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VIA FEDERAL EXPRESS

John P. Cahill
Acting Commissioner
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-1010

Re: **PETITION**: Pall Corporation, Site No. 130053B

Dear Acting Commissioner Cahill:

In accordance with NY CLS ECL § 27-1305 (c) and the regulations thereunder, 6 NYCRR § 375-1.9 (a) - (d), Pall Corporation, a Section 375-1.9 (a) party at the above referenced site, hereby requests that its 30 Sea Cliff Avenue facility in Glen Cove, New York (the "Sea Cliff Avenue Site" or "Site") be removed from New York's Registry of Inactive Hazardous Waste Disposal Sites (the "Registry") or in the alternative, be classified as a Class 3 site. The reasons supporting this request are set forth below.

I. Introduction

This petition generally follows the format recommended in the document entitled "Petition Information Suggestions" which the New York Department of Environmental Conservation (the "Department") provided to Pall Corporation. Under the recommended format, a discussion of the

petitioner's request for relief and the basis for the request appear in Item 14, the last item of the petition. For your convenience, we have summarized below the reasons supporting Pall Corporation's request that the Sea Cliff Avenue Site be delisted or in the alternative, receive a change in classification to a Class 3 site. *See infra*, part II, Summary. A more detailed discussion is set forth in Item 14. *See infra* p. 35, part III.14., Relief Sought and Reasons.

II. Summary

A. The State's Evidence is Incredible and Unreliable and is Insufficient to Provide a Basis for a Classification Determination

1. No Direct Evidence Links Pall Corporation to the Contamination in the Area

Pall Corporation's Site is in the heart of Glen Cove's Sea Cliff Avenue Industrial Area. Chlorinated solvents have impacted the groundwater underlying that area. Yet, no credible evidence in the record demonstrates that Pall Corporation contributed to that impact in any way. Indeed, all efforts to directly link Pall Corporation to the contamination in the area rest on one unreliable handwritten statement prepared by two Nassau County inspectors in February 1978. That handwritten statement purports to record a comment allegedly made several months earlier by a Pall Corporation employee, Mr. Sidney Krakauer, in an interview with the inspectors. As a matter of law, the Nassau County inspectors' handwritten statement is non-contemporaneous, multiple hearsay and inherently unreliable. The handwritten statement also is patently erroneous in material respects and Mr. Krakauer can neither confirm nor deny what he is alleged to have said because he died in the late 1980's.

Each subsequent report on the source of contamination in the Sea Cliff Industrial Area relies exclusively on the Nassau County inspectors' handwritten statement or some later version of it to implicate Pall Corporation. In increments, the comment attributed to Mr. Krakauer in the original handwritten statement become more definitive and more incriminating of Pall Corporation in each subsequent report. To illustrate this point, one need only read the statements in the order in which they were made. Initially, the Nassau County inspectors' handwritten statement records Mr. Krakauer as having allegedly made the general observation that "Industries, including his own would dump these chemicals down drains and into yards." A typewritten summary prepared by the same Nassau County inspectors one month later, however, has Mr. Krakauer saying *"his company would and did dump* these chemicals because they felt they were too volatile to cause a problem." A later report claims Mr. Krakauer *"admitted to dumping* halogenated hydrocarbons in the past," and another report has Mr. Krakauer acknowledging a *"history of chemical dumpage down drains and in the yard."* Finally, in the Department's August 2, 1995 Site Investigation Information, Mr. Krakauer purportedly had confessed that *"the company had a history of dumping."*

It is evident that to the extent Mr. Krakauer made any comment at all, it has been grossly embellished and misused. The alleged comment starts as a broad generalization about practices within the industry as a whole, and over the course of almost twenty years becomes an outright confession. In the meantime, no government official inquires about Mr. Krakauer's identity, what position he held at Pall Corporation, his duties and responsibilities, or whether he even worked at the Pall Corporation Sea Cliff Avenue Site during the relevant time. The government must operate in a more precise, demanding manner and has the burden of establishing its case based on fact, not

fabrications.

The comment attributed to Mr. Krakauer, the Nassau County inspector's handwritten statement and all of the subsequent revisions are inherently untrustworthy. The record shows that the Department relied on these unreliable materials in making its listing decision. As such, that listing decision is not based on substantial evidence, is arbitrary and capricious and cannot stand.

2. The Limitations in the Preliminary Site Assessment Make it Fundamentally Unsound and an Inadequate Basis for a Listing or Classification Determination

According to the Department, Nassau County Department of Public Works' ("NCDPW") Preliminary Site Assessment ("PSA") of the Sea Cliff Industrial Area is the primary "impetus for listing" the Sea Cliff Avenue Site in the Registry. *See* Letter from Robert Marino, Chief, Site Control Section, Bureau of Hazardous Site Control, Division of Environmental Remediation, NY DEC to Kurt J. Olson, Esq., Maupin, Taylor, Ellis & Adams, P.A. (Aug. 5, 1996) at 2. As related to Pall Corporation, however, the PSA has serious limitations that make it an inadequate basis for a listing determination.

The data NCDPW relied upon in the PSA was over two years old at the time the PSA was issued and was almost five years old when the Department decided to list Pall Corporation in the Registry. The data is stale and clearly does not reflect whether the Site represents an existing significant threat to the environment. Moreover, the data NCDPW used to evaluate Pall Corporation is inherently biased. Holzmacher, McLendon & Murrell, P.C. ("H2M"), a private consultant working for Kollmorgen Corporation ("Kollmorgen"), collected the data at a time when Kollmorgen was suing Pall Corporation. H2M's sole objective was to show that Pall Corporation contributed

to the contamination in the Sea Cliff Avenue Industrial Area. The bias inherent in that objective is plain on its face and evident when the analytical results of split samples taken by Pall Corporation are compared to H2M's results. There is nothing in the record to suggest that NCDPW made any allowance for this inherent bias against Pall Corporation.

More importantly, although NCDPW does not account for the bias inherent in H2M's data, it candidly acknowledges that there are serious data gaps in H2M's work. NCDPW concedes that H2M's work "lacked site specific information which is commonly used" to evaluate the quality of a site. Indeed, NCDPW specifically found that the H2M report lacked fundamental information such as "well construction specifications, geologic logs, water level data and soil and groundwater sampling protocols." While NCDPW claims that "[m]any of the gaps" in H2M's work could be filled by existing information from other reports, nothing indicates that NCDPW did anything other than unconditionally base its conclusions on H2M's work.

For example, NCDPW concludes that the Sea Cliff Avenue Site should be listed because H2M found trichloroethylene (TCE) levels in one groundwater sample from Pall Corporation's property at levels twenty times greater than any upgradient sample. According to NCDPW, this finding means Pall Corporation "is a major point of origin for this compound." Yet how could NCDPW reach any conclusion based on comparative sample results when fundamental information like "well construction specifications, geologic logs, water level data and soil and groundwater sampling protocols" is missing from the record? Indeed, the phenomena NCPDW observed can be explained in a number of ways other than the conclusion NCDPW reached, including among other things, the possibility of wells screened at different levels in a common aquifer, differences in

sampling methods and protocol, and the nature of the contaminants themselves (dense non-aqueous phase liquids). Without the technical information and data admittedly missing from H2M's work, NCDPW's conclusion about Pall Corporation is mere speculation which the Department cannot rely upon to classify the Sea Cliff Avenue Site as a Class 2 Site in the Registry.

B. **The Sea Cliff Avenue Site Does Not Present a Significant Threat and Consequently Should Not Be Listed as a Class 2 Site**

In its listing documents, the Department found that the Sea Cliff Avenue Site was a significant threat to the environment. The regulations provide that the Department may make this finding whenever "the hazardous waste disposed at the site or coming from the site results in, or is reasonably foreseeable to result in "one of six specified adverse impacts on environmental concerns. None of those six impacts are applicable in this instance. Moreover, the "catch-all" provision which states that a site is a significant threat if it results in or is likely to result in significant environmental damage also is inapplicable, in part, because the standard is impermissibly vague and will lead to arbitrary and discriminatory enforcement. Each person will apply varying criteria to determine what is or is not a "significant threat" likely to cause "significant environmental damage."

Even if the standard is not vague, a significant threat has a temporal component and the determination must be made with reference to existing conditions. Past conditions that no longer exist cannot support a significant threat finding. The data used to list Pall Corporation was almost five years old and reflected wholly past circumstances and conditions. More recent data generally show very low levels of contamination from off-site sources. Given these circumstances, the Pall Corporation Site does not pose a significant threat and therefore, cannot be a Class 2 site.

Finally, the Department has not "confirmed" that "a consequential amount of hazardous waste has been . . . disposed" on the Site. Accordingly, the Site cannot be listed. 6 NYCRR § 375-1.8.

III. **Petition**

The information in this petition is based on a thorough review of available documents and numerous interviews with existing and former employees of Pall Corporation. *See* Affidavit of Kurt J. Olson at Paragraph 4 (hereinafter "Olson Aff." at ____) (attached hereto as Exhibit A). Due to the length of time between relevant events and the listing of the Sea Cliff Avenue Site on the Registry, specific documents concerning chemical usage and disposal are not available and certain key witnesses are deceased. *Id.* Pall Corporation believes that the lost information would be exculpatory in nature and as such, it has been severely disadvantaged by the delay in this matter. Nevertheless, Pall Corporation has made a diligent, good faith effort to reconstruct as accurately as possible a description of its activities and practices during the time period involved.[1] *Id.*

1. Site Name and Owners. The Department has named the Site the Pall Corporation Site. Pall Corporation owns roughly 3.36 acres of the Site and August Thomsen owns roughly 1.3 acres. At one time, Pall Corporation owned the portion of the Site now owned by August Thomsen, but sold it to August Thomsen in 1971. *See* Affidavit of Henry Petronis at Paragraph 6 (hereinafter "Petronis Aff." at ____) (attached hereto as Exhibit B).

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[1] Unless otherwise provided with this Petition, Pall Corporation assumes that the Department has the documents referred to and cited herein. If the Department does not have a document referenced, Pall Corporation will provide it upon request.

2. Site Number. The Department has assigned the Site No. 130053B. The August Thomsen site has been assigned the same number. *See* Letter from Robert L. Marino, Chief Site Control Section, Bureau of Hazardous Site Control, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation to Pall Corporation (June 13, 1996); and Letter from Robert L. Marino, Chief Site Control Section, Bureau of Hazardous Site Control, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation to August Thomsen (June 13, 1996). The Sea Cliff Avenue Industrial Area has been assigned DEC Site No. 130053.

3. Site Location. The Site is located along the northern side of Sea Cliff Avenue in Glen Cove, Nassau County, New York. The tax map numbers for the Site are Section 21, Block H, Lots 37 & 320. The Site is situated at longitude 73 37' 23" W and latitude 40 51' 6" N approximately two (2) miles east of Hempstead Harbor and about five (5) miles north of the Long Island Expressway. The land use pattern in the surrounding area is light and heavy industry, commercial and some residential.

The street address for the Pall Corporation portion of the Site is 30 Sea Cliff Ave., Glen Cove, New York 11542. The street address for the August Thomsen portion is 36 Sea Cliff Ave., Glen Cove, New York 11542.

4. Size and Structures. The approximate size of the Site is 4.66 acres. Pall Corporation owns and occupies roughly 3.36 acres of the Site and August Thomsen owns and occupies roughly another 1.3 acres. Most of the Site has been paved over with asphalt since the late 1950's and early 1960s.

Two concrete buildings are located on the Site. The larger of the two (the "Pall Building") is located on the Pall Corporation portion of the Site and consists of approximately 70,800 square feet. At present, roughly 47,400 square feet of the Pall Building are dedicated to research labs, testing facilities and manufacturing space, and 23,400 square feet to administrative space. The Pall Building was constructed in 1918 and used as a ice house prior to being acquired and occupied by Pall Corporation in 1950 or early 1951. *See* Petronis Aff. at 7; Affidavit of Chesterfield F. Seibert, Sr. at 4-5 (hereinafter "Seibert Aff." at ___) (attached hereto as Exhibit C). It was renovated in 1967 and in 1977.

The second, smaller concrete building at the Site (the "Glen Components Building") is located on August Thomsen's 1.3 acres. It was built in 1958 and used by Glen Components, Inc., a wholly owned subsidiary of Pall Corporation. In 1971 the building was sold to August Thomsen. *See* Petronis Aff. at 6; Affidavit of Shirley Faecher at 2, 6 (hereinafter "Faecher" Aff. at ____) (attached hereto as Exhibit D).

In addition, several storage structures or sheds are located on the Pall Corporation portion of the Site.

