

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel
625 Broadway, 14th Floor, Albany, New York 12233-1500
P: (518) 402-9185 | F: (518) 402-9018
www.dec.ny.gov

May 4, 2018

**SENT VIA FIRST CLASS MAIL AND BY
ELECTRONIC MAIL**
mvillani@swc-law.com

Ms. Miriam E. Villani, Esq.
Sahn Ward Coschignano, PLLC
The Omni
333 Earle Ovington Blvd., Ste. 601
Uniondale, NY 11553

RE: Order on Consent and Administrative Settlement
Index No.: CO 3-20170612-108
Site Name: Former Thypin Steel Plant
Site No.: 130119 OU1 and OU 2

Dear Ms. Villani:

Enclosed to complete your files is a fully executed Order on Consent and Administrative Settlement referencing the site located at 5 Sagamore Hill Drive, Manorhaven, Nassau County and MBA – Manorhaven, LLC.

If you have any further questions or concerns relating to this matter, please contact Rosalie Rusinko at 914-428-2505 x 315.

Sincerely,



Maria Mastroianni
Remediation Bureau
Office of General Counsel

Enclosure

ec: R. Rusinko, Esq., NYSDEC



Department of
Environmental
Conservation

cc: Mr. Richard Thypin
T.Co Metals, LLC
215 Nassau Street
Princeton, NJ 08542-4601
Richard.thypin@tcometals.com

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program under the Inactive
Hazardous Waste Disposal Site Remedial Program,
pursuant to Article 27, Title 13, and, Article 71 of the
Environmental Conservation Law
for the Former Thylin Steel Plant Site,
by

MBA – Manorhaven, LLC,
Respondent.

**ORDER
ON
CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # CO 3-20170612-108

Site # 130119

Operable Unit 1 and
Operable Unit 2

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71-2727 and ECL 3-0301.

2. The Site is not listed the *Registry of Inactive Hazardous Waste Disposal Sites in New York State*, but will be tracked as a site undergoing an active remedial program, a Class "A". Because of technical considerations, the Department divided the Site into Operable Unit 1 ("OU1") for on-Site soil, soil vapor and groundwater, and Operable Unit 2 ("OU2") for off-Site soil, soil vapor, groundwater and intertidal sediments off-Site. A map depicting the general location of the Site is attached hereto as Exhibit "A."

3. MBA – Manor Haven, LLC (“Respondent”) is a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York, with offices at 215 Nassau Street, Princeton, New Jersey 08542.

4. Under the Department’s Voluntary Cleanup Program (“VCP”), Respondent entered into a Voluntary Cleanup Agreement (“VCA”), effective date January 2, 2001, for the investigation and remediation of the Site which required the Volunteer to address on-Site and off-Site contamination.

5. The Department issued a Decision Document (“DD”) for the Site on September 1, 2015 which referenced the Site as VCP number V00366. The Operable Units 01 and 02 are the subject of the DD. The DD is attached hereto as Exhibit “C.”

6. The VCP is an administrative program developed in 1994 to promote the cleanup and redevelopment of contaminated sites. The VCP was superseded by the Brownfield Cleanup Program (“BCP”) in 2003, after which new applications to the VCP were not accepted. The VCP is terminating on March 31, 2018 and the VCA for any project not completed by that date will be terminated. Volunteers who cannot complete their projects by that date may apply to the BCP or enter into an Order on Consent under Article 27, Title 13 of the ECL.

7. Respondent acknowledges that its project under the VCA will not be completed by June 29, 2018 as a result of a local moratorium on development. Respondent, therefore, has elected to enter into this Order.

8. Respondent granted an Environmental Easement (“EE”) to The People of the State of New York acting through their Commissioner of the Department of Environmental Conservation, which EE is recorded with the Office of the Nassau County Clerk as Document Number 2016-00004825.

9. Respondent submitted a draft Site Management Plan (“SMP”) for the Department’s review and approval.

10. Respondent expects that it will sell the Site to a Purchaser/Developer who will redevelop the property in accordance with the EE and SMP. The Purchaser/Developer may request to be added as an additional respondent to this Order. Once added as a Respondent, the Purchaser/Developer shall have the same obligations as Respondent under the terms of this Order, and the term “Respondent” throughout this Order then shall apply also to the Purchaser/Developer.

11. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release or disposal of hazardous waste, hazardous substances or petroleum at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste, hazardous substances or

petroleum at or from the Site constitutes a significant threat to the public health or environment.

12. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order in accordance with its terms, and agrees not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Real Property

The Site subject to this Order has been assigned number 130119 and is approximately 11 acres in size.

Subject Property Description
(Exhibit "A" is a location map of the Site)

Tax Map/Parcel No.: Section 4, Block L, Lot 153
5 Sagamore Hill Drive
Village of Manorhaven
Town of North Hempstead
Nassau County

II. Submittals

A. This Order, inter alia, covers the implementation of the remaining elements of the Remedial Program set forth in the Site's DD. Respondent must notify the Department 60 days in advance of the start of construction on the Site.

B. Respondent shall, within 90 days of the conclusion of the redevelopment build-out, submit for the Department's review and approval a Final Engineering Report for the Site.

C. Respondent shall, within the same time period stated in Subparagraph II.B above, submit for the Department's review and approval an updated SMP, including a revised Site survey.

III. Communications

A. All written communications required by this Order shall be transmitted by

United States Postal Service, by electronic transmission including email or facsimile, by private courier service, or hand delivery as follows:

1. Communication from Respondent shall be sent to:

John Sheehan
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Circle Road, SUNY@ Stony Brook
Stony Brook, New York 11790
john.sheehan@dec.ny.gov

Note: one hard copy (unbound) of work plans is required, as well as one electronic copy.

with copies to:

Rosalie K. Rusinko, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603-2860
rosalie.rusinko@dec.ny.gov

Note: work plans in electronic copy only

Melissa Doroski
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
melissa.doroski@health.ny.gov

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

2. Communication to be made from the Department to Respondent shall be sent to:

Richard Thypin
T.Co Metals LLC
215 Nassau Street
Princeton, NJ 08542-4601
richard.thypin@tcometals.com

with copy to:

Miriam E. Villani, Esq.
Sahn Ward Coschignano, PLLC
The Omni
333 Earle Ovington Boulevard, Suite 601
Uniondale, NY 11553
mvillani@swc-law.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication upon written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the addresses in this Paragraph III.

IV. Environmental Easement

Respondent shall, submit a corrected/amended Environmental Easement which reflects the new Site number and this Order on Consent to the Department and shall record same with the Office of the Nassau County Clerk after execution by the Department.

V. Financial Assurance

A. In the event that the real property which comprises the Site is under contract to be sold or is to be converted to condominium ownership, Respondent shall provide financial assurance under 6 NYCRR 375-1.11(c) "to ensure the long term implementation, maintenance, monitoring, and enforcement" of the on-Site engineering controls and the groundwater monitoring program.

B. 1. Respondent shall deliver to the Department no later than 10 days after entering into a contract for the sale of the Site or filing of a condominium offering plan with the Office of the New York State Attorney General, an irrevocable, unconditional evergreen letter of credit¹ in favor of the Department in the total amount of \$1,509,620.00 (the "Installation Letter of Credit"). The total amount of the Installation Letter of Credit is estimated to be sufficient to cover the following costs:

(i) installation of the cover system (in areas not covered by building foundations or roads), currently estimated to be a one-time cost of \$795,000.00,

¹ The letter of credit must be issued by a New York State branch of an institution which has the authority to issue letters of credit, whose letter of credit operations are regulated and examined by the Federal Reserve System, and whose total assets are not less than \$1 billion.

(ii) the installation and startup of the sub slab depressurization systems under all buildings constructed on the Site, currently estimated to be a one-time cost of \$625,620.00,

(iii) decommissioning of existing monitoring² wells and air sparge wells to accommodate Site redevelopment, currently estimated to be \$40,000.00, and

(iv) installation of OU2 groundwater monitoring wells, currently estimated to be \$49,000.00").

The Installation Letter of Credit shall be substantially in the form of Exhibit "D" attached hereto.

2. Respondent shall deliver to the Department no later than 10 days after the completion of the installation of the sub slab depressurization systems and prior to the occupancy of any on-Site building, an irrevocable, unconditional evergreen letter of credit, as described in Subparagraph V.B.1 above, in favor of the Department in the total amount of \$ 595,659.00 (the "Operation, Maintenance & Monitoring ("OM&M") Letter of Credit"). The total amount of the OM&M Letter of Credit is estimated to be sufficient to cover the following costs:

(i) the operation and maintenance of the sub slab depressurization systems ("SSDSs") under all buildings constructed on the Site, currently estimated to be \$314,659.00 for a 10-year period,

(ii) OU1 and OU2 groundwater monitoring, currently estimated to be \$271,000.00 for a 10-year period, and

(iii) on-going post-installation maintenance necessary to ensure the success of the revegetation of the cover, currently estimate to be \$10,000.00 for a 10-year period.

The OM&M Letter of Credit shall be substantially in the form of Exhibit "D" attached hereto.

3. The currently estimated amounts contained in Subparagraphs V.B.1 and V.B.2 are based on the *Proposed Master Plan* dated February 17, 2017 by **spectorgroup**. Once a final redevelopment plan is approved by the Village of Manorhaven, the estimates of the installation costs and the OM&M costs shall be recalculated based upon the approved plan and submitted to the Department. Additionally, should any of the retained monitoring wells require relocation or replacement, the installation costs shall be recalculated to include these costs. Such recalculated estimate shall include an itemized listing of each cost and how the cost was calculated, including the cost of contracting with a third party. The Department will review the recalculated estimate and accept, modify or reject it. If the Department accepts or modifies the recalculated estimate, the dollar amount of the letter(s) of credit shall be adjusted to the new amount.

² The current estimate is based on retaining MW-2, MW-21, MW-26S, MW-26I, MW-30S, and MW- 30I and preserving these monitoring wells during Site development.

