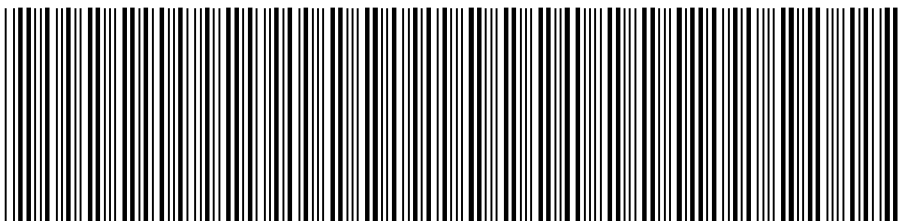


**NYC DEPARTMENT OF FINANCE
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RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 28

Document ID: 2005101900290006

Document Date: 10-07-2005

Preparation Date: 12-01-2005

Document Type: DECLARATION

Document Page Count: 27

PRESENTER:

COMMONWEALTH
185 OLD COUNTRY ROAD
05304202 - PICK UP RSR
RIVERHEAD, NY 11901
631-727-7760

RETURN TO:

JONATHAN D. BLUM, ESQ. STROOK & STROOK
& LAVAN
180 MAIDEN LANE
NEW YORK, NY 10038-4982

PROPERTY DATA

Borough	Block	Lot	Unit	Address
QUEENS	2519	1	Entire Lot	55-54 56 ROAD
Property Type: NON-RESIDENTIAL VACANT LAND Easement				
Borough	Block	Lot	Unit	Address
QUEENS	2519	100	Entire Lot	N/A 56 ROAD
Property Type: NON-RESIDENTIAL VACANT LAND Easement				

CROSS REFERENCE DATA

CRFN _____ or Document ID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

PARTY 1:

PHELPS DODGE REFINING CORPORATION
ONE NORTH CENTRAL AVENUE
PHOENIX, AZ 85004-2306

PARTY 2:

NEWFOUND LLC
46-27 54TH ROAD
MASPETH, NY 11378

FEES AND TAXES

Mortgage		Recording Fee: \$	175.00
Mortgage Amount:	\$	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	NYC Real Property Transfer Tax Filing Fee:	
Exemption:		\$	0.00
TAXES: County (Basic):	\$	NYS Real Estate Transfer Tax:	
City (Additional):	\$	\$	0.00
Spec (Additional):	\$		
TASF:	\$		
MTA:	\$		
NYCTA:	\$		
Additional MRT:	\$		
TOTAL:	\$		0.00

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CITY OF NEW YORK**

Recorded/Filed 12-21-2005 11:31

City Register File No.(CRFN):

2005000700832



Annette McMill

City Register Official Signature

27

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "Declaration") made as of this 7th day of October, 2005 by PHELPS DODGE REFINING CORPORATION, a New York corporation, with offices at One North Central Avenue, Phoenix, Arizona, 85004-2306, as Seller ("Seller"), SAGRES PARTNERS LLC, a New York limited liability company, with offices at 2 Galasso Place, Maspeth, New York, 11378 as Buyer ("Sagres") and NEWFOUND LLC, a New York limited liability company, with offices at 46-27 54th Road, Maspeth, New York 11378 ("Buyer").

Recitals

A. Seller and Sagres are parties to that certain Agreement to Purchase Real Estate (the "Initial Agreement"), dated December 6, 2001, as amended (the "Agreement"), pursuant to which Seller agreed to sell, and Sagres agreed to purchase, certain real property (the "Real Property"), all as more particularly set forth in, and subject to the terms and conditions of, the Agreement.

B. Contemporaneously with the execution of this Declaration, Seller has sold a portion of the Real Property, as more particularly described on Exhibit A hereto (the "Premises"), to Buyer.

C. Pursuant to the terms and conditions of the Agreement, upon sale of the Premises to Buyer a declaration of covenants and restrictions is to be recorded against the Premises, which sets forth certain terms and conditions of the Agreement which survive said sale, and which are to run with the land and be binding upon Buyer and its successors and assigns.

NOW, THEREFORE, in consideration of ten (\$10) dollars in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Any and all capitalized terms used herein but specifically defined herein are defined on Exhibit B annexed hereto and made a part hereof.

2. Sagres Communications.

a. NOTWITHSTANDING THE FOLLOWING, THE SAGRES COMMUNICATION RESTRICTIONS SHALL NOT APPLY TO ANY THIRD-PARTY SUCCESSORS AND ASSIGNS OF SAGRES THAT OWN OR LEASE PORTIONS OF THE PREMISES AS TO SAID PORTIONS OF THE PREMISES, PROVIDED THAT SUCH THIRD PARTIES ARE NOT AFFILIATES OF SAGRES AND OTHERWISE DO NOT CONSTITUTE SAGRES PARTIES.

b. The Sagres Communication Restrictions shall (i) be binding upon all Sagres Parties, directly, or indirectly through other entities, intermediaries or persons in which Sagres Parties presently have, have had, or may hereafter have, an ownership interest in, and (ii) shall run with the land comprising the Premises.

3. Increased Costs, Etc.

a. In the event any Buyer Development Work and/or Buyer Remedial Work causes, directly or indirectly, an increase in the cost of the PDRC Remedial Work, Buyer shall bear 100% of such increased cost, which cost shall be payable by Buyer upon demand therefor by Seller. Notwithstanding the foregoing, nothing contained in this Paragraph 3(a) is intended, or shall be deemed, to (i) relate to costs to Seller associated with any Reopeners, or (ii) implicitly permit or prohibit Buyer to change (or seek to change) the location of any component of the remedial system, including, but not limited to the groundwater monitor wells.

b. Buyer shall, at Buyer's sole cost and expense, be responsible for adequately safeguarding the Premises to prevent public access thereto until such time as the Site-Specific Cap has been installed on the Premises.

c. Notwithstanding Buyer's ownership of the Premises, neither Buyer nor any other party other than Seller and its contractors, agents and representatives may enter onto or otherwise access Seller's active work sites in connection with PDRC Remedial Work, except as may be expressly provided for in the Agreement.

