

ALLOCATION AGREEMENT

WHEREAS, the Town of Springfield, Vermont (the "Town"); Emhart Industries, Inc., on its own behalf and on behalf of Fellows Corporation (collectively, "Emhart"); and Textron Inc., on its own behalf and on behalf of Bryant Computer, Bryant Grinder, and Jones and Lamson (collectively "Textron") executed on or about September 22, 1989 a Partial Consent Decree with the United States of America ("United States") on behalf of the United States Environmental Protection Agency ("EPA") and with the State of Vermont (the "State") for the implementation of the management of migration remedial action selected by EPA for the site known as the Old Springfield Landfill located in Springfield, Vermont (the "Landfill"), pursuant to a Record of Decision dated on or about September 22, 1988; and

WHEREAS, the Town, Emhart and Textron wish to allocate among themselves on a fair and equitable basis the responsibilities for performing their collective obligations under the Partial Consent Decree; and

WHEREAS, the Town, Emhart and Textron entered into a letter of intent regarding this allocation of responsibilities on or about September 22, 1989 and now

wish to formalize the agreements and undertakings set forth in that letter of intent in this definitive Allocation Agreement (the "Agreement"); and

WHEREAS, the Town, Emhart and Textron intend that this Agreement shall become binding only after the Partial Consent Decree and this Agreement are approved by the voters of the Town and the fully executed Partial Consent Decree is entered by the appropriate court;

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings contained in this Agreement and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Town, Emhart and Textron hereby agree as follows:

ARTICLE 1. Definitions.

"Additional Work" shall have the meaning set forth in the Partial Consent Decree.

"Construction Completion Date" shall mean the date of EPA approval of the completion of construction of the Work, pursuant to section VI.E.3 of the Scope of Work.

"Focused Feasibility Study" shall mean the studies and other activities performed by Emhart and Textron pursuant to Administrative Order by Consent, U.S.

EPA Docket No. I-89-1019, dated on or about March 13, 1989.

"Labor Costs" shall mean all costs and expenses arising from or relating to the payment of employees including, without limitation, salaries, wages, bonuses, employment taxes, health and other insurance benefits and pension or other retirement benefits.

"Monitoring Activities" shall mean all activities required by the Partial Consent Decree to monitor the Work and the Landfill including, but not limited to, the monitoring activities described in Table 1 to the Scope of Work; and shall also include any such activities arising from or related to any Additional Work pursuant to the Partial Consent Decree.

"Operation and Maintenance Activities" shall mean all activities required by the Partial Consent Decree for the operation and maintenance of the Work and the Landfill; and shall also include any such activities arising from or related to any Additional Work pursuant to the Partial Consent Decree.

"Partial Consent Decree" shall mean the partial consent decree, together with any appendices or attachments incorporated therein, as executed by the Town, Emhart, Textron, Browning-Ferris Industries of Vermont,

Inc. (on its own behalf and on behalf of Harry K. Shepard, Inc. (collectively "BFI")), the United States and the State, and as entered by the United States District Court for the District of Vermont.

"POTW" shall mean the publicly owned treatment works operated by the Town or any agency or entity controlled by or affiliated with the Town.

"Pretreatment Facility" shall mean any part of the Work which is designed and operated for the purpose of treating groundwater or leachate associated with the Work prior to the discharge of such water to the POTW, the Black River or otherwise.

"Remedial Design and Construction Activities" shall mean all activities required to design and construct the Work in accordance with the terms of the Partial Consent Decree; and shall also include any such activities arising from or related to any Additional Work pursuant to the Partial Consent Decree.

"Schedule of Services" shall mean the list of services set forth as Attachment A to this Agreement which is hereby incorporated into and made a part hereof.

"Scope of Work" shall mean the Old Springfield Landfill Scope of Work set forth as Appendix 3 to the Partial Consent Decree.

"Work" shall have the meaning set forth in the Partial Consent Decree.

ARTICLE 2. Remedial Design and Construction Activities. Emhart and Textron agree to perform the Remedial Design and Construction Activities at their own cost and expense and to assume all obligations under the Partial Consent Decree in connection with the Remedial Design and Construction Activities.

