springs Clean Air Act Order.

**X. COVENANT NOT TO SUE BY THE UNITED STATES**

28. Except as specifically provided in Section XI (Reservation of Rights by United States), the United States covenants not to take civil judicial or administrative action against Rock Springs pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a), with regard to the Site. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VII (Payment of Proceeds from Transfer of Site Property) of this Consent Decree and any amounts due under Paragraphs 21 or 22 of this Consent Decree. This

covenant not to sue is conditioned upon the satisfactory performance by Rock Springs of its obligations under this Consent Decree, including, but not limited to, implementation of institutional controls through the execution and recording of the Environmental Covenant as required by Paragraph 38(d) of this Consent Decree. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Rock Springs. If, after entry of this Consent Decree, the Financial Information is determined by EPA to be false or, in any material respect, inaccurate, Rock Springs shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 35 of this Consent Decree shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Rock Springs' false or materially inaccurate or incomplete information. This covenant not to sue extends only to Rock Springs and does not extend to any other person.

#### **XI. RESERVATIONS OF RIGHTS BY UNITED STATES**

29. The United States reserves, and this Consent Decree is without prejudice to, all rights against Rock Springs with respect to all matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 28 of this Consent Decree. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Rock Springs with respect to:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Rock Springs' status as owner or operator for hazardous substances disposed at the Site after signature by Rock Springs of this Consent Decree, or upon Rock Springs' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree;

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and

f. claims based upon Rock Springs' failure to comply with the Rock Springs Administrative Order.

30. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to re-institute or re-open this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Rock Springs, or the financial certification made by Rock Springs in Paragraph 41 is false or, in any material respect, inaccurate.

## **XII. COVENANTS NOT TO SUE BY ROCK SPRINGS**

31. Rock Springs covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

32. Except as provided in Paragraph 35 of this Consent Decree, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 28, but only to the extent that Rock Springs' claims arise from the same response action or costs of response action that the United States is seeking pursuant to the applicable reservation.

33. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

34. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. The Parties expressly reserve any and all rights (including, but

not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party to this Consent Decree. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2), 42 U.S.C. § 9613(f)(2), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

35. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Rock Springs is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, and the implementation of institutional controls by the execution and recording of the Environmental Covenant as required by Section XIV of this Consent Decree. The “matters addressed” in this Consent Decree do not include those response actions or costs of response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Rock Springs coming within the scope of such reservations.



36. Rock Springs agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than sixty (60) Days prior to the initiation of such suit or claim. Rock Springs also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) business days of service of the complaint or claim upon it. In addition, Rock Springs shall notify EPA and DOJ within ten (10) business days of service or receipt of any Motion for Summary Judgment, and within ten (10) business days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

37. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of costs of response action, or other relief relating to the Site, Rock Springs shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States set forth in Section X.

#### **XIV. ACCESS AND INSTITUTIONAL CONTROLS**

38. Rock Springs shall:
- a. commencing on the date of lodging of this Consent Decree, and thereafter, provide Newell Holdings and its agents and contractors with access at all reasonable times to the

Site, or such other property, for the purpose of conducting response activity related to the Site, including, but not limited to, the response activity described in the Administrative Order on Consent.

b. commencing on the date of lodging of this Consent Decree, and thereafter, provide the United States, the State of West Virginia, and their representatives, including but not limited to, EPA and the West Virginia Department of Environmental Protection ("WVDEP"), and their contractors, with access at all reasonable times to the Site, or Site Property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States or WVDEP;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents concerning the Site that may be maintained or generated at the Site by Newell Holdings and Rock Springs and their agents, contractors, and employees;

7. Assessing Rock Springs' compliance with this Consent Decree, the Rock Springs Administrative Order, and the Rock Springs Clean Air Act Order; and

8. Determining whether the Site or Site 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 Consent Decree;

c. commencing on the date of lodging of this Consent Decree and continuing thereafter, comply with the following:

