



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

FINAL DECISION AND RESPONSE TO COMMENTS

FORMER ELCO CORPORATION  
HUNTINGDON, PENNSYLVANIA  
EPA ID# PAD 003009461

## I. PURPOSE

The United States Environmental Protection Agency (EPA) is issuing this Final Decision and Response to Comments (FDRTC) selecting the final remedy for soil and groundwater contamination (Final Remedy) at the Former ELCO Corporation Facility (Facility) located in Huntingdon, Pennsylvania. EPA is issuing this FDRTC under the authority of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901, et seq. (RCRA).

## II. PUBLIC COMMENT PERIOD

On August 24, 2022, EPA proposed a remedy of the establishment of a technical impracticability zone for groundwater within the Facility property boundary; natural attenuation for contaminated groundwater migrating beyond the Facility property boundary, and activity and use limitations for land, groundwater, and surface water. Consistent with public participation provisions under the RCRA, EPA requested comments from the public on the proposed remedy as described in the Statement of Basis (SB). The commencement of a thirty (30)-day public comment period was announced in the *Huntingdon Daily News* newspaper and on the EPA Region III website. The public comment period ended on September 23, 2022.

EPA received three comments from KYOCERA AVX Components Corporation on the proposed remedy during the public comment period. See Attachment A. The comments and EPA's responses are provided in Section IV, below.

EPA has determined that the public comments do not substantially change, or cause reason to change, the proposed remedy in the SB and therefore, the Final Remedy is unchanged from the proposed remedy. The SB is incorporated by reference into this FDRTC as Attachment B.

## III. FINAL REMEDY

EPA's Final Remedy for Facility consists of the following components:

1. For the groundwater within the Facility property boundary: A Technical Impracticability (TI) zone will be established and mapped in accordance with EPA's Mapping of Institutional and Engineering Controls in EPA Cleanup Programs document;
2. For the groundwater at and beyond the Facility property boundary: natural attenuation until trichloroethylene levels attain the applicable Maximum Contaminant Level at the Facility boundary and beyond; and
3. The following activity and use limitations:

Final Decision and Response to Comments

- a. Use of the Facility property shall be restricted to commercial or industrial activity, which shall exclude schools, nursing homes and other residential uses or residential-style facilities and recreational uses.
- b. The surface water and groundwater at the Facility property shall not be used for any purpose, including, but not limited to use as a potable or non-potable source, other than to conduct maintenance and monitoring activities required by PADEP and/or EPA.
- c. The subsurface strata and soils in the designated affected areas at the Facility property shall not be disturbed, except as approved in advance by PADEP and EPA, and provided that appropriate health and safety precautions shall be implemented for the protection of workers and any other persons who may be subject to exposure in the event of such PADEP and EPA-authorized disturbance.
- d. Prior to further development or redevelopment of the Facility property which could disturb subsurface strata and soils in the designated affected areas, the owner of the Facility shall, no less than thirty (30) days before the beginning of the disturbance, submit to the PADEP/EPA, or its then successor agency, a work plan for management and disposal of disturbed subsurface strata and soils consistent with the regulations of PADEP and shall thereafter properly manage and dispose of all subsurface strata and soils consistent with the work plan approved by PADEP.
- e. Any new construction of buildings intended for human occupation will include mitigation measures designed to prevent vapor intrusion-related exposures unless PADEP and EPA determine these unnecessary. Mitigation measures incorporated into new building construction will be designed by a licensed professional engineer. EPA and PADEP will be provided with a description of the mitigation measures prior to building construction.
- f. Ensure the existing asphalt/building foundation slab remains in place and maintained in good condition.

EPA's preferred instrument to implement the activity and use limitations and ensure that the current and any future landowners comply with the restrictions is an Environmental Covenant prepared under Pennsylvania's Uniform Environmental Covenants Act, 27 Pa. C.S. §§ 6501 et seq. (UECA). These restrictions may also be implemented via a permit or order.