C. Respondent shall also establish a standby trust agreement substantially in the form of Exhibit "E" attached hereto (the "Trust Agreement") pursuant to which the Trustee under the Trust Agreement shall open a bank account into which the Commissioner shall direct that all draws under the Installation Letter of Credit or the OM&M Letter of Credit be deposited.

D. At such time as the Purchaser/Developer is added as a Respondent to this Order, the Purchaser/Developer shall be permitted to provide a substitute letter(s) of credit in compliance with Subparagraphs V. B.1 and V.B.2 above, and to establish a substitute standby trust agreement in compliance with Subparagraph V. C above.

E. The Department shall review the dollar amount of the Installation Letter of Credit at the completion of each of (i) installation of the cover system, (ii) installation and system startup of the sub slab depressurization systems, (iii) installation of OU2 monitoring wells, and (iv) completion of the build out of the redevelopment plan. Upon each such review, the Department may release all of the required dollar amount or a portion of the required dollar amount of the Installation Letter of Credit.

F. The Department shall review the dollar amount of the OM&M Letter of Credit at the annual anniversary of each of (i) the startup of the last of the sub slab depressurization system, (ii) the establishment of a stable vegetated cover system, and (iii) post-construction groundwater monitoring. Upon each such review, the Department may release all of the required dollar amount or a portion of the required dollar amount of the OM&M Letter of Credit.

G. Once there is a Department-approved SMP, a recorded corrected/amended EE, a fully-funded condominium association, and the condominium board agrees in writing to assume the responsibility to maintain the vegetative cover system and to maintain and operate the SSDSs, the Department will release the portion of the required dollar amount of the OM&M Letter of Credit pertaining to the vegetative cover system and the SSDSs.

VI. Miscellaneous

A. Appendix A – "Standard Clauses for All New York State State-Superfund Orders" is attached to and hereby made part of this Order as if set forth fully herein.

B. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this Order shall control.

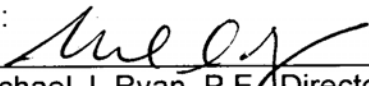
C. Exhibit "B" is not applicable to this Order.

D. The effective date of this Order is the 10th Day after the date the Commissioner or the Commissioner's designee signs this Order.

DATED: Albany, New York
MAY 03, 2018

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



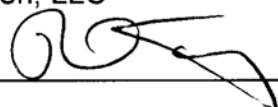
Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waive their right to a hearing herein, and agree to be bound by the terms, conditions and provisions contained in this Order.

MBA – Manor Haven, LLC

By: (Signature):



Print Name: Richard Thypin

Title: Manager

Date: April 3, 2018

State of New Jersey)

) s.s.:

County of Middlesex)

On this 3rd day of April, 2018, before me, the undersigned, personally appeared Richard Thypin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

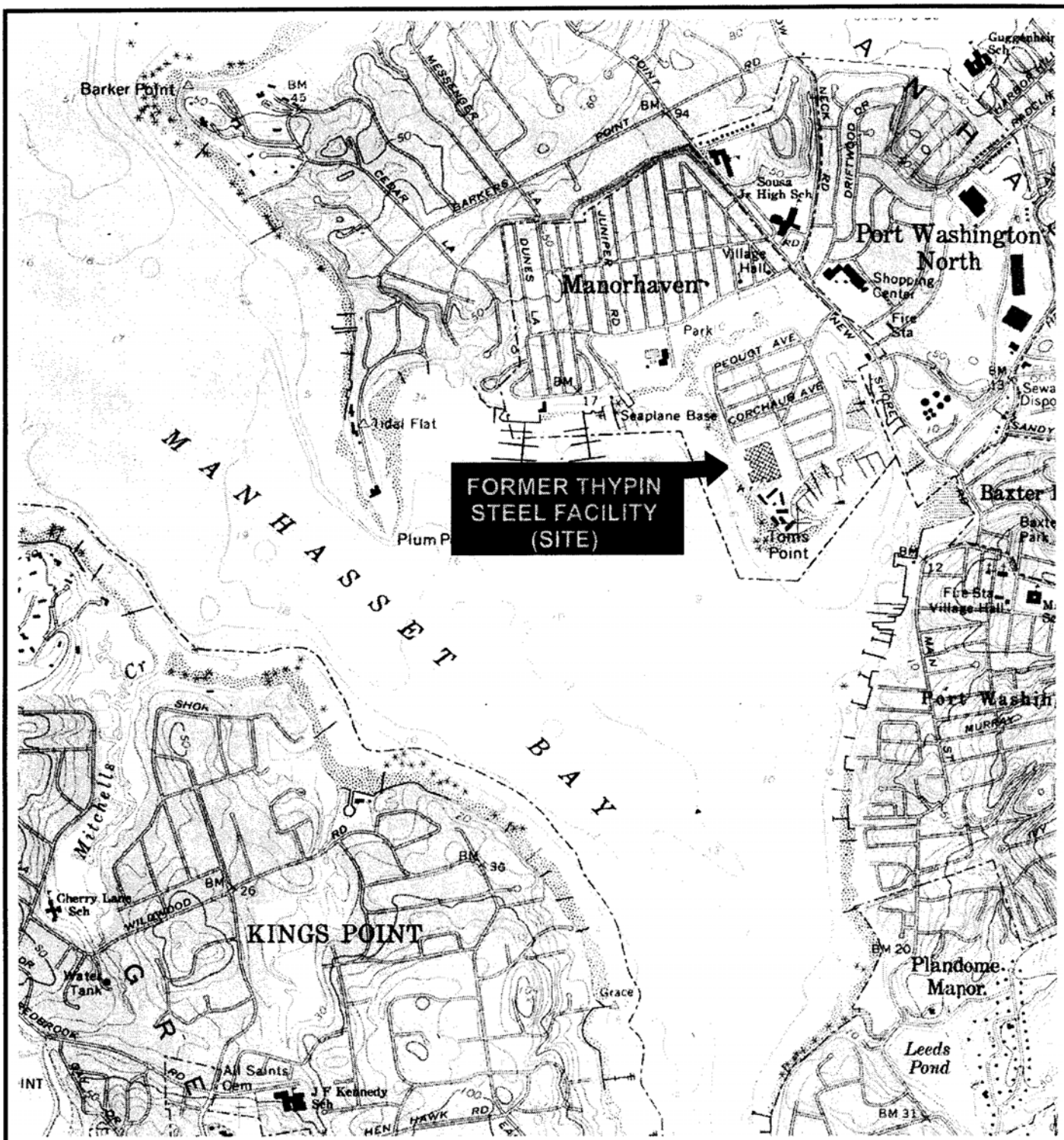
Christine H. Appel

Notary Public

CHRISTINE APPEL
NOTARY PUBLIC OF NEW JERSEY
I.D. # 50023893
My Commission Expires 9/23/2020

EXHIBIT "A"

SITE LOCATION MAP



QUADRANGLE LOCATION



SOURCE:
USGS; 1979. Hicksville, New York
7.5 Minute Topographic Quadrangle

0 2000'

Title:

SITE LOCATION MAP

FORMER THYPIN STEEL FACILITY
MANORHAVEN, NEW YORK

Prepared for:

MBA-MANORHAVEN, LLC
PRINCETON, NEW JERSEY

ROUX
ROUX ASSOCIATES, INC.
Environmental Consulting
& Management

Compiled by: J.W.	Date: 17AUG11
Prepared by: C.P.	Scale: 1:25000
Project Mgr.: C.P.	Office: NY
File No.: MBA0129404.CDR	Project No.: 77101Y

FIGURE

1

EXHIBIT "B"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.

2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.

3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:

- (i) a history and description of the Site, including the nature of operations;
- (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
- (iii) a description of current Site security (i.e. fencing, posting, etc.); and
- (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "C"

DECISION DOCUMENT

DECISION DOCUMENT

Former Thypin Steel Plant
Voluntary Cleanup Program
Manorhaven, Nassau County
Site No. V00336
September 2015



Prepared by
Division of Environmental Remediation
New York State Department of Environmental Conservation

DECLARATION STATEMENT - DECISION DOCUMENT

Former Thypin Steel Plant
Voluntary Cleanup Program
Manorhaven, Nassau County
Site No. V00336
September 2015

Statement of Purpose and Basis

This document presents the remedy for the Former Thypin Steel Plant site, a voluntary cleanup site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and applicable guidance.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the Former Thypin Steel Plant site and the public's input to the proposed remedy presented by the Department.

Description of Selected Remedy

For OU: 01 & OU: 02

The elements of the remedy are as follows:

Based upon the results of the investigations at the site, the IRMs that have been performed, and the evaluation presented here, the Department has selected the following remedy for the site. This remedy includes continued operation of the implementation of ICs/ECs which include: green remediation principles and techniques, establishing and maintaining a site cover system, restriction of groundwater use, restricting the use of the property to restricted residential, commercial or industrial use property, and a site management plan for monitoring and future development. The Department believes that this remedy is protective of human health and the environment and satisfies the remediation objectives described in Section 6.5.

The elements of the selected remedy are as follows:

1. Engineering Control. A site cover will be required to allow for restricted residential, commercial or industrial use of the site. The cover will consist of either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of two feet of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for restricted residential use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified use as set forth in 6 NYCRR Part 375-6.7(d).

2. Institutional Control. Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8(h)(3);
- allows the use and development of the controlled property for restricted residential, commercial or industrial use as defined by Part 375-1.8(g), although the land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH; and
- requires compliance with the NYSDEC approved Site Management Plan.

3. A Site Management Plan for OU-1 and OU-2. A Site Management Plan is required which includes the following:

a) an Institutional Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and engineering controls remain in place and effective:

- Institutional Controls: An Environmental Easement will be imposed which will address the requirements and restrictions outlined in Paragraph 1 above.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any groundwater use restrictions;
- a provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site including provision for implementing actions recommended to address exposures related to soil vapor intrusion in any on-site or off-site buildings;
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certifications of the institutional and engineering controls;

b) a Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- monitoring of soil gas, indoor air and on-site and off-site groundwater to assess performance and effectiveness of the remedy;
- monitoring for vapor intrusion for any building occupied or developed on the site;
- If shallow groundwater off-site were ever found to be contaminated with VOCs, the Department would evaluate the need for additional soil vapor intrusion sampling in any off-site structures located within the proximity of a shallow groundwater plume;
- a provision for implementing actions recommended to address exposures related to soil vapor intrusion in any off-site buildings; and
- a schedule of monitoring and frequency of submittals to the Department.

