

***FEDERAL FACILITY COMPLIANCE
AGREEMENT***

BETWEEN

**THE
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

AND

THE UNITED STATES AIR FORCE

CONCERNING

**DISMANTLEMENT ACTIVITY SUPPORTING THE
STRATEGIC ARMS REDUCTION TREATY AND THE
SUBSEQUENT CLOSURE OF USAF MINUTEMAN II
MISSILE SITES**

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COMPLIANCE AGREEMENT

I. PARTIES

The United States Environmental Protection Agency ("EPA") and the United States Air Force ("USAF") are parties to this Compliance Agreement.

II. JURISDICTION

This Agreement is entered into under the authority of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§2601 to 2692, and Executive Order 12088, 43 F.R. 47707 (October 13, 1978).

III. PURPOSE

EPA and USAF are entering into this Agreement after consideration of TSCA and the polychlorinated biphenyl ("PCB") regulations at 40 C.F.R. Part 761, *et seq.*, and applicable portions of Executive Order 12088, to establish and memorialize their commitments for conducting actions at USAF missile silos scheduled for dismantlement in support of the Strategic Arms Reduction Treaty ("START"), and the subsequent closure of the missile sites ("sites"). It is the further purpose of this Agreement to formalize USAF's responsibility for sampling, analysis and monitoring to detect potential migration of PCBs from closing sites. All plans, studies, construction, maintenance and monitoring programs, and other obligations created directly or indirectly by this Agreement shall be implemented in a manner calculated to identify and minimize the risk of harm to human health and the environment from implementation of the plan to close those sites where the presence of PCBs in a non-liquid form is known through specific testing or representative sampling. In addition, this Agreement shall serve as a model for all future closures of Air Force missile sites where PCB materials are discovered.

IV. SCOPE

This Agreement establishes a plan which is intended to address TSCA requirements through the PCB regulations found at 40 C.F.R. Part 761 for silos dismantled pursuant to START and subsequent site closure. Except as specifically provided in this Agreement, USAF responsibility to comply with all other applicable statutes and regulations is unaffected.

V. DEFINITIONS

As used in this Agreement:

1. "Affected States" means states with missile sites containing PCB materials, scheduled for closure, who have not executed a Participating State attachment pursuant to Section XV.
2. "Agreement" means this document upon execution by EPA and USAF, and any documents attached hereto or incorporated herein by reference.
3. "Binding" means to be legally enforceable upon. Those entities bound by this Agreement are constrained and compelled to act in accord with the terms herein contained.
4. "EPA" means the United States Environmental Protection Agency and its Regional Offices.
5. "Excess" or "excess to USAF needs" means land reported or to be reported by DoD to GSA as no longer required for military purposes.
6. "HQ ACC" means Headquarters Air Combat Command, AFB, Virginia.
7. "LCF" means Launch Control Facility. The manned LCF encompasses approximately 3.5 to 5 acres. Significant features inside the security fence include one or two above-ground support buildings, an elevator shaft, one or two below-ground "pods", and underground storage tanks (USTs). The LCF is the control center for ten missile sites (LFs).
8. "LF" means Launch Facility. The unmanned LF encompasses approximately 1.6 acres. Significant features inside the security fence include an underground missile silo (launcher), support building (LFSB) and an underground storage tank (UST).
9. "LFSB" means Launch Facility Support Building. The LFSB (also referred to as the support building) is a below-grade concrete structure, located on an LF, which houses support equipment.
10. "Non-liquid PCBs" means PCBs which were intentionally incorporated into solid materials, including dried paint, to achieve flame retardant, plasticizer, or other similar properties in the solid material. It does not include solid materials which were contaminated with PCBs by accidents or even the normal use of liquid PCBs. The essential distinction is whether or not the PCBs were intentionally incorporated at the time of manufacture of the solid material.
11. "Participating States" means those states which have executed an attachment to this Agreement pursuant to Section XV.

12. "PCB Materials" means any materials containing polychlorinated biphenyls (PCBs) in a non-liquid form at any of the sites subject to this Agreement. To date these materials have been found as coatings on Underground Storage Tanks (USTs), Launch Facilities (LFs) which include the silos (launchers), and Launch Facility Support Buildings (LFSBs). In addition these materials are suspected to be present on the Launch Control Facilities (LCFs) below-ground pods and elevator shafts.

13. "Points of Contact" or "POCs" means the persons for each agency or party in interest to this Agreement who must be contacted to arrange for inspection of sites or records pursuant to Section X of this Agreement, engage in informal dispute resolution pursuant to Section XIII of this Agreement, and who concur or nonconcur in extensions or delays pursuant to Section XI of this Agreement. Except as otherwise specifically provided herein, all requirements under this Agreement for document review, comment, notices, and work to be performed will take place at the POC level and between the POCs. POCs may be changed at any time by the parties hereto by serving written notice to the other POCs of record. Those POCs as of the date of this Agreement are listed at Attachment 3.

14. "PCB Concentration Level Test" is defined as the test for PCB concentration conducted in accordance with EPA SW 846 Extraction and Analytical Methods, 3540/8080 (Soxhlet extraction).

15. "Reasonable Notice" as used under Section X of this Agreement means seventy two (72) hours unless the site visited is a Launch Facility which contains a missile, in which case the term shall mean ten (10) working days.

16. "Representative Sampling" means, for purposes of this Agreement, the selective sampling requirements embodied in a sampling procedure agreed upon by the parties.

17. "Silo" means the below-grade concrete tube-like structure, located on an LF, which was designed to house a missile and associated equipment (also referred to as the launcher).

18. "Sites" means the locations on USAF controlled property, at which the presence of non-liquid PCBs is suspected or confirmed, utilized for missile operations, scheduled for silo dismantlement pursuant to START and subsequent missile site closure. The sites are located on USAF property near the USAF bases with which they are associated.

19. "START" means the Strategic Arms Reduction Treaty.

20. "Submit" means to send by certified mail, return receipt requested, the specified number of copies of the applicable documentation to the POCs for the parties to this Agreement.

21. "USAF" means the United States Air Force and its subordinate major commands.

22. "USTs" means underground storage tanks, parts of underground storage tanks, associated piping, adjacent soils, and coating material removed from piping and underground storage tanks.

VI. BACKGROUND

1. In February 1990 the Secretary of Defense announced the retirement of the Minuteman II missile system. Subsequently, USAF initiated a program to dismantle Minuteman II missile systems at Ellsworth AFB, South Dakota and Whiteman AFB, Missouri. Pursuant to START, USAF elected, following extensive analysis and opportunity for public comment, to implode the missile silo headworks and cap the silo. As part of the dismantlement, USTs and associated piping would either be removed or left in place. The LFSB, USTs and associated piping, and the LCF will be dismantled as part of the general efforts associated with closing the missile sites. Following the silo implosion, the site would eventually be disposed of through the General Services Administration as excess property.

2. Ellsworth AFB and Whiteman AFB each have 150 launch facilities (LFs; each of which includes a silo, sometimes referred to as a launcher, and a support building, LFSB) and 15 control centers (Launch Control Facility, or LCF) consisting of some configuration of above-ground building or buildings, an elevator shaft, and one or two below-ground "pods".

3. Deactivation began in December 1991 and was scheduled to be completed by 1997. The first silo at Whiteman AFB was destroyed on 8 December 1993, and the first at Ellsworth AFB was destroyed on 7 April 1994. During the initial stages of the dismantlement, PCB materials used as a waterproof coating were discovered at levels above the 50 ppm regulatory limit set in the implementing regulations of the Toxic Substances Control Act (TSCA) at 40 C.F.R. Part 761. In addition, asbestos was discovered in the protective coating on the USTs and underground piping. Dismantlement was suspended at Whiteman AFB in April 1994 pending completion of an extensive investigation to determine if these materials pose a threat to the environment. Dismantlement continued at Ellsworth AFB since the PCB material above the regulatory limit was limited to some LFSBs and the USTs. Attachment 1 identifies where the PCB material was found at Whiteman AFB and Ellsworth AFB. Pursuant to the PCB disposal regulations at 40 C.F.R. Part 761, PCBs at 50 ppm or greater must be disposed of in either an EPA approved landfill or in an EPA approved incinerator. Disposal by burial in place is not an approved disposal method under the current PCB regulations.