In addition, groundwater protection beyond the Facility Property boundary shall continue through the existing Smithfield Township Municipal Ordinance No. 2001-4, enacted on July 9, 2001, which prohibits a person whose property is served by public water supply to drill, or use for any purpose, a water well that is or is likely to be contaminated or where the pumping of such well may induce the migration or spread of such contaminants.

#### IV. RESPONSE TO COMMENTS

EPA received three comments on the proposed remedy during the public comment period. Below are the comments and EPA's responses:

##### Comment 1

Comment: In prior discussions with the USEPA, KAVX's representatives have raised questions regarding the USEPA's purported jurisdiction in this matter. PADEP has jurisdiction over this matter, and USEPA has oversight over certain of PADEP's environmental programs. KAVX believes that the administrative record is incomplete regarding the USEPA's purported basis for the sentence above that the Facility is subject to the USEPA's Corrective Action Program. For this reason, among others, KAVX reserves and does not waive the right to challenge USEPA's jurisdiction in this matter.

EPA's response: EPA disagrees with this comment and maintains its position that the Facility is subject to the Corrective Action Program.

##### Comment 2

Comment: First, on Page 1 in Section 2 ("Facility Background"), the USEPA indicates that "The Facility property consists of approximately 21 acres...". Based on information in the Huntingdon County Mapping Department's "Tax Parcel Viewer", and based on the 2008 deed for the Facility property (see attached deed), the property is approximately 17 acres rather than the 21 acres referenced in the Statement of Basis.

EPA's response: Upon review of the deed included as part of the submitted comments, EPA agrees that the correct acreage for the Facility is approximately 17 acres. EPA's reference for the Facility acreage was taken from ELCO's Remedial Investigation and Final Reports included as part of the Administrative Record. The correct acreage is hereby incorporated into the FDRTC.

Comment 3

Comment: Second, on Page 2 in Section 2, the USEPA indicates that “The Facility is currently occupied by Seven D. Industries, LP, which manufactures vinyl window and patio door products.” Arcadis understands that D. Real Estate sold the Facility property (Tax Parcel 44-02-25.3) to Flat Top Enterprises, LLC (Flat Top) on December 11, 2008 (see attached deed), and that Flat Top currently owns the Facility property and uses the building and property for warehousing.

EPA’s response: EPA appreciates the update and clarification to the current ownership of the Facility. The FDRTC hereby incorporates that D. Real Estate sold the Facility to Flat Top Enterprises, LLC (Flat Top) on December 11, 2008, and Flat Top currently owns the Facility and uses it for warehousing.

V. DECLARATION

Based on the Administrative Record compiled for the Corrective Action at the Former ELCO Corporation Facility, EPA has determined that the Final Remedy selected in this Final Decision and Response to Comments is protective of human health and the environment.

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Dana Aunkst, Director  
Land, Chemicals & Redevelopment Division  
U.S EPA Region III

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09/29/2022

Date

Attachment A

Mr. Kevin Bilash  
Remedial Project Manager  
Land and Chemicals Division  
United States Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Arcadis U.S., Inc.  
6041 Wallace Road Extension  
Suite 300  
Wexford, Pennsylvania 15090  
Phone: 724 742 9180  
Fax: 724 742 9189  
[www.arcadis.com](http://www.arcadis.com)

Date: September 23, 2022  
Our Ref: 30009106  
Subject: Comments to USEPA's July 2022 Proposed Plan  
Former Elco Corporation Facility  
Huntingdon, Pennsylvania  
USEPA ID No. PAD003009461

Dear Mr. Bilash,

On August 24, 2022, the United States Environmental Protection Agency (USEPA) provided a notice to the public (public notice) announcing the USEPA's proposed remedy for the above-referenced former Elco Corporation facility (Facility). The USEPA indicated in the public notice that it welcomed comments on the USEPA's July 2022 Statement of Basis. On behalf of KYOCERA AVX Components Corporation (KAVX), Arcadis U.S., Inc. (Arcadis) respectfully submits the following comments to the USEPA regarding the Statement of Basis.