4. Costs. Sagres shall pay for the cost of the Buyer Remedial Work on the Premises, and in the event that Sagres fails to perform such obligation, Seller may (but shall have not obligation to Buyer or Sagres to) perform such obligation on the part of Sagres and place a mechanics lien on the Premises with respect to the costs and expenses thereof. Without limiting the generality of the foregoing, to the extent the ROD requires any work effectively consisting of Buyer Development Work or Buyer Remedial Work (as distinguished from PDRC Remedial Work), Buyer and/or Sagres shall be responsible for bearing 100% of the cost thereof. To the extent, if any, that Seller shall be obligated to incur any such cost, said costs shall be paid by Buyer to Seller in advance, upon demand by Seller.

5. Additional Obligations of Buyer. Seller shall not have responsibility for Remedial Work required to be taken (i) at or under any buildings or structures erected on the Premises on or after the date hereof, unless Buyer removes, at Buyer's expense, the building or structure that would otherwise impede Remedial Work, provided that the structures do not include roads, parking areas, or similar surface coverings, or (ii) in connection with the construction or maintenance of buildings or structures (e.g. excavation, handling,

storage, treatment or disposal of contaminated soils) at the Premises subsequent to Closing, except for (A) PDRC Remedial Work required by the ROD, but only for a period of three (3) years following the date hereof, and (B) Remedial Work arising out of a Reopener.

6. Interference. Buyer shall not interfere with Seller's implementation of Remedial Work on the Real Property, including Seller's implementation of the Groundwater Treatment System. Without limiting any other rights and remedies Seller may have, Buyer, its assignees and designees, shall reimburse Seller for any increase in cost associated with Seller's performance of Remedial Work caused by such interference. Seller shall make commercially reasonable efforts to avoid interference with the use of the Real Property by Buyer or its designees, successors and assigns in connection with Seller's implementation of Remedial Work on the Real Property, including Seller's implementation of the Groundwater Treatment System.

7. Generally. Sagres, Buyer and all subsequent owners and occupants of the Premises, shall own and occupy the same subject and subordinate to the ROD and the RD/RA Consent Order.

8. Miscellaneous.

a. Amendments. This Declaration may not be modified or terminated orally or in any manner other than by an agreement in writing signed by all the parties hereto or their respective successors in interest, as the case may be.

b. Governing Law; Construction. This Declaration shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

c. Partial Invalidity. If any provision of this Declaration is held to be invalid or unenforceable as against any person or under certain circumstances, the remainder of this Declaration and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

d. Counterparts. This Declaration may be executed in any number of counterparts, each of which shall constitute an original, but all of which, taken together, shall constitute but one and the same instrument.

e. Waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The

waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

f. Headings. The headings which have been used throughout this Declaration have been inserted for convenience of reference only and should not be construed in interpreting this Declaration. Words of any gender used in this Declaration shall include any other gender and words in the singular shall include the plural, and vice versa, unless the context requires otherwise. The terms "include" and "including" when used in this Declaration shall each be construed as if followed by the phrase "without being limited to" or "without limitation". The words "herein," "hereof," "hereunder" and other similar compounds of the words "here" when used in this Declaration shall refer to the entire Agreement and not to any particular provision or section. As used in this Declaration, the term "business day" shall be deemed to mean any day, other than a Saturday or Sunday, on which commercial banks in New York State are not required or authorized to be closed for business.

g. Construction. This Declaration shall be given a fair and reasonable construction in accordance with the intentions of the parties hereto.

h. Binding Effect; Run With Land. This Declaration shall be binding upon, and shall inure to the benefit of, the parties and each of their respective successors and assigns. This Declaration shall run with and encumber the Premises until such time as expressly provided for herein, and is intended to provide actual and constructive notice to the world of the terms and conditions herein.

i. Agreement. Nothing herein is intended or shall be construed to modify or amend the terms of the Agreement.


j. Recording/Priority. It is agreed that this Declaration is intended to be recorded against the Premises immediately sequential to the recording of the deed from Seller to Buyer, without any intervening instruments, liens or other encumbrances.

IN WITNESS WHEREOF, Seller, Sagres and Buyer have caused this Declaration of Covenants and Restrictions to be executed and delivered as of the date written above.

SELLER:

PHELPS DODGE REFINING CORPORATION

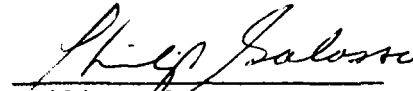
By:


Name: S. David Cotton
Title: SVP & General Counsel

SAGRES:

SAGRES PARTNERS LLC:

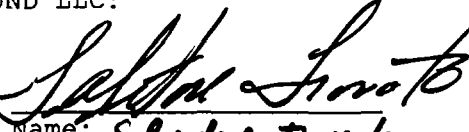
By:


Philip Galasso,
Managing Member

BUYER:

NEWFOUND LLC:

By:


Name: Salvatore Trivelpiece
Title: Managing Member

ACKNOWLEDGEMENTS

STATE OF Arizona)
) ss.:
 COUNTY OF Maricopa)

On the 6th day of October in the year 2005 before me, the undersigned, a notary public in and for said state, personally appeared S. David Colton, 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/she/ executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Karen A. Tierney
 Notary Public



STATE OF New York)
) ss.:
 COUNTY OF New York)