Green Remediation

Green Remediation principals and techniques will be implemented to the extent feasible in the site management of the remedy as per DER-31. The major green remediation components are as follows:

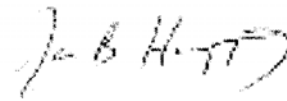
- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gas and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of material which would otherwise be considered a waste.

Declaration

The remedy conforms with promulgated standards and criteria that are directly applicable, or that are relevant and appropriate and takes into consideration Department guidance, as appropriate. The remedy is protective of public health and the environment.

September 1, 2015

Date



James B. Harrington, P.E., Director
Remedial Bureau A

DECISION DOCUMENT

Former Thypin Steel Plant
Manorhaven, Nassau County
Site No. V00336
July 2015

SECTION 1: SUMMARY AND PURPOSE

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of contaminants at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of contaminants at this site, as more fully described in this document, has contaminated various environmental media. Contaminants include hazardous waste and/or petroleum.

The Voluntary Cleanup Program (VCP) is a voluntary program. The goal of the VCP is to enhance private sector cleanup of brownfields by enabling parties to remediate sites using private rather than public funds and to reduce the development pressures on "greenfields." This document is a summary of the information that can be found in the site-related reports and documents.

SECTION 2: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held on the Operable Unit-1 Remedial Action Work Plan (RAWP) in March 2006 and a public comment period was held on the Operable Unit-2 RAWP in August 2014, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made available for review by the public at the following document repositories:

Port Washington Public Library
1 Library Drive
Port Washington, NY 11050
Phone: 516-883-4400

NYSDEC
Attn: Division of Environmental Remediation
50 Circle Road
SUNY @ Stony Brook, NY 11790
Phone: 631-444-0240

Receive Site Citizen Participation Information By Email

Please note that the Department's Division of Environmental Remediation (DER) is "going paperless" relative to citizen participation information. The ultimate goal is to distribute citizen participation information about contaminated sites electronically by way of county email listservs. Information will be distributed for all sites that are being investigated and cleaned up in a particular county under the State Superfund Program, Environmental Restoration Program, Brownfield Cleanup Program, Voluntary Cleanup Program, and Resource Conservation and Recovery Act Program. We encourage the public to sign up for one or more county listservs at <http://www.dec.ny.gov/chemical/61092.html>

SECTION 3: SITE DESCRIPTION AND HISTORY

Location: The site is located at 5 Sagamore Hill Drive in the Village of Manorhaven, Town of North Hempstead, Nassau County and is approximately 11 acres in size.

Site Features: Since vacated by the Thylin Steel Company in 1988, there have been no occupants of the site. The existing buildings were demolished in 1990 and the site is currently overgrown with trees and brush.

Current Zoning/Use: The site is zoned for residential use, although it is currently vacant. There is a condominium complex and boat marina to the south, Manhasset Bay to the west, residential homes to the north and commercial/industrial facilities to the east of the site.

Past Uses of the Site: Historic use of the site dates back to 1916 when the site was occupied by the First Yale Naval Aviation Unit for flight training of U.S. Navy personnel during World War I. Since that time, the site has been occupied by various entities associated with either flight training or the manufacturing of airplanes or airplane parts. The Thylin Steel Company occupied the site from 1958 until 1988. The company occupied the existing buildings for the storage and cutting of steel products. Historic manufacturing activities are viewed as the source of the metal plating waste discovered in on-site soil and volatile organic compounds in groundwater.

Site Geology/Hydrogeology: Groundwater occurs approximately eight to ten feet below land surface (bls) depending on seasonal fluctuation. Subsurface soil is composed of fill material and sand to a depth of approximately 20 feet bls. Below that exists the Upper Glacial aquifer which extends to approximately 75 feet bls and is composed of sand, silt and clay with a higher proportion of silt and clay with increasing depth. The groundwater flow direction is to the south/southwest.

Operable Units:

Operable Unit (OU) Numbers 01 and 02 are the subject of this document.

OU-1 consists of the on-site soil, soil vapor and groundwater.

OU-2 consists of the soil, soil vapor, groundwater and intertidal sediments off-site.

A site location map is attached as Figure 1.

Operable Unit (OU) Numbers 01 and 02 are the subject of this document.

A site location map is attached as Figure 1.

SECTION 4: LAND USE AND PHYSICAL SETTING

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, at a minimum, alternatives that restrict the use of the site to restricted-residential use (which allows for commercial use and industrial use) as described in DER-10, Technical Guidance for Site Investigation and Remediation were evaluated.

A comparison of the results of the Remedial Investigation (RI) to the appropriate standards, criteria and guidance values (SCGs) for the identified land use and the unrestricted use SCGs for the site contaminants is available in the RI Report.

SECTION 5: ENFORCEMENT STATUS

The voluntary cleanup agreement is with the responsible party and was executed by the Department on January 2, 2001. The agreement requires the party to address on-site and off-site contamination. Accordingly, no enforcement actions are necessary.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A remedial investigation (RI) serves as the mechanism for collecting data to:

- characterize site conditions;
- determine the nature of the contamination; and
- assess risk to human health and the environment.

The RI is intended to identify the nature (or type) of contamination which may be present at a site and the extent of that contamination in the environment on the site, or leaving the site. The RI reports on data gathered to determine if the soil, groundwater, soil vapor, indoor air, surface water or sediments may have been contaminated. Monitoring wells are installed to assess groundwater and soil borings or test pits are installed to sample soil and/or wastes identified. If other natural resources are present, such as surface water bodies or wetlands, the water and sediment may be sampled as well. Based on the presence of contaminants in soil and groundwater, soil vapor will also be sampled for the presence of contamination. Data collected in the RI influence the development of remedial alternatives. The RI report is available for review in the site document repository and the results are summarized in section 6.3.

The analytical data collected on this site includes data for:

- air
- groundwater
- soil
- sediment
- soil vapor
- indoor air
- sub-slab vapor

6.1.1: Standards, Criteria, and Guidance (SCGs)

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media-specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. For a full listing of all SCGs see: <http://www.dec.ny.gov/regulations/61794.html>

6.1.2: RI Results

The data have identified contaminants of concern. A "contaminant of concern" is a contaminant that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized below. Additionally, the RI Report contains a full discussion of the data. The contaminants of concern identified at this site are:

For OU: 01

1,1,1-TCA	nickel
tetrachloroethene (PCE)	benzo(a)anthracene
trichloroethene (TCE)	dibenz[a,h]anthracene
zinc	indeno(1,2,3-CD)pyrene
arsenic	chrysene
cadmium	benzo(a)pyrene
chromium	benzo(b)fluoranthene
copper	benzo[k]fluoranthene

For OU: 02

1,1,1-TCA	trichloroethene (TCE)
tetrachloroethene (PCE)	

The contaminants of concern exceed the applicable SCGs for:

- groundwater
- soil

6.2: Interim Remedial Measures

An interim remedial measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before issuance of the Decision Document.

The following IRMs have been completed at this site based on conditions observed during the RI.

IRM

In June 2001, under the Voluntary Cleanup Program, eleven 20 yard roll-off containers were filled with black stained wood debris. The contaminated wood was removed from an area which was subjected to test pitting in an area which was the location of a former metal plating shop. The roll-offs were transported to a permitted disposal facility. A total of 118 tons of wood debris was disposed of as non-hazardous waste.

Soil samples results collected in 2000 and 2001 were compared to Technical and Administrative Guidance Memorandum (TAGM) #4046 Recommended Soil Cleanup Objectives. An additional 52.5 tons of contaminated soil containing chromium and other metals as well as semi-volatile organic compounds was excavated and disposed of off-site as hazardous waste at a permitted disposal facility.

In July 2003, under an approved Interim Remedial Measures work plan, an air sparge/soil vapor extraction system was constructed to remediate volatile organic compounds (VOCs) in on-site groundwater. The system became operational in August 2003 and operated until August 2004 at which time it was shutdown for the purposes of sampling and assessing groundwater quality in the shallow aquifer.

While groundwater quality had improved in the area where the system was operating, elevated levels of VOCs were detected in groundwater outside the influence of the system. As a result, the system was expanded to the affected area and operated from December 2005 until October 2008 after which time, monitoring of shallow groundwater revealed total VOC concentrations had diminished from approximately 2,000 parts per billion (ppb) to less than 50 ppb. The IRM activities are memorialized in a Remedial Action Completion Report dated November 2009.

6.3: Summary of Environmental Assessment

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water.

The RI report presents a detailed discussion of any existing and potential impacts from the site to fish and wildlife receptors.

Nature and Extent of Contamination: A Remedial Investigation was conducted to delineate the nature and extent of soil, soil gas and groundwater contamination on-site and off-site. The primary contaminants of concern in soil are metals (arsenic, cadmium, chromium, copper, nickel and zinc) and semi-volatile organic compounds (SVOCs) and the primary contaminants of concern in soil gas and groundwater are volatile organic compounds (VOCs) (1,1,1-trichloroethane, tetrachloroethylene and trichloroethene).

Prior to Remediation:

Soil: Based on soil samples collected from soil borings and test pits in 2000 and 2001, soil cleanup objectives were exceeded for the metals identified in Section 6.1.2, in on-site soil. Arsenic was detected in the range of 1.9 parts per million (ppm) to 36.4 ppm. Cadmium was detected in the range of 0.06 ppm to 192 ppm. Chromium was detected in the range of 0.5 ppm to 33,900 ppm. Copper was detected in the range of 1.0 ppm to 1,620 ppm. Nickel was detected in the range of 1.0 ppm to 223 ppm, and zinc was detected in the range of 2.0 to 81,300 ppm. There were no elevated levels of site related metals, VOCs or SVOCs in off-site soils.

