A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA and NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; ACTING ADMINISTRATOR, NEW JERSEY SPILL COMPENSATION FUND; and COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION as TRUSTEE for NATURAL RESOURCES, Plaintiffs, v. PRINCETON GAMMA-TECH, INC., et al. Defendants.	CIVIL ACTION NO. 91-809 (AET)

PROPOSED ORDER REGARDING DISBURSEMENT OF FUNDS
FROM THE COURT REGISTRY

Upon application of the parties, it is hereby ORDERED, ADJUDGED and DECREED:

1. Pursuant to the Order of the Court dated_____, 2003 in this action, Defendant Princeton Gamma-Tech, Inc. paid the sum of $21,500,000 into the Court Registry between _____, 2003 and _____2003.

2. Pursuant to the _____, 2003 Order, the funds deposited by Princeton Gamma-Tech, Inc. were to be disbursed in accordance with the terms of a proposed Consent Decree to be lodged with this Court.

3. Pursuant to the terms of the Consent Decree, which was entered by the Court on _____, 2003, the Clerk of the Court shall disburse the funds Princeton Gamma-Tech, Inc. deposited into the Court Registry as follows:

(i) To the United States: $14,204,000 plus all accrued interest on this amount (without a deduction for the handling fee, as noted below). The check should bear the name and Civil Action No. of this matter, and USAO File No. _____, and should be forwarded to:

United States Attorney's Office
District of New Jersey
402 E. State Street, Room 502
Trenton, New Jersey 08608

(ii) To the State of New Jersey: $7,296,000, plus the interest accrued on this amount (without a deduction for the handling fee, as noted below). The check should be made payable to the "Treasurer, State of New Jersey". The check should be forwarded to:

Section Chief, Hazardous Site Litigation Section
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625-0093

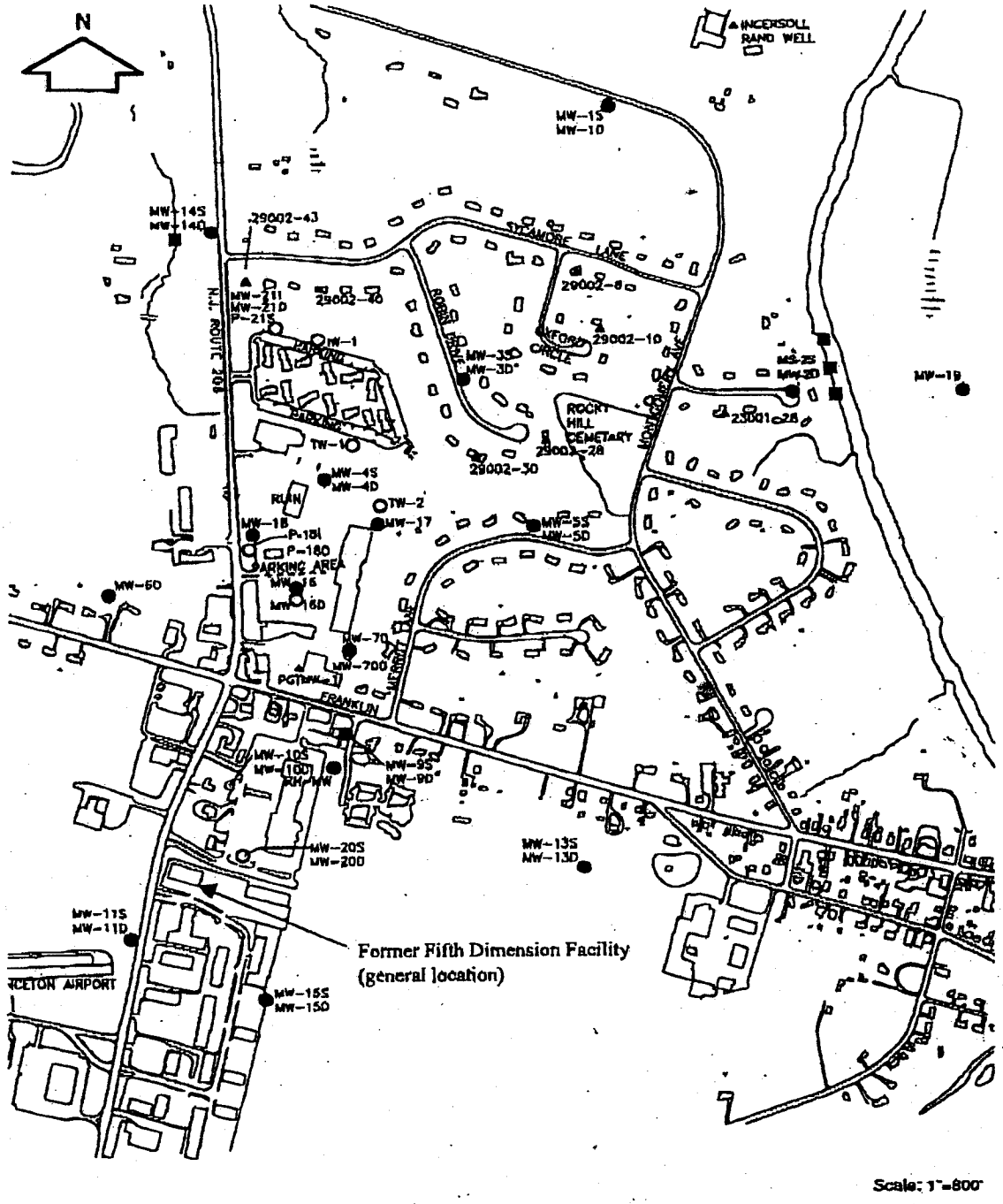
4. The miscellaneous fee for handling of the funds in the registry of the Court shall not be deducted from the payments referenced in Paragraph 3, above, because the funds are being handled on behalf of the United States, in accordance with the notes to 28 U.S.C. § 1914 and 55 Fed. Reg. 42867.