#### **General Comment**

KAVX and Arcadis agree, based on the extensive investigations that have been conducted at the Facility, in response to requests initially by the Pennsylvania Department of Environmental Protection (PADEP) and later by the USEPA, that no further action is required at the Facility and the proposed remedy is appropriate.

#### **Comment to Section 1: Introduction; first sentence of second paragraph on Page 1**

The first sentence of the second paragraph on Page 1 of the Introduction reads:

"The Facility is subject to EPA's Corrective Action Program under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976, and the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. § 6901 et seq. (Corrective Action Program)."

In prior discussions with the USEPA, KAVX's representatives have raised questions regarding the USEPA's purported jurisdiction in this matter. PADEP has jurisdiction over this matter, and USEPA has oversight over certain of PADEP's environmental programs. KAVX believes that the administrative record is incomplete regarding the USEPA's purported basis for the sentence above that the Facility is subject to the USEPA's Corrective Action Program. For this reason, among others, KAVX reserves and does not waive the right to challenge USEPA's jurisdiction in this matter.

Mr. Kevin Bilash  
United States Environmental Protection Agency  
September 23, 2022

Additionally, KAVX notes two factual inaccuracies in the Statement of Basis<sup>1</sup>. First, on Page 1 in Section 2 (“Facility Background”), the USEPA indicates that “*The Facility property consists of approximately 21 acres...*”. Based on information in the Huntingdon County Mapping Department’s “Tax Parcel Viewer”, and based on the 2008 deed for the Facility property (see attached deed), the property is approximately 17 acres rather than the 21 acres referenced in the Statement of Basis. Second, on Page 2 in Section 2, the USEPA indicates that “*The Facility is currently occupied by Seven D. Industries, LP, which manufactures vinyl window and patio door products.*” Arcadis understands that D. Real Estate sold the Facility property (Tax Parcel 44-02-25.3) to Flat Top Enterprises, LLC (Flat Top) on December 11, 2008 (see attached deed), and that Flat Top currently owns the Facility property and uses the building and property for warehousing.

If you have any questions, please do not hesitate to call me at 724.934.9518.

Sincerely,  
Arcadis U.S., Inc.



Mark B. Hanish  
Project Manager

Email: mark.hanish@arcadis.com  
Direct Line: 724.934.9518

#### Attachment

CC. Jim Zemek, KAVX  
William Popham, Arcadis

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<sup>1</sup> By commenting on these factual inaccuracies, KAVX does not concede that EPA possesses the requisite jurisdiction in this matter.



*Janet E. Harbin*  
Janet E. Harbin  
Recorder of Deeds

T-H-I-S D-E-E-D

MADE THE 11<sup>th</sup> day of December, in the year of our Lord two thousand eight (2008).

BETWEEN D REAL ESTATE, INC., a Pennsylvania Corporation with its principal place of business at 3229 Pleasant Valley Boulevard, Altoona, Pennsylvania, GRANTOR,

A-N-D

FLAT TOP ENTERPRISES LLC, a Pennsylvania limited liability company, of Huntingdon County, Pennsylvania, GRANTEE.

WITNESSETH, that in consideration of ONE MILLION FIVE HUNDRED THOUSAND AND 00/100 (\$1,500,000.00) DOLLARS in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantee, its successors and assigns:

ALL that certain tract or parcel of land and premises, situate, lying and being in the Township of Smithfield, in the County of Huntingdon, and Commonwealth of Pennsylvania, more particularly described as follows:

007876

BEGINNING at a point, said point being located immediately north of Legislative Route 31034 as more fully set forth in a Plan of Survey hereinafter described and being the southeastern corner of the parcel hereinafter described; thence along the line of lands now or formerly of Huntingdon Business & Industry, Inc., South 58 degrees, 58 minutes West, 1100 feet to a point; thence along the line of lands now or formerly of the Pennsylvania Electric Company North 31 degrees, 02 minutes West, 670 feet to a point; thence along the line of lands now or formerly of Huntingdon Business & Industry, Inc., North 58 degrees, 58 minutes, East 1100 feet to a point; thence along the line of lands now or formerly of Huntingdon County Industrial Development Authority, South thirty one (31) degrees, two (02) minutes East, 670 feet to a point, the place of BEGINNING. CONTAINING 16.92 Acres as more fully set forth in a plan of Survey for Elco Corporation prepared by Africa Engineering Associates, Inc. dated May 23, 1983 and being Drawing No. 9784 and having thereon erected a manufacturing facility.