Groundwater: The groundwater monitoring well network revealed the presence of volatile organic compounds, identified in Section 6.1.2, in on-site groundwater which exceeded the NYS Groundwater Standards for Class GA Groundwaters. VOC concentrations in on-site groundwater were as high as 8,900 ppb. Temporary groundwater monitoring wells constructed off-site downgradient revealed sporadic levels exceeding the groundwater standards in deeper groundwater, however, VOC concentrations in shallow groundwater (10 feet to 20 feet bls) were below standards

Soil Gas: TCE was detected in on-site soil gas at levels from non-detect to 4,200 ug/m³. Additional VOCs (PCE and TCA) were detected in on-site soil gas at far lesser concentrations than TCE. VOC concentrations were not found to be elevated in any of the six off-site soil gas samples except for one sample which detected PCE at 41 ug/m³.

A vapor intrusion study was conducted at an off-site condominium complex located south (downgradient) of the site. A sub-slab soil gas and an indoor air sample was collected from the basement of each of the eight condominium buildings in the complex. One ambient air sample was also collected for comparative purposes, PCE ranged from ND to 18 ug/m³ in sub-slab soil gas and 0.81 ug/m³ to 16 ug/m³ in indoor air. TCE ranged from ND to 18 ug/m³ in sub-slab soil gas and ND to 0.97 ug/m³ in indoor air. TCA was ND in sub-slab soil gas in all buildings and ND to 1.3 ug/m³ in indoor air. All three compounds were ND in the ambient air sample.

Intertidal sediment sampling was conducted along Manhasset Bay. Sediments were analyzed for the Target Analyte List/Target Compound List. No compounds were detected at levels exceeding the Department's Class A saltwater sediment guidance values.

Post Interim Remedial Measure:

Soil: With the promulgation of 6NYCRR Part 375 on December 14, 2006, the soil quality data is being compared to the restricted residential use soil cleanup objectives (RRSCOs). Twelve surface soil samples (0-2 inches bls) were collected on-site and analyzed for metals. There was only one detection of arsenic at 22.6 ppm and copper at 343 ppm which were found to exceed the RRSCO of 16 ppm and 270 ppm, respectively. Elevated levels of the following SVOCs exists in on-site shallow soils (0-2 feet bls); Benzo(a)anthracene was detected in the range of non-detect (ND) to 7 ppm, the RRSCO is 1 ppm. Benzo(a)pyrene was detected in the range of ND to 5.8 ppm, the RRSCO is 1 ppm. Benzo(b)fluoranthene was detected in the range of ND to 4.7 ppm, the RRSCO is 1 ppm. Benzo(k)fluoranthene was ND to 4.9 ppm, the RRSCO is 3.9 ppm. Chrysene was ND to 7.6 ppm, the RRSCO is 3.9 ppm. Indeno(1,2,3-cd)pyrene was ND to 4.1 ppm, the RRSCO is 0.5 ppm and Dibenz(a,h)anthracene was ND to 2.1 ppm, the RRSCO is 0.33 ppm.

Groundwater: The groundwater monitoring well network revealed the presence of volatile organic compounds, identified in Section 6.1.2, in on-site groundwater which exceeded the NYS Groundwater Standards for Class GA Groundwaters. VOC concentrations in on-site groundwater are currently as high as 2,900 ppb. However, that is representative of groundwater quality in a discrete silt/clay zone approximately 35' bls where contaminants are sorbed onto organic particles. In November 2005, temporary groundwater monitoring wells constructed off-site downgradient revealed levels sporadically exceeding the groundwater standards in deeper groundwater (35' bls) with concentrations as high as 5,500 ppb. This again was indicative of a discrete zone where contaminants are sorbed onto silts and clays. VOC concentrations in shallow groundwater off-site (10 feet to 20 feet bls) were found to be below the groundwater standards. Access issues have restricted re-sampling off-site.

Under the Department approved Interim Remedial Measure, VOCs in shallow groundwater were remediated using air sparge/soil vapor extraction technology. Total VOC levels in shallow groundwater were reduced from approximately 2,000 ppb to less than 50 ppb.

Under the Department approved OU-1 Remedial Action Work Plan, deeper groundwater was remediated utilizing in-situ chemical oxidation (ISCO) injections. Four rounds of ISCO injections were performed into on-site groundwater (Figure 2). Post remedial monitoring revealed VOCs in groundwater have been significantly reduced and in most cases approach SCGs. Sporadic detections of residual VOCs have been discovered bound in the tight silt and clay layers beneath the site. In general, there has been a 90% reduction of VOCs in on-site groundwater.

Soil Gas: As a result of the remediation of on-site groundwater, VOCs levels in on-site soil gas have diminished by an order of magnitude or more.

6.4: Summary of Human Exposure Pathways

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching or swallowing). This is referred to as *exposure*.

People are not drinking contaminated groundwater because the area is served by a public water supply that is not affected by this contamination. People will not come into contact with the contaminated soil unless they perform ground-intrusive work at the site. Volatile organic compounds in the groundwater may move into the soil vapor (air spaces within the soil), which in turn may move into overlying buildings and affect the indoor air quality. This process, which is similar to the movement of radon gas from the subsurface into the indoor air of buildings, is referred to as soil vapor intrusion. The potential for soil vapor intrusion must be evaluated for any buildings developed on the Site and any actions recommended to address exposures related to soil vapor intrusion will be taken as necessary. Environmental sampling indicates soil vapor intrusion is not a current concern for off-site buildings.

6.5: Summary of the Remediation Objectives

The objectives for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375. The goal for the remedial program is to restore the site to pre-disposal conditions to the extent feasible. At a minimum, the remedy shall eliminate or mitigate all significant threats to public health and the environment presented by the contamination identified at the site through the proper application of scientific and engineering principles.

The remedial action objectives for this site are:

For OU 01:

Groundwater

RAOs for Public Health Protection

- Prevent ingestion of groundwater with contaminant levels exceeding drinking water standards.
- Prevent contact with, or inhalation of volatiles, from contaminated groundwater.

RAOs for Environmental Protection

- Restore ground water aquifer to pre-disposal/pre-release conditions, to the extent practicable.
- Remove the source of ground or surface water contamination.

Soil

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.

Soil Vapor

RAOs for Public Health Protection

- Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings at a site.

For OU 02:

Groundwater

RAOs for Environmental Protection

- Restore ground water aquifer to pre-disposal/pre-release conditions, to the extent practicable.

Soil Vapor

RAOs for Public Health Protection

- Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings off-site.

SECTION 7: ELEMENTS OF THE SELECTED REMEDY

The alternatives developed for the site and the evaluation of the remedial criteria are presented in the Alternative Analysis. The remedy is selected pursuant to the remedy selection criteria set forth in DER-10, Technical Guidance for Site Investigation and Remediation.

For OU 01: On-site, the selected remedy is referred to as the remedy.

The elements of the selected remedy, as shown in Figure 2, for OU: 01 are as follows:

Based upon the results of the investigations at the site, the IRMs that have been performed, and the evaluation presented here, the Department has selected the following remedy for the site. This remedy includes continued operation of the implementation of ICs/ECs which include: green remediation principles and techniques, establishing and maintaining a site cover system, restriction of groundwater use, restricting the use of the property to restricted residential, commercial or industrial use property, and a site management plan for monitoring and future development. The Department believes that this remedy is protective of human health and the environment and satisfies the remediation objectives described in Section 6.5.

The elements of the selected remedy are as follows:

1. Site Cover. A site cover will be required to allow for restricted residential, commercial or industrial use of the site. The cover will consist of either of the structures such as buildings, pavement, or sidewalks comprising the site development or a soil cover in areas where the upper two feet of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of two feet of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for restricted residential use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer. Any fill material brought to the site will meet the requirements for the identified use as set forth in 6 NYCRR Part 375-6.7(d).

2. Institutional Control. Imposition of an institutional control in the form of an environmental easement for the controlled property that:

- requires the remedial party or site owner to complete and submit to the Department a periodic certification of institutional and engineering controls in accordance with Part 375-1.8(h)(3);
- allows the use and development of the controlled property for restricted residential, commercial or industrial use as defined by Part 375-1.8(g), although the land use is subject to local zoning laws;
- restricts the use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the NYSDOH or County DOH; and
- requires compliance with the NYSDEC approved Site Management Plan.

3. A Site Management Plan for OU-1 and OU-2. A Site Management Plan is required which includes the following:

a) an Institutional Plan that identifies all use restrictions and engineering controls for the site and details the steps and media-specific requirements necessary to ensure the following institutional and engineering controls remain in place and effective:

- Institutional Controls: An Environmental Easement will be imposed which will address the requirements and restrictions outlined in Paragraph 1 above.