4. The bases involved immediately notified, and have continued to work closely with, regulators from the states of Missouri, South Dakota, and North Dakota, and EPA regulators from Regions VII and VIII. USAF initially met with state and regional EPA officials in April 1994. USAF briefed senior headquarters EPA officials in August 1994. The parties determined that this Agreement was necessary to allow USAF to continue silo dismantlements.

5. USAF, in coordination with EPA and the states of Missouri and South Dakota, developed a sampling plan and aggressively sampled the material from an approximate ten percent representative sample of each type of structure. Soil and groundwater were also collected at an approximate ten percent representative sample of sites. The investigation found that PCBs are present on every type of structure sampled. Toxicity characteristic leaching procedure (TCLP; 40 C.F.R. 261, Appendix II, Method 1311) testing was conducted as contemplated by EPA's December 6, 1994 proposed rules (59 Fed. Reg. 62788-887). The TCLP testing indicated that PCBs may leach from the coating materials on these structures in low (0-7 ppb) concentrations. This finding led to the conclusion that PCBs may already have, or may in the future, leach into soils and groundwater surrounding Minuteman II structures. These results demonstrated a need for development of sampling and groundwater monitoring requirements to be included in this Agreement, to detect any existing or potential future migration of PCBs from Minuteman II structures. These initial sampling results were compiled and submitted on 24 January 1995.

6. In March 1995, representatives from EPA, the states of Missouri, South Dakota and North Dakota, and USAF met to review sampling results and to continue discussions concerning this Agreement. At this meeting, USAF proposed resumption of limited silo dismantlement activities as a means to fully characterize impacts to the environment during silo eliminations and to support and expedite joint USAF and EPA efforts to complete this Agreement while allowing START mandates to proceed. On 28 June 1995, EPA, with concurrence by the State of Missouri, issued a Letter of Enforcement Discretion (LOED) allowing USAF to implode up to fifteen (15) silos near Whiteman AFB between 28 June 1995 and 30 September 1995. The LOED required prior coordination with state regulatory authorities, continued best efforts toward completing this Agreement, and soil, water, and air sampling to characterize the environmental impacts during and after the silo implosions. The LOED was amended and expanded on 3 October 1995 for an additional twenty (20) implosions through 15 November 1995.

7. USAF resumed progress toward dismantlement of silos at Whiteman AFB in July 1995, with the first implosion under the LOED taking place in late August 1995. Upon the effective date of this Agreement, dismantlement activities will continue at Whiteman AFB under the terms and conditions herein.

VII. COMPLIANCE PLAN

Pursuant to this Agreement, the Parties shall take the following actions:

PCB Materials at LFs, and LCFs. The following procedures shall apply to PCB materials at LFs, and LCFs.

a. PCB materials at LFs which demonstrate through specific testing or by representative sampling, the presence of PCBs at a concentration greater than or equal to 50

parts per million (ppm), as determined by a PCB concentration level test, shall be addressed in accordance with the following destruction plan.

(1). Destruction Plan. Destruction activities at USAF sites covered by this Agreement shall comport with the following provisions:

(a). Missile Silo.

i. The silo is imploded with explosives. All the concrete is then mechanically separated from the rebar and dropped down the remaining portion of the silo. It is not possible to contain all the rubble in the remaining portion of the silo nor is it possible to ensure the PCB coated material is placed inside the remaining portion of the silo. A cone of observation is excavated and the site remains in this condition for a minimum of 90 days. Prior to the observation period, the remaining portion of the silo is covered with a concrete cap and the remaining rubble is deposited on top of the silo headworks foundation. The site is then backfilled with all rubble material remaining deeper than seven feet below grade. The site is then graded to the contour of the surrounding area. Attachment 2.1 is a diagram of the completed site after destruction.

ii. Ellsworth Air Force Base, SD. Destruction activity will take place in accordance with subparagraph i. above.

iii. Whiteman Air Force Base, MO. All PCB containing rubble from the silo will be disposed of inside the concrete tube and the area directly above the concrete headworks. The rubble will be covered with a 20 mil plastic liner whose edges have been overlapped and seam welded in order to form a continuous sheet of plastic over the rubble. A 12 inch thick layer of cushion soil will be compacted and smoothed over the rubble in such a manner that the surface contacted by the plastic liner will be free of materials which might puncture the liner. The cushion soil will be covered with the liner such that the surface of the plastic will be relatively smooth and free of wrinkles. The liner will extend horizontally three feet beyond the edge of the rubble or the remaining structure, whichever is greater. The liner will mark where the rubble is buried and will also provide some protection from surface water infiltration through the rubble. The contour of the liner shall be slightly rounded. A minimum of 24 inches of soil shall be placed over the plastic liner before construction equipment can operate on top of the plastic liner in order to protect it from damage. Care shall be taken during installation to ensure that the plastic liner is not torn, ripped, or punctured. All rubble will be deeper than seven feet below grade. Attachment 2.2 is a diagram of a Whiteman AFB site after destruction.

(b). Launch Facility Support Building (LFSB)

i. The roof and exterior walls of the LFSB are demolished to a depth of at least seven feet below grade either mechanically or by using explosives. The rubble is then mechanically separated from the rebar. The LFSB is covered by soil excavated to construct the observation cone during the observation period and remains covered as the site is finished.

ii. Ellsworth Air Force Base, SD. The LFSB rubble is deposited inside the remaining structure and covered with a six (6) mil plastic liner prior to final backfill. This liner is intended to simply mark where the rubble is buried in the remaining structure of the LFSB. All rubble will be approximately three to four feet below grade. Attachment 2.3 is a diagram of a Ellsworth AFB LFSB after destruction.

iii. Whiteman Air Force Base, MO. The corners of the LFSB are imploded at the time the silo is imploded. Starting with the implosion on 12 October 95, soil will be pushed over the corners of the LFSB to limit the amount of rubble dispersed during the implosion. The rubble from the LFSB will be disposed of inside the remaining structure and covered with a twelve inch layer of soil and a 20 mil plastic liner. The plastic liner edges will be overlapped and seam welded in order to form a continuous sheet of plastic over the rubble. The plastic liner will extend horizontally three feet beyond the edge of the rubble or the remaining structure, whichever is greater. The contour of the liner shall be slightly rounded in order to improve drainage. A minimum of 24 inches of soil shall be placed over the plastic liner before construction equipment can operate on top of the plastic liner in order to protect it from damage. Care shall be taken during installation to ensure that the plastic liner is not torn, ripped, or punctured. The liner will mark where the rubble is buried and will also provide some protection from surface water infiltration through the rubble. All rubble will be deeper than seven feet below grade. Attachment 2.4 is a diagram of a Whiteman AFB LFSB after destruction

b. LCFs. Underground portions of LCF structures shall be assumed to have PCB contaminated exterior coatings similar to those coatings present at LFs associated with that particular installation. All LCFs will remain in place. Equipment and salvage items will be removed from the below-grade structures, and the underground blast doors will be welded shut. The access elevator shafts will be filled to the surface level with backfilled material and an eight (8) inch doweled concrete slab will be poured at ground level to restrict future access. Prior to exiting the LCF property, USAF, in consultation with EPA and Participating and Affected States, shall perform representative sampling around the perimeter of the launch control support building and the top three (3) feet surrounding the outside of the elevator shaft to ascertain whether PCB weatherproofing material is present. If sampling confirms PCB materials are present, USAF, EPA and Participating and Affected States, shall meet and/or consult to determine any additional or different conditions to be utilized in the closure of the LCFs. Attachment 2.5 is a diagram of the LCF at Whiteman AFB and Attachment 2.6 is a diagram of the LCF at Ellsworth AFB. Where USTs have not been removed prior to the execution of this Agreement, LCF USTs will be closed according to applicable UST regulations. Coating material on the LCF structures, piping, and tanks will remain in place. Drinking water wells at the LCFs will be sampled for the presence of PCBs in consultation with the Participating and Affected States or if USAF decides not to sample such wells they shall be closed in accordance with applicable federal and state requirements. If PCBs are found during testing, USAF shall consult with EPA and the Participating and Affected States on an appropriate course of action.

c. PCB materials at the sites covered by this Agreement which do not contain PCBs greater than or equal to 50 ppm shall be regarded as being unregulated for disposal.