TOGETHER WITH all the right, title and interest of the Grantor in and to the easements for ingress and egress and rights attendant thereto as set forth in Huntingdon County Misc. Book 72, at Page 491.

TOGETHER WITH all the right, title and interest of the Grantor in and to the sewer line easement and rights attendant thereto as set forth in Huntingdon County Misc. Book 72, Page 482.

UNDER AND SUBJECT to and together with the benefits of the restrictions and provisions in Declaration of Protective Restrictions recorded in Huntingdon County Misc. Book 60, Page 499.

UNDER AND SUBJECT to information and restrictions set forth in the Deed Acknowledgment attached to deed recorded in Huntingdon County Record Book 554, Page 0651.

BEING the same premises title to which vested in the grantor herein by deed of ELCO U.S.A. Inc. dated December 5, 2000, and recorded in Huntingdon County Record Book 554, Page 0651.

BEING TAX PARCEL NO. 44-02-25.3

UNDER AND SUBJECT, nevertheless, to the express condition and restriction that the use of the Premises conveyed herein shall be restricted to the construction of new or expanding facilities to be used for manufacturing, product assembly, light industrial, distribution and/or warehousing, research and development and other commercial or retail uses compatible with the industrial nature of the Premises. The usage restrictions herein set forth shall be a covenant running with the land and shall not be altered or eliminated without the concurrence of the United States Department of Commerce, Economic Development Administration, or a successor agency. The Grantee, for itself, its successors and assigns by acceptance of this indenture, agrees with the grantor, its successors and assigns, that the said condition and restriction shall be a covenant running with the land, and that in any deed of conveyance of said premises or any part thereof to any person or persons, or entity or entities, said condition and restriction shall be incorporated by reference to this indenture and the record hereof or as fully as the same are contained herein.

UNDER AND SUBJECT to Consent Order and Decree entered into between ELCO, U.S.A. Inc., D Real Estate, Inc. and the Commonwealth of Pennsylvania, Department of Environmental Protection, attached hereto as Exhibit "A", the entire contents of which are incorporated herein by reference.

GRANTOR ACKNOWLEDGES THAT HAZARDOUS SUBSTANCES AND HAZARDOUS WASTES HAVE BEEN DISPOSED OF ON THE HEREIN DESCRIBED PROPERTY; FOR A DESCRIPTION OF SUCH MATERIALS AND LOCATION THEREOF SEE DEED ACKNOWLEDGMENT DATED DECEMBER 5, 2000, ATTACHED AS EXHIBIT "A" TO DEED RECORDED IN HUNTINGDON COUNTY RECORD BOOK 554, PAGE 0651.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

ELCO U.S.A. INC.

D REAL ESTATE, INC.

Re: Buyer/Seller Agreement  
Former Elco U.S.A. Facility  
State Highway 3035 (Fairgrounds Road)  
Huntingdon Industrial Park  
Huntingdon, Pennsylvania

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("CO&A") is entered into this 2nd day of November, 2000, by and among the Commonwealth of Pennsylvania, Department of Environmental Protection (the "Department"), ELCO U.S.A. Inc., a wholly owned subsidiary of AVX Corporation, ("Seller") and D Real Estate, Inc. ("Buyer").