5. Boundaries. The Pall Corporation property is bordered on the north by August Thomsen, on the south by Sea Cliff Avenue, on the east by Route 107 and on the west by a company presently known as Associated Drapery. The Associated Drapery site at one time was occupied by HMS Machine Corporation. Glen Cove Creek (also known as Cedar Swamp Creek) runs parallel to the western boundary of the Site from the southwest corner to the northwest corner and divides the Site from properties located to the west, principally the Associated Drapery property.

The Photocircuits Corporation ("Photocircuits") (Site No. 130009) and Pass & Seymour (formerly Slater Electric Company) (Site No. 130053A) are located south of the Site across Sea Cliff Avenue. Glen Cove Creek runs through the Photocircuits site.

6. Nature of the Operation. Pall Corporation designs, engineers and manufactures filtration and fluid clarification equipment. Its product line ranges from basic filter media to complex full scale filtration systems. *See* Pall Corporation *Our First 20 Years* (1966) at 13 (attached hereto as Exhibit E). Typical products include porous metals, filtration systems using porous metal filter media, disposable cellulose filter cartridges, filtration systems using the cellulose filter technology, and ancillary products such as ultrasonic cleaning systems for filtration units and differential pressure devices. *Id.* Pall Corporation's customers include the fluid processing and power industries, the aerospace industry, the environmental treatment industry, the bio-medical industry and consumers, to name a few. *See* Pall Corporation, 1995 Annual Report (attached hereto as Exhibit F).[2]

a. General Corporate History

Pall Corporation was founded by Dr. David Pall in 1944. *See* 1958 Annual Report at "The

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[2] Pall Corporation's filters are used primarily for fluid clarification. Clarification involves the removal of particles from a gas or liquid stream where the particles being removed are a very small part of the stream being clarified. The process is distinguishable from bulk solid collection where the particles being removed constitute a large portion of the liquid or gas stream. The size of the particles removed by Pall Corporation's filters range from 10 microns and above to a fraction of a micron. A micron is 1/25,000 of an inch. A particle 25 microns in diameter is too small to see with the naked eye. Pall Corporation, Annual Report for the year ended July 31, 1958 at "A Lexicon" (attached hereto as Exhibit G) (hereinafter 1958 Annual Report).

Past and Present." At the time it was called the Micro Metallic Company and operated out of a small store in Brooklyn, New York. *See* Seibert Aff. at 2. *See also* 1958 Annual Report at "Dear Stockholder." It had six employees, including Dr. Pall, and one product, porous stainless steel ("PSS"). Seibert Aff. at 2.

PSS is porous metal made from sintered metal powders.[3] *See* Pall Corporation 1963-64, Engineered Products for the Control of Fluids and Environments at 7 (attached hereto as Exhibit H) (hereinafter "Pall Corporation 1963-64"); Seibert Aff. at 7. It is made mainly from stainless steel, nickel or monel, can be formed, welded and machined like sheet metal, and has properties that allow it to withstand high temperatures, extremely high pressure and very corrosive conditions. Pall Porous Metal Media Guide at 6 (attached hereto as Exhibit I). PSS is used primarily as a filter media. *See* Seibert Aff. at 7.

In 1946, the Micro Metallic Company was incorporated in New York as Micro Metallic Corporation. *See* 1958 Annual Report at "The Past and Present." In late 1950 or early 1951, the company moved from Brooklyn to 30 Sea Cliff Avenue, Glen Cove, New York. *See* Seibert Aff. at 2. At the time, there was one main building at 30 Sea Cliff Avenue (the Pall Building) which had been a cork-lined Knickerbocker ice plant. *Id.* at 4-5. The building had been partially destroyed by a fire before Micro Metallic Corporation occupied it and one of the first things done was to renovate the building and remove the cork. *Id.*

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[3] Sintering is a process of heating a metal in a very narrow temperature range near its melting point and in a closely controlled atmosphere so that adjacent strands or particles of metal fuse together but do not melt. *See* Pall Corporation *Our First 20 Years* at 14. *See also* Seibert Aff. at 8.

In November 1957, the company changed its name to Pall Corporation. *See* 1958 Annual Report at "The Past and Present." By that date, the company had grown substantially and consisted of the following manufacturing components: the Micro Metallic Division, Aircraft Porous Media Inc., and Porous Plastic Filter Co., Inc. *See id.* at "Who, What And Where We Are." The company also owned Fibrous Glass Products, Inc., which was located in Wilkes-Barre and later Mountaintop, Pennsylvania, and part of Glen Components, Inc. *See* Pall Corporation 1963-64, "A Brief History."

b. Micro Metallic Division

Micro Metallic Division was the progeny of the original corporation. It was located in the Pall Building and produced PSS filters for the industrial market. *See* 1958 Annual Report at "Who, What And Where We Are." In the basic production process for these filters, metal powders were spread on ceramic trays coated with aluminum oxide and water. *See* Seibert Aff. at 7. The coating prevented the metal powder and sintered porous metal from adhering to the ceramic trays during the sintering process. *Id.* The trays were stacked on top of each other with separator sheets between them and then placed into sintering furnaces designed and operated by Pall Corporation. *Id.* The furnaces reached extremely high temperatures and the finished product was sintered porous metal sheets free of organic contamination. Seibert Aff. at 7, 9.

Following sintering, a number of mechanical processes were performed to make the PSS sheets into filter elements. *Id.* at 8. Basically, the sheets would be sheared to the desired size, and then bent, stamped, rolled, shaped and welded to form a cylinder. *Id.* End caps and rings were then welded to the cylinder to form elements. *Id.*

Over time, Micro Metallic Division's product line grew to include disposable cartridge filters composed of epoxy resin impregnated cellulose or epoxy resin bonded inorganic fiber. Micro Metallic Division also manufactured components for filtration systems such as mechanical differential pressure indicators and electrical differential pressure switches. *See* Pall Corporation Annual Report 1962 at 8 "Industrial Products" (attached hereto as Exhibit J).

In 1963, Pall Corporation consolidated the Micro Metallic Division with Trinity Equipment Corporation, a company Pall Corporation had acquired several years earlier. *See* Pall Corporation Annual Report 1963 at 2 (hereinafter 1963 Annual Report) (attached hereto as Exhibit K). *See also* Seibert Aff. at 3. The new company was named Pall Trinity Micro Corporation and located in Cortland, New York. *Id.* Thereafter, all of Pall Corporation's manufacturing for the industrial market was conducted in Cortland. *See* Pall Corporation, *Our First 20 Years* (1966) at 3. *See also* 1963 Annual Report at 2 and Pall Corporation 1963-64 at "A Brief History" and at 24 (chart indicating that all of Pall Corporation's activities in the U.S. for the industrial market were located in Cortland).

c. Aircraft Porous Media, Inc.

Aircraft Porous Media, Inc. was a subsidiary of Pall Corporation that designed, engineered and manufactured filters and filtration systems for the aerospace industry. Affidavit of John A. Farris at 3 (hereinafter "Farris Aff." at _____) (attached hereto as Exhibit L). It was formed in 1951, but did not become a significant component in Pall Corporation's business until several years later. *See* Pall Corporation, *Our First 20 Years* (1966) at 3. Aircraft Porous Media's production operation was located in the Pall Building and like Micro Metallic Division, its basic process centered on

sintering. *See* Farris Aff. at 8.

Aircraft Porous Media produced "RIGIMESH," a sintered porous metal filter media. RIGIMESH was made from stainless steel fine wire cloth combined in various weaves, layers and thicknesses.[4] *See* Farris Aff. at 8; Affidavit of Bernard Silverwater at 8 (hereinafter "Silverwater Aff." at ____) (attached hereto as Exhibit M). *See also* Pall Corporation 1963-64 at 4, 16. The wire cloth or mesh was manufactured on looms located at the Sea Cliff Avenue Site and was sintered in furnaces located in the Pall Building. Silverwater Aff. at 9; Farris Aff. at 8.[5]

RIGIMESH was produced in sheets. Silverwater Aff. at 8. After being removed from the furnace, the sheets were degreased in ultrasonic cleaning units using aqueous solutions and surfactants. Silverwater Aff. at 12. The sheets were then formed into useable filter elements through a variety of mechanical operations such as shearing, pleating, swaging and heliarc welding. Farris Aff. at 10. Throughout this process, various quality control tests were performed on the mesh

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[4] Aircraft Porous Media also made another porous metal media call SUPRAMESH which was a combination of PSS (sintered powered metals) and RIGIMESH (sintered woven wire cloth). Pall Corporation 1963-64 at 5, 18.

[5] To meet its production needs, Aircraft Porous Media also imported some woven wire cloth from outside sources, primarily from Europe. Silverwater Aff. at 9.

and RIGIMESH element. *Id.* at 9, 11. [6]

Upon request, each filter Aircraft Porous Media produced was tested before being shipped to the customer. Farris Aff. at 11; Silverwater Aff. at 15. These tests would simulate specified performance requirements. Farris Aff. at 11. Because Aircraft Porous Media's filters were produced primarily for the aerospace industry for use in hydraulic systems, Mil-H-5606 hydraulic oil was the predominant test material. Farris Aff. at 11; Silverwater Aff. at 15.

Generally, the filter assembly would be degreased following the performance tests. Degreasing was not performed in all cases and depended on customer specifications. When it occurred, however, degreasing typically would be accomplished by immersing the filter element and housing in a "tote" box containing a solvent, or by using a rag that had been dipped into the tote box. Silverwater Aff. at 15. The solvent used for this purpose was petroleum ether or Freon. *Id.*

In 1971, Aircraft Porous Media moved to St. Petersburg, Florida. *See* Petronis Aff. at 14; Pall Corporation Annual Report 1971 at 11 (attached hereto as Exhibit N).

d. Porous Plastic Filter Co., Inc.

Porous Plastic Filter Co., Inc. produced chemically inert porous plastic filters for industrial

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[6] A common quality control test was the "bubble point" test. In a bubble point test, filter media are submerged into a tank containing a liquid and observed while pressure is applied. Farris Aff. at 9. The first point at which a bubble appears identifies the largest diameter pore in the media and the suitability of the product as a filtration medium. Silverwater Aff. at 14. The bubble point test typically was run when the RIGIMESH was received on the shop floor and again after the filter element was assembled. Farris Aff. at 9-10. In the first test an aqueous solution typically was used and in the second a denatured alcohol, Solox 190. *Id. See also* Silverwater Aff. at 14. Oversized holes were repaired with an epoxy resin. *See* Farris Aff. at 10.

and commercial use. *See* 1958 Annual Report at "Who, What And Where We Are." Its products included "Porous Teflon," "Kel-F," and "Centipore," a plastic disposable filter. The primary markets for these products were industries with a process requiring the filtration of extreme corrosives. *See* Pall Corporation *Our First 20 Years* at 16. Porous Plastic Filter Co. did not grow like other Pall Corporation ventures and consequently, never became a significant part of Pall Corporation's business. *See* Petronis Aff. at 11. In 1963, Porous Plastic Filter Co. was consolidated with Pall Trinity Micro Corporation and moved to Cortland, New York. *See id.* at 13.

e. Glen Components Corporation

Glen Components Corporation was a precision machine operation. *See* Petronis Aff. at 2, 5 & 17; Faecher Aff. at 3. It was formed to supply machined parts to Aircraft Porous Media. *See* Petronis Aff. at 5; Faecher Aff. at 3. *See also* 1958 Annual Report at "Who, What and Where We Are." The company was established in 1957 as a joint venture between Henry Petronis and Pall Corporation, but did not begin operations until August of 1958. *See* Petronis Aff. at 5-6. By then, Glen Components was a wholly owned subsidiary of Pall Corporation. *Id.* at 6. Start up was delayed until 1958 to allow for the completion of a new building (the "Glen Components Building") at Pall Corporation's Sea Cliff Avenue Site for Glen Components to occupy. *See* Petronis Aff. at 6. The new building had approximately 6,000 square feet of floor space, and was connected to municipal water and sewers. *Id.* at 6, 23.

Glen Components' operation consisted of multiple precision tools, including lathes, drill presses, screw machines, grinders, spindles and deburrers. *Id.* at 17; Faecher Aff. at 3. It also included an anodizer to provide protective or decorative coatings on certain finished parts, and

several centrifuges so that cutting and lubrication oils could be retrieved from scrap metal and reused. Petronis Aff. at 17; Faecher Aff. at 3. The scrap metal was sold or sent to vendors. Petronis Aff. at 22. In addition, Glen Components had two vapor degreasers which were used to remove trace amounts of lubricating and cutting oils from machined parts. Petronis Aff. at 18.