1. Refrain from using the Site, or Site Property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of any response actions that are being or have been performed at the Site;

2. To prevent the release and threat of release of hazardous substances, refrain from any and all activities at the Site that may disturb or damage areas of the Site that have been capped or where contamination remains at depths greater than two feet (as shown on the map attached hereto as Appendix C), including, but not limited to, excavation and driving or towing heavy equipment in those areas; and

3. Provide security at the Site that is sufficient to preclude access by motorized vehicles, including but not limited to heavy machinery that may disturb the cap. Site security measures shall include maintenance of the perimeter fence at the Site and placement of signs on the fence and Site Property notifying the public that the Site Property is part of the 8<sup>th</sup> and Plutus Streets Pottery Superfund Site and notifying the public of prohibited activities on the Site. Nothing in this Paragraph 38.c shall be construed to prevent EPA and/or the West Virginia

Department of Environmental Protection (“WVDEP”), and their contractors, from conducting any response activity related to the Site.

d. Environmental Covenant. Within thirty (30) Days of entry of this Consent Decree, record the Environmental Covenant attached hereto as Appendix D with the Office of the County Clerk, Hancock County, State of West Virginia. The Environmental Covenant shall be executed with respect to the Site Property and shall comply with the West Virginia Uniform Environmental Covenants Act, W.Va. Code Chapter 22, Article 22B. The Environmental Covenant shall provide notice to all successors-in-interest that the Site Property is part of the Site. The Environmental Covenant shall identify the civil action number of this Consent Decree and the date this Consent Decree is entered. The Environmental Covenant shall recite Rock Springs’ obligations to comply with the use restriction and access requirements of Paragraph 38.c. under this Section XIV (Access and Institutional Controls). The Environmental Covenant shall include requirements for notice to EPA and WVDEP following Transfer of a specified interest in the Site Property, or concerning any proposed changes in the use of, applications for building permits for, or proposals for any activity that will potentially disturb any areas of the Site Property described in Paragraph 38.c.2 of this Section XIV (Access and Institutional Controls). The Environmental Covenant shall be recorded in accordance with W.Va. Code § 22-22B-8. Such recording shall be made in the Grantor/Grantee and Lot/Block indices of the deed for the Site Property. Thereafter, each deed, title, or other instrument for Transfer of property executed by Rock Springs regarding the Site Property, or any portion thereof, shall contain a notice stating that the Site Property is subject to the Environmental Covenant. Rock Springs

shall not modify or terminate the Environmental Covenant except by written consent of each party that originally signed the Environmental Covenant, as provided by W.Va. Code § 22-22B-

10. Rock Springs shall provide EPA with a certified copy of the recorded Environmental Covenant within ten (10) Days of recording such Environmental Covenant.

39. If EPA determines that additional land/water use restrictions in the form of State or local laws, regulations, ordinances, or other governmental controls are needed to implement response activities at the Site, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Rock Springs shall cooperate with EPA's efforts to secure such governmental controls.

40. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and any other applicable statutes or regulations.

#### **XV. CERTIFICATION**

41. Rock Springs hereby certifies that, to the best of its knowledge and belief, after reasonable inquiry:

a. it has not altered, mutilated, discarded or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all requests by

EPA for documents or information regarding the Site and Rock Springs' financial circumstances pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e);

b. the Financial Information submitted to EPA, which Financial Information is identified in Appendix A, fairly, accurately, and materially sets forth Rock Springs' financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Rock Springs signs this Consent Decree; and

c. it has fully disclosed to the United States the existence of any insurance policies that may cover claims relating to clean up of the Site.

#### **XVI. DISPUTE RESOLUTION**

42. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising with respect to the requirements of Section VI (Transfer of Site Property) of this Consent Decree. Nothing in this Consent Decree shall be construed to allow Rock Springs to dispute or assert any claims under this Consent Decree relating to the Newell AOC, the Rock Springs Administrative Order, or the Rock Springs Clean Air Act Order. Any dispute with respect to the Newell AOC shall be governed by the Dispute Resolution provisions of Section XVI (Dispute Resolution) of the Newell AOC. The procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Rock Springs under this Consent Decree that have not been disputed in accordance with this Section.

43. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) Days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

44. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Rock Springs invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Rock Springs. The Statement of Position shall specify Rock Springs' position as to whether formal dispute resolution should proceed under Paragraph 45 or Paragraph 46 of this Consent Decree

b. Within fifteen (15) Days after receipt of Rock Springs' Statement of Position, EPA will serve on Rock Springs EPA's Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 45 or 46.

Within fifteen (15) Days after receipt of EPA's Statement of Position, Rock Springs may submit a Reply.

c. If there is disagreement between EPA and Rock Springs as to whether dispute resolution should proceed under Paragraph 45 or 46, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Rock Springs ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 45 and 46.

45. Formal dispute resolution for disputes concerning whether a cost item represents costs that are inconsistent with the NCP, and which pertain to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph.

a. EPA shall maintain an administrative record of the dispute which shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 45.a. This decision shall be binding upon Rock Springs, subject only to the right to seek judicial review pursuant to Paragraph 47.c and 48.a.



c. Any administrative decision made by EPA pursuant to Paragraph 45.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Rock Springs with the Court and served on all Parties within ten (10) Days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Rock Springs' motion.

d. In proceedings on any dispute governed by this Paragraph, Rock Springs shall have the burden of demonstrating that the decision of the Hazardous Site Cleanup Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 45.a.

46. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph 46.

a. Following receipt of Rock Springs' Statement of Position submitted pursuant to Paragraph 44, the Director of the Hazardous Site Cleanup Division, EPA Region III will issue a final decision resolving the dispute. The Hazardous Site Cleanup Division Director's decision shall be binding on Rock Springs unless, within ten (10) Days of receipt of the decision, Rock Springs files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be

resolved to ensure orderly implementation of response action. The United States may file a response to Rock Springs' motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

47. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Rock Springs under this Consent Decree not directly in dispute, unless EPA agrees or the Court rules otherwise. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Rock Springs under the Rock Springs Administrative Order or under the Rock Springs Clean Air Act Order. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 48. Except as provided in Paragraph 46.d of this Consent Decree, and notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Rock Springs does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Failure to Comply with Consent Decree).

48. Except as provided in subsection d of this Paragraph 48, stipulated penalties shall continue to accrue as provided in Paragraph 47 during any dispute resolution period, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) Days of the agreement or the receipt of EPA's decision or order;
- b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Rock Springs shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) Days of receipt of the Court's decision or order, except as provided in Paragraph c below;
- c. If Rock Springs appeals the District Court's decision, Rock Springs shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) Days of receipt of the Court's decision or order. Rock Springs shall continue to pay penalties into this account as they continue to accrue, at least every sixty (60) Days. Within fifteen (15) Days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Rock Springs to the extent that it prevails;
- d. Stipulated penalties shall not accrue: (1) with respect to a decision by the Director of the Hazardous Site Cleanup, EPA Region III, under Paragraph 45.b or 46.a of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Rock Springs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section XVI (Dispute Resolution), during the period, if any,

beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

**XVII. NOTICES AND SUBMISSIONS**

49. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Rock Springs, respectively:

**As to the Department of Justice:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-09297)  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611

**As to the U.S. Environmental Protection Agency:**

Chief, Site Remediation Branch No. 1 (3RC41)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

Chief, Cost Recovery Branch (3HS62)  
Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

**As to Rock Springs Enterprises, Inc.**

Lawrence L. Manypenny, Esq.  
Manypenny & Carey  
106 Court Street  
P.O. Box 638  
New Cumberland, WV 26047

**XVIII. RELEASE OF NOTICE OF FEDERAL LIEN**

50. Within sixty (60) Days after EPA receives the payment required by Paragraphs 18, 19, 21, and 22 of this Consent Decree, and Subject to the Reservation of Rights in Section XI of this Consent Decree, EPA agrees to remove any lien it may have on the Site Property under Sections 107(I) of CERCLA, 42 U.S.C. § 9607(I), as a result of response action conducted by EPA at the Site.