d. Sites at Whiteman AFB where dismantlement implosion and capping has already taken place, namely India-2, India-4, and India-8, shall remain closed. There shall be no further requirement for testing of these sites unless indications of PCBs, attributed to the presence of PCBs on site structures, are discovered in local soils or groundwater. These sites are eligible for inclusion in the groundwater monitoring plan to be produced by USAF under this Agreement.

e. Nothing in this Agreement shall be construed to prohibit USAF from removing and properly disposing of PCB materials covered by this Agreement, in accordance with applicable federal and state requirements, when it is determined by USAF to be necessary for the dismantlement of the site, advantageous to USAF, or in the best interest of the parties involved.

f. USAF shall notify verbally, in writing, by facsimile, or by mail the EPA, the Participating and Affected States, and adjacent landowners, to the extent practicable, at least seven (7) days in advance of silo implosions at Minuteman II sites. If it is not practicable to provide seven (7) days advance notice, USAF shall notify the POCs for EPA and the Participating and Affected States as far in advance of the occurrence of dismantlement activity as possible. USAF shall provide the POCs for EPA and the Participating States, via facsimile, with a written schedule of planned dismantlement activity, as well as a summary of completed activity every month until the completion of dismantlement activity. The first such monthly update shall be provided on the first day of the second month following the execution of this Agreement. The parties recognize that the schedule of dismantlement activity is provided for informational purposes only and adherence to that schedule is not intended to be an enforceable part of this Agreement.

g. Groundwater Monitoring. USAF and the Participating States shall develop a groundwater monitoring plan, including an implementation schedule, based on the general concepts found at 40 C.F.R. Part 264. It is anticipated that this plan will be finalized no later than 18 months after executing this Agreement or after executing a Participating State attachment, whichever is later. When an Affected State notifies USAF that it does not choose to become a Participating State and does not plan to execute a state attachment in accordance with Section XV, the anticipated 18 month period to finalize the groundwater monitoring plan begins from receipt of that notification. In addition, at the request of an Affected or Participating State, an interim monitoring plan may be developed and implemented. Affected and Participating States may request EPA assistance in the development of such a plan. USAF is responsible for implementation of groundwater monitoring plans.

(1) If USAF detects PCBs equal to or greater than 0.5 ppb at any monitoring well, USAF shall take the following actions:

(a) Notify applicable state regulatory authorities and the Regional Administrator in writing of the location of the well where PCBs were detected and the concentration of PCBs detected within seven (7) days of receiving analytical results;

(b) Immediately resample all wells in coordination with the EPA and the Affected and Participating States at the site where PCBs were detected, to confirm the detection of PCBs; and

(c) After confirming the detection of PCBs, develop recommendations to characterize any possible PCB plume, conduct a risk assessment, and institute an appropriate remedy based on the risk assessment results. Both the risk assessment and the remedy selection process will be conducted in coordination with EPA and the Participating or Affected State.

h. Additional Monitoring. USAF shall meet with Participating and Affected States within thirty (30) days of the execution of this Agreement and determine what additional monitoring, to include interim groundwater monitoring, is required in light of the air, soil, and water samples, and analysis, accomplished at Whiteman AFB sites in accordance with the 28 June 1995 and 3 October 1995 Letters of Enforcement Discretion. Until such requirements are agreed to by a Participating or Affected State, USAF shall continue compliance with the environmental monitoring requirements of the 28 June 1995 Letter of Enforcement Discretion as modified by the 3 October 1995 Letter of Enforcement Discretion or any alternative requirements levied upon USAF by a Participating or Affected State.

i. Underground Storage Tanks. The following procedures are general concepts which shall apply to USTs and associated coating material which representative sampling demonstrates may contain PCBs and asbestos. There are two categories of USTs addressed in this agreement: those remaining in Air Force possession on a site, and those which have been removed from a site and are in use by private, state or federal agencies as culverts, fill, support equipment or other uses. The enforcement discretion provided for under this Agreement for specific actions detailed in this Agreement does not extend to non-signatory third parties such as private owners of removed USTs.

(1) USTs Remaining in USAF Possession

(a) USTs in place at the sites for which representative sampling predicts PCB concentrations greater than or equal to 50 ppm may be permanently closed in place in accordance with applicable state and federal UST closure regulations.

(b) Such closure in place of USTs shall be deemed to be in compliance with applicable federal, and participating state, asbestos disposal requirements. For the removal and disposal of USTs with concentrations of PCBs greater than or equal to 50 ppm which also contain asbestos, compliance with 40 C.F.R. 761 Subpart D and 40 C.F.R. Section 61.154(a) shall be deemed to be adequate disposal for regulated asbestos provided incineration is not used as a method of disposal. USAF shall comply with

applicable asbestos handling requirements. For the removal and disposal of USTs with concentrations of PCBs less than 50 ppm, the USTs shall be handled and disposed of in accordance with appropriate federal and state asbestos requirements. See 40 C.F.R. Part 61 Subpart M.

(c) Sites where it is determined under applicable state or federal law or regulation that USTs have leaked will be closed in accordance with applicable UST closure requirements pursuant to 40 C.F.R. Part 280 and applicable state requirements. Where soils surrounding the USTs show the presence of PCBs at levels greater than or equal to 10 ppm, cleanup of soils shall be in accordance with the requirements of 40 C.F.R. Part 761, Subpart G.

(2) USTs Transferred From USAF Possession

(a) Within sixty (60) days following the execution of this Agreement USAF shall provide to EPA and the applicable Participating or Affected State, an accounting of all USTs that have been removed from the USAF sites and transferred to non-USAF ownership. This accounting will include the current location of the UST, the current owner if not USAF, any PCB concentration test results obtained, and, if the UST is found to be coated with PCB material with a concentration of PCBs equal to or greater than 50 ppm and is not under USAF control, USAF shall provide EPA evidence of the reasonable efforts taken to recover the UST, including copies of correspondence to private owners, within sixty (60) days of executing this Agreement. USAF shall keep EPA and Participating and Affected States apprised of the status of these USTs until final resolution of their status.

(b) If past experience with USTs from missile fields associated with the same base indicates a likelihood of PCB concentration equal to or greater than 50 ppm, USAF shall use reasonable efforts to obtain the rights to remove the UST and to remove any associated piping, adjacent soil, water, or other material which contains PCBs greater than or equal to of 50 ppm. These best efforts include the requirement to remediate to less than ten (10) ppm PCB, in accordance with 40 C.F.R. Part 761 Subpart G, any soil adjacent to an UST which has been contaminated by petroleum leaks. Such material removed from the ground shall be disposed of in accordance with 40 C.F.R. 761 Subpart D.

(c) If past experience with USTs from missile fields associated with the same base indicates a likelihood of PCB concentration below 50 ppm, the material shall remain in place in accordance with any applicable state and federal UST closure requirements, unless removal of these materials is requested by the owner. If removal is requested by the owner, such removal will be performed free of charge by USAF. If USAF is unable to obtain permission to remove USTs currently in use, USAF will attempt, in coordination with EPA and Participating and Affected States, to take appropriate steps to reduce the exposure of the USTs to the air.

(d) USTs which have been removed from a site and are in use by private, state or federal agencies as culverts, fill, support equipment or other uses, are not

required to be removed by USAF if the owner is notified and refuses the USAF offer to remove the USTs, free of charge, provided USAF has exercised best efforts as described in paragraph (f) below.

(e) USTs which have been removed from a site and are in use by private persons, state or federal agencies, but which have not been buried or are otherwise exposed to the air, shall be tested for PCB concentration and, if demonstrated to be greater than or equal to 50 ppm, USAF shall use reasonable efforts to recover and, if recovered, dispose of the UST in accordance with 40 C.F.R. 761 Subpart D and applicable asbestos requirements.