ARTICLE 3. Operation and Maintenance Activities and Monitoring Activities.

(a) Commencing on the effective date of the Partial Consent Decree as defined in paragraph 85 thereof and for the period ending on the first anniversary of the Construction Completion Date, Emhart and Textron agree to perform all Operation and Maintenance Activities and Monitoring Activities at their own cost and expense and to assume all obligations under the Partial Consent Decree in connection with such activities.

(b) Commencing on the first anniversary of the Construction Completion Date and for the period ending on the thirtieth anniversary of the Construction Completion Date, or for any shorter or longer period that may be

required under the terms of the Partial Consent Decree, the Town agrees to perform all Operation and Maintenance Activities and Monitoring Activities at its own cost and expense, except as provided in sections (c) and (d) of this Article 3, and to assume all obligations under the Partial Consent Decree in connection with such activities.

(c) Notwithstanding section (b) of this Article 3, commencing on the first anniversary of the Construction Completion Date and for the period ending on the tenth anniversary of the Construction Completion Date, Emhart and Textron agree to reimburse the Town for its actual net, out-of-pocket expenditures associated with Monitoring Activities arising from or related to monitoring the influent to or effluent from any Pretreatment Facility to the extent, and only to the extent, that any particular such Monitoring Activities are required, under the terms of the Partial Consent Decree, more often than four times in any calendar year; provided, however, that Emhart and Textron shall not be required to reimburse the Town for any such expenditures which represent Labor Costs for employees of the Town or any agency or entity controlled by or affiliated with the Town, or for any such expenditures (whether or not made to third par-

ties) associated with Monitoring Activities which the Town or any agency or entity controlled by or affiliated with the Town has the capability to provide itself.

(d) Notwithstanding section (b) of this Article 3, Emhart and Textron shall bear, at their own cost and expense, or shall reimburse the Town for, its actual net, incremental, out-of-pocket expenditures associated with the removal and disposal of any contaminated sludge or other waste product from the POTW to the extent, and only to the extent, that such contaminated sludge or other waste product results from any inadequacy in the design or construction of any Pretreatment Facility or any improper operation or maintenance of any Pretreatment Facility performed by Emhart and Textron pursuant to section (a) of this Article 3.

ARTICLE 4. Reimbursement of Past Costs. Emhart and Textron agree to reimburse the United States and the State, at their sole cost and expense, for all costs incurred by the United States and the State prior to the effective date of the Partial Consent Decree, as required by paragraphs 42 and 43 of the Partial Consent Decree.

ARTICLE 5. Additional Covenants of the Town.

(a) The Town agrees to make the POTW available to receive the discharge of any groundwater or leachate associated with the Work, and to receive the effluent from any Pretreatment Facility, in connection with the performance of the Focused Feasibility Study and the performance of the Work and any Additional Work required in accordance with the terms of the Partial Consent Decree, at no charge to Emhart and Textron; provided, however, that the Town shall be under no obligation to accept any such discharge or effluent to the extent that such acceptance is prohibited by the State or any agency thereof.

(b) The Town agrees to provide the services set forth in the Schedule of Services in connection with the performance of the Focused Feasibility Study and the performance of the Work and any Additional Work required in accordance with the terms of the Partial Consent Decree.

(c) The Town agrees to allow the construction of any Pretreatment Facility on land that is adjacent to the POTW and that is owned by the Town or an agency or entity controlled by or affiliated with the Town. The exact location of any Pretreatment Facility shall be

selected by the Town, subject to the consent of Emhart and Textron, which consent shall not be unreasonably withheld.

(d) The Town agrees to use its best efforts to acquire or to assist Emhart and Textron to acquire, at the lowest possible cost, any equipment or supplies that Emhart or Textron require to perform their obligations under this Agreement or the Partial Consent Decree including, but not limited to, purchasing such equipment or supplies itself and reselling or leasing such equipment or supplies to Emhart and Textron on terms equivalent to the actual cost thereof.