Glen Components' vapor degreasers were standard systems using either trichloroethane (TCE) or perchloroethylene (PCE).[7] *Id.* at 20. Machined parts having trace amounts of lubricating or cutting oil were placed in baskets and exposed to a zone of vaporized solvent. *Id.* at 18. Upon coming into contact with the parts, the vaporized solvent condensed and dripped back into the solvent reservoir removing any oil or grease with it. *Id.* The parts were staged in the vapor zone until they reached vapor temperature at which time condensation stopped and the parts, which dried immediately, were withdrawn. *Id.* at 18. The vaporized solvent not coming into contact with parts during the degreasing operation contacted a condensing coil and dripped back into the reservoir where it was vaporized again. *Id.* at 18-19.

In 1971, Glen Components moved its operation to St. Petersburg, Florida. *Id.* at 14; Faecher Aff. at 6. Thereafter, the Glen Components Building was sold to August Thomsen. Petronis Aff. at 6; Faecher Aff. at 2.

f. Other Operations at The Sea Cliff Avenue Site

(i) R & D Laboratories

From the early 1950's until 1967, Pall Corporation had one research and development

[7] One of these solvents was used briefly and the other for a longer period. The sequence is unclear, however. Petronis Aff. at 20.

laboratory at the Sea Cliff Avenue Site. This laboratory employed four people and directed its efforts at developing new filter media, at first metal media and later various fibers. The employees in the laboratory also would evaluate various potential media by testing performance characteristics such as removal efficiency, dirt holding capacity, pressure drop and others. *See* Affidavit of Rogelio A. Pessina at 2 (hereinafter "Pessina Aff." at __) (attached hereto as Exhibit O) . To conduct this work, the laboratory employees made test stands that simulated customer or internal company specifications for filter performance. *See* Pessina Aff. at 2, 4; Affidavit of David Carson at 3 (hereinafter "Carson Aff." at ____) (attached hereto as Exhibit P). Because a major market at the time was the aerospace industry and the filtration of hydraulic or lubricating fluids, a significant quantity of Mil-H- 5606 hydraulic and lubricating oil was used in the laboratory. *See* Pessina Aff. at 4; Carson Aff. at 3, 10. Denatured alcohol also was used in significant amounts to conduct bubble point tests. *See* Carson Aff. 4, 10.

No chlorinated solvents were used in the first laboratory. *See* Pessina Aff. at 6, Carson Aff. at 5. Tote boxes containing petroleum ether were located in the laboratory and parts needing degreasing were immersed into the tote box or cleaned with rags that had been saturated with petroleum ether from a tote box. *See* Pessina Aff. at 4; Carson Aff. at 5.

In 1967, a second research and development laboratory was established at the Sea Cliff Avenue Site. *See* Pessina Aff. at 3. This laboratory employed two people and basically performed the research and development function previously conducted in the first laboratory. *Id.* The first laboratory became almost exclusively a performance evaluation laboratory. *Id.*; Carson Aff. at 3.

Small amounts of PCE and TCE were used in the second laboratory. *See* Pessina Aff. at 6. At the time, Pall Corporation was evaluating hydrophobic filter elements. *Id.* The solvents were used to dilute or dissolve a RTV silicone base into which a hydrophilic filter media was immersed to produce a hydrophobic media. *Id.* Roughly 400 milliliters of solvent were used each time a solution was produced. *Id.* This activity was strictly a research function and once the process proved ready for production, it was placed at PallFlex, a subsidiary of Pall Corporation located in Connecticut. *Id.* at 6.

(ii) Mechanical Laboratory

The Sea Cliff Avenue Site also was the location of Pall Corporation's Mechanical Laboratory. *See* Affidavit of Zoltan Doman at 4 (hereinafter "Doman Aff." at ___) (attached hereto as Exhibit Q). The Mechanical Laboratory designed, engineered and manufactured prototype filters, filtration systems and related products and tested these prototype products to determine their suitability for the intended use. *Id. at 4.* The Mechanical Laboratory performed strictly a research and development function and was not involved in production. *Id.*

No chlorinated solvents, other than Freon, were used in the Mechanical Laboratory. *Id.* at 9. Freon was stored in tote boxes in the laboratory and used to degrease parts either by dipping the part into the box or partially soaking rags that were used to wipe down the part that required cleaning. *Id.*

(iii) Administrative Offices

The Pall Building housed Pall Corporation's headquarters, administrative offices, marketing and sales offices, and engineering department.

g. Present

No full scale production has been conducted at the Sea Cliff Avenue Site since 1971. Petronis Aff. at 15. Operations currently conducted in the Pall Building include administrative, sales, marketing, pilot studies, performance evaluations, light machining and limited manufacturing. The only chemicals used in these operations are lubricating oils, alcohol solvents, hydrochloric acid, sodium hydroxide, some speciality chemicals, dimethyl acetamide (DMAC) and water. No chlorinated solvents are used.

7. History of Ownership

The Pall Building was built in 1918. *See* Petronis Aff. at 7. It was used as an ice house prior to the early 1950s when Pall Corporation bought the Site. *See* Seibert Aff. at 2.

Pall Corporation built the Glen Components building in 1958. *See* Petronis Affidavit at 6. Glen Components occupied the building until 1971. *Id.*; Faecher Aff. at 6. August Thomsen has occupied the building since that time. Petronis Aff. at 6; Faecher Aff. at 2.

8. History of Investigations Conducted at the Site

The Sea Cliff Industrial Area has been the subject of several environmental investigations by public and private entities. In addition, Nassau County prepared a Preliminary Site Assessment ("PSA") of the Sea Cliff Industrial Area, including Pall Corporation's Site, which is a compilation of selective portions of these prior studies. These investigations and studies are summarized below.

a. 1989 Phase I Assessment

In October 1989, Pall Corporation hired H2M to conduct a Phase I environmental assessment of the Sea Cliff Avenue Site in connection with an anticipated real estate transaction. *See* H2M

Group Phase I Environmental Assessment Report, 30 Sea Cliff Avenue, Glen Cove, New York at 1.0 and 1.1 (hereafter "H2M Phase I Report"). H2M found no evidence of surface contamination at the Site. *See id.* at 2.0 (no "evidence of spills or leaks" in the chemical storage area; "soil beneath an [empty drum storage area] did not show any visible evidence of spillage or leakage;" "[a]ny hazardous spills [from loading catch basin] would be pumped to suitable containers for disposal"). H2M confirmed the apparent absence of surface contamination with PID screenings "throughout" the exterior of the property which were all "at or near ambient background levels." *Id.* at 2.1.

H2M also took three samples for analysis: one soil sample in the "empty drum storage area" and two water samples, one collected from a supply well and the other collected from the waste water collection sump. *Id.* at 3.0. The soil sample from the empty drum storage area did not show any metal or volatile organic compound above detection limits. *Id.* The supply well sample contained elevated concentrations of lead, chloroform, 1,1,1-trichloroethane (TCA), TCE, PCE, 1,1-dichloroethane (1,1-DCA) and 1,2-dichloroethylene (1,2-DCE). The sump sample contained elevated concentrations of lead, 1,2-DCE and TCE. *Id.* H2M also reported that data in Nassau County Department of Health's ("NCDOH") files showed groundwater contamination under Pall Corporation's property as early as 1977. *Id.* at 4.0.

Based on these findings, H2M recommended a groundwater investigation to determine the source of the contamination. *Id.* at 6.0. H2M stated, however, that because it had another client in the immediate area (Kollmorgen), it had a conflict of interest and could not conduct the recommended source investigation for Pall Corporation. *Id.*

b. 1990 Nassau County Report

In 1990, NCDOH and NCDPW (collectively "Nassau County") jointly conducted an investigation of groundwater contamination in the Sea Cliff Avenue Industrial Area. *See* Investigation of Contaminated Aquifer Segment, City of Glen Cove, Nassau County, New York, Volume I, Nassau County Department of Public Works, Nassau County Department of Health (June 1990) (hereinafter "1990 NC Investigation"). Nassau County performed this study in response to the detection of volatile organic chemicals in monitoring, industrial and public supply wells in the City of Glen Cove and the closure of City's wellfields in 1977. *Id.* at 1. The purpose of the study was to identify the aerial and vertical extent of the contamination. *Id.*

Nassau County concluded that a plume of contaminated groundwater was emanating from the Sea Cliff Avenue Industrial Area into the capture zone of the City's Carney Street wellfield. *Id.* at 38. According to Nassau County, numerous industries in the Sea Cliff Avenue Industrial Area used the organic chemicals identified in the groundwater and "accidental or intentional discharges of solvents [were] not uncommon at industrial establishments handling [these] chemicals over a period of forty years." *Id.* To identify "potential source areas and the overall contribution of each," Nassau County recommended a site-specific investigation. *Id.*

Although failing to identify Pall Corporation as a potential contributing source of contamination at the Sea Cliff Industrial Area, Nassau County made the following observations regarding Pall Corporation's potential involvement:

1. Pall Corporation used organic chemicals in the past, discontinuing this use in 1972;

2. Pall Corporation bought 1000 milliliters of PCE and 16 liters TCE in 1987; and

3. A chemical engineer at Pall Corporation reported "a past history of chemical dumpage down drains and in the yard of both Pall Corporation and the neighboring HMS machine shop yard." *See id.* at 36 and Appendix A.

Nassau County also concluded that industrial well pumping in the Sea Cliff Avenue industrial zone caused groundwater contaminants to migrate downward into the deep industrial supply wells where they subsequently were reintroduced back into the aquifer through diffusion wells screened at various depths. *Id.* at 39. According to the County, this pumping and diffusion impacted the hydrodynamic dispersion of the groundwater contamination. *Id.* The County concluded that further study was warranted to establish the relationship between the aquifer, pumping rates and contaminant transport. *Id.* at 30, 39.

c. City of Glen Cove v. Photocircuits: H2M's 1992 Source Area Study

In 1990, the City of Glen Cove sued Photocircuits and Kollmorgen for allegedly contaminating the City's wellfields. *See City of Glen Cove v. Photocircuits Corp., et. al.*, Civ. Action No. 90-Civ.0939 (E.D.N.Y.). Kollmorgen and Photocircuits brought a third party action against Pall Corporation and others. *Id.* In connection with this litigation, H2M, now acting as Kollmorgen's consultant, performed the 1992 Source Area Study, an investigation of various sites in the Sea Cliff Industrial Area including Pall Corporation's Site. [8]

[8] Pall Corporation does not have a copy of the 1992 Source Area Study.

In November 1991, H2M collected soil samples from eight locations on Pall Corporation's Sea Cliff Avenue Site.[9] *See* Pall Corporation Soil and Groundwater Laboratory Results (hereinafter H2M Lab. Results-Pall) (attached hereto as Exhibit R). Pall Corporation's consultant, C.A. Rich Consultants, Inc. (C. A. Rich), received split samples. *See* Letter to Mary Ann Bartlett, Assistant General Counsel, Pall Corporation, from Charlotte Biblow (January 6, 1992) (attached hereto as Exhibit S). C.A. Rich found no TCE and no TCA. *See id.* PCE was identified at 14 ppb in one sample (P6(26)) and estimated at 3 and 4 ppb in two other samples. *Id.* All quantities were far below recommended cleanup objectives.

H2M's analysis of the same eight samples predictably resulted in higher concentrations of contaminants than C.A. Rich's results. *See* H2M Lab. Results-Pall, P1(3) through P8(46). H2M identified 1000 ppb of PCE in the one sample where C.A. Rich identified 14 ppb and identified 57 ppb and 110 ppb of PCE in two other samples. In two samples H2M identified 17 ppb and 40 ppb of TCE where C.A. Rich found none. *Id.* Like C.A. Rich, H2M did not identify any constituent in any soil sample that exceeded the State's recommended clean-up objectives for soil. *See* H2M Lab. Results-Pall.

In late January 1992, H2M, again acting on Kollmorgen's behalf, installed five monitoring wells on Pall Corporation's property. Several soil samples were taken at the time of installation and groundwater samples were taken on February 2, 1992.[10] H2M's analysis of the soil samples showed

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[9] The samples taken in November 1991 are identified as P1(3), P2(38), P3(43), P4(30), P5(27), P6(26), P7(25) and P8(46).