(f) USAF shall be required to use all reasonable efforts to carry out the provisions of this Agreement in situations in which permission of the owner and/or occupier of the property or UST is required for the inspection, testing or removal of USTs and associated equipment, soils or other material which may be covered under this Agreement. Such reasonable efforts shall include, but are not necessarily limited to, written notification to landowners/occupiers via certified mail of the USAF request for and reason it is seeking permission for inspection, testing, or removal of USTs and associated equipment, soils or other materials, and, the name, address, and telephone number of a point of contact for additional information regarding the actions of USAF and the potential risks associated with PCBs and regulated asbestos, including the potential pathways of exposure. In addition, the notification shall include information for landowners/occupiers on procedures to initiate a claim for compensation for the cost of replacement of the UST in its current condition and application.

j. Storage. In cases where PCB material is stored awaiting testing, test results, or disposal, such material shall be stored wrapped in plastic upon a heavy-gauge leak-tight plastic liner, which, for the purposes of this Agreement, shall be considered a conforming storage facility meeting storage requirements for PCBs and asbestos. Such material shall be considered stored in a conforming storage facility for a maximum of two (2) years from the time the material is moved into the facility. Prior to the expiration of this two (2) year period USAF shall dispose of such material in accordance with all applicable state and federal requirements.

k. Disposal of Previously Stored PCB Materials. Those PCB materials, including USTs, associated piping, soils and coating material removed from piping and USTs, which have been removed from the ground and are, at the time of this Agreement, being stored by USAF, shall be disposed of at an EPA approved PCB landfill or through other EPA authorized PCB disposal method, if a test for PCBs indicates concentrations greater than or equal to 50 ppm. If acceptable to the Participating or Affected States, disposal in accordance with the 40 C.F.R. 761 Subpart D requirements for PCBs and 40 C.F.R. Section 61.154(a) shall, for purposes of this Agreement, be considered to comply with applicable disposal requirements for regulated asbestos, with the exception that under no circumstances may any PCB material which contains asbestos be incinerated. USAF shall comply with applicable asbestos handling requirements. Such action shall be initiated within 60 days of the effective date of this Agreement.

l. Previously Disposed Materials.

(1) For those materials, including USTs, soils, and bagged material taken from the coating of piping and USTs, which have previously been placed in federal or state permitted landfills, shall remain in those landfills if agreed to by the State where the permitted landfill is located.

(2) For those materials, including USTs, disposed of through means other than landfilling, such as smelting or scrapping, USAF shall make reasonable efforts to notify any party known to have managed or disposed of such materials. Notification will include a description of the waste managed or disposed, and an offer of assistance in disposal of any remaining PCB or regulated asbestos waste resulting from the UST coating material.

m. Hardened Intersite Cable System (HICS). USAF will develop and submit to EPA and Participating and Affected States a HICS sampling plan to include a schedule for implementation within thirty (30) days of executing this Agreement. Sampling results will be submitted for review to EPA and the Participating and Affected States for selection and implementation of additional actions if deemed appropriate. Land containing HICS cables shall not be found to be excess to USAF needs prior to USAF submission of sampling results to the Participating and Affected States and EPA. If sampling indicates regulated PCBs in or on HICS cables, EPA, the Participating and Affected States, and USAF shall consult on the appropriate course of action.

n. Future Real Property Transfers. Following dismantlement, sites may be disposed of by the General Services Administration. If any sites are transferred to private ownership, the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act §120(h) as amended by the Community Environmental Response Facilitation Act of 1992, shall apply. An environmental baseline survey will be used to determine the specific restrictions required to comply with §120(h). In addition, USAF will exercise its best efforts to ensure that:

(1) No sites covered by this Agreement are transferred by another Federal agency without proper notification to all parties of the existence of this Agreement;

(2) Any transfer document contains the right of access necessary for USAF to carry out the provisions of this Agreement and any applicable provisions of the Participating State attachments;

(3) Any transfer document requires prior notice to and approval by the appropriate regulatory agencies of any construction, alterations, or similar activity affecting any monitoring wells, other groundwater wells, or any other facilities present on the site as required by this Agreement; and

* (4) Any subsequent transaction relating to sites covered by this Agreement shall also provide for the notices and right of access discussed above;

(5) Future property owners will be restricted from the installation of water wells on property comprising the site;

(6) Future property owners will be restricted from engaging in activities which will cause physical penetration and ground disturbance below a depth of two (2) feet beneath the surface of the site, unless such activities are approved in advance by the appropriate EPA Regional office on a case-by-case basis. Prohibited activities include, but are not limited to, soil excavation, trenching, installation of building foundations, footings, pilings, or supports, if such activities will extend to a depth of more than two (2) feet beneath the surface of the site;

(7) In the event that LCFs are closed at ground level, future property owners will be restricted from engaging in activities that will cause physical penetration and ground disturbance at any depth beneath the surface of the site above the below-ground pod and adjacent to the closed elevator shaft;

(8) The deed specifies that enforceability of restrictive covenant provisions in this Agreement shall be by EPA and/or Affected and Participating States in addition to General Services Administration (GSA).

(9) GSA provides EPA and Participating and Affected States with copies of model deed restriction language and opportunity to comment at least 90 days prior to the first conveyance in each Affected or Participating State of any site covered by this Agreement; and

(10) Within four months of executing this Agreement, and prior to excessing any site, USAF shall use best efforts to provide EPA with a written statement from GSA confirming that GSA intends to implement the restrictive covenant provisions of this Agreement in conveyance of property subject to this Agreement.

o. Notice of Public Meetings. USAF shall give ten (10) working days prior notice of, and an opportunity to participate in, any formal public meeting, formal public information sessions, or formal public discussions concerning implosions or the excessing of the sites which are the subject of this Agreement, to EPA and any Participating or Affected State.

VIII. FUNDING

USAF shall request, in a timely manner, through the Department of Defense (DoD), all funds and/or authorizations necessary to meet the conditions of this Agreement. With regard to funding, the timetables, schedules and courses of action reached in implementation of this Agreement are fixed and definite except to the extent that the Congress of the United States may fail to approve authorizations and/or appropriations requests necessary to execute

them. As funds are appropriated for compliance with this Agreement, USAF shall obligate such funds as necessary to meet the obligations of this Agreement and the Participating State attachments thereto within the timeframes specified for actions required of USAF under this Agreement.

Although failure to obtain approval of adequate authorizations and/or appropriations from Congress may alter the established timetable and schedules, it does not release USAF from its ultimate obligations under this Agreement or any applicable federal, state, or local laws or regulations. If sufficient funds are not appropriated by the Congress as requested and existing funds are not available to achieve compliance with the schedules provided in this Agreement, USAF and EPA shall modify this Agreement as necessary in accordance with Section XII Amendments and Modifications. The burden rests with USAF to show that funds are not available to achieve compliance with the schedules provided in this Agreement and that USAF, through DoD, properly requested such funds.

IX. FORCE MAJEURE

USAF agrees to perform all requirements of this Agreement within the time limits established by this Agreement unless the performance is prevented or delayed by events which constitute a *force majeure*. A *force majeure* shall mean any event arising from causes not reasonably foreseeable and beyond the control of USAF which results in a delay in or prevents the performance of any obligation under this Agreement despite USAF best efforts to fulfill such obligation. *Force majeure* includes but is not limited to, acts of God; fire; war; insurrection; civil disobedience; explosion; adverse weather conditions that could not be reasonably anticipated; unusual delays in transportation beyond the control of USAF; restraint by court order or public authority; inability to obtain, at reasonable cost and after exercise of best efforts, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any government agency or authority other than USAF; and delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisitions procedures, despite the exercise of reasonable diligence. The requirement that USAF exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential *force majeure* event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. A *force majeure* shall also include any strike or other labor dispute, whether or not within the control of the parties affected hereby. A *force majeure* shall not include increased costs of activities covered by this Agreement, whether or not anticipated at the time such activities were initiated. In the event a *force majeure* occurs, USAF shall notify EPA and the Participating States, in writing, within fourteen (14) days, of the existence of the *force majeure*. Such notification shall also include the anticipated duration of any delay, actions taken to prevent or minimize any delay, any other obligations affected by the *force majeure* event, and any available documentation supporting the claim that any delay was attributable to an event of *force majeure*. USAF bears the burden of proving any delay was attributable to an event of *force majeure* to include the existence of the *force majeure* itself. The Parties shall, within a reasonable time, negotiate, in accordance with Section XII, Amendments and Modifications any new provisions, schedules, or requirements needed to complete the actions in Section VII of this Agreement.