(e) At the request of Emhart and Textron, the Town agrees to acquire any Pretreatment Facility and any equipment comprising the Pretreatment Facility or associated therewith, subject to reimbursement by Emhart and Textron or, if Emhart and Textron acquire any Pretreatment Facility or any equipment comprising the Pretreatment Facility or associated therewith, the Town agrees to accept the donation of or to purchase same at any time requested by Emhart and Textron prior to the first anniversary of the Construction Completion Date for the sum of one dollar (\$1.00). The Town further agrees that, if the Town owns such Pretreatment Facility or equipment

comprising such Pretreatment Facility or associated therewith and if EPA certifies the work as complete pursuant to paragraph 86 of the Partial Consent Decree prior to the fifth anniversary of the Construction Completion Date, the Town shall pay to Emhart and Textron a sum equal to one-half of the proceeds of the sale of the Pretreatment Facility or any equipment comprising the Pretreatment Facility or associated therewith after any reasonable costs incurred by the Town in dismantling, decontaminating or otherwise decommissioning such equipment prior to sale have been deducted from the aggregate proceeds of such sale; provided, however, that the Town, Emhart and Textron shall mutually agree as to the terms and timing of the sale.

(f) The Town agrees to enforce its Ordinance 88-2 as required by the Partial Consent Decree and, consistent with its legislative process and with the Ordinance, to implement the Ordinance so as to protect human health and the environment, to prevent interference with the Work required pursuant to the Partial Consent Decree, and to prevent interference with future remedial action that may be required at the Landfill, including but not limited to restricting unauthorized persons from entering into secured areas or designated exclusion zones at the

Landfill, and from tampering with equipment and facilities at the Landfill.

(g) The Town agrees to take all necessary steps to obtain access to the Landfill and any other property to which access is required for the implementation of the Partial Consent Decree, consistent with Section X thereof.

(h) The Town agrees to assume any and all liability arising from or related to its acts or omissions in the performance of its obligations under this Agreement and the Partial Consent Decree including, but not limited to, the payment of any stipulated penalties set forth in the Partial Consent Decree.

ARTICLE 6. Additional Covenants of Emhart and Textron. (a) Emhart and Textron agree not to institute any action at law or equity against the Town that seeks as a part of its relief any reimbursement or other payments in compensation for any costs or expenses relating to environmental investigative or remedial work or other activities at the Landfill which Emhart and Textron have incurred prior to the date of this Agreement or for any costs or expenses that Emhart and Textron have incurred or will incur in connection with their performance of the

Focused Feasibility Study, activities funded by Emhart and Textron through the Old Springfield Landfill Trust administered by the Proctor Trust Company or the relocation of residents (excluding persons identified by EPA as potentially responsible parties) from the Landfill, whether incurred prior or subsequent to the date of this Agreement.

(b) Emhart and Textron agree to pay to the Town the sum of two hundred thousand dollars (\$200,000) within fifteen (15) days following the effective date of the Partial Consent Decree, such sum to be used by the Town in connection with the performance of its obligations thereunder.

(c) Emhart and Textron agree to take all necessary steps to obtain access to the Landfill and any other property to which access is required for the implementation of the Partial Consent decree, consistent with Section X thereof.

(d) Emhart and Textron agree to assume any and all liability arising from or related to their respective acts or omissions in the performance of their obligations under this Agreement and the Partial Consent Decree including, but not limited to, the payment of any stipulated penalties set forth in the Partial Consent Decree.

ARTICLE 7. Waiver and Indemnity.

(a) The Town, Emhart and Textron agree to waive any and all claims against each other arising from or related to their respective obligations and undertakings pursuant to this Agreement and the Partial Consent Decree including, but not limited to, contribution claims.

(b) The Town, Emhart and Textron agree to indemnify each other against any and all claims arising from or related to their respective obligations and undertakings pursuant to this Agreement and the Partial Consent Decree including, but not limited to, contribution claims.

(c) Emhart and Textron agree to indemnify the Town against any and all claims by BFI or any other person arising from or relating to BFI's obligations and undertakings pursuant to the Partial Consent Decree including, but not limited to, contribution claims. In consideration thereof, the Town agrees to waive any and all claims against BFI and to indemnify BFI against any and all claims arising from or relating to the Town's obligations and undertakings pursuant to this Agreement and the Partial Consent Decree, in each such case, including, but not limited to, contribution claims.