**XIX. RETENTION OF JURISDICTION**

51. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XX. INTEGRATION/APPENDICES/MODIFICATION**

52. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

- Appendix A - Declaration
- Appendix B - Deed for Site Property
- Appendix C - Site Map
- Appendix D - Environmental Covenant

Any agreed upon written modification to this Consent Decree must be signed by the Parties. No Party may petition the Court for modification without having first made a good faith effort to reach agreement with the other Party on the terms of such modification.

#### **XXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

53. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Rock Springs hereby consents to the entry of this Consent Decree without further notice.

54. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XXII. SIGNATORIES/SERVICE**

55. Each undersigned representative Rock Springs to this Consent Decree and the Deputy Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, certifies that he or she is

authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

56. Rock Springs hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

57. Rock Springs shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Rock Springs with respect to all matters arising under or relating to this Consent Decree. Rock Springs hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Rock Springs need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

### **XXIII. FINAL JUDGMENT**

58. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Rock Springs. The

Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_

---

Frederick P. Stamp, Jr.  
United States District Judge

FOR THE UNITED STATES OF AMERICA

1/22/10  
Date

W. BENJAMIN FISHEROW  
Deputy Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice



THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Newell Holdings Delaware, Inc. relating to the 8th and Plutus Streets Pottery Site.

1/25/10

Date

DONNA D. DUER  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

SHARON L. POTTER  
United States Attorney  
Northern District of West Virginia

\_\_\_\_\_  
Date

\_\_\_\_\_  
HELEN ALTMAYER  
Assistant United States Attorney  
Northern District of West Virginia  
U.S. Courthouse and Federal Building  
1125 Chapline Street  
Wheeling, WV 26003  
304-234-0100,  
WV Bar No. 117

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Newell Holdings Delaware, Inc. relating to the 8th and Plutus Streets Pottery Site.

ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY:

JAN 26 2010

DATE

\_\_\_\_\_  
SHAWN M. GARVIN  
Regional Administrator  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

1/22/10  
Date

\_\_\_\_\_  
MARCIA MULKEY  
Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

01/20/10  
Date

\_\_\_\_\_  
ROBERT HASSON  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States v. Newell Holdings Delaware, Inc. relating to the 8th and Plutus Streets Pottery Site.

ON BEHALF OF ROCK SPRINGS ENTERPRISES, INC.

1-14-10

Date

LAWRENCE L. MANYPENNY, Esq.  
Manypenny & Carey  
106 Court Street  
P.O. Box 638  
New Cumberland, WV 26047

1-14-10

Date

HEIDI DIETZ  
President  
Rock Springs Enterprises, Inc.  
205 California Street  
Chester, WV 26034



**CERTIFICATE OF SERVICE**

I, Helen Campbell Altmeyer, hereby certify that on January 27, 2010, I caused a true and correct copy of the foregoing PLAINTIFF UNITED STATES OF AMERICA'S NOTICE OF LODGING OF CONSENT DECREE and attached CONSENT DECREE to be served by first class mail on the following:

Andrew N. Sawula, Esq.  
Gabriel M. Rodriguez, Esq.  
Schiff Hardin LLP  
6600 Sears Tower  
Chicago, IL 60606

Karen E. Kahle, Esquire  
Steptoe and Johnson PLLC  
1233 Main Street, Suite 300  
P.O. Box 751  
Wheeling, WV 26003

Lawrence L. Manypenny, Esq.  
Manypenny & Carey  
106 Court Street  
P.O. Box 638  
New Cumberland, WV 26047

Assistant United States Attorney  
WV Bar #117  
United States Attorney's Office  
P.O. Box 591  
Wheeling, WV 26003  
Phone: 304-234-0100  
Fax: 304-234-0012