X. INSPECTION

Representatives of EPA, its regional offices and the Participating and Affected States shall have the right at any reasonable time upon reasonable notice to inspect any records, reports, data, compliance schedules, or other documents which are related to this Agreement or to any actions taken or obligations established under this Agreement which are kept by USAF and are located on United States Air Force controlled property. Representatives of EPA, its regional offices, and the Participating and Affected States, at reasonable times and upon reasonable notice, shall have access to the sites covered by this Agreement. Nothing herein shall be interpreted as modifying any requirement of law or regulation regarding national security or security clearance requirements, which govern access to controlled areas or documents. Additionally, where property upon which sites or records are maintained is leased to USAF, access shall be obtained consistent with the terms of the lease. USAF agrees that unannounced inspections may be accomplished if such unannounced inspections are allowable under applicable federal and state law.

XI. EXTENSIONS

USAF shall immediately notify the POCs verbally, and shall, within seven (7) calendar days, notify the POCs in writing whenever any event occurs which causes delay or the reasonable likelihood of delay in meeting any schedule for work to be performed pursuant to this Agreement (e.g., *force majeure*). USAF shall have the burden of showing that the delay was or will be caused by circumstances beyond the reasonable control of USAF and could not have been or can not be overcome by due diligence. The notification shall describe in detail the anticipated length of delay, the precise cause or causes of the delay, when and how USAF became aware of the causes of the delay, the measures taken and to be taken to prevent or minimize the delay (or similar, future delays) and the alternative schedule by which the required action or actions will be completed. The time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances, unless the parties negotiate a different period. Within ten (10) days following receipt by EPA and the Participating or Affected State(s) of written notice of a delay or anticipated delay, EPA and the Participating or Affected State shall confirm receipt of the notification and provide their concurrence or nonconcurrence with the alternative schedule proposed by USAF, or they will suggest an alternate extension period. If EPA or the Participating or Affected State(s) do not concur with the extension as proposed by USAF, they shall provide a written explanation of the basis for nonconcurrence or the proposed alternate extension period.

Disputes concerning the need for an extension or regarding the duration of an extension shall be resolved pursuant to Section XIII, Dispute Resolution.

XII. AMENDMENTS AND MODIFICATIONS

In the event that amendments or modifications to this Agreement are necessary as a result of informal dispute resolution pursuant to Section XIII of this Agreement, if amendments or modifications are required due to changes in applicable law or regulation, or if the parties mutually agree to amend or modify this Agreement, the affected provisions of this Agreement shall be renegotiated as necessary. All amendments and modifications to this Agreement shall be in writing and executed by EPA and USAF. In addition Participating States and USAF may agree to include such amendments and modifications in the Participating State attachment. Disagreements in renegotiation shall be resolved pursuant to the Dispute Resolution provisions of this Agreement, Section XIII. During the pendency of any request for renegotiation, this Agreement shall remain in effect.

XIII. DISPUTE RESOLUTION

1. This section applies to disputes arising between the EPA and USAF under this Agreement. Participating State attachments shall contain dispute resolution language designed to quickly and fairly resolve any and all disputes arising between them and USAF under this Agreement.

2. EPA and USAF, shall use their best efforts and act in good faith to resolve disputes arising under this agreement informally and expeditiously. Each specific dispute will be resolved at the lowest possible level of authority. Normally this resolution will occur between the POC's for EPA and USAF. In addition, during the pendency of any dispute, USAF agrees that it shall continue to implement those portions of this Agreement which are not in dispute and which can be reasonably implemented pending final resolution of the issue(s) in dispute.

3. If EPA determines that all or part of those portions of work which are affected by the dispute should stop during the pendency of the dispute and so notifies USAF in writing, USAF shall discontinue implementing those portions of the work. EPA and USAF agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Agreement, subject, however, to Section XIX of this Agreement. If any party fails to follow any of the requirements contained in this section, that party shall have waived its right to further consideration of the disputed issue.

4. If EPA or USAF disagrees with a decision or action of the other party, within ten (10) working days the POC of the objecting party shall notify the POC of the other party. If the parties cannot resolve the dispute informally, EPA or USAF may pursue the matter formally by placing objections in writing.

a. USAF's written objections will be directed to the Director, Federal Facilities Enforcement Office, HQ EPA. EPA's written objections shall be directed to the Director, Environmental Quality, HQ USAF/CEV. This written notice shall be mailed within 10 working days

after conclusion of the informal dispute resolution process. The written objections shall identify specific points of the dispute, any basis for its position, and a proposed resolution.

b. EPA and USAF shall have fifteen (15) working days from receipt of the written objections to attempt to resolve the dispute through formal negotiations. EPA and USAF agree to confer in person or by telephone to resolve the dispute as long as any request for a conference will not exceed the formal negotiation period. EPA or USAF shall provide a written decision to the objecting party within 20 working days of receipt of the written objections.

5. If the written decision does not resolve the issue to the satisfaction of the objecting party and, in the opinion of the objecting party, the issue is of national significance, the Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health) (SAF/MIQ) or the Director, Federal Facilities Enforcement Office, HQ EPA (the "Director") may request, in writing, to confer about the dispute within 20 working days of receipt of the written decision. The Director and SAF/MIQ shall have fifteen (15) working days, from receipt of the request for a conference, to resolve the dispute. The request for a conference shall enumerate the specific points of the dispute, the basis for the position, the proposed resolution and issue(s) of national significance.

6. No later than 20 working days after the Director and SAF/MIQ confer, the Director shall provide SAF/MIQ a written decision resolving the dispute. If there is no written request for a conference within 20 days of receipt of the written decision, the decision is final. The unresolved dispute tolls the effect of any decision until USAF receives the Director's written decision finally resolving the dispute. USAF agrees to abide by the final decision of the Director.

XIV. TERMINATION

Upon completion of all obligations required in this Agreement, addressing PCB materials at LFs, and LCFs, as well as for any other PCB materials covered by this Agreement, including those PCB materials which have been placed in landfills or are in use by private persons, state, or federal agencies in a manner that does not involve their exposure to air, USAF shall certify in writing to the other parties its completion of its obligations. Upon receipt of USAF certification of completion, EPA, and any Participating State, shall provide their written concurrence to the effect that USAF has satisfactorily completed its obligations or a written statement detailing the manner in which those obligations have not been completed, including a statement as to the specific actions required of USAF to complete its obligations under this Agreement. Upon receipt of EPA's and the Participating States' concurrence, the further obligations of USAF under this Agreement shall cease except for any monitoring or sampling requirements under Section VII hereto. Upon completion of all monitoring and sampling requirements as stated under Section VII, all further USAF requirements under this Agreement shall be extinguished with the exception that any PCB contamination attributed to any site covered under this Agreement may require USAF to take additional corrective action in coordination with EPA and the Participating or Affected State.

XV. AGREEMENT OF PARTICIPATING STATES

Interested States may become parties to this Agreement at any time subsequent to the execution of this Agreement by USAF and EPA by executing an attachment to this Agreement indicating their consent to, intent to be bound thereby, and incorporating by reference all applicable provisions of this Agreement. These attachments may also include provisions which differ from those in the Agreement. If any provision of a Participating State attachment is different from a provision within the Agreement, the attachment shall control provided the attachment's differing provisions are no less stringent than applicable federal laws and regulations and consistent with all applicable state, and local laws and regulations. Upon notification by an Affected State that they wish to become a Participating State, USAF shall begin negotiations with the Affected State with the intent to finalize an attachment to this Agreement within six (6) months.

XVI. COMPUTATION OF TIME

Unless otherwise specified in this document, all time periods delineated are to be computed from the date this Agreement is signed by all parties to this Agreement. All time periods are to be calculated as calendar days, not working days, unless otherwise specified. However, if a submittal, document, deadline, or other obligation under this Agreement falls due on a weekend or federal holiday, it will be due and deemed timely if submitted on the next business day following the weekend or holiday on which it fell due. A document is deemed submitted when it is placed into the U.S. Mail, certified, return receipt requested.

XVII. BINDING EFFECT

This Agreement shall apply to and be binding upon EPA and its regional offices, USAF, and all officers, directors, agents, trustees, servants, employees, successors or assigns of the named parties, as well as upon all persons, firms and other legally cognizable entities in active concert or participation with the named parties. This Agreement does not bind non-parties and shall not impact USAF's existing or future obligations to any non-parties.

XVIII. EFFECT OF AGREEMENT; EFFECTIVE DATE

EPA, for and in consideration of the complete and timely performance by USAF of the obligations agreed to in this Agreement, hereby waives any right to seek judicial imposition of damages or civil penalties under TSCA against USAF for the specific activities related to PCB materials as defined in this Agreement at sites covered by this Agreement.