ARTICLE 8. Reservation of Claims.

(a) The Town, Emhart and Textron expressly reserve any and all claims including, but not limited to, contribution claims against each other and against BFI arising from or related to losses, costs or expenses incurred by them in connection with matters that are not covered by this Agreement or the Partial Consent Decree including, but not limited to, any source control remedy that may be required at the Landfill, any subsequent Record of Decision for the Landfill, or any other governmental or private claims in connection with the Landfill.

(b) The Town, Emhart and Textron expressly reserve any and all claims including, but not limited to, contribution claims against any party not named in Article 7 hereof arising from or related to losses, costs or expenses incurred by them in connection with the Landfill, whether or not in connection with matters that are covered by this Agreement or the Partial Consent Decree.

(c) To the extent that any of the Town, Emhart or Textron makes a demand or commences an action, for contribution or otherwise, against a third party relating to losses, costs or expenses incurred entirely or partially by it in connection with matters that are covered by this Agreement or the Partial Consent Decree, the

party making such demand or filing such action shall provide timely notice of such demand or action to the other parties to this Agreement and shall support any effort by the other parties to this Agreement to join such demand or action. In the event any recovery (including, but not limited to, any settlement) is made as a result of such demand or action, the proceeds of such recovery, after deducting reasonable costs and expenses incurred by any of the parties to this Agreement in connection with such demand or action, shall be divided among those parties to this Agreement that are parties to the demand or action based upon the allocation among such parties of such losses, costs or expenses incurred, with a precise allocation to be agreed upon in good faith between such parties to this Agreement, to the extent that such allocation is not determined by a court or other tribunal having jurisdiction over the action.

ARTICLE 9. Scope of Agreement.

(a) The scope of this Agreement is intended by the parties hereto to be limited to matters dealt with in or covered by the Partial Consent Decree except to the extent otherwise expressly provided herein and shall have no force or effect with respect to any matters, includ-

ing, but not limited to, any source control remedy that may be required at the Landfill, that are not dealt with in or covered by the Partial Consent Decree.

(b) With respect to those matters dealt with in or covered by the Partial Consent Decree, this Agreement constitutes the entire agreement of the parties hereto and there are no restrictions, understandings, promises, representations, warranties, covenants or undertakings with respect to such matters except those set forth herein or expressly incorporated herein by reference. This Agreement supersedes all prior agreements among the parties with respect to such matters.

(c) No provision of this Agreement shall affect any agreements among Emhart, Textron and BFI (or any two of them) concerning allocation among themselves of any of the obligations or benefits owed by or accruing to any of them under this Agreement or the Partial Consent Decree.

ARTICLE 10. Conditions Precedent. This Agreement shall be of no force or effect until both such time as the terms of the Partial Consent Decree and this Agreement shall be affirmed by the voters of the Town consistent with section XXXVII of the Partial Consent

Decree and the Partial Consent Decree shall be entered by the United States District Court for the District of Vermont.

ARTICLE 11. Dispute Resolution.

(a) If there shall be a dispute over any of the terms of this Agreement, there shall be a meeting of the parties hereto which each of the parties shall attempt to have attended by a representative who has authority to resolve the dispute. The meeting shall be scheduled promptly following written notice by any party that a dispute exists.

(b) If the meeting described in section (a) of this Article 11 shall fail to achieve a resolution of the dispute satisfactory to each of the parties hereto, said parties shall, by mutual agreement, select an independent arbitrator who shall conduct a non-binding arbitration of the dispute, in accordance with such rules and procedures as such arbitrator, in his sole discretion after consultation with the parties hereto, deems appropriate.

(c) If the parties hereto are unable to agree on the identity of an independent arbitrator pursuant to section (b) of this Article 11, or if the parties fail to reach agreement following the non-binding arbitration,

the parties hereto may agree to request a neutral party to select an arbitrator who will conduct a binding arbitration of the dispute or may seek appropriate legal or equitable relief in a court of appropriate jurisdiction.