SO ORDERED this _____ day of _____ 2003

_____

UNITED STATES DISTRICT JUDGE

B



RHMW = Rocky Hill Municipal Well

Site Map

Rocky Hill Municipal Well/Montgomery Township Housing Development Superfund Sites
Rocky Hill, New Jersey
Project Number 6126-006

CDM Federal Programs Corporation

C

ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 19____, by and between _____, ("Grantor"), having an address of _____, and, _____ _____("**Grantees**"), having addresses of _____ _____.

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the county of _____, State of _____, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the _____ Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on _____, 19__; and

4. WHEREAS, in a Record of Decision dated _____, 19__ (the "ROD"), the EPA Region __ Regional Administrator, **with the concurrence of the New Jersey Department of Environmental Protection ("NJDEP"),** selected a "remedial action" for the Site, which provides, in part, for the following actions:

and

5. WHEREAS, with the exception of_____

_____

___, the remedial action has been implemented at the Site; and

6. WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

7. WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

8. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of [the terms of the Consent Decree in the case of ____ v. ____, etc.], does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantees, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. Purpose: It is the purpose of this instrument to convey to the Grantees real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

11. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantees. If requested by the Grantor, such writing will be executed by Grantees in recordable form.

12. Environmental Protection Easement: Grantor hereby grants to the Grantees an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

a) Implementing the response actions in the ROD, including but not limited to_____ _____;

b) Verifying any data or information submitted to EPA **or the NJDEP;**

c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;

e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and

f) Implementing additional or new response actions if the Grantees, in **their** sole discretion, determine[ ] i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. Nothing in this document shall limit or otherwise affect EPA's **or NJDEP's** rights of entry and access or EPA's **or NJDEP's** authority to take response actions under CERCLA, the NCP, **the Spill Act** or other federal **and state** laws.