On the 7th day of October in the year 2005 before me, the undersigned, a notary public in and for said state, personally appeared Philp Balzano, 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/she/ executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
 Notary Public

ELI D. DWECK
 Notary Public, State of New York
 No. 02DW6039741
 Qualified in New York County
 Commission Expires April 10, 2007



STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 7th day of October in the year 2005 before me, the undersigned, a notary public in and for said state, personally appeared Salvatore Tomato, 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/she/ executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

ELI D. DWECK
Notary Public, State of New York
No. 02DW6039741
Qualified in New York County
Commission Expires April 10, 2007



EXHIBIT A

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough and County of Queens City and State of New York bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of 43rd Street (60 feet wide) with the northerly side of 56th Road (62 feet wide);

RUNNING THENCE westerly, along the northerly side of 56th Road and along a curve bearing to the left, having a radius of 326.517 feet, an arc length of 62.78 feet to a point of tangency;

RUNNING THENCE South 76 degrees 48 minutes 50.0 seconds West, along the northerly side of 56th Road, 260.71 feet to the easterly side of Tax Lot 150, land now or formerly of the City of New York;

RUNNING THENCE North 04 degrees 01 minutes 03.0 seconds East, along the easterly side of Tax Lot 150, land now or formerly of the City of New York, 317.20 feet to a point;

RUNNING THENCE North 02 degrees 10 minutes 14.0 seconds West, along the easterly side of Tax Lot 150, land now or formerly of the City of New York, 244.10 feet to the southerly side of 55th Avenue (60 feet wide);

RUNNING THENCE North 76 degrees 43 minutes 08.5 seconds East, along the southerly side of 55th Avenue, 20.00 feet to a point;

RUNNING THENCE South 09 degrees 14 minutes 30.8 seconds East, 240.00 feet to a point;

RUNNING THENCE North 80 degrees 06 minutes 05.0 seconds East, 200.01 feet to the westerly side of 43rd Street;

RUNNING THENCE South 09 degrees 14 minutes 30.8 seconds East, along the westerly side of 43rd Street 298.46 feet to the corner formed by the intersection of the westerly side of 43rd Street with the northerly side of 56th Road, the point or place of BEGINNING.

EXHIBIT B

Definitions

1. "Affiliates" shall mean, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and/or, without limiting the generality of the foregoing, (i) is a director or officer of such Person, (ii) owns any direct or indirect beneficial interest in such Person, or (iii) is an Affiliate of such Person. As referenced herein, the term "Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, and any fiduciary acting in such capacity on behalf of any of the foregoing.

2. "Assumed Obligations" shall mean Buyer Remedial Work and Buyer Development Work and Buyers' and/or Sagres' other obligations set forth in this Declaration and shall further mean (i) any and all Losses attributable to the Premises to the extent they arise from or are attributable to events or circumstances that occur on or after the date hereof, (ii) Buyer's or Sagres' obligation to conduct its portion of the Remedial Work in accordance with Environmental Laws, (iii) any and all Losses arising from tort claims made or brought with respect to the Premises, or the use or operation thereof, to the extent they arise from or are attributable to events or circumstances that occur on or after the date hereof including, without limitation, third party claims for bodily injury, property damage, business interruption, or natural resource damages arising from Hazardous Substances, and (iv) any and all Losses to the extent they arise from the acts or omissions of Sagres or Buyer or any subsequent occupants, or the breach by Buyer or Sagres of any of their respective obligations under this Declaration that occur prior to, on or after the date hereof; provided however, that Assumed Obligations does not include any of the Retained Obligations.

3. "Barrier Wall" shall mean the "barrier wall" as defined and more specifically described in the ROD.

4. "Buyer Development Work" shall mean any physical work by Buyer on, in or under the Premises other than elements thereof which constitute Buyer Remedial Work.

5. "Buyer Parties" shall mean Buyer and its employees, agents, principals, members, representatives, and their respective successors and assigns and Affiliates.

6. "Buyer Remedial Work" shall mean that portion of the Remedial Work that Sagres (and/or Buyer, as Sagres' successor-in-interest) is, pursuant to and accordance with the terms of the Section 8.3 Provisions, responsible for performing, and shall include, if and to the extent not otherwise provided for in such provisions, the design and implementation of the Site-Specific Caps, stormwater controls necessary during performance of Sagres Remedial Work and/or Buyer Development Work, the grading and/or stormwater management plan(s), the stormwater management system, the institutional controls, and any Buyer Development Work which constitutes Remedial Work.

7. "Communications" shall mean any verbal, oral, written and/or electronic communications, and other means of information exchange, including, without limitation, letters and other written correspondence, emails and telephone calls, which are to, by, between, directed to, received from, or made available to, any Restricted Party.

8. "DEC" shall mean the New York State Department of Environmental Conservation.

9. "Environment" shall mean the ambient air, surface water, groundwater, soil, sediment and land.

10. "Environmental Conditions" shall mean the Release, past Release, or threatened Release of a Hazardous Substance into the Environment.

11. "Environmental Laws" shall mean any and all Laws existing as of the Closing Date relating to Environmental Conditions, the Release, past Release or threatened Release of Hazardous Substances into the Environment, the protection of public health and the Environment, or the use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Substances, including without limitation, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k; the Clean Air Act, 42 U.S.C. §§ 7401-7671q; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692; the New York Navigation Law, Article 12, and the New York Environmental Conservation Law, Article 13, Title 27; each of their federal, state and local counterparts, as applicable, and any and all rules and regulations promulgated thereunder for all the foregoing.

12. "Feasibility Study" shall mean the document entitled "Feasibility Study Report Operable Unit Nos. 1A, 2, 3, 4

and 5", for the Laurel Hill Site, Maspeth, New York, prepared by Seller's consultants, dated May, 2002.