USAF shall sign and date this Agreement followed by EPA. This Agreement is final and effective on the date EPA signs after USAF affixes its signature to the Agreement.

XIX. ENFORCEMENT ACTIONS AND RESERVATION OF RIGHTS

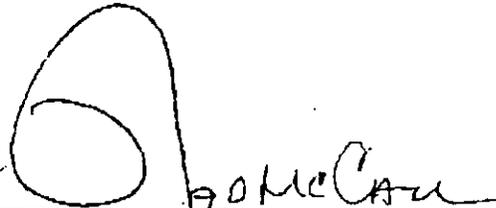
In the event that USAF fails to comply with any of its obligations under this Agreement and the Parties are unable to resolve the issue pursuant to the Dispute Resolution process in Section XIII of this Agreement, EPA may terminate this Agreement and furthermore, EPA reserves any rights granted to it under applicable law to seek administrative or judicial relief against USAF in the form of, but not limited to, civil or criminal penalties, declaratory, injunctive, or other relief as necessary and appropriate. Nothing in this Agreement shall preclude any actions by EPA, after exhaustion of the dispute resolution process in Section XIII, to enforce the terms of this Agreement. Nothing in this agreement shall preclude any actions by EPA to address or bring any available legal or equitable claims for any preexisting, current, or future violations or conditions at any USAF site included in this Agreement which are not specifically covered by this Agreement, or for any emergency condition or imminent hazard which may exist or arise at any such site, for any cleanup action pursuant to any available authority.

XX. SEVERABILITY

If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.

AGREED:

Date: Nov 15, 1995



Thomas W. L. McCall
Deputy Assistant Secretary of the Air Force
(Environment, Safety, and Occupational Health)

Date: Nov 16, 1995



Barry N. Breen
Director, Federal Facilities Enforcement Office
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

ATTACHMENTS:

Attachment 1 - Diagram Showing Location of PCB Material

Attachment 2 - Destruction Plan Diagrams:

2.1 - Diagram of Completed Site After
Destruction

2.2 - Diagram of a Whiteman AFB Site After
Destruction

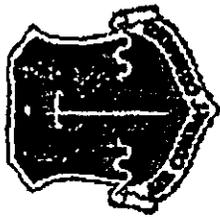
2.3 - Diagram of an Ellsworth AFB LFSB
After Destruction

2.4 - Diagram of a Whiteman AFB LFSB
After Destruction

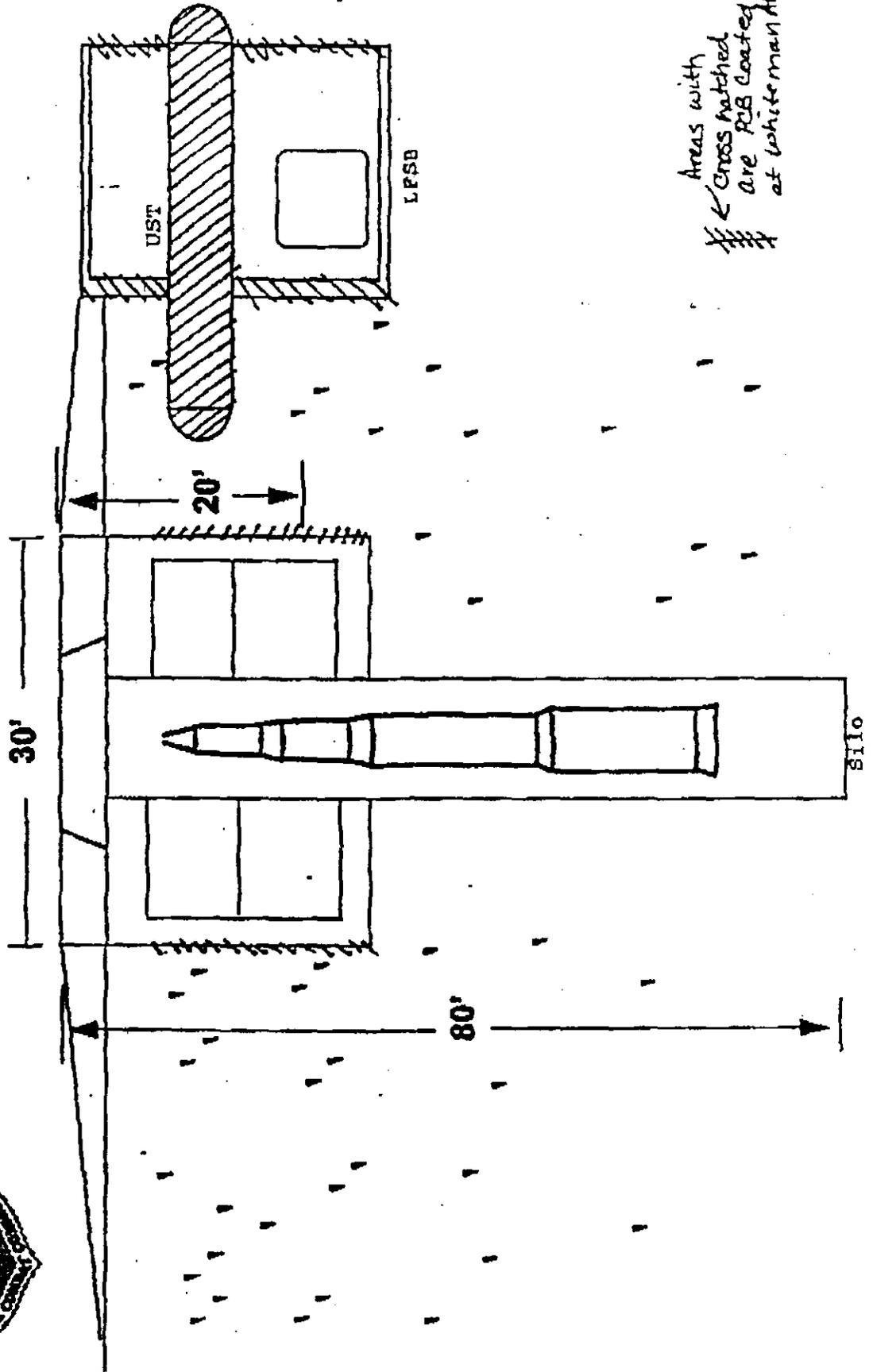
2.5 - Diagram of a Launch Control Facility at Whiteman AFB