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

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

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 19__, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 19___, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE UNITED STATES OF AMERICA AND THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION.

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

17. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA. **The state agency having administrative jurisdiction over the interests acquired by the State of New Jersey by this instrument is the NJDEP.**

18. Enforcement: The Grantees shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA **and the Spill Act.** Enforcement of the terms of this instrument shall be at the discretion of the Grantees, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantees of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantees under this instrument.

19. Damages: Grantees shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

20. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

21. Covenants: Grantor hereby covenants to and with the United States and **the NJDEP and their** assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit D** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

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

To Grantor:	To Grantees:
_____	_____
_____	_____
_____	_____

23. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

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

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

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

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

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

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

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States **and the State of New Jersey** and **their** assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this _____ day of _____, 19__.

_____

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this __ day of _____, 19__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

_____
Notary Public in and for the
State of _____

My Commission Expires: _____.

This easement is accepted this ____ day of _____ , 19__.

UNITED STATES OF AMERICA

the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns.

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

_____

New Jersey Department of Environmental Protection

By: _____

_____

Attachments:	Exhibit A	-	legal description of the Property
	Exhibit B	-	identification of proposed uses and construction plans, for the Property
	Exhibit C	-	identification of existing uses of the Property
	Exhibit D	-	list of permitted title encumbrances

D

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II
CONSENT FOR ACCESS TO PROPERTY

Owner: Princeton Gamma-Tech, Inc.

Property: Block 29002, Lot 49 and Block 29002, Lot 50
Montgomery Township, New Jersey

Mailing Address: CN 863 Princeton, New Jersey 08542

I, the undersigned, represent that Princeton Gamma-Tech, Inc. is the owner ("Owner") of the real property ("Property") noted above and I consent to officers, employees and authorized representatives of the United States Environmental Protection Agency ("EPA") entering and having access to this property for the following purposes:

1. Construction and long-term operation and maintenance of a groundwater pump and treat system, to be furnished and installed as a complete modular system ready for operation, and sized to fit into a standard trailer type enclosure situated upon a concrete slab and foundation on the Property. The system is to be located on the Property as designated on the attached map;

2. Construction of a temporary staging area/support zone to store construction materials, trucks/drill rig, equipment and investigation derived wastes;

3. Storage of an approximate 10' x 40' tank of investigation derived wastewater to be located on a paved portion of the parking lot on the Property as designated on the attached map. This tank will be stored on the Property until the groundwater pump and treat system is fully operational;

4. Installation, operation and maintenance of extraction wells with vaults as designated on the attached map;

5. Installation, operation and maintenance of underground piping from the extraction wells to the treatment system as designated on the attached map;

6. Installation, operation and maintenance of underground piping from the treatment system to a catch basin located on the Property for discharge purposes as designated on the attached map;

7. Use of an existing on-site storm water sewer for treated effluent discharge;

8. Conducting sampling for the purpose of chemical analysis and geophysical testing of monitoring wells and extraction wells located on the Property;

9. Conducting maintenance of the monitoring wells located on the Property;

10. Restoring those areas disturbed during EPA's construction on the Property as best as is practicable due to the additional investigation on the Property to be conducted by the New Jersey Department of Environmental Protection;

11. Owner shall notify EPA and receive approval from EPA (in consultation with the New Jersey Department of Environmental Protection) before the Owner conducts any operation that could adversely affect the integrity or protectiveness of any containment system, extraction system, treatment system, monitoring system, or other remedial measures implemented at the Property by EPA.

We realize that these actions by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §9601 et seq.

This written permission is given voluntarily with knowledge of a right to refuse and without threats or promises of any kind.

Aug 8, 2013
Date

Signature, Authorizing Official
Princeton Gamma-Tech, Inc.

KALEVI ONNELA
Name (Print) Authorizing Official
Princeton Gamma-Tech, Inc.

CHIEF EXECUTIVE OFFICER
Title of Authorizing Official