13. "Groundwater Treatment System" shall mean the groundwater extraction, collection and treatment system as described in the Feasibility Study.

14. "Hazardous Substances" shall mean any materials, substances, wastes, pollutants or contaminants that are regulated under, defined, or listed in any Environmental Law, as of the date of December 6, 2001, including, but not limited to, petroleum (including constituents or degradation products), radioactive materials and substances, asbestos, polychlorinated biphenyls and polyurethane foam insulation.

15. "Institutional Controls" shall mean any limitation or condition on the use of the Premises required pursuant to the ROD or the RD/RA Consent Order, including, but not limited to, that certain Declaration of Covenants and Restrictions, made by Seller and Sagres, dated July 26, 2004, and recorded against the Premises.

16. "Laws" shall mean all federal, state, or local laws, statutes, ordinances, common law, rules, regulations, and codes, judicial and administrative orders existing as of the date hereof.

17. "Losses" shall mean any and all fines, penalties, damages (including, without limitation, damages on account of personal injury or death, property damage or damage to natural resources), reasonable fees, costs and expenses (including, without limitation, sampling, monitoring or remedial costs, reasonable attorneys', consultants' and engineering fees and disbursements, cost or defense and interest) including losses of third parties and the cost incurred by a Buyer or Seller in enforcing its rights hereunder. Notwithstanding the foregoing, "Losses" shall not mean (i) internal management, administrative or overhead costs of Seller or Buyer; or (ii) consequential or special damages of Seller or Buyer, including damages arising from loss of use, or loss of profit or income of Seller or Buyer.

18. "PDRC Remedial Work" shall mean all Remedial Work other than (i) Sagres Remedial Work, and (ii) if and to the extent comprising Remedial Work, Buyer Development Work.

19. "RD/RA Consent Order" shall mean that certain Order on Consent, dated May 13, 2004, entered into by and among Seller, Sagres and DEC with respect to the Real Property.

20. "Release" shall mean any discharge, burial, spillage, leaking, pumping, pouring, emitting, emptying, escaping, injection, migration, leaching, dumping or disposing or a Hazardous Substance into the Environment.

21. "Remainder Closing" shall mean the closing on the sale of the last parcel comprising the Real Property.

22. "Remedial Certification" shall mean the written confirmation by DEC, by letter to Seller dated April 23, 2004, a copy of which is annexed hereto as Exhibit E.

23. "Remedial Work" shall mean any activities or work performed in order to respond to, investigate, evaluate, treat, remove, remediate, monitor, correct, abate or in any way address any actual or potential Environmental Conditions and includes, without limitation, response, removal, remedial and/or corrective actions under any Environmental Law and Sediment Remedial Work.

24. "Reopener" shall mean any requirement by DEC or any other Restricted Party following Remedial Certification with respect to the Premises, that Hazardous Substances which existed on such Parcel or Operable Unit as of the Closing thereon be removed from such Parcel or Operable Unit notwithstanding the prior issuance of a Remedial Certification with respect to such Parcel or Operable Unit.

25. "Restricted Party" shall mean, subject to the second (2nd) sentence of this definition, any federal, state or local governmental agency, organization or regulatory body, which has jurisdiction over, or approval rights and/or enforcement power with respect to, Remedial Work (including, without limitation, DEC, the Department of Health, the United States Environmental Protection Agency and the United States Army Corps of Engineers), and any other governmental agency, organization, or regulatory body that may be granted jurisdiction over, or approval rights and/or enforcement power with respect to, the Remedial Work from time to time, and shall include any individual employees, agents, officials or other persons employed by or acting under the jurisdiction of any of the foregoing. Buyer and Seller agree that for purposes of defining Restricted Parties, the only governmental agencies, organizations and regulatory bodies having jurisdiction over the Remedial Work shall be New York State and federal agencies, organizations and regulatory bodies (i.e. not local agencies), unless and to the extent that, after the date hereof, applicable laws, rules and/or regulations (including applicable interpretations and/or applications thereof) change such that any local agencies,

organizations and/or regulatory bodies become vested with jurisdiction, in which case such local agencies, organizations and/or regulatory bodies shall be deemed to be included within the definition of Restricted Parties.

26. "Retained Obligations" shall mean all of PDRC Remedial Work, and shall further mean: (i) any and all Losses attributable to the Premises to the extent they arise from or are attributable to events or circumstances that occur prior to the date hereof, (ii) Seller's obligation to conduct its portion of the Remedial Work in accordance with Environmental Laws, (iii) any and all Losses arising from tort claims made or brought with respect to the Premises, or the use or operation thereof, to the extent they arise from or are attributable to events or circumstances that occur prior to the date hereof including, without limitation, third party claims for bodily injury, property damage, or natural resource damages, and (iv) any and all Losses to the extent they arise from the acts or omissions of Seller, or the breach by Seller of any of its obligations under this Declaration; provided however, that Retained Obligations does not include any of the Assumed Obligations. Notwithstanding the foregoing, Buyer and Sagres acknowledge and agree that (w) Seller's performance of PDRC Remedial Work may necessarily impact upon certain physical structures, installations and other conditions existing on the Premises as of the date hereof ("Existing Conditions"), (y) that Seller shall have no obligation, express or implied (including, without limitation, pursuant to Seller's Retained Obligations) to preserve, maintain, repair or replace any Existing Conditions in connection with or relating to Seller's performance of PDRC Remedial Work, (iii) that, notwithstanding any Retained Obligations to the contrary, Seller shall have no liability to Sagres or Buyer (or their respective successors or assigns), express or implied, for any claim of damage, loss, diminution in value or otherwise in connection with or arising out of any loss, damage, removal, replacement or modification of any Existing Conditions, unless and to the extent the same is the direct result of Seller's gross negligence or willful misconduct in performing PDRC Remedial Work.