This plan includes, but may not be limited to:

- an Excavation Plan which details the provisions for management of future excavations in areas of remaining contamination;
- descriptions of the provisions of the environmental easement including any groundwater use restrictions;
- a provision for evaluation of the potential for soil vapor intrusion for any buildings developed on the site including provision for implementing actions recommended to address exposures related to soil vapor intrusion in any on-site or off-site buildings;
- provisions for the management and inspection of the identified engineering controls;
- maintaining site access controls and Department notification; and
- the steps necessary for the periodic reviews and certifications of the institutional and engineering controls;

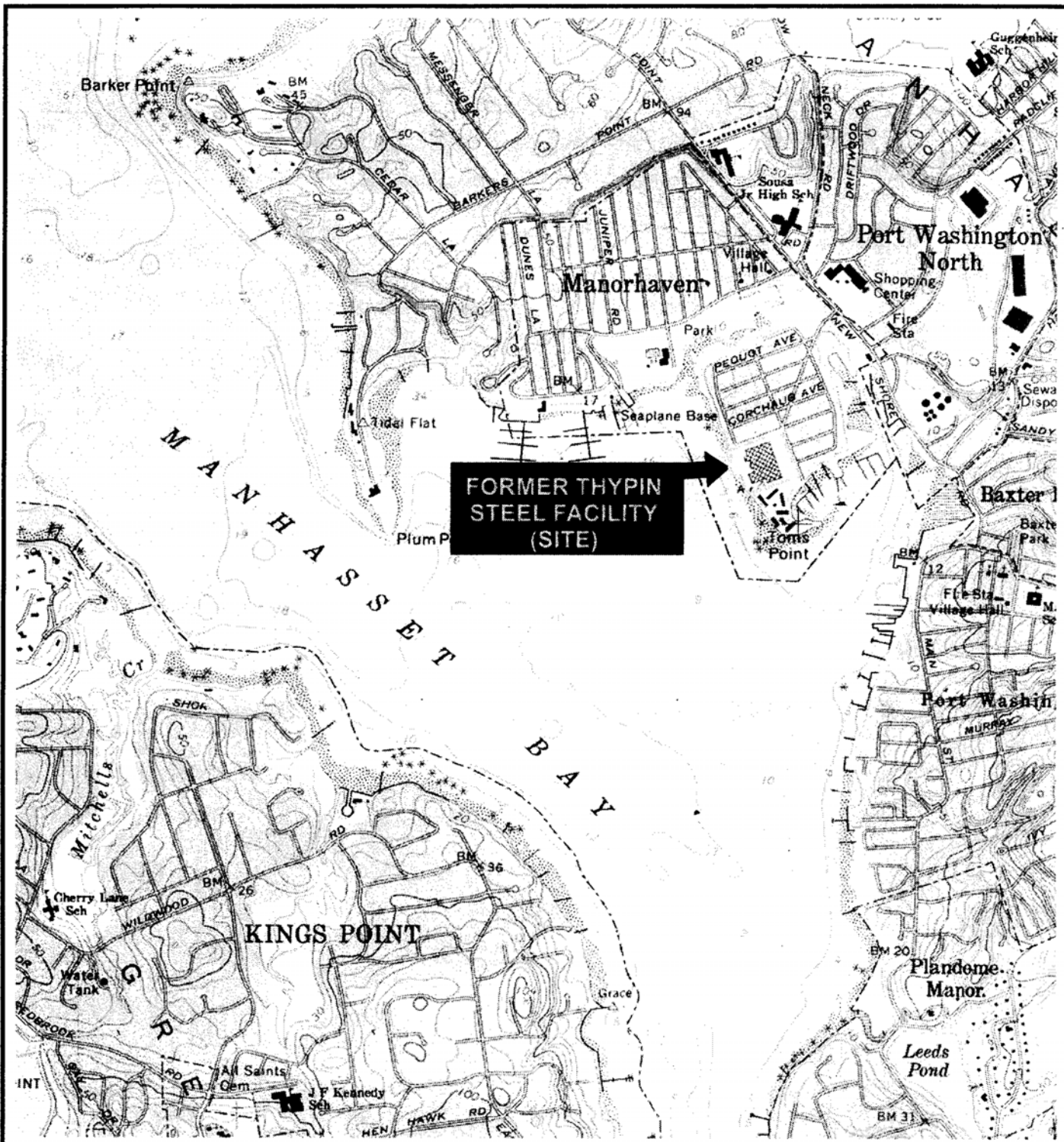
b) ora Monitoring Plan to assess the performance and effectiveness of the remedy. The plan includes, but may not be limited to:

- monitoring of soil gas, indoor air and on-site and off-site groundwater to assess performance and effectiveness of the remedy;
- monitoring for vapor intrusion for any building occupied or developed on the site;
- If shallow groundwater off-site were ever found to be contaminated with VOCs, the Department would evaluate the need for additional soil vapor intrusion sampling in any off-site structures located within the proximity of a shallow groundwater plume;
- a provision for implementing actions recommended to address exposures related to soil vapor intrusion in any off-site buildings; and
- a schedule of monitoring and frequency of submittals to the Department.

4. Green Remediation

Green Remediation principals and techniques will be implemented to the extent feasible in the site management of the remedy as per DER-31. The major green remediation components are as follows:

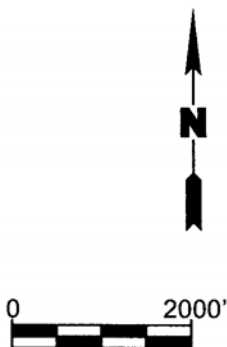
- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gas and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of material which would otherwise be considered a waste.



QUADRANGLE LOCATION



SOURCE:
USGS; 1979. Hicksville, New York
7.5 Minute Topographic Quadrangle



Title:

SITE LOCATION MAP

FORMER THYPIN STEEL FACILITY
MANORHAVEN, NEW YORK

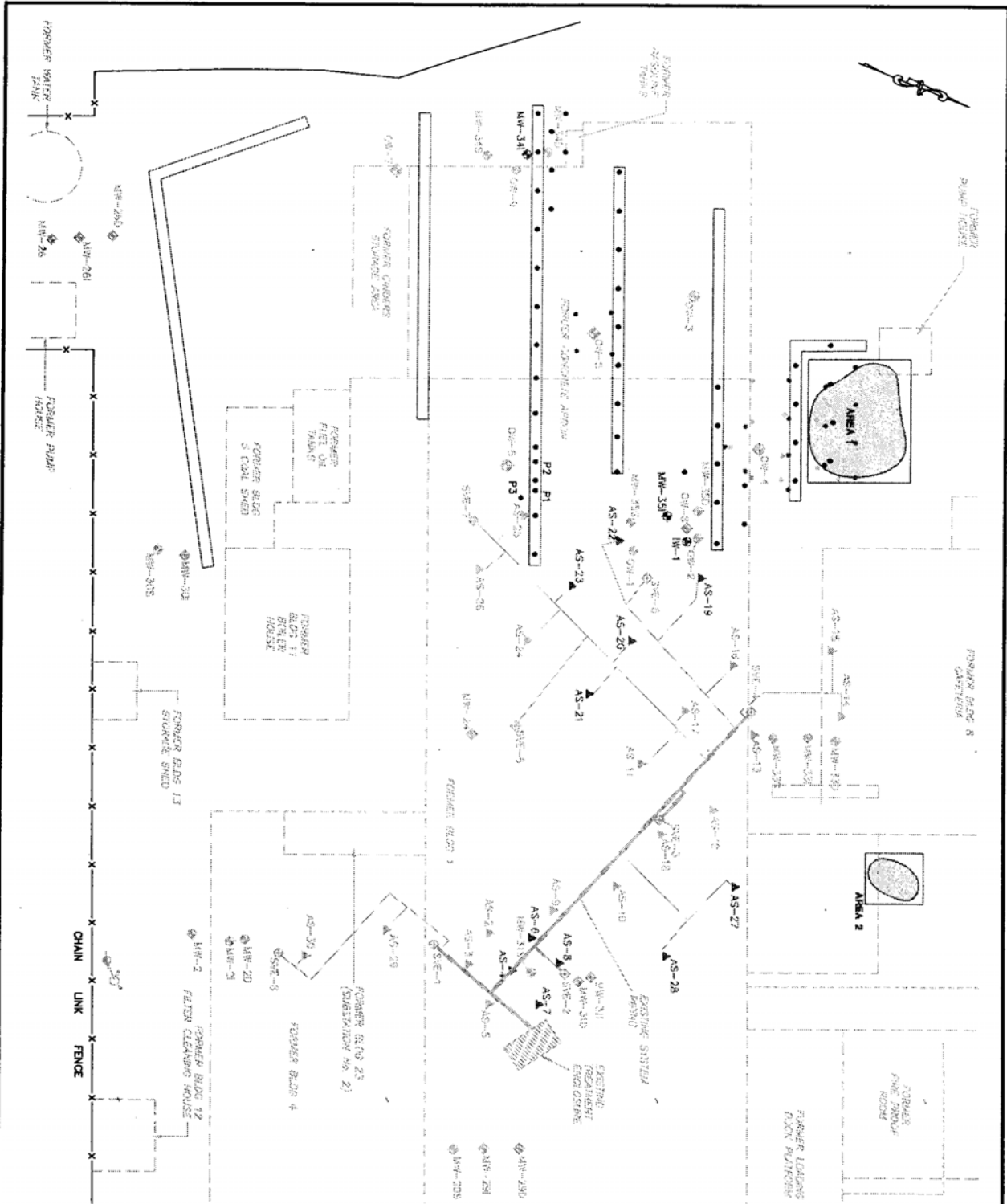
Prepared for:

MBA-MANORHAVEN, LLC
PRINCETON, NEW JERSEY

ROUX

ROUX ASSOCIATES, INC.
Environmental Consulting
& Management

Compiled by: J.W.	Date: 17AUG11	FIGURE 1
Prepared by: C.P.	Scale: 1:25000	
Project Mgr.: C.P.	Office: NY	
File No.: MBA0129404.CDR	Project No.: 77101Y	



LEGEND

- LOCATION AND DESIGNATION OF
EXISTING WELL SAMPLED

WELL DEPTH DESIGNATIONS:

INTERMEDIATE

LOCATION AND DESIGNATION

EXISTING MONITORING WELL

LOCATION AND DESIGNATION OF AIR SPARGE WELL

LOCATION AND DESIGNATION

FIRST PHASE OF INJECTION

LOCATION AND DESIGNATION

100-443887-100

EXISTING INJECTION WELL

LOCATION OF INJECTION POINTS
SECOND PHASE OF INJECTION

LOCATION OF INJECTION POINTS

ISCO PILOT STUDY

THIRD PHASE OF INJECTION

LOCATION OF INJECTION POINTS

[illegible]

ON MIP RESULTS

LOCATION OF INJECTION POINTS

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PRINT OBTAINED FROM LOCKW

TEEL CO., INC. ADVERTISING B

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SECTION POINT LOCATION

FORMER THYPIN STEEL FACILITY

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PRINCETON, NEW JERSEY

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| Designed by: W.M. | Scale: 1/8"=1' |

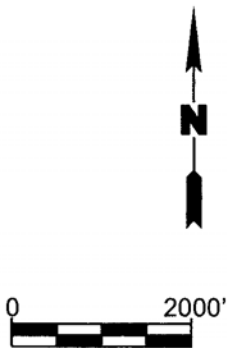
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| Project Wgr: C.P. | Project: 07/11.00 |
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QUADRANGLE LOCATION



