

**New York State Department of Environmental Conservation
Division of Legal Affairs, Region 3**

21 South Putt Corners Road, New Paltz, New York 12561-1696

Phone: (845) 256-3000 • FAX: (845) 255-3042

Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

Cert. Mail/RRR #7000 1670 0003 1974 3949

March 21, 2002

Paul D. Polidoro, Esq.
Associate General Counsel
Watchtower Bible and Tract
Society of New York, Inc.
100 Watchtower Drive
Patterson, NY 12563-9204

RE: Watchtower Bible and Tract Society Shale Pit
Case #3-19990826-43

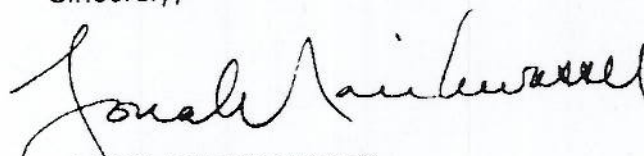
Dear Mr. Polidoro:

Served upon you herewith, as an authorized representative of Watchtower Bible and Tract Society of New York, Inc., is a photocopy of the fully executed Consent Order.

This letter will also acknowledge that Watchtower Bible and Tract Society of New York, Inc. has paid a civil penalty in the amount of \$30,000.00 as required by the Order. A receipt is enclosed.

Thank you for your attention to this matter.

Sincerely,



JONAH TRIEBWASSER
Deputy Regional Attorney

JT/bt watchtower.wpd
Enclosures

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Alleged Violations of Articles 23 and 27
of the Environmental Conservation Law ("ECL") and Part 360
of Title 6 of the Official Compilation of Codes, Rules and
Regulations of the State of New York ("6 NYCRR")

WATCHTOWER BIBLE & TRACT SOCIETY
OF NEW YORK, INC.,

**ORDER
ON
CONSENT**

Respondent.

Case #3-19990826-43

WHEREAS:

1. The Department of Environmental Conservation ("DEC") or ("the Department") has jurisdiction over the law and regulations pertaining to the management and operation of mines pursuant to Article 23 of the ECL, and over the laws and regulations pertaining to the establishment and operation of solid waste management facilities, pursuant to Article 27 of the ECL and Part 360 of 6 NYCRR.
2. Respondent, WATCHTOWER BIBLE & TRACT SOCIETY owns and operates a permitted mine at 900 Red Mills Road in the Town of Shawangunk, Ulster County, New York (the "Site" or the "Facility").
3. Section 23-2713(2) of the ECL requires the reclamation of all affected mine land to be completed in accordance with the schedule contained in an approved Mined Land-Use Plan pertaining thereto. Furthermore, Section 422.1(a) of 6 NYCRR, promulgated thereunder, prohibits the permittee from making any deviation from the approved Mined Land-Use Plan without the prior approval by the Department of an alteration or amendment thereto.
4. Section 27-0707 of the ECL, and Section 360-1.7(a)(1) of 6 NYCRR, promulgated thereunder, prohibits any person from constructing or operating a solid waste management facility, or any phase of it, except in accordance with a valid permit. Furthermore, Section 360-1.14(b)(1) prohibits the disposal of solid waste in any surface or ground waters.
5. During an inspection of the Site, on July 21, 1999, DEC determined that (a) Respondent has filled in an approved irrigation pond with construction and demolition ("C&D") debris, including but not limited to dimensional lumber, insulation, plastic concrete, and landscaping wastes; and

(b) Respondent did not complete required grading of the perimeter of the irrigation pond as specified by Special Condition number 3 of Respondent's Mined Land Reclamation Use Permit Number 3063-32-0227 (DEC Permit # 3-5152-00029/1-0); and

(c) Respondent had excavated below the final approved elevation of 250 feet.

6. On August 23, 1999, DEC staff returned to the Site and observed that additional shale had been removed, and additional C&D debris had been disposed of in the irrigation pond subsequent to the July 21, 1999 inspection. On April 19, May 31, August 23, October 30, October 31, November 1 and November 10 of 2000, and February 2, and February 22 of 2001, DEC again inspected the site and found the conditions at the site to be the same as that observed on August 23, 1999.

7. Respondent's disposal of C&D debris in a pond that was approved for the purpose of irrigation constitutes a deviation from the Mined Land-Use Plan, in violation of ECL Sections 23-2713(2) and 71-1305(2), and Section 422.1(a) of 6 NYCRR. Respondent's failure to obtain a valid permit for the construction and operation of a solid waste management facility constitutes a violation of Section 360-1.7(a)(I) of 6 NYCRR. Furthermore, disposal of the waste in a pond containing surface and/or ground waters constitutes a violation of Section 360-1.14(B)(1) of 6 NYCRR.