(d) Compliance with the procedures of this Article 11 shall be a prerequisite to an action by any of the parties to this Agreement for breach of the Agreement; provided, however, that any of the parties to this Agreement, at any time and without waiver or other diminution of its rights under this Agreement, may seek injunctive relief to address an immediate harm or may take such action as it deems necessary and appropriate to avoid the incurrence of additional liabilities or penalties by itself or the other parties to this Agreement with respect to any matters covered by the Partial Consent Decree and such party may then seek appropriate reimbursement for costs and expenses incurred in taking such action, in accordance with the terms of this Agreement.

(e) Each party shall bear its own costs and expenses arising from or related to any of the dispute resolution proceedings provided for in this Article 11.

ARTICLE 12. Notice. All notices, reports, invoices for reimbursement of costs and expenses and other correspondence arising from or related to this Agreement shall be sent to each of the following persons:

For the Town:

William R. Steele
Town Manager, Town Hall
96 Main Street
Town of Springfield
Springfield, Vt 05156

with a copy to:

John Parker, Esq.
Parker & Ankuda, P.C.
P.O. Box 519
52 Elm Street
Springfield, Vermont 05156

For Emhart:

Linda H. Biagioni
Black & Decker Corporation
701 East Joppa Road
Towson, Md 21204

with a copy to:

Barry L. Malter, Esq.
Swidler & Berlin
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

For Textron:

Paul B. Duff
Textron Inc.
40 Westminster Street
Providence, R.I. 02903

with a copy to:

Daniel H. Squire, Esq.
Skadden, Arps, Slate, Meagher &
Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Any of the parties to this agreement may change the persons designated for notice hereunder by appropriate and timely notice given in accordance with this Article 12.

ARTICLE 13. Reports; Correspondence with EPA and the State.

(a) Any party to this Agreement may, at any time, request of any other party to this Agreement a report of the status of its activities and obligations under this Agreement. The party making such request may be required by the reporting party to bear the reasonable cost of preparation or duplication of any written materials so requested.

(b) Each party to this Agreement shall assure that each of the other parties to this Agreement receives copies of all correspondence to and from, and submissions to, both EPA and the State arising from or related to the Work or the Partial Consent Decree or otherwise connected

with the performance of its obligations under this Agreement.

ARTICLE 14. Amendment.

The parties to this Agreement may amend or supplement this Agreement at any time by execution of an appropriate written instrument of amendment or supplementation. Such instrument shall be effective upon its execution by all of the parties hereto or in accordance with its provisions.

ARTICLE 15. Reimbursement Procedure.

(a) Any party to this Agreement seeking reimbursement of costs or expenses incurred from any other party to this Agreement shall, within forty-five (45) days of its determination that it is entitled to such reimbursement, deliver to such other party an invoice which shall set forth in reasonable detail the nature and amounts of the costs and expenses for which reimbursement is sought and the provision of this Agreement pursuant to which reimbursement is sought and which shall contain appropriate and legible copies of any invoices for goods or services by third parties for which reimbursement is sought.

(b) The party from which reimbursement is sought shall have thirty (30) days from the date of receipt of such invoice to pay any amounts invoiced which it does not dispute or to commence dispute resolution procedures as set forth in Article 11 of this Agreement with respect to any other amounts. If no payment is made and dispute resolution procedures are not commenced within the 30-day period with respect to any amounts invoiced, the party from which reimbursement is sought shall be deemed to have waived any right to dispute its obligation to pay such amounts and the party seeking reimbursement may immediately institute an action in a court of appropriate jurisdiction to compel recovery of such amounts.

ARTICLE 16. Governing Law. This Agreement shall be governed by the laws of the State of Vermont (regardless of the laws that might otherwise govern under applicable Vermont conflict of law principles) as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

ARTICLE 17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 18. Parties in Interest. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives but, except with respect to the express provisions of Articles 7(c) or 8(a) of this Agreement with respect to BFI, is not intended to create any rights or interests on behalf of any other persons.

ARTICLE 19. Injunctive Relief. In the event any party to this Agreement is determined by a court of competent jurisdiction to be in breach of any of the terms or provisions of this Agreement, any nonbreaching party, in addition to any other remedies to which it may be entitled, shall be entitled to injunctive relief as against the breaching party or parties, including, but not limited to, specific performance of appropriate terms of this Agreement.