The Department has found and determined the following:

The Parties

- A. The Department is the agency with the duty and authority to administer and enforce the Land Recycling and Environmental Remediation Standards Act, Act 2 of May 19, 1995, P.L. 4, No. 1995-2, 35 P.S. Sects. 6026.101 et seq. ("Act 2"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, as amended, 35 P.S. Sects. 6018.101 et seq. ("Solid Waste Act"); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. Sects. 691.1 et seq. ("Clean Streams Law"); the Storage Tank and Spill Prevention Act, Act of July 6, 1989, P.L. 169, as amended, 35 P.S. Sects. 6021.101 et seq. ("Storage Tank Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1989, P.L. 177, as amended, 71 P.S. Sect. 510.17 ("Administrative Code"); and the rules and regulations promulgated thereunder.
- B. Seller is a Delaware corporation with a principal place of business located at 801 17<sup>th</sup> Avenue South, Myrtle Beach, South Carolina 29578-0867. Seller is in the business of producing and distributing a broad line of electronic connector products.
- C. Buyer is a Pennsylvania corporation with a principal place of business located at 3229 Pleasant Valley Boulevard, Altoona, Pennsylvania 16602. Buyer is in the business of manufacturing and distributing windows, window components, roof trusses and vinyl fencing.

EXHIBIT



The Property

- D. The property, owned by the Seller, consists of a single parcel containing 16.92 acres and all improvements thereon, located at the Huntingdon Industrial Park, State Highway 3035 (Fairgrounds Road), Huntingdon, Pennsylvania, being identified as Tax Parcel 25.3 shown on Map 44, Block 2 (the "Property"). A description of the Property is attached hereto as Exhibit A. The Property is situated in an area called the Huntingdon Industrial Park, which consists of the Property and two other industrial/commercial facilities located to the northeast of the Property along State Highway 3035 (Fairgrounds Road). Southwest of the Property, also along State Highway 3035, are utilities (GPU Energy and Verizon [Bell Atlantic]) and other commercial establishments. To the north of the Property is a hillside which is undeveloped. To the south of the Property (across State Highway 3035) are residences and commercial establishments.
- E. The building on the Property was originally constructed in the 1962/1963 timeframe by Elco U.S.A. as the result of a U.S. Government grant in order to construct components needed by the Government. The acceptance of the grant was contingent upon the manufacturing site being situated in an underdeveloped area in order to create job opportunities for the unemployed. Major modifications were made in the 1966 timeframe, including a factory addition to the western side of the existing building and paving. Prior to this 1996 addition, a loading dock had been located in the area that is currently the western part of the plating department. A row of storage and maintenance rooms were added to the back of the building sometime before the early 1970's. In 1982, a row of offices was added to the front of the building.

The former Elco U.S.A. facility shut down on June 30, 1996. Currently, the building is vacant, except for a custodial office and the remedial vacuum enhanced recovery (VER) system which is located in a room on the north side of the building.

The principal sources of contamination are as follows:

- Releases in the area of the former loading dock in the northeast area of the western portion of former plating department and also in the former "orange team" room/maintenance room. The releases in the area of the former loading dock appear to date back approximately 35 years to the early years of operation (1962-1966), since they pre-date the construction of the 1966 building addition.
- Releases in the former drum storage area and adjacent alleyway behind (north of) the building.

# EXHIBIT

- Releases resulting from the application of sludge from the former plating department to the so-called "effluent application area" located on a small slope just north of the building.
  - Releases relating to construction and demolition debris disposed of in the "debris deposition area" located on the undeveloped area of the Property situated easterly of the building.
- F. The facilities, structures and other improvements currently located on the Property include the following: a manufacturing building having approximately 110,665 square feet of floor area, including manufacturing space and office area, and an accessory storage shed and paved parking lot.

#### Contamination of the Property

- G. The location and horizontal and vertical extent of environmental contamination on the Property has been assessed in the following environmental investigation report ("Report"):
1. Remedial Investigation Report, Former Elco U.S.A Facility, Huntingdon, Pennsylvania dated September, 2000, as prepared by Vincent Uhl Associates, Inc.
- H. The Report is incorporated herein by reference. It has been provided to the Department and is maintained as a public document by the Department in accordance with its standard document retention practices.

#### The Proposed Sale

- I. Seller intends to sell the Property to Buyer, who intends to buy the Property and to utilize it for the manufacture, storage and distribution of windows, window components, roof trusses and vinyl fencing.
- J. Buyer represents to the Department that it did not cause or contribute to, and is not otherwise liable or responsible under environmental law for, the identified contamination of the Property. The Department is not aware of any information to the contrary that would indicate such liability or responsibility.