[10] The wells were identified as MW-1P, MW-2P, MW-3P, MW-4P and MW-5P.

no contamination above state cleanup objectives with the exception of total xylenes in one sample from well boring MW-5P. *See* H2M Lab Results - Pall, MW-2 through MW-5 (soil). TCE and TCA were not detected in any sample. A minute quantity of PCE (30 ppb) was detected in one well boring sample (MW-5P). *See id.* H2M identified 1,1 DCA in one sample (MW-3P) at 13 ppb and 1,2 DCE (total) was detected in well boring samples from MW-4P (40 ppb) and MW-5P (75 ppb). *Id.*

C.A. Rich analyzed split samples from the same well borings. *See* Glen Cove Industrial Area Soil and Groundwater Investigation, Soil and Groundwater Analysis, Summary of Detection Tables, Pall Corp., August Thomsen and Glen Cove Creek Samples, C. A. Rich Consultants, Inc. (March 1992) at 1 (attached hereto as Exhibit T) (hereinafter "C. A. Rich Glen Cove Study"). Like H2M, C.A. Rich did not find any TCE or TCA and every constituent identified was well below state recommended cleanup objectives except total xylenes. *Id.*

Analysis of the groundwater samples taken by H2M revealed groundwater contamination. *See* H2M Lab Results - Pall, MW-1 through MW-5 (water) and C.A. Rich Glen Cove Study at 3. In almost all cases the constituents found in the groundwater had not been found in the soil. Thus, while no soil sample revealed any notable concentration of TCE, groundwater samples from each of the five monitoring wells showed elevated concentrations of that compound. *Id.* Similarly, although PCE was found in minute concentrations in several soil samples, it was present in elevated concentrations in four of the five groundwater samples. *Id.* [11]

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[11] Vinyl chloride also was found in the groundwater samples (elevated concentrations in all five samples) as was 1,2 DCE (total) (elevated concentrations in all five samples). *Id.*

d. September 1992 Sampling Event

In September 1992, Pall Corporation installed a monitoring well in addition to the five wells H2M previously installed. *See* Letter to Stanley Pierce, Esq., Rivkin, Radler & Kremer from Eric A. Weinstock, C.A. Rich Consultants, Inc. (September 29, 1992) (attached hereto as Exhibit U). This well, identified as MW-6P, was located upgradient from Pall Corporation's Sea Cliff Avenue facility at a depth and location designed to intercept contamination coming onto Pall Corporation's property from off-site sources.

C. A. Rich took samples from MW-2P, MW-5P and new MW-6P. The results from MW-2P and MW-5P were consistent with the results in samples from those wells taken previously; *i.e.*, both showed elevated concentrations of TCE, PCE, DCE (total) and vinyl chloride. *Id.* The results from MW-6P, however, showed that the groundwater coming from an upgradient source and moving onto the Pall Corporation property contained PCE at 110 ppb, TCE at 190 ppb, DCE (total) at 660 ppb, vinyl chloride at 150 ppb and TCA at 16 ppb. *Id.*

e. Nassau County PSA

In March 1994, NCDPW issued a preliminary site assessment for the Sea Cliff Avenue Industrial Area. *See* Engineering Investigations At Inactive Hazardous Waste Sites, Preliminary Site Assessment, Sea Cliff Avenue Industrial Area, Town of Oyster Bay, Nassau County, Site No. 130053 (March 1994) (hereinafter the "PSA"). The PSA is a compilation of prior studies of the Sea Cliff Industrial Area. *See* Inactive Hazardous Waste Disposal Report (Pall Corporation) (referring to the PSA as "largely a compendium of previous investigations and an interpretation of those results"). With respect to Pall Corporation, the PSA is based exclusively on H2M's 1992 Source

Area Study.[12] *See* PSA at 3, 16-18, 73 and 75.

With regard to the H2M Study, NCPDW states candidly that the H2M data "lacked site specific information which is commonly used" to evaluate the quality of a site. *See id.* at 51. According to NCDPW, the H2M report lacked fundamental information such as "well construction specifications, geologic logs, water level data and soil and groundwater sampling protocols." *Id.* Rather than rejecting the H2M data, NCPDW concludes that "many gaps in the data [could] be filled by using existing geologic information from other reports." *Id.* Nothing in the PSA indicates what "other reports" allegedly were or could have been relied upon to fill in the known data gaps, and more importantly, there is no indication in the PSA that these gaps actually were filled. *See* PSA at 73-78 (showing that H2M data was the sole basis for NCDPW's conclusions about Pall Corporation).

Rather, based on the H2M data, NCDPW concludes that the presence of PCE and TCE in the Industrial Chemical Profile for Pall Corporation and the data showing these constituents at "significant concentrations" in the soil and "at levels exceeding NYS drinking water standards in the groundwater," demonstrates that the Pall Corporation Site is a "significant threat" that should

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[12] NCDPW briefly mentions the 1989 H2M Phase I Report and the 1990 Nassau County Investigation, but does not rely on these reports to reach its conclusions concerning Pall Corporation. Moreover, in the PSA, NCDPW badly misquotes H2M's Phase I Report. *See* PSA at 17. NCDPW states that the Phase I report "identified several possible on-site sources of contamination [at Pall Corporation] including several diffusion wells." *Id.* In point of fact, H2M states that the Nassau County Department of Health indicated three diffusion wells were once on the property and "very little is known about how they were used." *See* H2M Phase I Report at 6.0. H2M said nothing about "possible on-site sources of contamination."

be designated a Class 2 site. *Id.* at 111.[13]

f. 1995 Groundwater Analysis

In October 1995, Groundwater Technology, Inc. (now known as Fluor Daniel GTI and referred to hereafter as such) collected samples from the six monitoring wells (MW-1P through MW-6P) on Pall Corporation's property. *See* Groundwater Sampling and Analysis Report, Groundwater Technology, Inc. (March 13, 1996, erroneously dated March 13, 1995 on the cover page) (attached hereto as Exhibit V) (hereinafter the 1996 Fluor Daniel GTI Report) at 6.[14] The samples were submitted to a State certified laboratory for analysis. *Id.* at 7. TCE was found at 18 ppb in the sample from the upgradient well (MW-6P) and 7.1 ppb in the sample from MW-2P. *Id.* and Table 4-1. The sample from the upgradient well (MW-6P) also showed TCA at 47 ppb, PCE at 9.8 ppb, 1,1-DCA at 8.9 ppb and 1,1 DCE and 1,2-DCE (total) at 9.2 ppb and 47 ppb respectively, although these constituents also were found in the method blank. *Id.*

Samples from MW-1P, MW-2P and MW-5P all showed elevated levels of 1,2-DCE (total) (8.6 ppb, 8.2 ppb and 220 ppb respectively) but again, this constituent also was present at elevated levels in the method blank. *Id.* The sample from MW-2P also showed 420 ppb of PCE. *Id.* Samples from MW-3P and MW-4P did not show any target constituent above NYSDEC Class GA Standard. *Id.*

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[14] Fluor Daniel GTI's analysis was provided to the Department by letter dated March 26, 1996 from Susan Morrissey, Pall Corporation to John B. Swartwout and Hayden Brewster.

g. Wellfield Analysis

In March 1996, Fluor Daniel GTI collected groundwater samples from three monitoring wells at the Carney Street wellfield, MW-1, a shallow well screened from approximately 5 to 20 feet, and MW-2 and MW-3, both screened at depths greater than 100 feet below grade. *See* Letter from Daniel J. Smith, P.E. Groundwater Technology to James P. Rigano, Esq., McMillian, Rather, Bennett & Rigano, P.C. (April 22, 1996) and accompanying material (attached hereto as Exhibit W). Each of the samples was analyzed using EPA Method 624 by a State-certified laboratory.

All parameters in the deep wells, MW-2 and MW-3, were non-detectable with the exception of minute quantities of 1,2-DCE and PCE (1 ppb each) in the sample from MW-2, and 2 ppb of TCE in the sample from MW-3. The sample from MW-1 had a virtual "smorgasbord" of constituents including, 130 ppb of bromomethane, 27 ppb fluorotrichloromethane, 80 ppb of dichchlorodifluoromethane, 1700 ppb cis-1,2-dichloroethene, 410 ppb of TCE, 360 ppb PCE, 1 ppb of chloroethane, 1 ppb of TCA, 7 pbb of trans-1,2-dicloroethene, 11 ppb of 1,1-DCA, 2 ppb of chlorobenzene and 1 ppb ortho-Dichlorobenzene.

h. Other Studies in the Sea Cliff Industrial Area

In 1977, NCDOH conducted tests of several "water wells" on Photocircuit's property. *See* Letter from L. Sama, Public Health Engineer, Bureau of Land Resources Management, NCDOH to Jere Austin, NY DEC (May 19, 1981). NCDOH found TCE in each well tested with quantities as

high as 460 ppb.[15]

In response to the closure of the Carney Street wells, the Nassau County Health Department ("NCHD") conducted an investigation to identify the source of the contamination. *See Final Report of Investigation of Organic Contamination of Groundwaters, Glen Cove* (April 6, 1978). NCHD concluded that the contamination of the wellfield was caused by disposal practices occurring before 1978 and that past contamination could not be attributed to any single industry "because of changes in solvent usage, the industries themselves, and waste disposal practices." *Id.* at 2. NCHD noted, however, that Slater Electric Co. was a large user of PCE and discharged significant quantities of this substance into the sewer system. *Id.* at 1-2. Likewise, NCHD identified Photocircuits as a large user of TCA and methylene chloride (MC) that discharged considerable volumes of MC to the sewer. *Id.*

In January 1988, the U.S. Environmental Protection Agency ("U.S. EPA") performed a Site Analysis of Photocircuits and Kollmorgen Corporation. *See Site Analysis, Photocircuits Division/Kollmorgen Corp., Glen Cove, New York*, Environmental Monitoring Systems Laboratory, U.S. EPA, TS-PIC-88036, Contract No. 68-03-3532 (January 1988). EPA reviewed historical aerial photography of the Photocircuits/Kollmorgen site from 1963 to 1987. *Id.* at Abstract, p. iii. This

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[15] Photocircuits used TCE in its production process in quantities of approximately 15,000 gallons per year until the late 1970s. *See, e.g., City of Glen Cove v. Photocircuits, et al.*, Defendant Photocircuits Corporation's Supplemental Responses to Plaintiff's First Set of Interrogatories And First Request for Production of Documents at 2, Interrogatory Nos. 4-9. Kollmorgen (who owned Photocircuits in the 1970s) claims that it did not use TCE, but admits that its predecessor, Powers Chemco, Inc., did. *See, e.g., City of Glen Cove v. Photocircuits, et al.*, Defendant Kollmorgen Corporation's Second Supplemental Responses to Plaintiff's First Set of Interrogatories at 2, Interrogatories 3 and 4d.

analysis showed numerous tanks and drums onsite in every year (except 1963 in the case of drums). It also showed frequent stains and/or standing liquids on the site and an active sludge bed visible from 1963 to 1980 that changed in the size and color of the contained substance from year to year. *Id.*

In September 1989, U.S. EPA issued a final draft site inspection of Photocircuits. *See Final Draft, Site Inspection Report, Photocircuits Div./Kollmorgen Corp., Glen Cove, Long Island, New York*, Prepared Under Technical Directive Document No. 02-8908-02, Contract No. 68-01-7346, For The Environmental Services Div., U.S. EPA, NUS Corporation (September 15, 1989) ("NUS Report"). EPA's contractor, NUS Corporation, identified numerous areas of concern including illegal discharges to Glen Cove Creek, unlined land disposal units and discharges in violation of the company's SPDES permit. *See id.* at Paragraph 2.2. NUS also identified other evidence of hazardous conditions including samples contaminated with heavy metals and solvents from the weir, pond and storm drain; discharges of untreated wastes to a parking lot storm drain leading to Glen Cove Creek; and the storage of large volumes of metal-laden sludge on-site in an unlined lagoon. *Id.* at 2.6 and 5.0 NUS recommended that Photocircuits be designated a high priority for further action. *Id.* at 5.0.

In December of 1991, H2M took and analyzed 11 groundwater samples from the Photocircuits/Kollmorgen site. *See* Photocircuits Soil and Groundwater Laboratory Results, (attached hereto as Exhibit X) . The samples showed elevated concentrations of TCE, TCA, PCE, 1,1 DCE and 1,1 DCA among other contaminants. *Id.* A sample from a well designated MW-7 and directly upgradient from Pall Corporation, showed massive concentrations of 1,1 DCA (a breakdown

product of TCE), TCA and chloroethane. It also showed significant quantities of vinyl chloride (another breakdown product of TCE), MC, 1,1 DCE, TCE and other substances. *Id.* A sample from a well designated as MW 3 which is directly across Sea Cliff Avenue from Pall Corporation showed 29 ppb of TCE and 21 ppb 1,2 DCE (total). Samples from wells identified as MW-9, MW-10 and MW-11, all of which were located directly across Sea Cliff Avenue from Pall Corporation, showed 59 ppb, 30 ppb and 79 ppb of TCE respectively, as well as elevated concentrations of other constituents including 1,2 DCE (total), TCA, and PCE.