8. Respondent's failure to grade the perimeter of the approved pond to the specifications outlined in Special Condition #3 of the Mined Land-Use Plan constitutes a deviation from said plan, and an additional violation of ECL Sections 23-2713(2) and 71-1305(2), and Section 422.1(a) of 6 NYCRR.

9. Respondent's excavation below 250 feet in elevation is a deviation from the approved Mined Land-Use Plan, and constitutes an additional violation of ECL Sections 23-2713(2) and 71-1305(2), and Section 422.1(a) of 6 NYCRR.

10. Section 71-1307 of the ECL provides for a civil penalty of up to \$5,000 for each violation, and an additional penalty of \$1,000 per day of violation of any rule or regulation promulgated, or Order issued, pursuant to Article 23 of the ECL.

11. Section 71-2703 of the ECL provides for a civil penalty of up to \$5,000 for each violation, and an additional penalty of \$1,000 per day of violation of Title 7 of Article 27 of the ECL, or any rule or regulation promulgated, or Order issued, pursuant thereto, and in addition provides that such violation may be enjoined. This section also provides for an additional penalty of \$10,000 for violations involving the construction or operation of facilities for the disposal of C&D materials, and provides that each day of violation shall be considered a separate violation.

12. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions, and conditions contained herein.

NOW, having considered this matter and being duly advised, it is hereby **ORDERED** that:

I. Civil Penalty. In respect of the violations described above, a civil penalty in the amount of \$50,000.00 is hereby assessed against Respondent, of which \$30,000 shall be paid by Respondent to the Department upon Respondent's return of an executed copy of this Order to the Department. The remaining \$20,000 penalty is hereby suspended upon condition that Respondent remain in compliance with each term, provision and condition of this Order. In the event that Respondent fails to comply with this Order, payment of the suspended penalty or such portion thereof as may be specified by DEC will be made by Respondent within 15 days after service upon Respondent of a notice of noncompliance demanding such payment. Such notice shall be deemed a part of this Order. Service of such notice may be by personal service or by certified mail return receipt requested (restricted delivery not required), or, if such service is refused or cannot be completed, by ordinary mail. Service shall be at the following address, unless Respondent hereafter notifies the Department in writing of a different address:

Richard D. Moake, Esq.
Watchtower Bible and Tract Society of New York, Inc.
100 Watchtower Drive
Patterson, New York 12563-9204

Neither the Department's demand for payment of a suspended penalty, nor Respondent's payment thereof, shall discharge Respondent from the obligation to comply with any obligation established under this Order.

II. Schedule of Compliance. Respondent shall comply strictly with the terms of this Order, and with the attached Schedule of Compliance, including any report(s), plan(s), proposal(s) and other submissions made pursuant thereto. All such submissions are hereby deemed incorporated into this Order, upon arrival by the Department if such approval is required, and shall be fully enforceable as part of this Order.

III. Stipulated penalties. (a) In the event that Respondent fails to timely comply with any of the requirements established by this Order on Consent or the attached Schedule of Compliance the following stipulated penalties shall be due and payable:

<u>PERIOD OF NONCOMPLIANCE</u>	<u>PENALTY PER DAY</u>
1 st day through 30 th day	\$100
31 st day through 60 th day	\$300
each day thereafter	\$600

(b) In the event that the Department determines that Respondent has violated any provision of this Order, the Department may serve upon the Respondent a notice of noncompliance which shall set forth the nature of the violation(s) and the calculation of penalties due. Respondent

shall deliver the full penalty amount to DEC within 10 business days after receipt of such notice. Such notice shall be deemed a part of this Order. Neither the Department's demand for payment of a stipulated penalty, nor Respondent's payment thereof, shall discharge Respondent from the obligation to comply with any obligation established under this Order. The payment of stipulated penalties as set forth above shall not limit the Department's right to seek such other relief as may be authorized by law.

IV. Failure to make penalty payment. (a) In the event that the Respondent fails to pay any penalty due pursuant to this Order by the date due, this Order together with a notice of noncompliance specifying the amount due may be filed and enforced by DEC as a civil judgment for the total penalty amount set forth in the notice of noncompliance, in the State of New York and in any other jurisdiction in which Respondent may reside, do business or have any assets, without the need for any further proceedings whatsoever.

(b) With regard to any penalty due pursuant to this Order which is not paid by the specified due date, Respondent shall be liable for and shall pay interest from the due date at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment.

