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August 25, 1995

VIA CERTIFIED MAIL-- P-329-604-658
RETURN RECEIPT REQUESTED

Michael Konczal
P.O. Box 928, Building T117A
Golden, Colorado 80402-0928

Re: **Written Comments to Final Proposed Plan and Draft
Modification of Colorado Hazardous Waste Permit for Rocky
Flats Environmental Technology Site/ Operable Unit 11:
West Spray Field**

Dear Mr. Konczal:

I am one of the attorneys for Perry S. McKay and Charles C. McKay. In addition to the comments contained in the August 23, 1995 letter to you from Charles C. McKay, the McKays have requested that I make the following written comments to the Final Proposed Plan and Draft Modification of Colorado Hazardous Waste Permit for Rocky Flats Environmental Technology Site/ Operable Unit 11: West Spray Field.

Background.

The McKays own the mineral rights associated with real property with a legal description of:

All of the NE1/4 NW1/4, SE1/4 NW1/4 and NE1/4 SE1/4 and PART of the NE1/4 SW1/4, SE1/4 SW1/4, NW1/4 SE1/4, SW1/4 SE1/4 and SE1/4 SE1/4 of Section 9, Township 2 South, Range 70 West of the Sixth Principal Meridian, County of Jefferson, State of Colorado

This property is included within Operable Unit 11.

In 1979 and again in 1987, the McKays obtained permits which allowed the mining of gravel, clay, sand, and like materials on their property. The McKays entered into a lease for the mining of the property. However, as a result of previous statements by the United States Department of Energy that the property was contaminated, the Board of County Adjustment of Jefferson County, Colorado, prohibited mining on the property "until contamination has been remedied." Indeed, "no disturbance of the site shall

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occur (except for remedial action performed by the Environmental Protection Agency or the Colorado Department of Health) until written evidence is presented at a public hearing which clearly demonstrat[es] to the satisfaction of the Board of Adjustment that no hazards to human health or the environment would be created by disturbance of the site."

The McKays have sued the United States to recover the damages caused by the contamination of their mineral interests and their resulting inability to conduct mining activities. That case, which is known as Perry S. McKay and Charles C. McKay v. The United States and which is identified as Case No. 94-580 L, is pending before the United States Court of Federal Claims.

Comments.

The McKays believe that the Final Report is inadequate. The Final Report (June 1995) concerning Operable Unit 11 concludes that "OU 11 poses minimal health risks, assuming long term residential exposure." However, the Final Report fails to discuss at all let alone address the McKays' mineral interests or the fact that mining has been permitted. The Final Report therefore does not address whether the use of the property for the mining of gravel, clay, sand, and the like will pose any hazards to human health or the environment. These issues need to be specifically addressed particularly as the Final Report does indicate the presence of Americium-241, Plutonium-239, 240, Tritium, and Nitrate/Nitrite in the surficial and subsurface soils. Identically, the effect of mining on the localized perched ground water noted in the Report must be specifically addressed. Finally, the Final Report does not address what remediation activities will be necessary to permit full use of the property or the time table for such remediation activities.

Thank you for your consideration.

Sincerely,



Charles B. Hecht

CBH/sc

cc: Carl Spreng
Perry S. McKay
Charles C. KcKay
Holly I. Holder