9. Waste Management - Chlorinated Solvents

Pall Corporation used production levels of chlorinated solvents at its Sea Cliff Avenue Site until 1971. The principal use was in vapor degreasers, in "tote" boxes and to some extent, in laboratory research applications. It was Pall Corporation's practice to collect waste solvents in drums and dispose of them offsite.

Two vapor degreasers were located in the Glen Components Building and used to degrease parts Glen Components manufactured for Aircraft Porous Media. The solvent used in the degreasers was either TCE or PCE. A third and perhaps fourth vapor degreaser was located on the shop floor in the Pall Building. This degreaser was used by Aircraft Porous Media to degrease wire mesh and parts coming from outside vendors, and to degrease components soiled during manufacture, assembly or testing. PCE was the solvent used in this operation. *See* Petronis Aff. at 17-18; Silverwater Aff. at 10-11; Farris Aff. at 12.

Residues from the vapor degreasers were drained and placed into drums. Petronis Aff. at 19. Pall Corporation's practice was to place waste chlorinated solvents in drums that had contained the

virgin material when it was delivered to the Site. The drummed wastes were stored behind the north end of the Glen Components Building, or in the storage shed behind the Pall Building. *See* Petronis Aff. at 19; Silverwater Aff. at 17. Vendors would remove and dispose of the drummed wastes. Petronis Aff. at 19.

Tote boxes were located on the shop floor and in the laboratories. Doman Aff. at 9; Carson Aff. at 5; Pessina Aff. at 4; Silverwater Aff. at 15. Parts, housings, elements and other metal components soiled during handling were degreased by immersing the unit in the tote box or by saturating a rag and cleaning the unit by hand. *Id.* Petroleum ether, PCE or Freon typically were used in the tote boxes. *Id.*

Spent solvents from tote boxes were transferred into safety cans located throughout the shop areas and laboratories. Silverwater Aff. at 17; Pessina Aff. at 5, 7; Doman Aff. at 9; Carson Aff. at 6; Farris Aff. at 14. These cans held roughly 5 or 10 gallons, resembled milk cans, were red in color, clearly marked and had a number of safety features, including spring loaded tops and vapor tight seals. Pessina Aff. at 5; Carson Aff. at 6; Doman Aff. at 9; Silverwater Aff. at 17; Farris Aff. at 14. Pall Corporation's standard procedure was to remove full safety cans from the laboratory or shop floor to the storage area behind the Pall Building. There, the contents of the safety cans were pumped into drums that contained the same waste substance or had contained the virgin substance when it was delivered to Pall Corporation. Full drums were then disposed of using an outside vendor. *Id.*

10. Resources Affected

The Department has alleged that hazardous waste disposed at Pall Corporation's Sea Cliff

Avenue Site has contaminated the Long Island sole source aquifer and contributed to the contamination loading that ultimately led to the closure of the Carney Street wellfield. *See* Letter from Robert L. Marino, Chief Site Control Section, Bureau of Hazardous Site Control, Division of Hazardous Waste Remediation, New York State Department of Environmental Conservation to Kurt J. Olson, Esq., Maupin, Taylor, Ellis & Adams, P.A. (August 5, 1996).

11. Demographic Information

The Sea Cliff Avenue Site is located within the Sea Cliff Avenue Industrial Area. The area is urban and industrial with some residential communities within a ½ mile radius. The area is supplied by public water and public sanitary sewers. *See* 1990 Nassau County Report at 3. Over 75 industrial sites, including metal fabricators, automotive repair shops, electrical equipment manufacturers, and a variety of other industrial entities, are or at one time were located within a one mile radius of the Site. *See* 1990 Nassau County Report at 8-9.

12. Geographic Information

Pall Corporation's Sea Cliff Avenue Site is basically flat with a gentle slope from the southwest corner (elevation 55 feet above mean sea level) toward the northeast corner of the Site (about 51 feet above msl.). 1996 Fluor Daniel GTI Report at 1. Glen Cove Creek runs across the Site from the southwest corner to the northwest corner.

The Site is underlain by three water bearing aquifers: the Upper Glacial Aquifer, the Magothy Aquifer and the Lloyd Aquifer. NUS Report at 2.3. The Upper Glacial Aquifer has a maximum thickness of 600 feet in the area. *Id.* It is overlain by soil and surficial deposits. *Id.* It is composed of three hydrostratigraphic units: an upper glacial till consisting of silty and sandy

facies, a sand and gravel unit of varying composition and the Port Washington confining unit. *See* PSA at 20.

Groundwater in the Sea Cliff Industrial Area is typically present at about 2 to 10 feet below grade. *See* PSA at 24. It flows from southeast to northwest across Pall Corporation's Sea Cliff Avenue Site. *See* 1996 Fluor Daniel GTI Report at 5; PSA at 27. Groundwater depths and flow are influenced by Glen Cove Creek which acts as a discharge area for areas of high elevation adjacent to the creek. *Id.* In the past, supply and diffusion wells also have had an impact on flow and contaminant transport. *See* 1990 Nassau County Report at 39.

Groundwater in the area is recharged by precipitation and in the past, by the use of recharge basins and diffusion wells. *See* NUS Report at Paragraph 2.3. Normal annual precipitation is 46 inches and mean annual lake evaporation is approximately 31 inches. *Id.* The hydraulic conductivity of the Upper Glacial Aquifer is estimated at 1700 gallons per day (gpd) per square foot. *See* N.E. McClymonds and O.L. Franke, Water-Transmitting Properties of Aquifers on Long Island, New York, Geological Survey Professional Paper 627-E (1972) at E23.

13. Cleanup Action *See* Item 8 above.

14. Relief Sought and Reasons

Pall Corporation requests that the Sea Cliff Avenue Site be removed from the Registry or be reclassified as a Class 3 site, with remedial action deferred indefinitely. The reasons supporting this request, as explained more fully below, are as follows:

(1) The record does not contain substantial evidence to support the present listing and as such, the Department's decision to list Pall Corporation is arbitrary and capricious.

(2) The Department's regulation defining significant threat to the environment is impermissibly vague and a finding that the Site presents such threat is void; and

(3) Alternatively, the Sea Cliff Avenue Site is not a significant threat to the environment as defined in the regulations.

a. The Record Does Not Contain Substantial Evidence Supporting The Department's Listing of the Sea Cliff Avenue Site as a Class 2 Site On The Registry

The Department listed the Sea Cliff Avenue Site for "environmental problems." *See* Letter form Robert L. Marino, Chief, Site Control Section, Bureau of Hazardous Site Control, Division of Hazardous Waste Remediation, NY DEC to Pall Corporation (June 13, 1996) (enclosing a copy of the Inactive Hazardous Waste Disposal Site Report ("IHWDS Report")). The IHWDS Report describes those problems as "[d]egreasing solvents were mismanaged or disposed on the soil, and has [sic] subsequently contaminated the underlying aquifer." *Id.* While the IHWDS Report does not identify the source for this finding, it states in the section entitled "Site Description" that on-site releases were "confirmed by the presence of volatile organic compounds such as [PCE] and [TCE] in the soil." *Id.* The Site Description further provides that "[t]hese solvents were also found in the groundwater at levels much higher than would be produced by any upgradient source." *Id.* Both of these findings are from the PSA.

In an August 5, 1996 letter, Mr. Robert Marino further explained the Department's decision to list the Sea Cliff Avenue Site in response to counsel's request for more information. *See* letter from Robert L. Marino, Chief, Site Control Section, Bureau of Hazardous Site Control, Division of

Environmental Remediation, NY DEC to Kurt J. Olson, Esq. (August 5, 1996). According to Mr. Marino, the Department determined that hazardous waste disposal at the Site "has contaminated the Long Island sole source aquifer . . . . and has contributed to the aquifer contamination loading that ultimately led to the closure of the Carney Street wellfield, although the extent of this contribution is not yet known." *Id.* Mr. Marino went on to say that the "primary impetus for listing the site" was the PSA. He also enclosed two documents to illustrate the basis for the Department's decision: a March 1978 document entitled "Summary of Survey Inspections, Glen Cove Industrial Area" which purports to record a conversation between Nassau County inspectors and a Pall Corporation employee, Sidney Krakauer, and a document dated August 1995, entitled "Site Investigation Information" which Mr. Marino states is the document upon which the "decision" to list the Sea Cliff Avenue Site was based. *Id.* The Site Investigation Information describes the Site, lists data from the first quarter of 1992 and concludes "[a] former chemical engineer at Pall indicated that the company had a history of dumping chemicals down the drains and in the yards . . . . Wells . . . indicate high levels of groundwater contamination . . . at least an order of magnitude higher than might be expected from another potential upgradient source."

Given the above, it is evident that the Department's decision to list the Sea Cliff Avenue Site in the Registry rests on two parts of the record: the purported statement by Sidney Krakauer and the conclusions in the PSA regarding the source of the contamination underlying the Site. Neither part provides a credible basis for listing the Sea Cliff Avenue Site.

(i) The Purported Krakauer Statement Is Unreliable In The First Instance And Grossly Misquoted Throughout The Record

The record in this proceeding contains several documents and reports that refer to a purported comment by a "former chemical engineer" at Pall Corporation. In each successive document or report, the alleged comment becomes more and more definitive and more and more incriminating. What starts out as an general observation about practices in the industry ultimately evolves into a specific admission about Pall Corporation. Yet from the outset, it is plain that the alleged comment is not reliable because it lacks a foundation and is classic hearsay. Moreover, each successive iteration of the original comment suffers from these infirmities and is a plain distortion apparently aimed at implicating Pall Corporation in some contamination-causing activity. None of these statements, the alleged original comment or its subsequent iterations, provide a credible basis for finding that Pall Corporation mismanaged or otherwise improperly disposed of waste solvents at the Sea Cliff Avenue Site.

In December 1977, two Nassau County inspectors allegedly conducted a re-inspection of the Sea Cliff Avenue Site. In the course of that re-inspection they claim to have contacted and spoken with Mr. Sidney Krakauer, an employee of Pall Corporation. Mr. Krakauer was a physical chemist who throughout his career specialized in research and development. At the time of the re-inspection he was a Senior Vice President of Pall Corporation. Prior to that time, Mr. Krakauer was a Vice President in charge of New Products, the President of Fibrous Glass Products, Inc. and Vice President of the fibrous glass and porous plastics product line. *See, e.g.,* Pall Corporation Annual Report at 1962 at 28. From 1961 to 1965 Mr. Krakauer, as President of Fibrous Glass Products,

Inc., was located at Pall Corporation's manufacturing facilities in Wilkes-Barre and Mountaintop, Pennsylvania. *See* Petronis Aff. at 25, Seibert Aff. at 13.

Nothing in the record explains why the inspectors chose to interview Mr. Krakauer. There is no indication whether the company proffered Mr. Krakauer as its representative on the matters the inspectors sought to address or whether the inspectors merely cornered him for a few questions. What is known, however, is that Mr. Krakauer was not responsible for environmental management or waste disposal at the Site and would have been unlikely, other than in the most general sense, to have had day to day knowledge of waste management and disposal activities. [16]

Three months after the purported re-inspection, in February 1978, the two Nassau County inspectors drafted a handwritten report of the alleged conversation with Mr. Krakauer. *See* Exhibit Y. In that handwritten document, the Nassau County inspectors state that Mr. Krakauer told them "in the past many Industries, including his own, would dump these chemicals down drains and into yards." The question to which Mr. Krakauer purportedly was responding is not evident in the handwritten document and consequently, the meaning and context of his alleged answer is inherently

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[16] It is not entirely clear that the inspectors actually interviewed Mr. Krakauer since they report speaking with a "chemical engineer." Mr. Krakauer was a physical chemist specializing in research and development. *See* Petronis Aff. at 26. Mr. Krakauer died in the late 1980s and cannot confirm or deny whether he actually had a conversation with the Nassau County inspectors.

ambiguous.[17]

On March 29, 1978, nearly four months after the purported conversation with Mr. Krakauer, the two Nassau County inspectors prepared a typewritten "Summary of Survey Inspections, Glen Cove Industrial Area" ("Summary Survey"). This document refers to re-inspections conducted in early December 1977 and with regard to Pall Corporation is identical to the earlier handwritten document except that the Nassau County inspectors now claim Mr. Krakauer told them that "industries including *his company* would and *did dump* these chemicals. . . ." Nothing in the record supports this remarkable change in Mr. Krakauer's purported comment. Nothing in the record shows why the words "*his company*" and "*did dump*" were added to the alleged comment. Based on the way the comment was changed, the Nassau County inspectors clearly were attempting to put an inculpatory spin on the reiteration of the statement that was not present in the first handwritten iteration.