V. Full settlement. All violations described above shall be considered continuing violations. However, the Department shall not institute an action or proceeding for penalties or other relief on account of such violations for as long as Respondent adheres to and fully complies with the terms, provisions and conditions of this Order. Any failure by Respondent to comply with the terms of this Order may subject Respondent to further enforcement action for the violations described herein. Compliance with this Order shall not excuse nor be a defense to charges of any violations of the ECL, or any regulation promulgated thereunder, or permit issued thereunder, which may occur subsequent to the date of this Order.

VI. Submissions. All reports and submissions herein required shall be made, in triplicate, to the Region 3 headquarters, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, NY 12561, attention: Jonah Triebwasser, Esq. Respondent shall be responsible for the content of any submissions made pursuant to this Order. Submission of any material containing assertions of fact shall be considered an affirmative representation by Respondent of the truth of such assertions. Respondent shall be in violation of this Order if any submission is of such poor quality that it does not constitute a good faith effort to comply with the provisions of this Order.

VII. Review of submissions. After the Department's receipt of any submission or proposal (collectively the "Proposal") requiring the Department's approval (as may be required pursuant to the Schedule of Compliance hereto annexed), the Department shall notify Respondent, in writing, of its approval or disapproval of the Proposal. If the Department approves the Proposal, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Department disapproves the Proposal, the Department shall provide to Respondent written notice of its disapproval, specifying with reasonable particularity the grounds for disapproval. Within 30

days after Respondent receives written notice of disapproval, Respondent shall submit a Revised Proposal which fully responds to each of the Department's specified grounds for disapproval. After the Department's receipt of Respondent's Revised Proposal, the Department shall notify Respondent, in writing, of its approval or disapproval. If the Department approves the Revised Proposal, Respondent shall implement it in accordance with its schedule and terms, as approved. If the Revised Proposal is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by DEC to make it approvable. If the Respondent does not accept such modifications, the Revised Proposal will be disapproved. If the department disapproves the Revised Proposal, the Respondent shall be in violation of this Order. The Proposal or Revised Proposal, as approved, shall be deemed incorporated into this Order.

VIII. Inspections. For the purpose of insuring compliance with this Order, and with applicable provisions of the ECL and regulations promulgated thereunder, representatives of this Department shall be permitted access to the facility and to relevant records during reasonable hours, in order to inspect and/or perform such tests as may be deemed appropriate to determine the status of Respondent's compliance.

IX. Notice of work. Respondent shall provide notice to the Department of any excavating, drilling, sampling, construction or start-up of equipment to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

X. Other approvals. Respondent shall be obligated to obtain whatever permits, easements, rights of entry, approvals or authorizations may be necessary in order to carry out its obligations under this Order. This Order shall not relieve the Respondent of the obligation to comply with any other laws, rules or regulations of the State of New York or any other government authority which are applicable to Respondent's activities, nor preclude or limit such enforcement action as may be authorized by law for any such violation.

XI. Other remedies. (a) Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) the Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall be in breach of the provisions hereof; (3) the Department's right to bring any action, administratively or at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns which the department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes from the site or from areas in the vicinity of the site, or to require that Respondent take such additional measures as may be necessary for the protection of public health or the environment, including interim remedial measures; (4) the Department's right to commence any action or proceeding relating to or arising out of any disposal of wastes at the site, as those wastes are defined

by applicable regulation; or (5) the Respondent's right to challenge any such action by the Department, whether by administrative hearing or otherwise, to the extent otherwise permitted by law.

(b) This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XII. Indemnification. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims resulting from the acts and/or omissions of Respondent resulting from the compliance or attempted compliance with the provisions of this Order.

XIII. Force majeure. Respondent shall not be in default of compliance with this Order to the extent that Respondent may be unable to comply with any provision of this Order because of the action of a national or local government body or court, an act of God, war, strike, riot or catastrophe as to any of which the negligence or willful misconduct on the part of Respondent was not a proximate cause; provided, however, that Respondent shall use its best efforts to comply. Respondent shall provide notice to the Department in writing immediately upon obtaining knowledge of such event, and shall request an appropriate modification to this Order. Relief under this clause shall not be available to Respondent, with regard to a particular event, if Respondent fails to provide timely notice of such event. The Respondent shall have the burden of proving entitlement to relief under this clause, by clear and convincing evidence.