SOURCE:
USGS; 1979. Hicksville, New York
7.5 Minute Topographic Quadrangle



Title:

SITE LOCATION MAP

FORMER THYPIN STEEL FACILITY
MANORHAVEN, NEW YORK

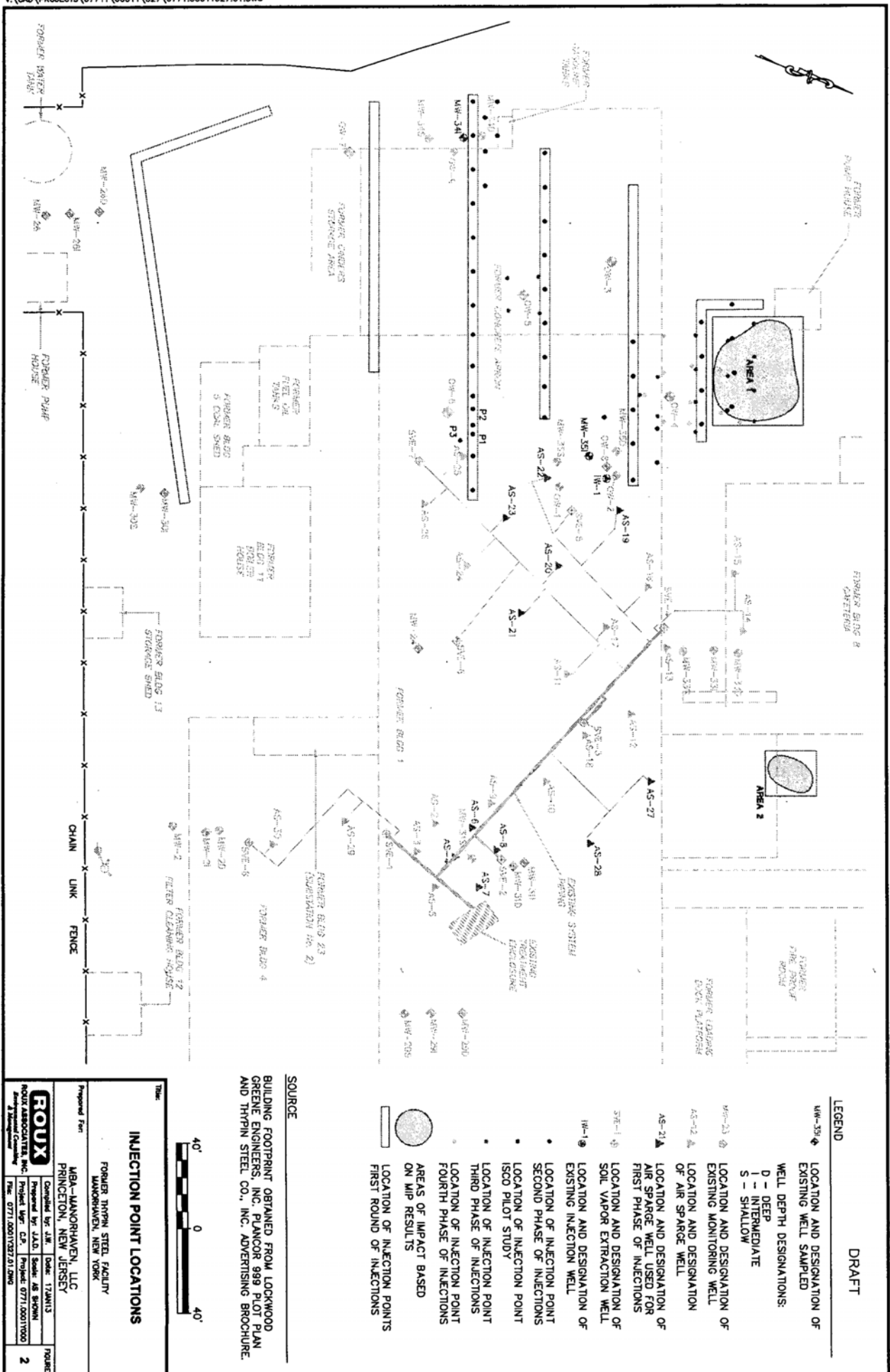
Prepared for:

MBA-MANORHAVEN, LLC
PRINCETON, NEW JERSEY

ROUX
ROUX ASSOCIATES, INC.
Environmental Consulting
& Management

| | | |
|--------------------------|---------------------|-----------------|
| Compiled by: J.W. | Date: 17AUG11 | FIGURE

1 |
| Prepared by: C.P. | Scale: 1:25000 | |
| Project Mgr.: C.P. | Office: NY | |
| File No.: MBA0129404.CDR | Project No.: 77101Y | |



LEGEND

DRAFT

- MW-35

EXISTING WELL SAMPLED

WELL DEPTH DESIGNATIONS:

D - DEEP

I - INTERMEDIATE

S - SHALLOW
- AS-23

LOCATION AND DESIGNATION OF EXISTING MONITORING WELL
- AS-12

LOCATION AND DESIGNATION OF AIR SPARGE WELL
- AS-21

LOCATION AND DESIGNATION OF AIR SPARGE WELL USED FOR FIRST PHASE OF INJECTIONS
- SW-1

LOCATION AND DESIGNATION OF SOIL VAPOR EXTRACTION WELL
- HW-19

LOCATION AND DESIGNATION OF EXISTING INJECTION WELL
- LOCATION OF INJECTION POINT SECOND PHASE OF INJECTIONS
- LOCATION OF INJECTION POINT ISCO PILOT STUDY
- LOCATION OF INJECTION POINT THIRD PHASE OF INJECTIONS
- LOCATION OF INJECTION POINT FOURTH PHASE OF INJECTIONS
- AREAS OF IMPACT BASED ON MIP RESULTS
- LOCATION OF INJECTION POINTS FIRST ROUND OF INJECTIONS

SOURCE

BUILDING FOOTPRINT OBTAINED FROM LOCKWOOD GREENE ENGINEERS, INC. PLANNING 999 PILOT PLAN AND TINTERN STEEL CO., INC. ADVERTISING BROCHURE.

TITLE

INJECTION POINT LOCATIONS

| | |
|--|---|
| <p>FORMER TINTERN STEEL FACILITY</p> <p>MANORHAVEN, NEW JERSEY</p> | |
| <p>Prepared For:</p> <p>MBA-MANORHAVEN, LLC</p> <p>PRINCETON, NEW JERSEY</p> | |
| <p>Compiled by: J.L.K.</p> <p>Project Mgr: C.P.</p> <p>Project: 0771.0001Y327.01.DWG</p> | <p>Date: 12/13/13</p> <p>Scale: AS SHOWN</p> <p>Project: 0771.0001Y327.01.DWG</p> |
| <p>FIGURE 2</p> | |

EXHIBIT "D"

LETTER of CREDIT

EXHIBIT "A" - FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

TO:

[REDACTED]

FROM:

[REDACTED]

PLEASE PROVIDE US WITH THE NAME OF THE COMPANY, ADDRESS, TELEPHONE NUMBER AND CONTACT PERSON RECEIVING THE ORIGINAL STANDBY LETTER OF CREDIT. THIS WILL ENSURE A TIMELY DELIVERY.

COMPANY NAME: _____

COMPANY ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

NOTE: BOTH APPLICANT AND BENEFICIARY MUST INITIAL EACH PAGE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

IRREVOCABLE NON TRANSFERABLE
STANDBY LETTER OF CREDIT
NUMBER S _____

PLACE OF ISSUE:
NEW YORK

DATE OF ISSUE:

BENEFICIARY:
COMMISSIONER
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ATTN: DIVISION OF ENVIRONMENTAL REMEDIATION
625 BROADWAY
ALBANY, NEW YORK 12233-5500

APPLICANT:

[REDACTED]

Gentlemen/Ladies:

We hereby issue this non transferable irrevocable credit in your favor available with [REDACTED]

By Payment.

DRAFTS AT SIGHT DRAWN ON SIGNATURE BANK NEW YORK, NY

TO THE EXTENT OF USE [REDACTED]

EXPIRY DATE [REDACTED]

PLACE OF EXPIRY SIGNATURE BANK [REDACTED]

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

1 DOCUMENTS REQUIRED:

2 FUNDS UNDER THIS CREDIT ARE AVAILABLE AGAINST YOUR SIGHT DRAFT DRAWN ON US IN THE
3 FORM OF ANNEX 1 ATTACHED HERETO, WHICH IS AN INTEGRAL PART HEREOF, ACCOMPANIED
4 BY A WRITTEN STATEMENT CERTIFYING THAT "I CERTIFY THAT THE AMOUNT OF THE DRAFT IS
5 PAYABLE PURSUANT TO REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE
6 ENVIRONMENTAL CONSERVATION LAW." THE DRAFT AND STATEMENT MUST BE PURPORTEDLY
7 SIGNED BY AN AUTHORIZED SIGNATORY OF THE BENEFICIARY.