The revisions to Mr. Krakauer's comment in the Summary Survey are only the beginning of a series of inaccurate elaborations. In each subsequent report, the spin on Mr. Krakauer's alleged comment becomes more definitive and more incriminating. In Nassau County's Final Report of Investigation of Organic Contamination of Groundwaters, Glen Cove (April 6, 1978), Mr.

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[17] It is not clear why the Nassau County inspectors waited 3 months after the purported interview with Mr. Krakauer to draft their report. Delays of this nature tend to raise doubt about the accuracy of the materials recorded. It is also not clear whether the inspectors claim to be quoting or paraphrasing Mr. Krakauer or whether they drafted the document from memory or from notes. It is clear, however, that the people who knew Mr. Krakauer believe that the statements attributed to him by the inspectors are not typical of Mr. Krakauer or his words. *See* Petronis Aff. at 27a-e.

Krakauer's alleged comment becomes an admission "to dumping halogenated hydrocarbons in the past." In the 1990 Nassau County Report, it evolves into a concession that Pall Corporation had a "history of chemical dumpage down drains and in the yard." *See* 1990 Nassau County Report at 33. Finally, the Department's Site Investigation Information, the "decision" document according to Mr. Marino, references Mr. Krakauer's alleged comment as "[a] former chemical engineer at Pall indicated that the company had a history of dumping chemicals down drains and in the yards." Nothing could be further from the truth. *See, e.g.,* Petronis Aff. at 19, 23 and 27; Carson Aff. at 11; Seibert Aff. at 12; Faecher Aff. at 7; Doman Aff. at 10; Farris Aff. at 14; Pessina Aff. at 9-10.

For several reasons Mr. Krakauer's purported comment to the two Nassau County inspectors and all subsequent recitations are not credible evidence. First, the original alleged comment lacks a foundation. There is nothing in Mr Krakauer's purported comment or the Nassau County inspector's handwritten statement that shows why the inspectors spoke to Mr. Krakauer or why Mr. Krakauer would have been in a position to have firsthand, direct knowledge of the matters the inspectors attributed to him.[18] Without a foundation for the alleged comment, there is no basis to accept Mr. Krakauer's purported statement as truth, and obviously no basis for accepting the inspectors' report. Similarly, there is no basis for accepting any allegation about Pall Corporation's waste mismanagement practices in any subsequent report or document because each subsequent

[18] To be sure, the inspectors attempt to establish a foundation for Mr. Krakauer's alleged statement by asserting that Mr. Krakauer was a "chemical engineer." However, Sidney Krakauer was never a chemical engineer; he was a physical chemist specializing in research and development. *See* Petronis Aff. at 26. Further, even had Mr. Krakauer been a chemical engineer, that fact alone is inadequate to provide a basis for his alleged knowledge.

report and document relies exclusively on Mr. Krakauer's alleged comment or some iteration of it. Fundamentally, a report can be only as reliable as its source, and in this case, the source is unreliable. *Cf.* 6 NYCRR § 375-1.9 (c) (requiring delisting petition to be supported by affidavits of persons "having *direct knowledge* of . . . the subject of the affiant's statement") (emphasis added).

Second, Mr. Krakauer's alleged comment is hearsay and each document that contains or reports on that alleged statement adds at least one and sometimes two additional layers of hearsay. While hearsay may be admissible in administrative proceedings, there are sound reasons why it is normally considered unreliable and why administrative tribunals must give hearsay evidence little or no weight.

The rule against hearsay "relates to the credibility of the evidence." McCormick on Evidence, 4th ed., 2 at 93 (1992). It embodies the principle that the reliability of testimonial evidence is suspect where the declarant's knowledge, perception, memory and narration have not been tested. Weinstein's Evidence, United States Rules, Vol. 4 at 800-12-13 (March 1996). "With every increasing level of hearsay there is a corresponding decrease in reliability." *Id.* at 805-7. Every level of hearsay "provides another possibility that the facts were inaccurately reported, intentionally or unintentionally, or misunderstood." *Id.*

The alleged Krakauer comment presents a textbook case of why hearsay should be given no weight. The original comment (as recorded in the inspector's handwritten document) purports to represent Mr. Krakauer's knowledge of matters for which he was not directly responsible, that encompass a period of time when he was not physically located at the Site and that involve activities occurring many years before the date of the purported comment. Further, although the inspectors

transcribed the comment as being Mr. Krakauer's, it is not clear whether the language or words attributed to him in the handwritten report are actually his own or whether the words and phrases were selected by the inspectors. Accordingly, the credibility of Mr. Krakauer's purported comment and its usefulness in this proceeding hinge entirely on ascertaining and testing the basis for his knowledge, his perception of events, the accuracy of his memory and his actual choice of words. The use of hearsay precludes the opportunity to determine or test any of these critical matters.

The hearsay problems plaguing Mr. Krakauer's purported comment also afflict the inspectors handwritten report and each subsequent document incorporating it. In each of these documents, the problems are exacerbated as each subsequent report or document represents double and sometimes triple hearsay. For example, the inspector's handwritten report is a statement about Mr. Krakauer's comment, or double hearsay. Each document relying on the inspector's handwritten report, *i.e.*, the Summary Survey, is triple hearsay. As noted above, every level of hearsay decreases the reliability of the statement offered because, among other reasons, every level represents another possibility that the statement was inaccurately reported or misunderstood. Weinstein's Evidence, United States Rules, Vol. 4 at 805-7 (March 1996). That rule is particularly applicable here.

The record shows that Mr. Krakauer's purported comment started as a general observation about "Industry" practices. Beginning with the remarkable addition of the words "*his company*" and "*did dump*" in the Summary Survey in 1978, the comment evolved incrementally in subsequent reports and documents into a specific and damaging statement implicating Pall Corporation. By 1995, in the Department's Site Investigation Information, Mr. Krakauer's alleged comment became an outright admission to a "*history of dumping*" and waste mismanagement. This digression

demonstrates exactly why multiple hearsay is considered the least reliable of evidence with each level of hearsay accompanied by a corresponding decrease in reliability. Therefore, every report relying on the original handwritten document must be viewed as unreliable because of the genuine and all too likely risk that the alleged statement and each iteration "was inaccurately reported or misunderstood."

Finally, because Mr. Krakauer's purported statement has been revised repeatedly, it is impossible at this point to determine which of the various versions (if any) reflect what he really said. Did Mr. Krakauer actually say "in the past many Industries, including his own, would dump . . . ." or was that what the Nassau County inspectors thought they remembered three months after speaking with him? Did Mr. Krakauer say "his company dumped" as recorded in the Summary Survey or was that language added by an overzealous inspector? Did Mr. Krakauer say that the company "had a history of dumping" as recorded in the Site Investigation Information almost twenty years after the purported conversation between Mr. Krakauer and the Nassau County inspectors or is this the spin put on Mr. Krakauer's comment by someone trying to justify the Site's inclusion on

the Registry? [19]

For the reasons set forth above, the Krakauer comment and each document or report incorporating it are unreliable. Further, the Krakauer statement should not be given weight in the Department's listing decision because to do so would reward what appears to be official misfeasance and over-zealous prosecution in the this matter. Because the record demonstrates that the Department relied upon the purported Krakauer statement to list the Sea Cliff Avenue Site as a Class 2 site, and because that alleged statement and all iterations of it are patently untrustworthy, Pall Corporation requests that the Department immediately rescind its decision to list the Sea Cliff Avenue Site.

(ii) The PSA Is Inadequate Grounds For the Department's Decision To List Pall Corporation.

The Department found two points in the PSA dispositive: eight VOCs including TCE and PCE were found in the soil at the Sea Cliff Avenue Site, and contamination in one groundwater sample taken from the Site was a magnitude higher than might be expected if the contamination was from a potential upgradient source. *See* Site Investigation Information (Conclusion) and IHWDS

[19] While it might be presumed that the Nassau County inspector's initial handwritten document is the version of Mr. Krakauer's purported statement most likely to be accurate because it was first in time, that presumption cannot be trusted in this instance. In addition to foundation and hearsay problems, the veracity of the original handwritten document is undermined by the fact that the same two inspectors who prepared it also prepared the Summary Survey one month later. As noted above, the Summary Survey's version of Mr. Krakauer's statement materially differs from the version of that statement in the handwritten document. Thus, the inspector's apparent predilection to improvise casts serious doubt on the veracity of any document they prepared concerning Mr. Krakauer, including the first handwritten document.

Report at 1 (Site Description). Neither of these findings is sound nor provide an adequate basis for listing the Sea Cliff Avenue Site in the Registry.

(1) The Conclusion that Pall Corporation Is A Major Source Based on Comparing Upgradient and Downgradient Groundwater Samples Is Fundamentally Flawed

NCDPW's conclusion that Pall Corporation is a "major source" of groundwater contamination is based entirely upon H2M data and the lone observation that TCE in one sample from Pall Corporation's property was higher than the TCE found in samples from Photocircuits property (upgradient property) taken several weeks earlier. *See* PSA at 111. This conclusion is overly simplistic, based on insufficient data and otherwise flawed because it fails to eliminate or at least consider other possible explanations for the phenomena observed. As such, NCDPW's conclusion is plainly erroneous and the Department's decision to rely upon it is arbitrary and capricious.[20]

(a) Data Gaps

As noted previously, NCDPW recognized in the PSA that the H2M data lacked fundamental information typically used to characterize the environmental quality of a site. *See* PSA at 51. What NCDPW did not acknowledge is that without this basic information, the conclusions in the PSA regarding Pall Corporation simply cannot be made with any degree of certainty. See Affidavit of

[20] Perhaps the most obvious problem with NCDPW's analysis stems from the fact that the samples from Pall Corporation were taken over two months after the samples taken at Photocircuits. *Compare* H2M Lab Results - Pall *with* Photocircuits Soil and Groundwater Laboratory Results. Comparing sample results from samples taken at different times is inappropriate because the system being evaluated is inherently fluid and dynamic.

Gordon R. Jamison at Paragraphs 3 and 4 (hereinafter "Jamison Aff." at _____.) (attached hereto as Exhibit Y-1).

To illustrate, NCDPW admits it did not have well construction data. PSA at 51. Well construction, however, can have a very pronounced impact on contaminant concentrations in samples taken from the well. *See* Joseph A. Devinny, Lorne G. Everrett, James C. S. Lu, Robert L. Stollar, *Subsurface Migration of Hazardous Wastes* at 89 (1990); Jamison Aff. at 4(b). Indeed, the precise effect observed by NCDPW could have been caused by, among other things, something as basic as the vertical location of the screens on the monitoring wells at issue. Contaminant concentrations in a sample from a well screened firmly in the subsurface plume will be substantially higher than concentrations in a sample taken from a well screened partially in the subsurface plume and partially in a portion of the aquifer unaffected by contamination. Dilution in this second sample will create the appearance of less contamination in the area of the second well when in fact that is not the case. *Id. See also* Suzanne Lesage and Richard Jackson, *Groundwater Contamination and Analysis at Hazardous Waste Sites* at 474 (1992) (explaining the effect on sample concentrations from well screen lengths or locations). Other well construction features that could influence the concentration of contaminants in samples taken from the wells include the location of the wells, the length of the screens, the length of the sandpacks, the location of the grout seals, the method of installing the grout seals and the type of grout seal used. Jamison Aff. at 4(b). Thus, without well construction data, it is impossible to determine whether the phenomena NCDPW observed (higher downgradient concentration and lower upgradient concentration) was real or induced by the construction or location of the wells.

Similarly, NCDPW concedes that the H2M data lacked information on sampling methods and sampling protocols. This basic information is absolutely necessary to have confidence in sampling results, particularly where the samples were taken from different wells on different occasions. "The methodology used in sampling procedure is critically important if the true chemical nature of the groundwater contamination at that site is to be determined." Fletcher G. Driscoll, *Groundwater and Wells,* 2d Ed. at 726 (1986). *See also* Jamison Aff. at 4(b) ("the methodology used for obtaining samples is critical to an accurate determination of groundwater contamination"). Sampling procedures are highly complex and reliable results will be obtained only where the procedures are "tailored to fit the chemical being monitored, the hydrogeologic situation and the design of the monitoring well." Fletcher 6. Driscoll, *Groundwater and Wells* at 728. Any one of numerous factors could have a material effect on sample results. Jamison Aff. at 4(b).