27. "ROD" shall mean the Record of Decision for the Phelps Dodge (Laurel Hill) Site, Maspeth, Queens County, Site Number 2-41-002, issued by DEC and dated January, 2003.

28. "Sagres Communication Restrictions" shall mean (i) that, subject to the Sagres Communication Rights, Seller shall have sole and absolute control, to the exclusion of

Buyer Parties, of all Communications regarding Remedial Work. Without limiting the generality of the foregoing, but subject to the terms hereof, Buyer Parties shall not, without the prior express written consent of Seller in each instance, which consent may be granted or withheld in Seller's sole and absolute discretion, engage in, cause, or otherwise effect any Communications, directly, or indirectly through other entities, intermediaries or persons in which any Buyer Parties presently have, have had, or may hereafter have, an ownership interest in, regarding Remedial Work; and (ii) if and to the extent that any Buyer Remedial Work and/or Buyer Development Work reasonably could, directly or indirectly, impact upon Seller's design or implementation of PDRC Remedial Work (or approval thereof by a Restricted Party), neither Buyer nor any Buyer Party may engage in, cause, or otherwise effect any Communication, directly or indirectly, as to the same, without Seller's consultation and participation.

29. "Sagres Communication Rights" shall mean that, notwithstanding Sagres Communication Restrictions, but expressly subject to the remaining terms of this Declaration, Seller consents to Buyer's Communications with Restricted Parties from and after the date hereof regarding Buyer Development Work and/or Buyer Remedial Work. If and to the extent that any Buyer Remedial Work and/or Buyer Development Work reasonably could, directly or indirectly, impact upon Seller's design or implementation of PDRC Remedial Work (or approval thereof by a Restricted Party), neither Buyer nor any Buyer Party may engage in, cause, or otherwise effect any Communication, directly or indirectly, as to the same, without Seller's consultation and participation. Further, Buyer agrees that Buyer shall (i) keep Seller reasonably apprized of the status of Buyer Remedial Work and Buyer Development Work, (ii) copy or blind copy (at Buyer's option) Seller on all written correspondence (including emails) from Buyer to (and promptly forward to Seller a copy of any such items received from) any Restricted Party, and (iii) except for unscheduled site visits or exigent meetings, give Seller reasonable advance notification (including an expected meeting agenda) of, and permit Seller to have one or two representatives attend and participate in, meetings between Buyer and any Restricted Party regarding Buyer Remedial Work and/or Buyer Development Work, provided that Buyer shall have no obligation to modify its proposed scheduling with any Restricted Party to accommodate Seller's representatives. Buyer shall be under no obligation to include any Seller Party on any telephone conversations between Buyer and any other party, including any Restricted Party. It is agreed that in the event Seller is unable, or elects not, to

attend any such meetings, Buyer will arrange, at Seller's request, for teleconference participation by Seller at such meetings. For purposes of this definition of Sagres Communication Rights, "reasonable advance notification" shall be deemed to be not less than seven (7) business days prior written notification.

30. "Sagres Parties" shall mean Sagres and its employees, agents, principals, members, representatives, and their respective successors and assigns and Affiliates.

31. "Section 8.3 Provisions" shall mean (A) that Buyer shall comply with and implement, at its sole cost and expense, all Remedial Work Requirements of the ROD and the RD/RA Consent Order, as follows: (i) the construction and long term maintenance, care, and repair, and all associated costs, of a Site Specific Cap for the Premises; (ii) compliance with Institutional Controls and associated costs; (iii) all requirements of the RD/RA Consent Order assumed by Sagres, (iv) Remedial Work after the date hereof if required by a Restricted Party and if the Remedial Work arises or results from (x) acts or omissions of Buyer, including Buyer's performance of the Remedial Work, (y) changes in Laws or standards which govern levels of the known contaminants approved and accepted for encapsulation by DEC pursuant to the ROD and RD/RA Consent Order, or (z) Environmental Conditions created by Buyer; (v) payments of any claims by the State of New York, DEC, or any agency for the reimbursement of costs or expenses incurred by such entities in connection with the obligations assumed by Buyer or Sagres under the Section 8.3 Provisions; and (B) that Buyer has assumed all responsibility for: (i) any development of the Premises; (ii) costs associated with the excavation, handling, treatment, removal and disposal in accordance with Environmental Laws, or all soils and materials removed by Buyer in investigating and developing the Premises for its use, except for such soils and materials which were required to be removed by Seller as part of PDRC Remedial Work; (iii) Remedial Work required to be taken (x) at or under any buildings or structures actually erected at the Premises on or after the date hereof, unless Buyer removes the buildings or structures that would otherwise impede Remedial Work, provided that structures do not include roads, parking areas, or similar surface coverings, or (y) otherwise required in connection with the construction or maintenance of buildings or structures (e.g. excavation, handling, storage, treatment or disposal of contaminated soils) at the Premises on or after the date hereof, except for such soils and materials which were required to be removed by Seller as part of PDRC Remedial Work.

32. "Site-Specific Cap" shall mean the "site specific cap" as described in the ROD.