8
9 THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT, AND ALL AMENDMENTS, IF ANY, MUST
10 ACCOMPANY ALL DRAWINGS OR OTHER TRANSACTIONS HEREUNDER.
11
12
13

14 SPECIAL INSTRUCTION(S):
15

16 ALL BLANKS ON STATEMENTS, DRAFTS OR ANY OTHER DOCUMENTS MUST BE FILLED IN. ALL
17 DRAFTS AND DOCUMENTS MUST BE MARKED "DRAWN UNDER SIGNATURE BANK STANDBY
18 LETTER OF CREDIT NO. S _____ DATED _____."
19

20 ANY REFERENCE IN THIS STANDBY LETTER OF CREDIT TO THE REGULATIONS ISSUED UNDER
21 AUTHORITY OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IS FOR
22 IDENTIFICATION PURPOSES ONLY AND DOES NOT INCORPORATE HEREIN BY REFERENCE THE
23 TERMS OF SUCH REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE
24 ENVIRONMENTAL CONSERVATION LAW.
25

26 THE ISSUER IS AUTHORIZED TO ACCEPT AND SHALL ACCEPT ANY STATEMENT, DOCUMENT OR
27 INSTRUMENT FURNISHED HEREUNDER AS BINDING AND CORRECT WITHOUT INVESTIGATION OR
28 RESPONSIBILITY FOR THE ACCURACY, VERACITY, CONCLUSORY CORRECTNESS, OR VALIDITY OF
29 THE SAME OR ANY PART THEREOF, OR OF ANY SIGNATURE THEREON.
30

31 PARTIAL AND MULTIPLE DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED. THE
32 AMOUNT AND DATE OF PRESENTATION OF ANY DRAFT DRAWN AND PRESENTED PURSUANT TO
33 THE TERMS OF THIS LETTER OF CREDIT SHALL BE NOTED ON THIS LETTER OF CREDIT. AFTER
34 MAKING SUCH NOTATION, WE SHALL RETURN THIS LETTER OF CREDIT TO YOU, UNLESS ANY
35 SUCH DRAFT PRESENTED AND PAID SHALL EXHAUST THIS CREDIT, IN WHICH CASE THIS LETTER
36 OF CREDIT SHALL BE RETAINED BY US.
37

38 IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT SHALL BE DEEMED
39 AUTOMATICALLY RENEWED AND EXTENDED WITHOUT ANY AMENDMENT, FOR PERIODS OF ONE
40 YEAR FROM THE EXPIRY DATE HEREOF, OR ANY ANNIVERSARY OF SAID EXPIRY DATE, UNLESS
41 AT LEAST ONE HUNDRED TWENTY (120) DAYS PRIOR TO ANY EXPIRY DATE OR ANNIVERSARY
42 THEREOF WE NOTIFY BOTH YOU AND _____
43 _____
44 _____

IN WRITING BY NATIONALLY

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

1 RECOGNIZED COURIER, THAT WE ELECT NOT TO RENEW AND EXTEND OUR STANDBY LETTER OF
2 CREDIT FOR ANY ADDITIONAL PERIOD. OUR NOTICE IS DEEMED TO HAVE BEEN GIVEN ON THE
3 DATE IT IS MAILED.

4 UPON RECEIPT OF A NOTICE THAT WE HAVE ELECTED NOT TO RENEW, YOU MAY DRAW
5 HEREUNDER BY MEANS OF YOUR DRAFT IN THE FORM OF ANNEX 1 ACCOMPANIED BY A
6 WRITTEN STATEMENT CERTIFYING THAT: "WE HAVE RECEIVED NOTICE FROM [REDACTED] BANK
7 OF ITS DECISION NOT TO EXTEND LETTER OF CREDIT NO. S _____ FOR ANY ADDITIONAL
8 TIME AND A SUBSTITUTE LETTER OF CREDIT HAS NOT BEEN PROVIDED." THE DRAFT AND
9 STATEMENT MUST BE PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNATORY OF THE
10 BENEFICIARY.

11
12 THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

13
14 ALL BANKING FEES CHARGED BY OR INCURRED TO [REDACTED] BANK ARE FOR THE ACCOUNT
15 OF THE APPLICANT. BANKING FEES CHARGED BY OR INCURRED TO ANY OTHER PERSON OR
16 ENTITY ARE NOT THE SUBJECT OF, NOR COVERED BY, THIS CREDIT.

17
18 PLEASE BE ADVISED THAT WE WILL NOT MAKE ANY PAYMENT UNDER THIS LETTER OF CREDIT,
19 OR TRANSFER THIS LETTER OF CREDIT, 1) TO OR AT THE REQUEST OF ANY ENTITY OR PERSON
20 WHO IS SUBJECT TO SANCTIONS ISSUED BY THE U.S. DEPARTMENT OF COMMERCE, OR 2) TO OR
21 AT THE REQUEST OF ANY ENTITY OR PERSON TO WHOM ANY PAYMENT IS PROHIBITED BY THE
22 FOREIGN ASSET CONTROL REGULATION OF THE U.S. DEPARTMENT OF THE TREASURY, OR 3)
23 WHICH IS OTHERWISE IN CONTRAVENTION OF U.S. LAWS OR REGULATIONS.

24
25 THIS LETTER OF CREDIT IS SUBJECT TO THE PROVISIONS OF THE UNIFORM CUSTOMS AND
26 PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF
27 COMMERCE PUBLICATION NO. 600 AND, TO THE EXTENT NOT INCONSISTENT THEREWITH, SHALL
28 ALSO BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, U.S.A (WITHOUT GIVING
29 EFFECT TO THE CONFLICTS OF LAW PROVISIONS THEREOF) INCLUDING BUT NOT LIMITED TO
30 ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT ON THE DATE OF ISSUANCE OF
31 THIS LETTER OF CREDIT.

32
33 WE HEREBY ENGAGE WITH THE DRAWERS OF DRAFTS AND DOCUMENTS PRESENTED DRAWN
34 UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT,
35 THAT THE SAME SHALL BE DULY HONORED ON PRESENTATION TO US AT OUR OFFICE LOCATED
36 AT [REDACTED] ATTENTION: MANAGER, STANDBY
37 LETTER OF CREDIT, NOT LATER THAN _____ OR ANY AUTOMATICALLY
38 EXTENDED DATE PROVIDED FOR HEREIN.

39
40 IN CASE OF ANY INQUIRIES IN CONNECTION WITH THIS LETTER OF CREDIT, YOU MAY CONTACT
41 US AT (646) 822-1713 OR 1-866-SIG-LINE.

42
43 THIS IRREVOCABLE STANDBY LETTER OF CREDIT CONSISTS OF XXX (X) PAGES.

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

AUTHORIZED SIGNATURE

1200247 v25

This is an integral part of the Standby Letter of Credit No. S _____

ANNEX I

SIGHT DRAFT

FOR VALUE RECEIVED

Dated: _____

PAY AT SIGHT TO

THE SUM OF _____

US DOLLARS (USD _____).

DRAWN UNDER _____ BANK STANDBY LETTER OF CREDIT NO. S _____, DATED
_____, 20__.

ALL PAYMENTS WILL BE MADE BY WIRE TRANSFER ONLY; NO PAYMENTS WILL BE MADE BY CHECK. TO
EXPEDITE PAYMENT, PLEASE INCLUDE CLEAR AND CORRECT WIRE TRANSFER INSTRUCTIONS (E.G. NAME
OF RECEIVING BANK, ACCOUNT NAME OF BENEFICIARY AND BENEFICIARY ACCOUNT NUMBER AT
RECEIVING BANK). WE DISCLAIM ANY RESPONSIBILITY IN THE EVENT UNCLEAR AND/OR INACCURATE
WIRE TRANSFER INSTRUCTIONS ARE PROVIDED TO US.

TO:



AUTHORIZED SIGNATORY

PRINT NAME AND TITLE

THE SIGNATURE BELOW CONSTITUTES AN ENDORSEMENT OF THIS SIGHT DRAFT.

AUTHORIZED SIGNATORY

PRINT NAME AND TITLE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

EXHIBIT "E"

TRUST AGREEMENT

██████████ - FORM OF TRUST AGREEMENT

STANDBY TRUST AGREEMENT

This Trust Agreement (this "**Agreement**") is entered into as of the ____ day of ██████████, 201█ by and between ██████████, a limited liability company organized and existing under the laws of the State of New York (the "**Settlor**"), and ██████████ a national banking association organized and existing under the laws of the United States of America, (the "**Trustee**").

Whereas, the New York State Department of Environmental Conservation (hereinafter referred to as "**NYSDEC**") and the Settlor have entered into an Addendum to Remedial Program Orders on Consent, Index No. ██████████, for the ██████████ Site, Site No. ██████████ (hereinafter the "**Addendum**");

Whereas, the Addendum provides that the Settlor shall provide assurance that funds will be available pursuant to 6 NYCRR 375-1.11(c) "to ensure the long term implementation, maintenance, monitoring, and enforcement" of the on-Site engineering controls;

Whereas, in order to provide such financial assurance, Settlor has agreed to provide an irrevocable standby letter of credit in the amount of \$██████████ from ██████████ Bank (hereinafter the "**Letter of Credit**") and to establish the trust created by this Agreement to accept the deposit of the draft amount against the Letter of Credit; and

Whereas, the Settlor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Settlor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "**Settlor**" means ██████████ and its successors and assigns.

(b) The term "**Trustee**" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "**Commissioner**" means the individual who is, from time to time, the Commissioner of the New York State Department of Environmental Conservation, or the commissioner's duly appointed designee.

Section 2. Identification of Facilities and Costs. This Agreement pertains to costs for the operation, maintenance, monitoring, and enforcement of the on-Site engineering controls required at the ██████████ Site in ██████████, ██████████ County, New York (hereinafter the "**Site**"), pursuant to the above referenced Addendum.

Section 3. Establishment of Trust Fund. The Settlor and the Trustee hereby establish a trust fund for the benefit of NYSDEC. The Settlor and the Trustee intend that no third party shall have access

to monies or other property in the Fund except as expressly provided herein. The Trust is established initially as consisting of the amount paid pursuant to a draft of the Commissioner under the terms of the Letter of Credit. (The initial principal amount of the Letter of Credit is \$ [REDACTED] U.S. Dollars.) Such funds, along with any other monies hereafter deposited into the Trust, and together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement, are referred to herein collectively as the "**Fund**." The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Settlor, any payments necessary to discharge any liabilities of the Settlor established by NYSDEC.

Section 4. *Payment for Work Required Under the Addendum.* The Trustee shall make payments from the Fund as the Commissioner shall direct, in writing, to provide for the payment of costs for the implementation, maintenance, and monitoring of the on-Site engineering controls covered by the Addendum. The Trustee shall reimburse such persons as specified in writing by the Commissioner from the Fund for the expenditures of such covered activities in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Settlor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein. Upon the termination of this Trust and Agreement, as provided in Section 16, the Commissioner shall direct the refund to the Settlor of the entire remaining balance of the Fund.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. *Trust Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Settlor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) securities or other obligations of the Settlor, or any other past or present owner or operator of the Site, or any of their affiliates as defined in the Investment Company Act of 1940, 15 USCA 80a-2(a) shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;

(b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the Federal or State government; and

(c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingleing and Investment.* The Trustee is expressly authorized in its discretion:

(a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USCA 80a-1et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government;

(e) to accept additions to the Fund from sources other than the Settlor of the Trust; and

(f) to contest, compromise, or otherwise settle any claim in favor of the Fund or Trustee, or in favor of third persons and against the Fund or Trustee.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid by the Settlor. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Settlor.