For example, some basic factors that could affect the chemical composition of a sample include the presence of stagnant water in the well, the transmissivity of the aquifer and the time required to remove enough water to obtain a reliable sample, well development, the type of equipment used and measures taken to decontaminate the equipment, the procedures used to preserve the samples and sampling procedures adopted to account for the hydraulic conductivity of the formation. Fletcher 6. Driscoll, *Groundwater and Wells* at 726-27. Basic information necessary to have confidence in results includes, among other things, whether stagnant water was purged from the wells prior to sampling and if so, how much was removed, how fast it was removed, what kind of equipment was used to remove it and whether standard parameters, such as pH, conductivity and temperature were measured and stabilized before purging was discontinued and

the sampling process begun. Jamison Aff. at 4(b). In addition, the reliability of results will depend on information showing the kind of equipment used to collect the samples, whether the equipment was decontaminated prior to use, what method was used to preserve and transport the samples from the site to the labs and whether proper chain of custody procedures were followed. *Id.*

Again, NCDPW admits that this information is missing from the record. There were no geologic logs, no water level data and no information on sampling methods or protocols. This missing information places the sample results in question and the proper response is to disregard them. *Id.*

(b) Analytical Gaps.

The conclusions in the PSA based on the comparative samples analysis also are unfounded because NCDPW failed to consider and eliminate alternative explanations. Most importantly, neither NCDPW nor the Department considered the special properties of the contaminants at issue. Both TCE and PCE are "dense non-aqueous phase liquids" (DNAPLs). *See* James F. Pankow and John A. Cherry, *Dense Chlorinated Solvents and Other DNAPLs in Groundwater*, Waterloo Press at 4 (1996) (hereinafter "*DNAPLs in Groundwater* at ___"). DNAPLs behave differently in the subsurface than other contaminants. *Id.* at 54. They have a high density and low absolute solubility and, if released in sufficient quantities, DNAPLs have the capacity to penetrate below the water table in free-phase form. *Id.* at 2, 15. *See also* ENSR Insight, *Dealing with DNAPL Contamination,* Vol. 2 at 5 (1992). Moreover, a release of sufficient quantity will continue to migrate downward through the aquifer leaving dissolved and residual DNAPL at all depths until accumulating at the bottom of the aquifer or in one or more perches or pools on top of low permeability subsurface

layers. *DNAPLs in Groundwater* at 15, 64-67. These subsurface pools are rarely discovered because "conventional site investigation techniques are not well-suited for their detection and because drilling and sampling the large number of boreholes necessary to encounter small to medium pools is usually not practical." *Id.* at 65. *See also* ENSR Insight, *Dealing with DNAPL Contamination,* Vol. 2 at 5 (DNAPLs are difficult to find because the pathways are variable).

Flowing groundwater will cause the DNAPL to dissolve. *Id.* at 66. The residual form will disappear much more rapidly than subsurface pools, however, and consequently the pools will provide a persistent source of downgradient contamination long after the residual and dissolved phase sources have begun to dissipate. *DNAPL in Groundwater* at 65-66. Contaminant plumes emanating from subsurface DNAPL pools will follow the groundwater flow with little or no transverse dispersion. *Id.* at 76. As such, the plume will assume a narrow, cigar-like shape and will maintain relatively high DNAPL concentrations in this narrow stream far from the source. *Id.* at 76. *See also* Joseph A. Devinny, Lorne G. Everett, James C. S. Lu, Robert Stellar *Subsurface Migration of Hazardous Waste* at 77-78 (1990).[21]

The top hydogeologic unit at the Sea Cliff Industrial Area is the upper glacial aquifer. 1990 Nassau County Report at 6. It consists of fine to coarse stratified sand and gravel and discontinuous beds or lenses of silt, clay and tills. *Id.* This uppermost unit lies above the Port Washington confining unit and contains the water table. *Id.* Persistent DNAPL sources below the water table

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[21] The high solubility of chlorinated solvents relative to maximum concentration limits (MCLs) and other groundwater standards makes it likely that contamination coming off a pool will be in excess of those standards. *DNAPL in Groundwater* at 11.

and away from the release point should be expected in this type of unit. *DNAPLs in Groundwater* at 64.[22]

There is no indication in the record that the unique characteristics of DNAPLs were considered by NCDPW or the Department in concluding that Pall Corporation was a "major source" of TCE contamination. Yet these characteristics could have a profound impact on the bases for that conclusion. Upgradient sources Photocircuits, Powers Chemco and Slater used extensive quantities of TCE. *See* Footnote 15, *supra.* Releases from these upgradient sources to the groundwater were confirmed as early as 1977 and thereafter. *See* Letter from L.Sama, Public Health Engineer, Bureau of Land Resources Management, NCDOH to Jere Austin, NY DEC (May 19, 1981). By 1992, the year H2M collected data, it was highly likely that residual TCE in the vadose and saturated zones underlying the release points would have dissipated substantially and groundwater samples taken in those areas likely would reflect this fact. In contrast, plumes emanating from subsurface pools that had accumulated around the release point could contain much higher concentrations of TCE. Thus, a downgradient area, *i.e.*, Pall Corporation, would show higher concentrations of TCE than the upgradient area even though the upgradient location was the site of the release.

The scenario described above is commonly associated with DNAPLs and results from its well-known characteristics: high densities, low absolute solubility, high relative solubility and low

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[22] The distribution of DNAPL below the water table is affected by the geologic layering present. *DNAPL in Groundwater* at 64. Where there is geologic heterogeneity, like in the Sea Cliff Industrial Area, the vertical movement of a release will be accompanied by deflection and unpredictable pathways. *Id.* Further, changes in permeability zones, *e.g.*, from coarse to fine or from gravel to clay, will cause shifts or offsets in movement. *Id.* at 55, 65.

degradabilities. Yet, there is no evidence in the record that NCDPW considered these factors when concluding that Pall Corporation was a "major source" based on sample comparisons. Indeed, the phenomena NCDPW observed (based on H2M data) is just as likely to have been caused by DNAPL pooling in an upgradient release point as by a downgradient release. Accordingly, NCDPW's analysis is incomplete and cannot be relied upon.

NCDPW also failed to consider the impact of industrial supply wells and dispersion wells on contaminant transport in the Sea Cliff Avenue Industrial Area. This omission is particularly curious since NCDPW previously reported that conclusions on contaminate transport in the area would not be credible without first ascertaining the impact and influence of the industrial supply and dispersion wells. *See, e.g.,* 1990 Nassau County Report at 39. *See also* Jamison Aff. at 4(c) (the construction and use of supply and diffusion wells is likely to have had a very significant impact on the transport of contaminants in the Sea Cliff Industrial Area). In fact, NCDPW recommended in 1990 that further "in-depth study [be undertaken] to more thoroughly establish the relationship between the aquifer, pumpage rates and contaminant transport." *Id.* at 30, 39. Despite the apparent recognition that supply wells and dispersion wells may affect the hydrology in the area and that further study was warranted, there is no indication in the record that NCDPW or anyone else ever performed any such study and nothing in the PSA that accounts for how the industrial supply and diffusion wells affected or influenced the contamination (if at all) found at the Sea Cliff Avenue Site. Without determining that impact of these wells, any conclusion about the source of contamination would have to be considered unreliable. Jamison Aff. at 4(c).

(2) The Conclusion that Soil Contamination at the Site is "Significant" and Demonstrates that Pall Corporation Was a Major Source is Ludicrous

The assertions in the PSA regarding soil contamination at the Sea Cliff Avenue Site are so far-fetched as to barely warrant serious discussion. According to NCDPW, there were "significant concentrations" of contaminants at the Site. PSA at 111. This hyperbole is echoed in subsequent documents reporting that PCE and TCE and "six other VOCs were found in the soil at Pall." *See* Site Investigation Information at Item 11. In point of fact, however, not one constituent identified in the soils at the Site exceeded New York State recommended clean-up objectives (with the exception of total xylenes). PSA at 74. All chlorinated substances identified in the soils at the Site were found at trace levels and substantially below cleanup objectives. PSA at 74. For example, TCE was found in two of 12 samples. *Id.* In one sample it was 60 times below the recommended clean-up objective and in the other it was almost 20 times below that objective. *Id.* Characterizing these levels as "significant" concentrations would seem to demand more.[23]

The record also shows that NCDPW did not take any soil samples and relied solely on H2M's soil analysis. NCDPW concedes, however, that it did not have information on sampling methods and protocols and did not know the rationale H2M used to select the location for eight of

[23] If Pall Corporation actually were a "major source" of TCE as NCDPW asserts in the PSA (pg. 111), and if it dumped or spilled TCE and waste solvents on the ground as asserted in the Site Investigation Information and IHWDS Report, the soil contamination at the Site would seemingly have been significantly higher than that actually found. As a corollary, the absence of any significant soil contamination at the Site strongly suggests that Pall Corporation did not do the things alleged.

the 12 soil samples taken at the Sea Cliff Avenue Site. PSA at 51, 73. Moreover, NCDPW admits that it does not know the meaning of the "numerical designation" carried by each of those eight samples. *Id.* This missing information clearly could have a bearing on the analysis and without it, the conclusions in the PSA regarding Pall Corporation are unfounded.

(3) Errors in the PSA Show a Lack of Precision that the State Should Not Tolerate

There also are numerous basic errors in the PSA. While alone each error might seem minor, in combination they demonstrate a lack of precision in the PSA's preparation. Certainly the State should demand precision before listing sites as Class 2 in the Registry, and Pall Corporation is entitled to such precision before its property is listed. For example, the dates for the sample events cited in the PSA are incorrect. The soil samples from the well borings (MW-2P through MW-5P) were taken in January 1992, and not in November 1991 as NCDPW indicates. *See* PSA at 74. *Compare* H2M Lab Results - Pall. Similarly, the groundwater samples from MW-1 through MW-5 were taken in February 1992 and not November 1991. *See* PSA at 77. *Compare* H2M Lab Results - Pall. Another example of imprecision exists on page 109 of the PSA, where NCDPW states that "benzene" was the one constituent found in the soil at the Sea Cliff Avenue Site that exceeded its cleanup objective. In fact, benzene was never found at the site. The one constituent in the soil exceeding its cleanup objective was "xylene." *See* PSA at 75. On page 75 NCDPW states that the amount of xylene (total) found in the soil at the Site was "**4.40** ppm in boring MW-5P," while later saying that "only xylene (total) exceeded its cleanup objective of **12** ppm." Other errors demonstrating a lack of precision exist and raise serious doubt about the PSA as a whole.

For reasons stated above, it is evident that the PSA is an inadequate basis for listing the Sea Cliff Avenue Site in the Registry. Accordingly, because the PSA was the "primary impetus" for listing the Site and because its flaws are numerous and fundamental, Pall Corporation requests that the Sea Cliff Avenue Site be deleted from the Registry immediately.

b. The Sea Cliff Avenue Site Does Not Present a Significant Threat to the Environment

(i) The Regulatory Definition of Significant Threat Is Inapplicable In This Instance and Is Otherwise Impermissibly Vague and Unenforceable

The regulations define a significant threat to the environment in Section 375-1.4. 6 NYCRR § 375-1.4. In relevant part, that Section allows the Commissioner to find a significant threat if, after reviewing the available evidence and considering the pertinent factors in Subsection 375-1.4(b), the Commissioner concludes that hazardous waste disposed at a site results in or is reasonably foreseeable to result in a significant adverse impact to any one of six identified environmental concerns. *Id.* at § 375-1.4(a)(1)(i)-(vi). None of those six identified impacts are implicated here. Indeed, the Department's significant threat determination in this case is based on Pall Corporation's alleged contamination of the Long Island sole source aquifer, and contribution to the Carney Street wellfield closing. Where water supplies are involved, a significant threat exists only if the New York State Department of Health or the Agency for Toxic Substances and Disease Registry determines that the situation poses a significantly increased risk to the public health. NYCRR § 375-1.4(a)(1)(vi). No such determination has been made here. *See* Letter from Robert Marino, Chief, Site Control Section, Bureau of Hazardous Site Control, Division of Environmental

Remediation, NY DEC, to Kurt J. Olson, Esq., Maupin Taylor Ellis & Adams, P.A. (August 5, 1996) at 1.

The regulations also define a "significant threat to the environment" as one that "results in, or is reasonably foreseeable to result in, significant environmental damage." 6 NYCRR § 375-1.4(a)(2). This "catch-all" provision also is inapplicable for several reasons. First, it is impermissibly vague. That is, although environmental damage is defined (6 NYCRR § 375-1.3(h)), "significant environmental damage" is not, either explicitly or by example. Thus, determining what is "significant" is left to the unguided interpretation of each staff person at the Department involved in making these determinations. Each staff person will apply his or her own set of criteria to determine whether a significant threat of significant environmental damage exists. The subjective criteria used by one staff person may or may not be the same criteria used by another. A staff person's subjective criteria will differ from a respondent's criteria, and may differ from the criteria envisioned by senior staff persons at the Department or by the Commissioner. Thus, the regulation defining significant threat is highly susceptible, and likely to lead to arbitrary and discriminatory enforcement.