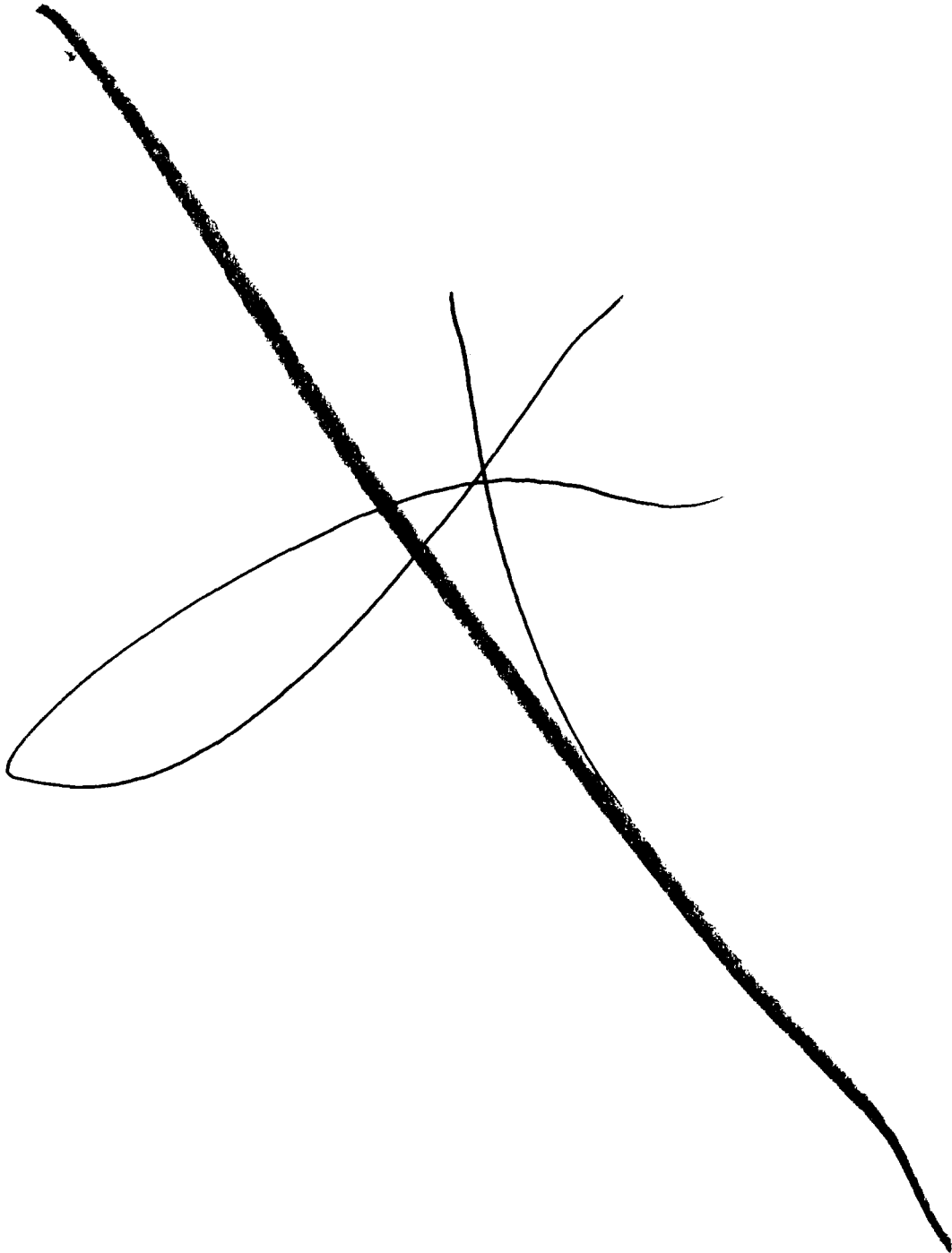
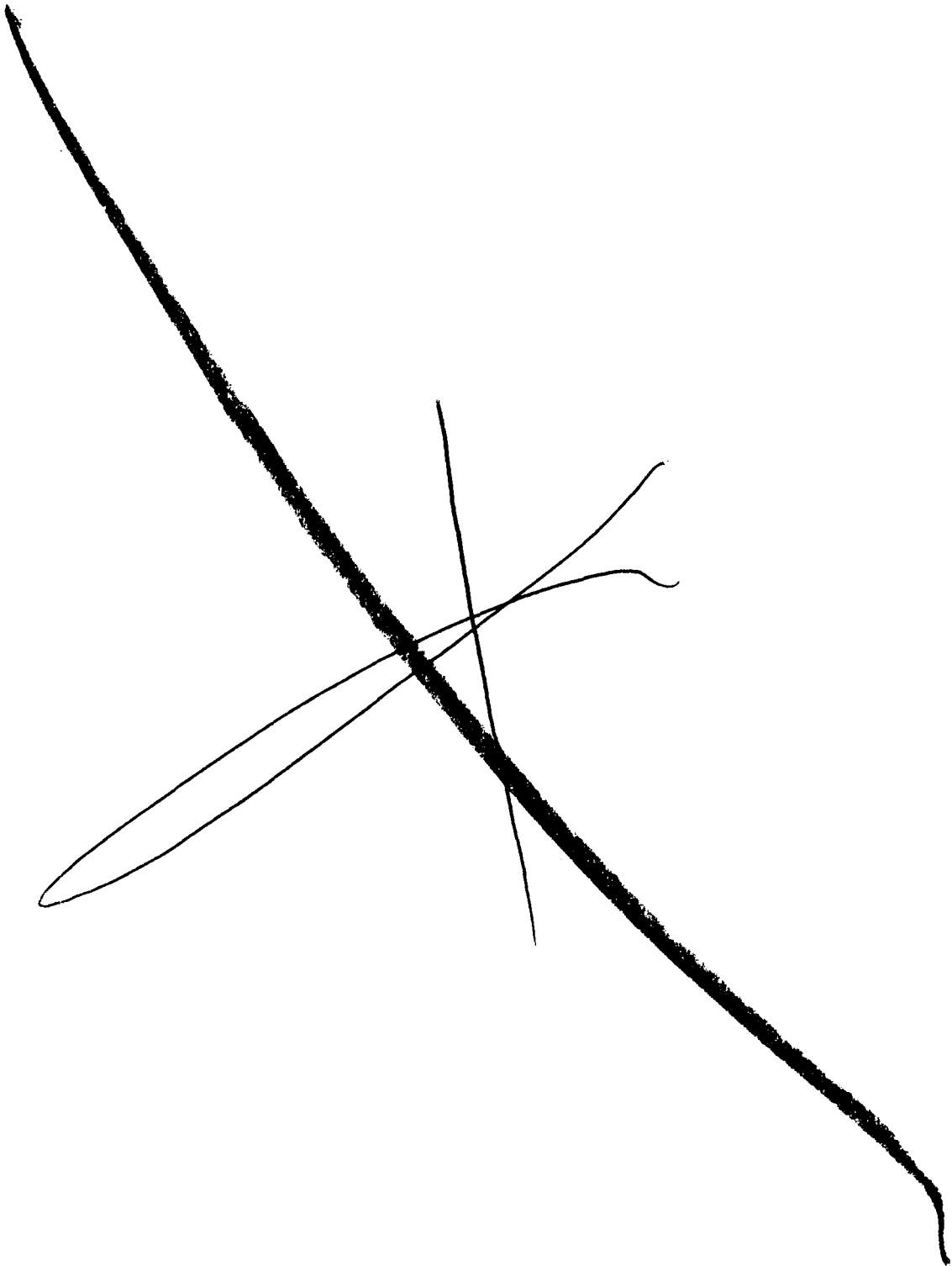