Section 10. *Annual Valuation.* The Trustee shall annually, no more than thirty (30) days after the anniversary date of establishment of the Fund, furnish, to the Settlor and to the Commissioner, a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as NYSDEC may request from time to time.

Section 11. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Settlor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. *Trustee Compensation.* The Trustee's compensation for its services shall be paid by the Settlor.

Section 13. *Successor Trustee.* The Trustee may resign or the Settlor may replace the Trustee, but such resignation or replacement shall not be effective until the Settlor has appointed a successor trustee approved in writing by NYSDEC and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Settlor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to NYSDEC or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Settlor, the Commissioner, and the present Trustee by certified mail, return receipt requested, no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. *Instructions to the Trustee.* All orders, requests and instructions by the Settlor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Settlor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Settlor's orders, requests and instructions. All orders, requests and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Settlor or NYSDEC hereunder has occurred. The Trustee shall have no duty to act in the absence of such written orders, requests and instructions from the Settlor and/or NYSDEC except as provided for herein.

Section 15. *Amendment of Agreement.* This Agreement may be amended only by an instrument in writing executed by the Settlor and the Trustee, and the Commissioner, or by the Trustee and the Commissioner if the Settlor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written agreement of the Settlor, the Trustee and the Commissioner, or by the Trustee and the Commissioner if the Settlor ceases to exist, (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to NYSDEC and the Settlor and [REDACTED] as required by the Addendum. Upon termination of the Trust pursuant to Section 16(a) or 16(c) as applicable, all remaining trust property (if any), less final trust administration expenses, shall be delivered to the Settlor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Settlor or the Commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Settlor or by the Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Settlor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of New York.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

SETTLOR

[REDACTED]

By: _____
[REDACTED], Duly Authorized

TRUSTEE

[REDACTED]

By: _____
Name [REDACTED]
Title [REDACTED]

State of New York County of New York

On this ____ day of _____, 201____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he is the chief executive of _____, the entity described in and which executed the above instrument; and that he signed his name thereto.

Notary Public

State of New York County of New York

On this _____, 201____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that she is Vice President of _____, the corporation described in and which executed the above instrument; and that she signed her name thereto.

Notary Public

EXHIBIT A – AUTHORIZED LIST

AUTHORIZED LIST OF SIGNERS OR OFFICER'S CERTIFICATE

This form supplements the Standby Trust Agreement dated as of February , 20 (as amended, amended and restated, supplemented or otherwise modified from time to time, (the "Agreement") and related documents and applies to instructions given by facsimile (or e-mail with .pdf attachment) for securities or funds transfers and for other purposes under the Agreement. In giving any facsimile (or e-mail with .pdf attachment) instruction as specified in the Agreement, the Grantor under the Agreement ("Grantor") acknowledges that facsimile (or e-mail with .pdf attachment) present a high degree of risk or error, security and privacy. Nevertheless the Grantor wishes to use facsimile (or e-mail with .pdf attachment) as a means of instruction. The Grantor hereby designates the Commissioner of New York State Department of Environmental Conservation as the individual who is authorized to initiate transfers or other instructions by facsimile (or e-mail with .pdf attachment) on behalf of the Grantor and are the individuals who may execute the Agreement on behalf of Grantor and selects the security procedures specified herein. The Grantor accepts the associated risks of unauthorized or erroneous instructions and agrees to be bound by such instructions whether or not actually authorized by the Grantor, provided the Trustee has complied with the stated security procedure. The Grantor is responsible for keeping confidential the contents of this Authorized List. The Grantor should be careful in completing this Authorized List of Signers as it may be rejected if it contains erasures or white outs.

☒ New ☐ Addition ☐ Supersede

Specimen Signature

Name and Title [REDACTED], Commissioner, New York State Department of
Environmental Conservation
By: Robert W. Schick, Director Division of Environmental Remediation

Phone (914) 428-2505 ext.315
(Rosalie Rusinko, Esq.)

E-mail Address [REDACTED]

Name [REDACTED] [For Grantor]
Title Authorized Signatory
Phone [REDACTED]
E-mail Address [REDACTED]

Name [REDACTED] [For Grantor]
Title Authorized Signatory
Phone [REDACTED]
E-mail Address [REDACTED]

Where applicable, the Trustee will confirm the instructions received by return call to one of the telephone numbers listed below.

| <i>Telephone Number (including Country code)</i> | <i>Name</i> |
|--|-------------|
| | |
| | |
| | |
| | |

Test Word

Test Words must contain at least 8 alphanumeric characters, and should be established at document execution and changed each time the List of Authorized Signers/Approvers is updated. All instructions should clearly display the Test Word, which may be used in lieu of a callback to confirm the authenticity of the instruction. However, [REDACTED] reserves the right to perform the callback in addition to the Test Word if circumstances warrant.

**AUTHORIZED LIST OF SIGNERS
OR OFFICER'S CERTIFICATE**

This form supplements the Standby Trust Agreement dated as of February , 20 (as amended, amended and restated, supplemented or otherwise modified from time to time, (the "Agreement") and related documents and applies to instructions given by facsimile (or e-mail with .pdf attachment) for securities or funds transfers and for other purposes under the Agreement. In giving any facsimile (or e-mail with .pdf attachment) instruction as specified in the Agreement, the Grantor under the Agreement ("Grantor") acknowledges that facsimile (or e-mail with .pdf attachment) present a high degree of risk or error, security and privacy. Nevertheless the Grantor wishes to use facsimile (or e-mail with .pdf attachment) as a means of instruction. The Grantor hereby designates the Commissioner of New York State Department of Environmental Conservation as the individual who is authorized to initiate transfers or other instructions by facsimile (or e-mail with .pdf attachment) on behalf of the Grantor and are the individuals who may execute the Agreement on behalf of Grantor and selects the security procedures specified herein. The Grantor accepts the associated risks of unauthorized or erroneous instructions and agrees to be bound by such instructions whether or not actually authorized by the Grantor, provided the Trustee has complied with the stated security procedure. The Grantor is responsible for keeping confidential the contents of this Authorized List. The Grantor should be careful in completing this Authorized List of Signers as it may be rejected if it contains erasures or white outs.

☒ New ☐ Addition ☐ Supersede

Specimen Signature

Name and Title [REDACTED], Commissioner, New York State Department of
Environmental Conservation
By: Robert W. Schick, Director Division of Environmental Remediation

Phone (914) 428-2505 ext.315
(Rosalie Rusinko, Esq.)

E-mail Address [REDACTED]

Name [REDACTED] [For Grantor]
Title Authorized Signatory
Phone [REDACTED]
E-mail Address [REDACTED]

Name [REDACTED] [For Grantor]
Title Authorized Signatory
Phone [REDACTED]
E-mail Address [REDACTED]

Where applicable, the Trustee will confirm the instructions received by return call to one of the telephone numbers listed below.

Telephone Number (including Country code)

Name

| | |
|--|--|
| | |
| | |
| | |
| | |

Test Word

Test Words must contain at least 8 alphanumeric characters, and should be established at document execution and changed each time the List of Authorized Signers/Approvers is updated. All instructions should clearly display the Test Word, which may be used in lieu of a callback to confirm the authenticity of the instruction. However, [REDACTED] reserves the right to perform the callback in addition to the Test Word if circumstances warrant.

APPENDIX "A"

**STANDARD CLAUSES FOR ALL NEW YORK STATE
SUPERFUND ADMINISTRATIVE ORDERS**

STANDARD CLAUSES FOR ALL NEW YORK STATE SUPERFUND ADMINISTRATIVE ORDERS

The parties to the State Superfund Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Order, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL §27-1417 and 6 NYCRR sections 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Initial Submittal

Within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached to the Order. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

III. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a), 375-3.6, and 375-6. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a

Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

The Work Plans shall be captioned as follows:

1. Site Characterization ("SC") Work Plan: a Work Plan which provides for the identification of the presence of any hazardous waste disposal at the Site;

2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site and a study of remedial alternatives to address such on-site and off-site contamination;

3. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD;

4. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;

5. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy; or

6. "Supplemental" if additional work plans other than those set forth in II.A.1-5 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

2. Any proposed Work Plan shall be submitted for the Department's review and approval

and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph III.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XV, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV, that Respondent submit additional or supplemental Work Plans for the Site to complete the current remedial phase within thirty (30) Days after the Department's written request.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

5. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

C. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an initial periodic report by

in accordance with the schedule in the Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. Review of Submittals

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include, in accordance with 6 NYCRR 375-1.6(d), an approval, modification request, or disapproval of the submittal, in whole or in part.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in

violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

2. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

E. Department's Issuance of a ROD

1. Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"); if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

2. Respondent shall have 60 days from the date of the Department's issuance of the ROD to notify the Department in writing whether it will implement the remedial activities required by such ROD. If the Respondent elects not to implement the required remedial activities, then this order shall terminate in accordance with Paragraph XIV.A. Failure to make an election or failure to comply with the election is a violation of this Order.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL '27-1423 and ECL 71-4003.

VII. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

VIII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be

construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

X. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45)

Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

XI. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

XII. Environmental Easement

A. If a Record of Decision for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph XII.A.

C. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9 and the Department may file an Environmental Notice on the site.

XIII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties

identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XIV, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XIV. Termination of Order

A.. This Order will terminate upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the ROD. In the event of termination in accordance with this Subparagraph, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the ROD, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's letter stating that all phases of the remedial program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and IX shall

survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIV.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XV. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XVI. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory

provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XVI.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue referenced in Paragraph VII.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to

the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

I. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

J. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

K. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.