ARTICLE 20. Severability. In the event that it is determined that any provision or portion thereof of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such determination shall affect only such provision or portion thereof and shall not act to impair the remaining provisions of this Agreement.

The signatures below signify the assent of the parties to this Agreement. Each undersigned representative of a party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and fully bind such party to this Agreement.

IN WITNESS WHEREOF, THE UNDERSIGNED PARTY enters into this Agreement relating to the Old Springfield Landfill.

TOWN OF SPRINGFIELD, VERMONT

By:

William R. Felt

Date:

NOVEMBER 21, 1989

IN WITNESS WHEREOF, THE UNDERSIGNED PARTY enters into this Agreement relating to the Old Springfield Landfill.

EMHART INDUSTRIES, INC.

By:

Charles E. Fento

Date:

November 8 1989

IN WITNESS WHEREOF, THE UNDERSIGNED PARTY enters into this Agreement relating to the Old Springfield Landfill.

TEXTRON INC.

By:

Richard A. Minter

Date:

10/3/89

ATTACHMENT A

SCHEDULE OF SERVICES

This Schedule of Services is attached to and made a part of the Allocation Agreement among the Town, Emhart and Textron. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Allocation Agreement.

The Town shall make available at no cost the goods and services described below for the assistance of Emhart and Textron in fulfilling the obligations of the Town, Emhart and Textron under the Focused Feasibility Study or the Partial Consent Decree. It is not contemplated that the Town will hire any additional employees or purchase any equipment which it would not otherwise hire or purchase in the normal conduct of its affairs in order to fulfill its obligations hereunder.

(a) Removal and disposal of mud and snow consistent with the availability of Town personnel and the capability of Town equipment, provided that such removal involves no hazardous wastes or other materials which would require special treatment or disposal under applicable laws or regulations.

(b) Provision and spreading of gravel in

the area of the existing and future field office trailers in order to provide an adequate surface for vehicles.

(c) Provision of potable water and assistance in making necessary connections to its source, subject to existing laws and regulations.

(d) Qualified plumbers in the employ of the Town or an agency or entity controlled by or affiliated with the Town to provide plumbing services in connection with the set-up of the future field office trailer(s), connections of piping laid by Emhart and Textron to existing sewer lines and the POTW and approval of such lines and connections after completion of appropriate tests, and other plumbing services similar to those provided prior to the date of the Agreement.

(e) Personnel and equipment of the Town or an agency or entity controlled by or affiliated with the Town for assistance with site restoration work, and for the clearing or upgrading of necessary access roads, consistent with the availability of Town personnel and the capability of Town equipment.

(f) Traffic control signs that are required, in conformance with the Vermont manual of uniform traffic control devices, and personnel of the Town or an agency or entity controlled by or affiliated with the

Town to act as "flagmen" during drilling or construction along any off-site roadway.

(g) Periodic police security checks including, but not limited to, evenings, nights, holidays and weekends.

(h) Maps showing property boundaries in the area of the site, noting names and addresses of all property owners.

(i) Personnel of the Town or an agency or entity controlled by or affiliated with the Town to assist in the construction of temporary, protective wooden sheds over any temporary pretreatment facility and, if available to the Town, portable electric heaters for use in such sheds and heat wrap for any piping associated with the Work.

(j) The use of a portable electric generator, electric sump pump and boat with motor, if available to the Town.

(k) Access to photocopying and telephone facsimile transmission equipment (to the extent available) during normal business hours.

(l) Personnel from the Town's engineering firm, Dufresne-Henry, Inc. to assist in conducting necessary bench-scale studies for the design of the remedial

action and in establishing pretreatment requirements for discharge to the POTW, the Black River, or otherwise. Bench-scale studies will include a simulation of treatment processes currently employed at the POTW using leachate and groundwater extracted at or near the Landfill by Emhart and Textron to determine the suitability of the POTW for treating such leachate or groundwater and appropriate analysis of such water to establish any necessary pretreatment standards.

(m) Reasonably available personnel and equipment to obtain materials locally and to transport such materials to the Work site or to act as courier to transport samples locally.

(n) Such other reasonably available goods or services as the Town may agree to provide.