2.6 - Diagram of a Launch Control Facility at Ellsworth AFB

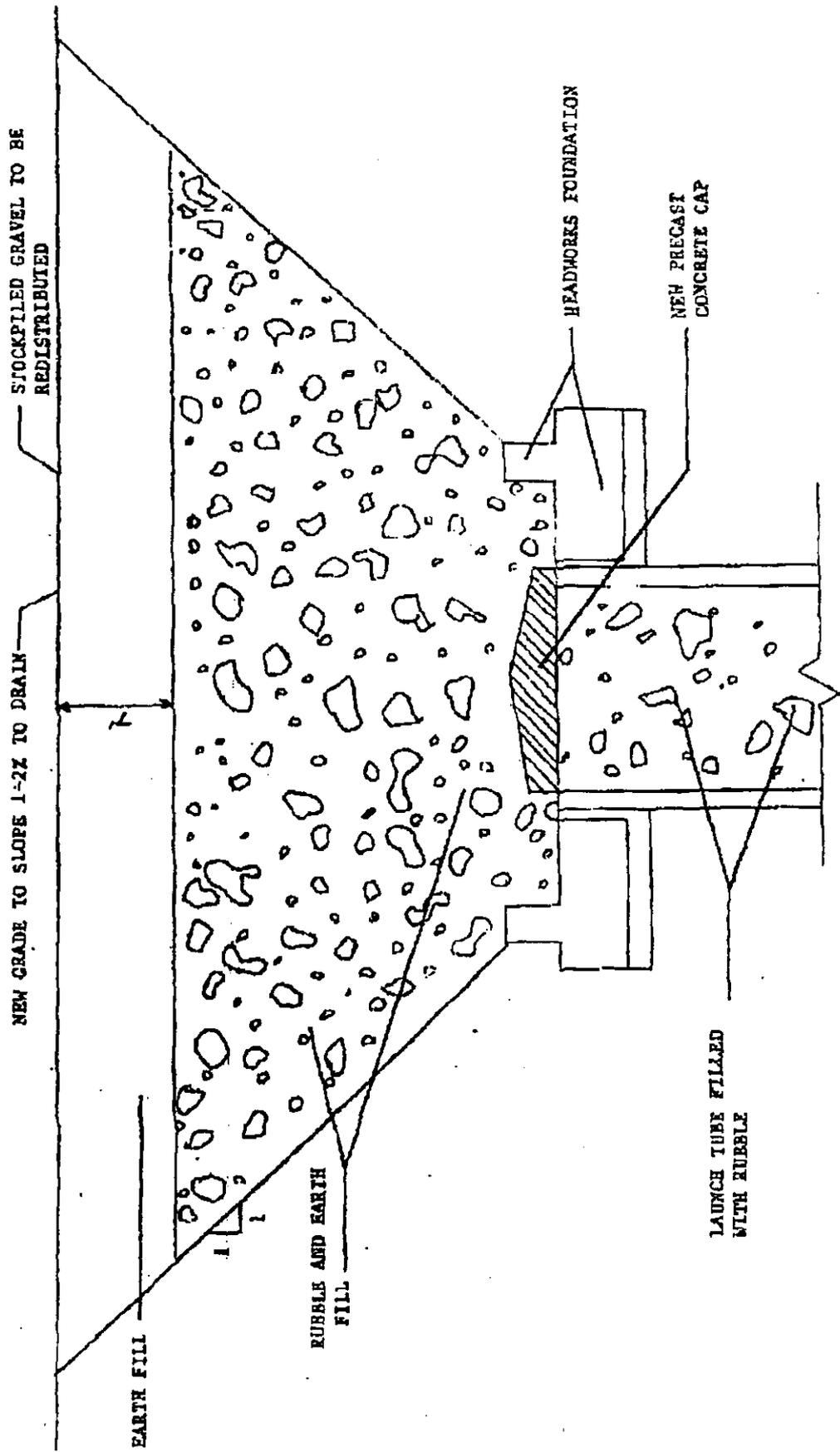
Attachment 3 - Points of Contact (POCs)



SILO & EQUIPMENT BUILDING

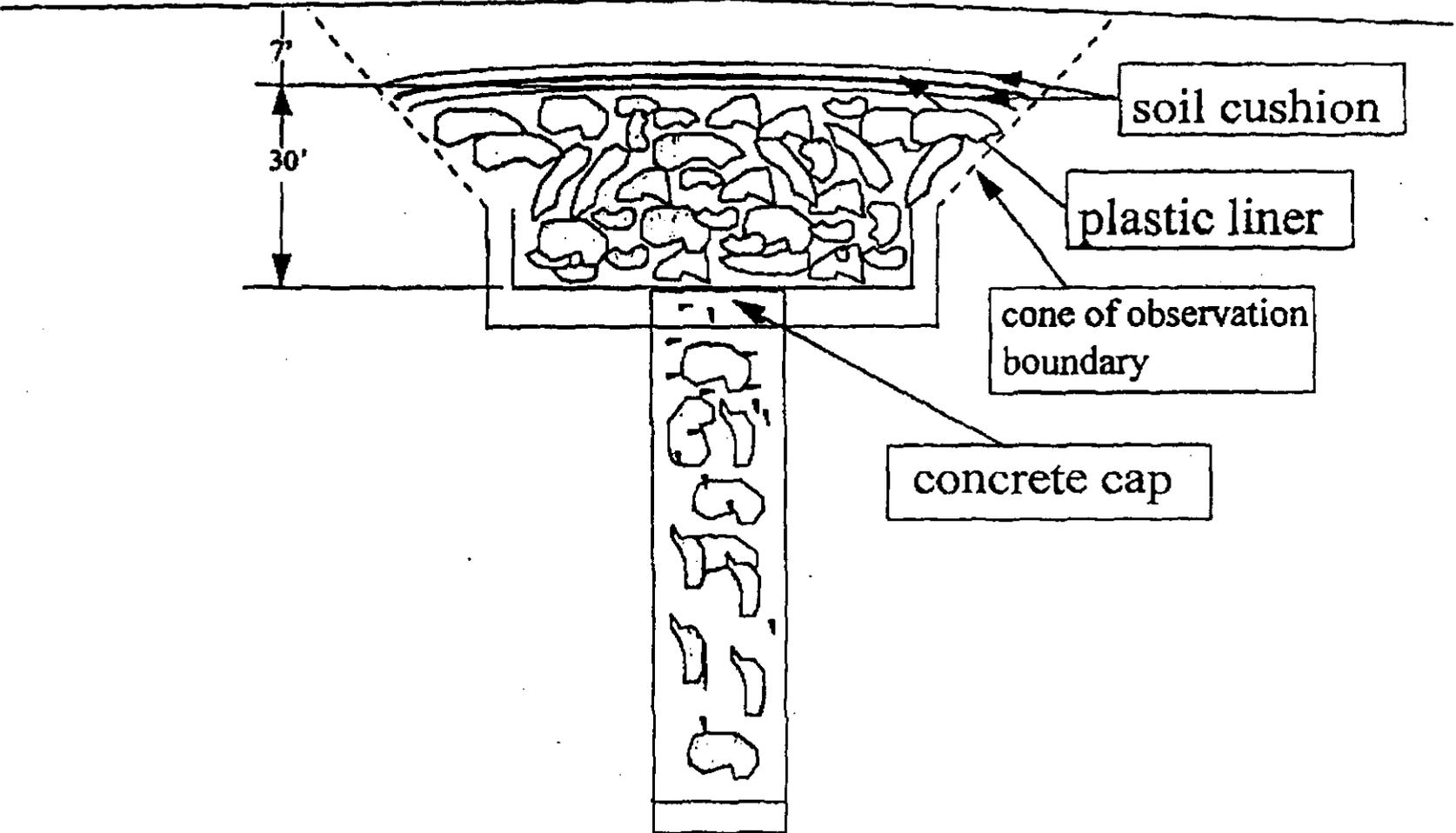


Areas with cross hatched are RFB coated at Whitehall AFB.