XIV. Modification. (a) If, for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefor to the Department setting forth reasonable grounds for the relief sought, together with any supporting documentation tending to establish such grounds. Such request shall be made as soon as reasonably possible after Respondent learns of the grounds for such relief. Where, as may be determined by DEC, a request for a modification is made in timely fashion and is properly supported and justified in light of all the circumstances, including Respondent's compliance history and the potential environmental consequences of such modification, DEC agrees that such relief will not be unreasonably denied. The granting of a requested modification may be conditioned upon Respondent's acceptance of additional terms, such as payment of penalties and/or suspension, modification or curtailment of operation

(b) This Order may be modified by the Department pursuant to the criteria and procedures set forth at ECL Section 70-0115 and 6 NYCRR Section 621.13.

(c) No change or modification to this Order shall be made or be effective except as may be specifically set forth in writing by the Department, pursuant to the procedure set forth in subparagraph (a) or (b) above.

(d) Unless otherwise agreed in writing, this Order shall be deemed to be immediately modified upon any relevant change in the Environmental Conservation Law or regulation promulgated thereunder.

XV. Default. The failure of Respondent to comply fully and in timely fashion with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL, and shall constitute sufficient grounds for revocation of any permit, license, certification or approval issued to the Respondent by the Department.

XVI. Entire agreement. The provisions hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Facility. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing pursuant to Paragraph XIV hereof. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XVII. Binding effect. The provisions of this Order shall be deemed to bind the Respondent, its officers, directors, agents, employees, contractors, successors and assigns, and all persons, firms and corporations acting under or for it, including, without limitation, any subsequent operator of the Facility who may carry on activities now conducted by Respondent at the Facility, and any successor in title to the Facility or any interest therein. Respondent shall provide a copy of this Order (including any submissions incorporated herein) to any contractor or subcontractor hired to perform work required under this Order, and shall require compliance with this Order as a term of any contract for performance of work under this Order. Respondent shall nonetheless be responsible for ensuring that all work performed under this Order is in compliance with the terms of the Order.

XVIII. Authority. The individual signatories to this Order represent that they have authority to bind the respective parties by execution of this Order.

XIX. Effective date. The effective date of this Order shall be the date upon which it is executed by the Department of Environmental Conservation.

New Paltz, New York

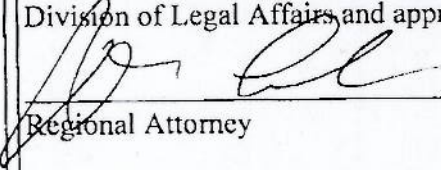
DATED: March 18, 2002

ERIN M. CROTTY
Commissioner
Department of Environmental
Conservation

By: 

MARC MORAN
Regional Director, Region 3

This document has been reviewed by Region 3
Division of Legal Affairs and approved as to form.


Regional Attorney

TO: Richard D. Moake, Esq.
Associate General Counsel
Watchtower Bible and Tract Society of New York, Inc.
100 Watchtower Drive
Patterson, NY 12563-9204

CONSENT BY RESPONDENT - Respondent hereby consents to the issuing and entering of this Order, waives Respondent's rights to notice and hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.

Watchtower Bible and Tract Society of New York, Inc.
Respondent

BY: Lon Schilling, V.P.

TITLE: VICE PRESIDENT

DATE: MARCH 8, 2002

STATE OF NEW YORK)
COUNTY OF Ulster) SS.:

On this 8th day of March, in the year 2002, before me, the undersigned, personally appeared

Lon Schilling

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Mitchell J. Mergenthaler
Notary Public/State of New York

MITCHELL J. MERGENTHALER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01ME5080283
QUALIFIED IN ULSTER COUNTY
COMMISSION EXPIRES JUNE 16, 2003