EXHIBIT

The Remediation Plan

- K. Seller intends to remediate the identified contamination. The proposed Remediation Plan ("Plan") is contained in the Cleanup Plan, Former Elco U.S.A. Facility, Huntingdon, Pennsylvania dated September, 2000, as prepared by Vincent Uhl Associates, Inc. and submitted to the Department on September 20, 2000. The Plan proposes remediation of the Property to meet a Site-Specific and Statewide Health Standard based on nonresidential use of the Property, as those terms are used in Act 2. The Plan may be changed in the future, with the approval of the Department. Because the remedial standard is based on nonresidential use of the Property, any other use, or any change in the exposure patterns on which the Plan is based, may require additional remediation of contamination remaining on the Property.

After full and complete negotiation of all matters set forth in this CO&A, and upon mutual exchange of the covenants contained herein, the parties intending to be legally bound, it is hereby ORDERED by the Department and AGREED TO by Seller and Buyer as follows:

1. **Findings.** Seller and Buyer agree that the findings in Paragraphs A through L are true and correct and, in any matter or proceeding involving either or both of them and the Department, Seller and/or Buyer shall not challenge the accuracy or validity of these findings.
2. **Seller's Obligations.** Seller shall:
  - a. Attain and demonstrate compliance with the Site-Specific and Statewide Health Standard, as the case may be, in accordance with the Plan and Act 2, by December 31, 2001.
    - i. The Notice of Intent to Remediate ("NIR") and the municipal and public notices of the NIR pursuant to Act 2 were sent out on September 24, 1997.
    - ii. Upon completion of remediation in accordance with the Plan and Act 2, submit the final report to the Department, and send the municipal and public notices of the final report by December 31, 2001.
  - b. Include restrictions in its deed to Buyer (1) limiting the use of the Property to commercial or industrial activity, excluding schools, nursing homes and other residential-style facilities and recreational areas and (2) requiring the maintenance of any engineering controls on the Property, as covenants running with the land.
  - c. Record this CO&A and its Exhibit with the Deed to the Property, in the Recorder of Deeds Office for Huntingdon County, and index the Deed, listing it under Seller, as Grantor, and Buyer, as Grantee.

3. **Buyer's Obligations.** Buyer shall:
- a. Use the Property only for commercial or industrial activity, excluding schools, nursing homes and other residential-style facilities and recreational areas.
  - b. The agreement by Buyer in Paragraph 3.a. above is a covenant running with the land, and Buyer shall include this covenant in all deeds, leases and other instruments of conveyance of the Property.
  - c. Avoid disturbing subsurface strata and soils in the restricted areas designated in the Cleanup Plan, except as may be necessary to install adequate foundation bearing support features. If such disturbance is proposed as part of Buyer's development of the Property, Buyer shall no less than thirty (30) days before beginning the disturbance, submit to the Department a Work Plan for management and disposal of disturbed subsurface strata and soils consistent with the regulations of the Department. Thereafter, Buyer shall properly manage and dispose of all subsurface strata and soils consistent with the Work Plan as approved by the Department.
  - d. Notify the Department if the Buyer or any successor to the Buyer proposes to change the exposure patterns on which the remediation standard was based, as summarized in Paragraph K above, and take steps to assure that an Act 2 standard continues to be met.
  - e. Notify the Department when the Property has been purchased and provide to the Department, within ten (10) days of the transfer of title, a copy of the instrument used to transfer title, containing the covenants described in Paragraphs 2.b. and 3.a. above.
  - f. Notwithstanding the provisions of this Paragraph 3 to the contrary, Buyer and each of Buyer's successors and assigns, including Buyer's successors in title to the Property, shall only be obligated to comply with the provisions of Paragraph 3 during their period of ownership and/ or operation of the Property, and shall not be liable for such compliance after they have ceased to own or operate the Property.