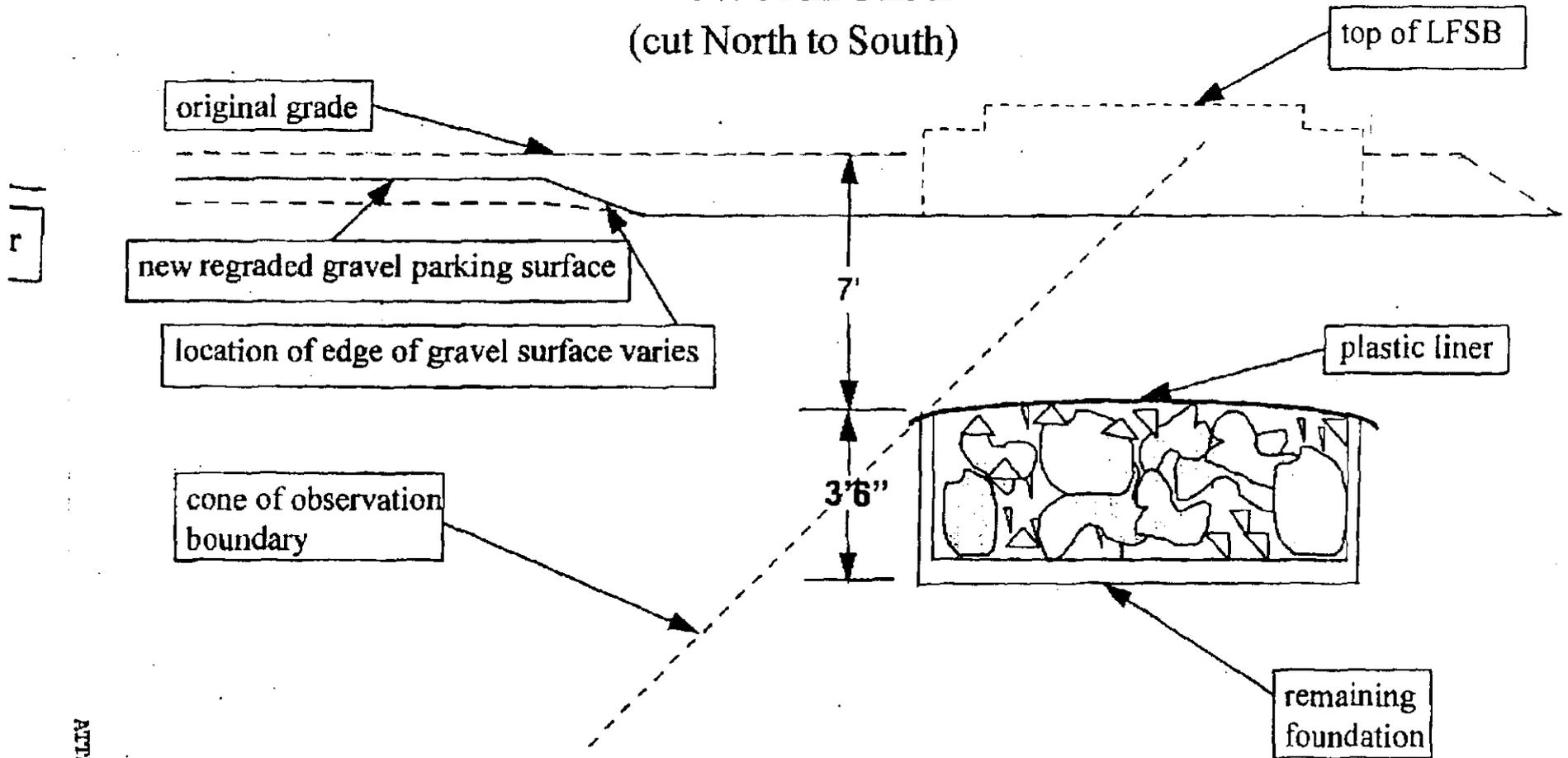


TYPICAL DISMANTLED CONFIGURATION

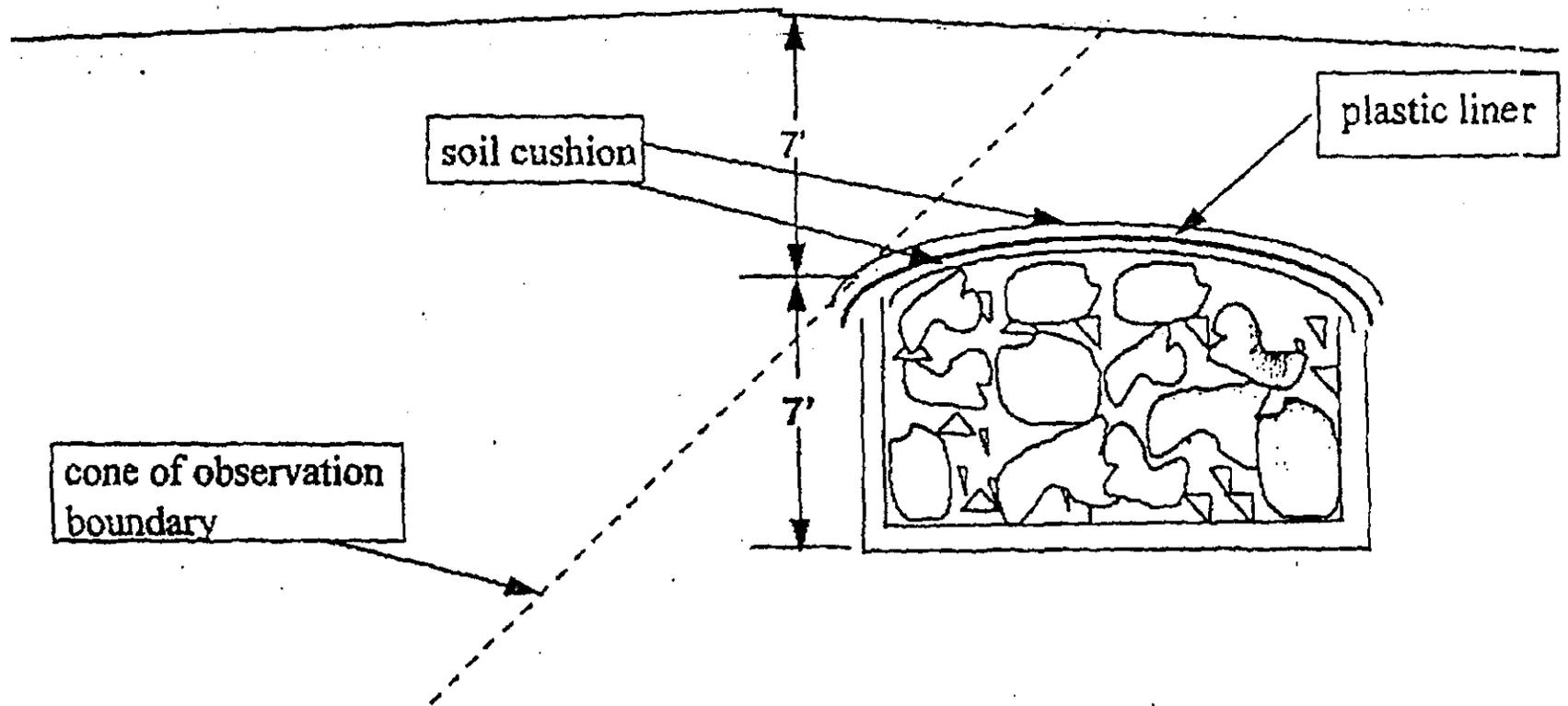
Silo After Destruction Process Whiteman AFB



Launch Facility Support Building Ellsworth AFB (cut North to South)

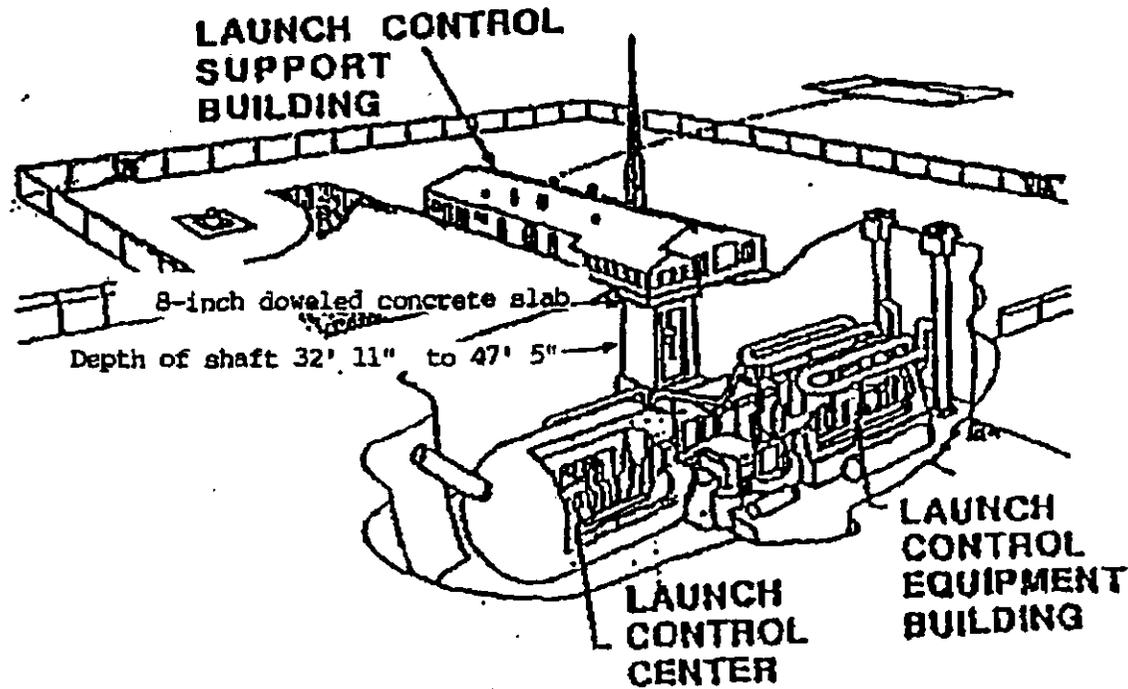


Launch Facility Support Building
After Destruction Process
Whiteman AFB





WHITEMAN AFB LAUNCH CONTROL FACILITY



POINTS OF CONTACT

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