SCHEDULE OF COMPLIANCE

1. Within thirty (30) days of the effective date of the Order, Respondent shall submit to the Department a complete Mined Land Reclamation Permit Renewal Modification Application. The Modification application shall include, and not be limited to, processing of material and include the J. A. Kirby Co. Survey dated November 27, 1999, and signed January 2000, (hereinafter "Kirby survey"), to depict current site conditions, identify material stockpiles, drainage and water control features in addition to incorporating the Operating Procedure prepared by Watchtower Bible & Tract Society of New York, Inc., dated August 17, 2001. Respondent agrees to update the Kirby survey as and when needed by the Department. No material may leave the mine site until the Mined Land Reclamation Permit has been renewed. The Respondent may resume mining activities including the removal of all non-solid waste stockpiled materials as depicted in the Approved Mined Land Use Plan after the Mined Land Reclamation Permit has been granted by the Department and to extent permitted by that permit.
2. Within thirty (30) days of the effective date of the Order, Respondent shall provide the Department with a reclamation bond in the amount of \$25,000.
3. Within thirty (30) days of the renewal of Mined land Reclamation Permit, Respondent shall notify the Department of and begin the removal all unauthorized fill material and solid waste from the mine site. The fill material stockpiles, primary and secondary sorting areas, the waste containers, mine and field contouring will be located and consistent with the map/document designated as "SHALE MINE, Procedure -Slope Grading and Field Leveling with Secondary Sorting in the Mine" (hereinafter "Shale Mine Procedure") which is included in the document Operating Procedure prepared by Watchtower Bible & Tract Society of New York, Inc., dated August 17, 2001. Any deviation from this location must have prior written approval from the Department. All sorting and processing of the stockpiles must be in accordance with all Department regulations (including but not limited to erosion control, water discharge, waste storage, waste disposal and mine reclamation) and good engineering practice.
4. Once excavated, stockpiles which meet the Part 360 site exemption criteria cannot be stored for more then six (6) months once placed in an open environment. At least 14 days prior to deposition of the Part 360 exempt material outside the area specified in the map/document designated as "SHALE MINE, Procedure -Slope Grading and Field Leveling with Secondary Sorting in the Mine" which is included in the document Operating Procedure prepared by Watchtower Bible & Tract Society of New York, Inc., dated August 17, 2001, Watchtower must notify the Department of the proposed new location.
5. Prior to the removal of solid waste from the site, the Respondent shall obtain approval from the Department to utilize the disposal facility proposed to accept the material. If the facility is an out of state facility, the Respondent shall provide documentation of the facility's legal authority to accept the solid waste from the site. Within 14 days of completion of removal of each load of material from the site, Respondent shall submit to the Department, by fax at (845) 255-3042 or by mail as specified in paragraph VI of this Order on Consent, completed and signed tracking documents and

other related documentation, acceptable to the Department, to confirm that the material has been properly disposed of.

6. Within twenty-four (24) months of the effective date of the Order the Respondent shall submit a certification that (a) all material which had been placed in the Shale Mine has been excavated from its fill location and moved to property within or adjacent to the mine boundary, (b) sorting of all excavated material has been performed and any solid waste (not meeting the site exemption criteria in 6NYCRR Part 360-7.1(b)) in the excavated fill material has been accepted by a properly licensed facility.
7. Within forty-five (45) days of the Department's acceptance of the Respondent's certification as described in Paragraph 6 of this Compliance Schedule, the Respondent shall provide the Department with a survey of the Shale Mine substantively showing excavated topographical conditions as of the certification date.
8. Within forty-five (45) days of the Department's acceptance of the Respondent's certification, the Respondent shall submit another modification to the Approved Mined Land Reclamation Plan to the Department. The Modification shall detail any additional excavation or fill areas to return the mined area to some productive use, compatible with existing surroundings. The Respondent shall incorporate all Department recommendations on the plan with regard to final grading, erosion control, soil cover, seeding, fertilizing and mulching.
9. The Respondent shall fully remediate and reclaim the Mine Site within two (2) years of the effective date of this Order.

REMITTANCE ADVICE		WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.			
REF NO.	INVOICE NO.	DATE	GROSS	DISCOUNT	NET
101200121	AP030502	03/05/02	30,000.00	0.00	30,000.00
DEC ORDER ON CONSENT CASE # 3-19990826-43, WTF SHALE MINE WTF REGULATORY OFF C/O KRIS VAN TASSEL					

CHECK NO. 221868	CHECK DATE 03/07/02	Account (Customer) No.	CHECK AMOUNT \$30,000.00
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THIS CHECK IS VOID WITHOUT A BLUE & PURPLE BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK - HOLD AT ANGLE TO VIEW SEAL

 JPMorgan Chase Bank Syracuse NY 13206	 WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. 25 Columbia Heights Brooklyn NY 11201-2483	Check No. 221868 <small>VOID AFTER SIX MONTHS</small> March 7, 2002
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PAY

\$30,000.00**

\$30,000.00**

TO THE ORDER OF

NYS DEPT OF ENVIRONMENTAL
CONSERVATION

[Signature]
[Signature]

SIGNATURE HAS A COLORED BACKGROUND • BORDER CONTAINS MICROPRINTING



32-01-3 (8/90)---101



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NUMBER
463022

RECEIPT

Region Number 3 Date 3/13/02
 Location New Paltz Division Legal Affairs
 Received of Watchtower Bible and Tract Society of New York
 In the amount of Thirty thousand dollars \$ 30,000.00 ⁰⁰/₁₀₀ Inc.
 For Case #3-19990826-43
WTF Shale Mine

☐ Cash Department Representative Beth Thornton
☒ Check Number 221868 Title Keyboard Spec. 2
☐ Money Order

ORIGINAL