To be sure, the regulations set forth a series of factors the Commissioner or his or her delegate "may" consider in making a "significant threat" determination. See 6 NYCRR § 375-1.4(b). These factors only add to the vagueness problem, however, because they do not explain how they are to be applied. The regulations do not indicate what weight is to be given to each factor, whether each applicable factor must be evaluated, whether the list of factors is inclusive or whether other factors may be considered. For example, one person applying these criteria may believe that

potential exposure to wildlife or aquatic life (Section 375-1.4(b)(11)) is the critical factor in finding a significant threat to the environment while another person might find the integrity of containment mechanisms (Section 375.1-4(b)(12)) to be the most critical consideration.

An enactment is void for vagueness where it lacks explicit standards for those who apply it. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-99, 33 L.Ed. 2d 222 (1972). A vague enactment exists if it delegates basic policy matters "for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.* at 108-09, 92 S.Ct. at 2299. The regulation at issue creates precisely this problem.

Each determination of a "significant" threat of "significant" environmental damage is a basic policy matter. Each determination will be made without objective standards, on a subjective, ad hoc basis. The possibility of arbitrary and discriminatory application is high, whether intentional or unintentional, due to differences in subjective criteria applied by individual staff persons. Accordingly, the regulation defining significant threat is void and cannot be applied against Pall Corporation in this instance.

Second, the catch-all provision is not applicable because the environmental values at issue are water supplies and the regulations specifically define the circumstances that must be present (but are not) to constitute a significant threat to water supplies. *See* 6 NYCRR § Section 375-1.4(a)(1)(vi). As a matter of construction, then, the catch-all provision in Section 375-1.4(a)(2) must contemplate other environmental concerns and factors. Accordingly, because the impact allegedly at issue here is the effect on the aquifer and the Carney Street wellfield, *i.e.*, water supplies, the Sea Cliff Avenue Site can be listed, if at all, pursuant to Section 375-1.4(a)(1)(vi) only, and not the

catch-all provision, Section 375-1.4(a)(2).

(ii) No Present Significant Threat Exists

Even if it is assumed that the Sea Cliff Avenue Site at one time presented a "significant threat" to the environment, that threat no longer exists. As such, the Site is not presently a significant threat and cannot be listed as a Class 2 site.

The regulations require the Department to list all sites where a "consequential" amount of hazardous waste "has been confirmed to have been disposed." 6 NYCRR § 375-1.8(a)(1). The regulations further provide that an "inconsequential amount of hazardous waste is an amount . . . disposed at a site that does not presently constitute a significant threat." *Id.* Thus, based on these regulations a site can be listed only where it presently is a significant threat.

This temporal component in the significant threat analysis has been repeatedly confirmed. For example, the Department has held that the significant threat standard in New York's Environmental Conservation Law is the virtual equivalent of the "imminent and substantial endangerment" standard in the federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992K. *See* In the Matter of an Alleged Significant Threat by Geo. A. Robinson & Co., Inc., Site No. 828065, File No. B8-0066-84-12, 1994 N.Y. Env. Lexis 6 (March 2, 1994) (Thomas C. Jorling, Commissioner). The U.S. Supreme Court recently ruled that the "imminent and substantial endangerment" standard is satisfied only where the endangerment is imminent and threatens to occur immediately. *Meghrig v. KFC Western, Inc.*, 116 S.Ct. 1251, 1255 (1996). The threat to the environment must be present "now." *Id.* at 1255.

New York's Court of Appeals also has found that the phrase "significant threat" has a temporal component. *New York State Superfund Coalition, Inc. v. New York State Dept. of Environmental Conservation,* 75 N.Y.2d 88, 550 N.E.2d 155 (1989). In *New York State Superfund Coalition,* the Court held that a significant threat must actually be causing environmental harm and not just a potential cause of such harm. *See id.* at 91, 550 N.E.2d at 156.

A temporal component is present in the very word "threat," which according to Webster means "something impending." Webster's Ninth New Collegiate Dictionary at 1228. This temporal aspect also is contained in the regulations defining "significant threat," which require the Commissioner to conclude that "waste disposed at the site or coming from the site results in or is reasonably foreseeable to result in significant environmental damage." 6 NYCRR § 375-1.4(a)(2). The use of the words "coming from," "results in" or "reasonably foreseeable to result in" all directly imply that a "significant threat" must exist in the present or the likely future. *Cf. Lashing Arcade Co. v. Jorling*, 221 A.D.2d 533, 634 N.Y.S.2d 138 (N.Y. App. Div. 1995) (past incident was not significant threat justifying Department's decision not to hold a hearing).

The Department listed the Sea Cliff Avenue Site based on data that was over four years old at the time of the Department's decision. *See* PSA at 74 and 77 and Site Investigation Information. No matter what that data showed about conditions at the Site four years earlier, that data cannot be the basis for finding a present significant threat now, especially given that more recent data demonstrates that no threat currently exists.

(1) 1995 Data.

Data from a sampling event conducted in October 1995 showed **no** contamination in the

samples taken from MW-3P and MW-4P, two downgradient wells at the Site.[24] *See* 1996 Fluor Daniel GTI Report, Table 4-1. The other downgradient well, MW-5P, showed 220 ppb of 1,2-DCE (total), but this constituent also was identified in an associated blank and therefore, its presence in the sample can not be presumed to accurately represent the quality of the groundwater in and around MW-5P. *Id.* *See also* IEA, "A Practical Guide to Environmental Laboratory Services," 1994 Edition at Table 14, Common Data Qualifiers, Qualifier B. Samples from upgradient well MW-2P showed 420 ppb of PCE.[25] *See* 1996 Fluor Daniel GTI Report, Table 4-1. Samples from upgradient well MW-6P showed 9.8 ppb of PCE, 18 ppb of TCE, 47 ppb of TCA and 8.9 ppb of 1,1-DCA. *Id.* Other contaminants, *i.e.*, 1,2-DCE (total) and 1,1-DCE, also were identified in the sample from MW-6P and were present in the associated blank as well. *Id.*

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[24] Pall Corporation's environmental consultant, Fluor Daniel GTI, collected two sets of depth to water measurements in connection with the October 1995 sampling event, one set in October 1995 and one set in December 1995. *See* 1996 Fluor Daniel GTI Report at 5. This data showed that groundwater flows from the southeast to the northwest across the Site but that near the north end of the Pall Building the groundwater took on a north-northeasterly flow component. *Id.* at 5. Fluor Daniel GTI confirmed this flow pattern in November 1996. *See* "Groundwater Sampling and Analysis Report, Pall Corporation 30 Sea Cliff Avenue Glen Cove, New York," Fluor Daniel GTI (January, 1997) (attached hereto as Exhibit Z) (hereinafter "1997 GTI Report"). As a result, it is now apparent that MW-1P, MW-2P, MW-6P and MW-7P measure groundwater that is upgradient of Pall Corporation. Further, MW-4P and MW-5P, although downgradient, are susceptible to influences from upgradient sources. *See id.* at 6, 9.

[25] Fluor Daniel GTI characterizes MW-2P as a downgradient well in the 1996 Report. *See* 1996 Fluor Daniel GTI Report at 8. It also states in that report, however, that water depth measurements for wells MW-2P, MW-3P, MW-4P and MW-5P indicate a north-northeasterly flow at the Site. *Id.* at 5. As noted previously, this north-northeasterly flow component was confirmed by measurements taken in November 1996 and it is now apparent that MW-2P is upgradient of Pall Corporation's facility. *See* 1997 GTI Report at 5, 9.

(2) 1996 Data.

In late November 1996, Fluor Daniel GTI installed a new shallow monitoring well at the Sea Cliff Avenue Site (MW-7P), collected depth to water measurements and took samples from all of the monitoring wells on the Site. *See* Olson Aff. at 7. The results of this work are documented in a report entitled "Groundwater Sampling and Analysis Report, Pall Corporation, 30 Sea Cliff Avenue, Glen Cove, New York," Fluor Daniel GTI (January 1997) (attached hereto as Exhibit Z) (hereinafter "1997 GTI Report").

The water level measurements taken by Fluor Daniel GTI are consistent with previous measurements and corroborate prior indications that groundwater flows onto the Sea Cliff Avenue Site from the southeast to the northwest on the southern portion of the Site, and from west/southwest to the east/northeast and on the portion of the Site north of the Pall Building. *Id.* at 5, 9. Consequently, with this substantiation of prior measurements (*see* Footnote 24, *supra*), Fluor Daniel GTI concluded that MW-1P, MW-2P, MW-6P and MW-7P are upgradient of the Pall Building, while MW-4P and MW-5P appear to be susceptible to upgradient influences. *Id.* 6, 9. This is a significant conclusion because MW-2P, which prior to this finding was viewed as a downgradient well, is the closest to Glen Cove Creek and historically the well showing the highest levels of PCE contamination. *Id.*

The groundwater samples collected by Fluor Daniel GTI were submitted to a New York State Department of Health certified analytical laboratory. *Id.* at 7. The results show no contaminants in the samples from MW-1P and MW-7P above NYSDEC Class GA Standards. *Id.* at Table 4-1. The sample from MW-2P contained 39 ppb of 1,2-DCE (total), 62 ppb of TCE and 280 ppb of PCE.

Id. The sample from MW-3P contained some estimated concentrations of several constituents and the sample from MW-4P showed 94 ppb of vinyl chloride and 230 ppb of 1,2-DCE (total). *Id.* Vinyl chloride (73 ppb), TCE (11 ppb) and 1,2-DCE (total) (510 ppb) were identified in MW-5P while 30 ppb of 1,2-DCE, 23 ppb of TCA and 12 TCE were present in the sample from MW-6P. *Id.*

(3) The Data Justify Reconsideration of the Department's Decision to List the Sea Cliff Avenue Site on the Registry

The data collected in 1995 and 1996 show that the concentrations of chlorinated solvents in the groundwater underlying the Sea Cliff Avenue Site are markedly below the concentrations upon which the Department relied on to list the Site. Nothing found at the Site in 1995 or 1996 approaches the 1600 ppb of TCE, 800 ppb of PCE, 3500 1,2-DCE and 840 ppb of vinyl chloride H2M reports having found and upon which the Department relied when it made its listing decision. *See* Site Investigation Information, Item 10, Analytical Data Available. Thus, because the data used to list the Sea Cliff Avenue Site is not representative of the Site presently, if it ever was, the Department must revisit its listing decision.

Moreover, it is now abundantly clear that one or more off-site sources are impacting the groundwater underlying the Sea Cliff Avenue Site. Upgradient wells, MW-2P and MW-6P, have consistently shown significant contamination moving onto the Site from off-site sources. Further, the level of contamination identified on the Site in 1995 and 1996 suggest strongly that the source of contamination is off site.

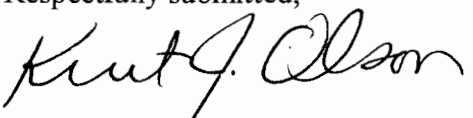
The Department may list a site on the Registry only upon finding that "a consequential amount of hazardous waste has been confirmed to have been disposed" on that site. 6 NYCRR § 375-1.8(a)(1). *See also* 6 NYCRR § 375-1.4 (providing that the Commissioner may find hazardous waste disposed at a site to be a significant threat if certain conditions are satisfied) (emphasis added). "Disposal" means the "abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any substance so that such substance . . . may enter the environment." 6 NYCRR 375-1.3(e). In the context of this definition, each one of these words denotes some active human conduct. *Accord United States v. CDMG Realty Co., et al.*, 96 F.3d 706 (3d Cir. 1996) (interpreting "disposal" under CERCLA, the definition of which is nearly identical to the definition at 6 NYCRR § 375-1.3(e)). Put another way, the passive migration of hazardous substances onto the Sea Cliff Avenue Site does not constitute a disposal. *Id.* (Passive migration of hazardous waste is not a disposal) Because there has been no "disposal" of a consequential amount of hazardous wastes at the Sea Cliff Avenue Site, that Site cannot properly be listed as a Class 2 Site on the Registry.

IV. Conclusion

For the reasons set forth above, Pall Corporation respectfully requests that the Sea Cliff Avenue Site be removed from New York's Registry of Inactive Hazardous Waste Disposal Sites or in the alternative, be re-classified as a Class 3 site with all remedial activity deferred indefinitely.

Pall Corporation appreciates the opportunity to submit this petition and looks forward to working with you and the Department in the future.

Respectfully submitted,



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