EXHIBIT

4. **Covenant Not To Sue.** Provided Seller complies with the obligations in Paragraph 2 above, and subject to the limitations set forth in Paragraphs 5 and 12 below, the Department hereby covenants not to sue or take administrative action against Buyer under the environmental laws of the Commonwealth listed in Paragraph A above because of Buyer's ownership interest in the Property, for remediation of the identified contamination. This covenant not to sue is null and void if the Department determines that the Buyer, its agents, employees or representatives caused or contributed to the identified contamination or submitted false information to the Department. When the final report has received the Department's approval, the liability protection conferred on Seller by Section 501 of Act 2 shall pass automatically to Buyer pursuant to Section 501 (a)(3), and this Covenant Not to Sue shall become null and void.
5. **Reservation of Rights.** With respect to any contamination on the Property not part of the identified contamination, or any contamination caused or contributed to by Buyer after Buyer assumes ownership of the Property, the Department expressly reserves the right to require Buyer to remediate, to the extent required by law.
6. **Non-Interference.** Neither Seller nor Buyer shall interfere with the performance of the remedial obligations under this CO&A.
7. **Non-Exacerbation.** Neither Seller nor Buyer shall, by act or omission, exacerbate any contamination of the Property.
8. **Access.** Buyer shall allow Seller, the Department and their representatives reasonable access to the Property during and after implementation of the Plan for purposes of remediation and monitoring the progress and results thereof. Seller and the Department will use their best efforts to minimize interference with Buyer's use of the Property. However, nothing in this CO&A shall limit the Department's statutory rights regarding access to the Property.
9. **Transferability.**
  - a. This CO&A shall be transferable by Buyer to any subsequent owner of the Property ("Transferee") who did not cause or contribute to and is not otherwise liable for contamination of the Property, provided that the subsequent owner or anyone who intends to take title to the Property agrees in writing to the obligations of this CO&A. Buyer, or anyone who intends to transfer title to the Property, shall provide a copy of this CO&A to anyone who intends to take title to the Property.
  - b. Within five (5) days of transferring any part of the Property to a Transferee, Buyer or anyone who intends to transfer title to any part of the Property shall notify the Department in writing of the date that legal title to the Property was transferred and the name and address of the Transferee.

EXHIBIT

- c. In the event of such transfer in accordance with the terms of this CO&A, the Transferee shall be entitled to the benefits of the covenant not to sue provided in Paragraph 4 above.
10. **Deed Notification.** Seller or Buyer, as appropriate, shall include in any Deed for the Property an acknowledgment of hazardous substances and/or hazardous wastes on the Property in accordance with Sec. 405 of the Solid Waste Act and Sect. 512 of the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. Sect. 6020.101 et seq.
11. **Non-Release of Other Parties.** Nothing in this CO&A is intended, nor shall be construed, to diminish or modify in any way the obligations with respect to the Property of any person or entity, other than those persons set forth in Paragraph 4 above, to the extent set forth in Paragraph 4 above.
12. **Remedies.**
- a. In the event Seller or Buyer fails to comply with any provision of this CO&A, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this CO&A.
- b. The remedies provided by this paragraph are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.
13. **Liability of Parties.** Seller and Buyer shall inform all persons necessary for the implementation of this CO&A of the terms and conditions of this CO&A. The Seller shall be liable for violations of Paragraphs 2, 6, 7 and 10 above, including those violations caused by, contributed to or allowed by its directors, officers, agents, managers, servants and privies and any persons, contractors and consultants acting under or for Seller. Buyer shall be liable for violations of Paragraphs 3, 6, 7, 8 and 10 above, including those violations caused by, contributed to, or allowed by its directors, officers, agents, managers, servants and privies and any persons, contractors and consultants acting under or for Buyer.