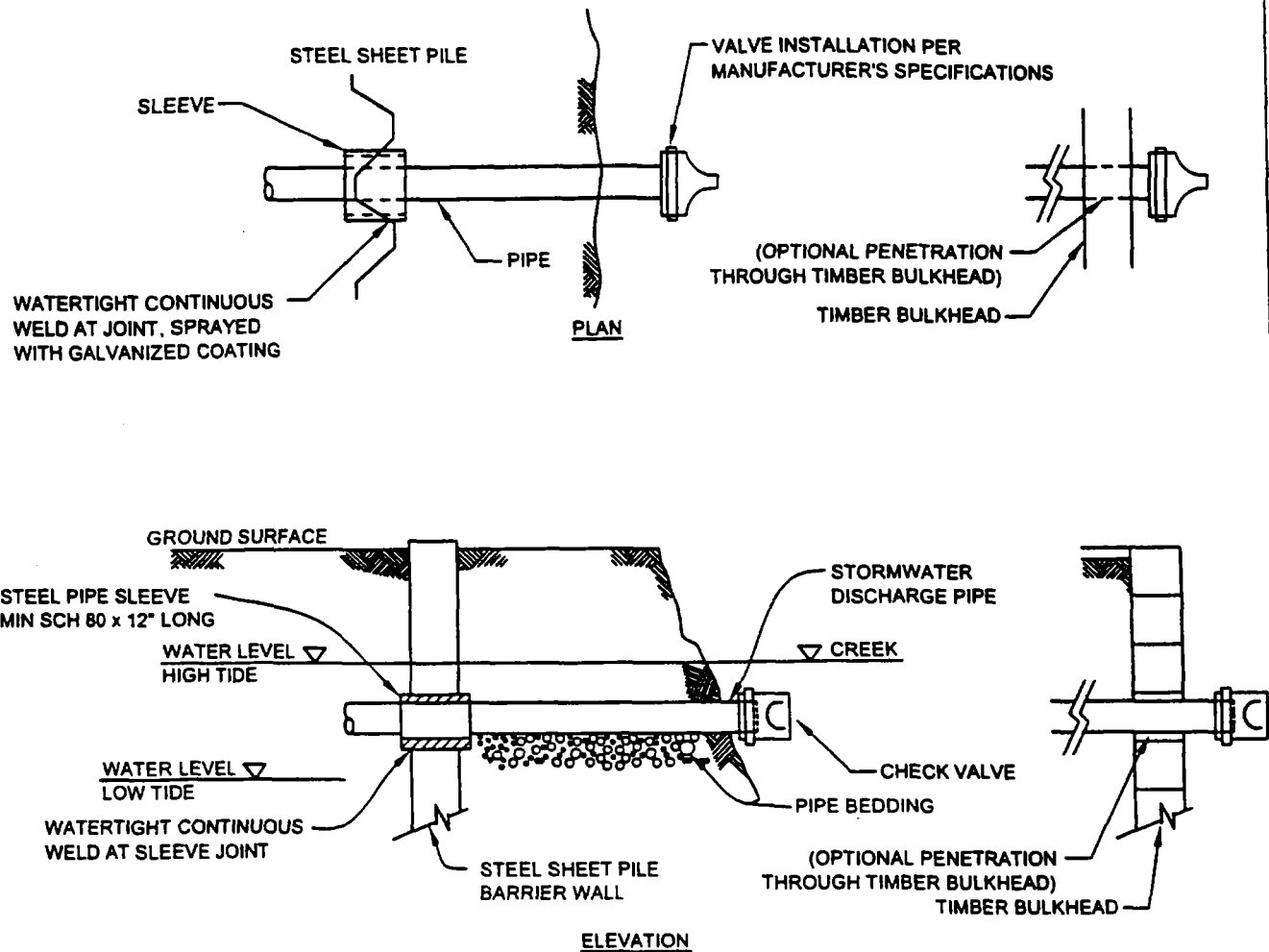


