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Via Telecopier and Certified Mail

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Re: U.S. v. The Selmer Company, et al.

Dear Ms. Weinstock, Mr. Woodsmall, Ms. Bullen and Mr. Dennis:

I am writing in response to Ms. Weinstock's letter to Frank Bentkover and Liz Murphy, dated March 28, 1994, in which The Selmer Company, Philips Electronics North American Corporation and MacMillan, Inc. (the "Defendants") request a six month extension to comply with Paragraph V.B.9 of the Consent Decree. According to Ms. Weinstock's letter, Defendants requests this extension, in large part, due to difficulties the Defendants have purportedly encountered in obtaining access agreements from some of the homeowners along Outer Drive.

Paragraph V.B.9 requires Defendants to "arrange for, pay for, and be responsible for..." provision of municipal water to the residences with drinking water wells along Outer Drive, from Middlebury Street to Toledo Road in Elkhart, Indiana within six months of the date of entry of the aforementioned Consent Decree. The date for compliance with this provision of the Consent Decree was March 28, 1994. Moreover, to the extent the Defendants have encountered difficulty in obtaining access to private property in order to complete the necessary work, Paragraph VII.16 of the Consent Decree requires Defendants not only to use "best efforts" to obtain such access, as those terms are applied in the Consent Decree, but also to notify U.S. EPA in writing within forty five (45) days of lodging of the Consent Decree that such access has not been obtained. I am not aware of any record or writing that indicates that the Defendants did so notify U.S. EPA in a timely manner.

Be advised that Kenneth Theisen, the U.S. EPA's On-Scene Coordinator for the Selmer Site, has considered the Defendants' request for extension and believes the request is unreasonable for the following reasons. First, laying the water main required by the Consent Decree does not necessitate gaining access to private property. U.S. EPA does understand that it might be necessary to obtain access to private properties in order to make the appropriate connections to the main. However, the Defendants have made insufficient progress on those elements of the required work which do not require access to private properties to sustain Defendants' request for a six month extension. Second, the On-Scene Coordinator has consulted with the Elkhart City Engineer and determined that obtaining the permits required from the city to complete the project will not involve the expenditure of significant amounts of time. Finally, to the extent Defendants continue to experience delays in obtaining access to homeowners' properties for purposes of implementing the provisions of the Consent Decree, or difficulty in obtaining necessary permits, Defendants should so notify U.S. EPA in writing as soon as practicable so that U.S. EPA might assist the Defendants in securing such access or permits as U.S. EPA, in its sole discretion, determines appropriate.

For the reasons given above, and pursuant to Paragraph XXVI.82 of the Consent Decree, the United States Environmental Protection Agency ("U.S. EPA") hereby grants the Defendants an extention to comply with Paragraph V.B.9. Defendants shall hereafter be required to complete the provisions of Paragraph V.B.9 within **thirty (30) calendar days** from the date of this letter.

Should you have any questions or comments which are technical in nature, please contact Ken Theisen, On-Scene Coordinator, 77 W. Jackson Blvd., Chicago, IL 60604. Ken Theisen may also be reached by dialing (312) 886-1959. Should you have questions or comments which are legal in nature, please contact Alan Lewis of the Office of Regional Counsel, 77 W. Jackson Blvd., Chicago, IL 60604. I can reached by dialing (312) 353-72.

Sincerely,

Alan I. Lewis
Law Clerk

cc: Kenneth Theisen, Project Coordinator
Elizabeth Murphy, Esq.
Frank Bentkover, Esq. - DOJ