14. **Correspondence With Department.** All correspondence with the Department concerning this CO&A shall be addressed to:

Ms. Patricia J. Romano  
Environmental Cleanup Program  
Department of Environmental Protection  
Southcentral Region  
909 Elmerton Avenue  
Harrisburg, PA 17110-8200

15. **Correspondence With Seller and Buyer.** All correspondence with Seller concerning this CO&A shall be addressed to:

Mr. Larry Blue  
Sr. Corporate Environmental Engineer  
801 17<sup>th</sup> Avenue South  
Myrtle Beach, South Carolina 29578-0867

All correspondence with Buyer concerning this CO&A shall be addressed to:

Mr. Bruno DeGol, Jr.  
D Real Estate, Inc.  
3229 Pleasant Valley Boulevard  
Altoona, VA 16602

Seller and Buyer shall notify the Department whenever there is a change in the contact person's name, title or address. Service of any notice or any legal process for any purpose under this CO&A, including its enforcement, may be made by mailing a copy by first class mail to the above addresses, respectively.

16. **Provisions Not Severable.** The provisions of this CO&A are not severable. If any provision or part hereof is declared invalid or unenforceable, or is set aside for any other reason, then the entire CO&A shall be void and of no continue in full force and effect between the parties.
17. **Entire Agreement.** This CO&A shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.
18. **Modifications.** No changes, additions, modifications or amendments of this CO&A shall be effective unless they are set out in writing and signed by the parties hereto.

EXHIBIT

19. **Attorney Fees.** The parties agree to bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this CO&A.
20. **Execution of Agreement.** This CO&A may be executed in counterparts.
21. **Titles.** A title used at the beginning of any paragraph of this CO&A may be used to aid in the construction of that paragraph, but shall not be treated as controlling.
22. **Effective Date.** This CO&A shall become effective upon execution provided that the Buyer buys the Property within sixty (60) days of execution of this CO&A.

EXHIBIT

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Seller and Buyer certify under penalty of law, as provided by 18 Pa. C.S. Section 4904, that they are authorized to execute this CO&A on behalf of Seller and Buyer, respectively; that Seller and Buyer consent to the entry of this CO&A as a final Order of the Department; and that Seller and Buyer hereby knowingly waive any rights to appeal this CO&A and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. Sect. 7514; the Administrative Agency Law, 2 Pa. C.S. Sect. 103(a) and Chapters 5A and 7A thereof; or any other provisions of law. (Signature by attorneys for Seller and Buyer certifies only that the agreement has been signed after consulting with counsel.)

FOR SELLER

ELCO U.S.A. INC.

By: *Allan H. Cole*  
Name: ALLAN H. COLE  
Title: VICE PRESIDENT OF SALES

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

*James T. Fleisher*  
[Name] JAMES T. FLEISHER  
Environmental Program Manager  
Environmental Cleanup Program

FOR BUYER:

D Real Estate, Inc.

By: *Prado Regol, Jr.*  
Name: PRADO REGOL, JR.  
Title: PRES

*Martin R. Siegel*  
[Name] MARTIN R. SIEGEL  
[Regional Counsel or  
Assistant Counsel]

EXHIBIT

JURAT Page

STATE OF SOUTH CAROLINA, SS,

COUNTY OF HORRY

On this 2nd day of November, 2000; before me, a Notary Public, the undersigned officer personally appeared, ALLAN H. COLE, who acknowledged (him)(her) self to be the VP OF SALES of ELCO U.S.A. Inc., a corporation, and that (s)he as such ALLAN H. COLE, being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing the name of ELCO U.S.A. Inc. by (him)(her)self as VP OF SALES

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Geri J. Sullivan  
Notary Public My Commission Expires  
September 17, 2003

EXHIBIT

STATE OF PENNSYLVANIA :  
:  
COUNTY OF DAUPHIN :

On this the 15<sup>th</sup> day of November, 2000, before me, a Notary Public, the undersigned officer, personally appeared James T. Flesher, who acknowledged himself to be the Environmental Program Manager, Environmental Cleanup Program, for the Commonwealth of Pennsylvania, Department of Environmental Protection, and that he as such Program Manager, being authorized to do so, executed the Consent Order and Agreement for the purpose therein contained by signing the name of the Commonwealth of Pennsylvania, Department of Environmental Protection, by himself as Environmental Program Manager.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Diane L. Houtz*  
\_\_\_\_\_  
Notary Public



EXHIBIT

Attachment B