EXHIBIT C

Approved Perforation Plan





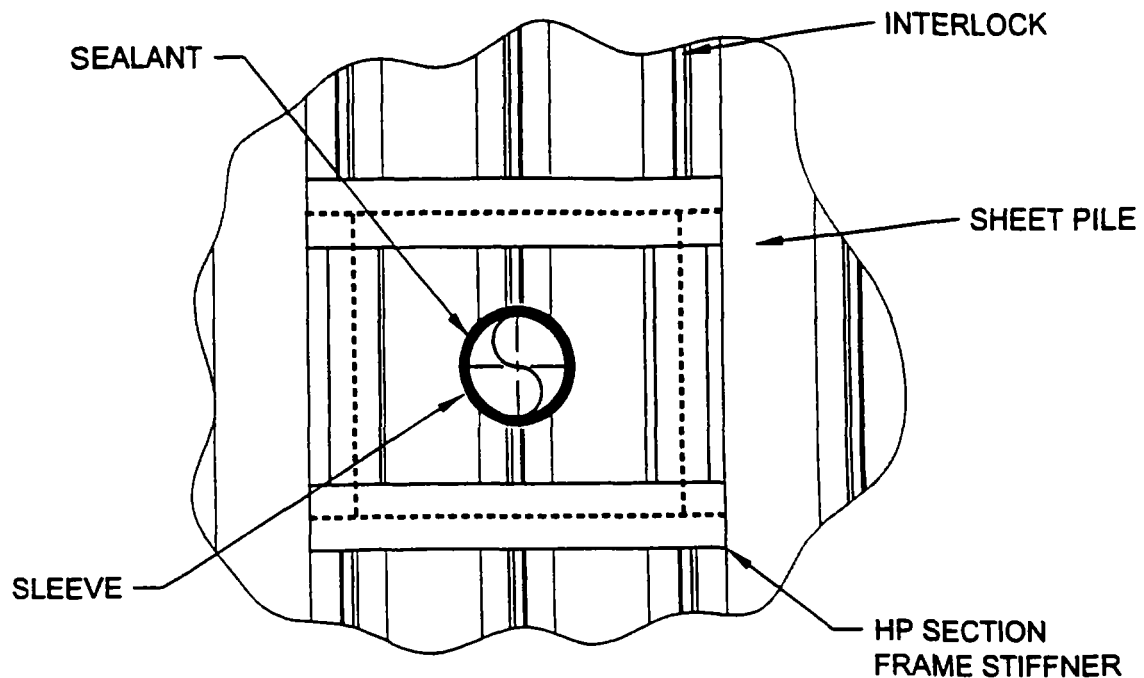
NOTES

1. INTERNAL DIAMETER OF PIPE SLEEVE SHALL BE AT LEAST 2" LARGER THAN OUTER DIAMETER OF STORMWATER DISCHARGE PIPE.
2. ANNULAR SPACE BETWEEN DISCHARGE PIPE AND SURROUNDING SLEEVE SHALL BE SEALED WITH SILICONE BASED SEALANT.
3. PROVIDE CONCRETE ENCASEMENT OF DISCHARGE PIPE ON UP-STREAM SIDE OF SHEET PILE WALL AS A PIPE ANTI-FLOTATION MEASURE WITHIN 5 FEET OF THE WALL.
4. NO LOADS FROM STORMWATER PIPE SHALL BE TRANSFERRED TO THE BARRIER WALL OR BULKHEAD.

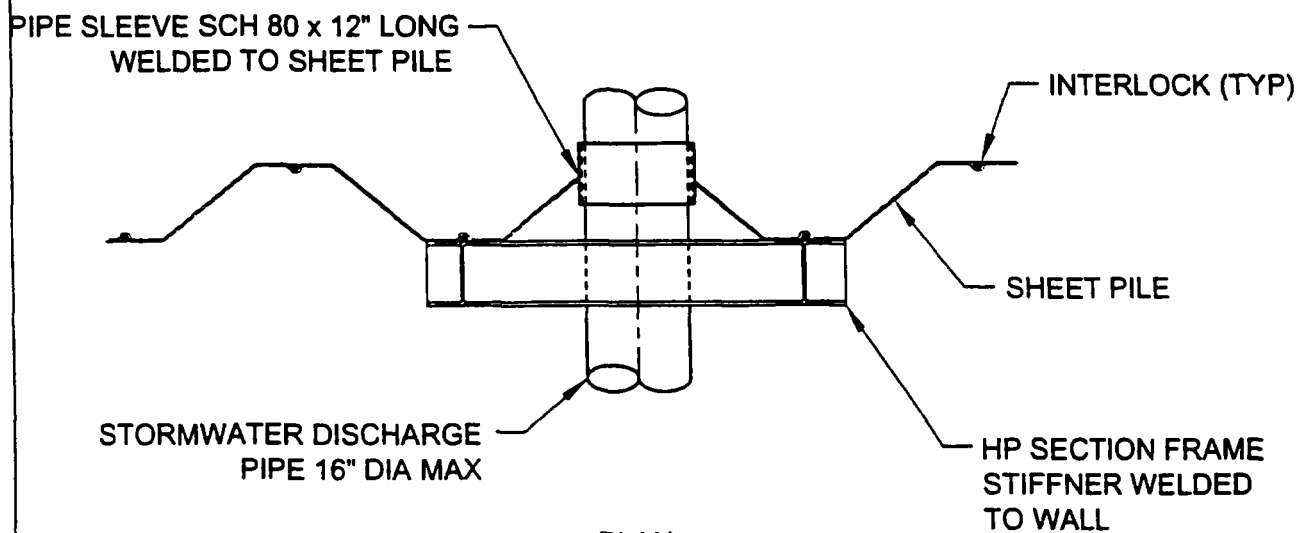
STORMWATER OUTFALL-PIPE PENETRATION AT SHEET PILE WALL: TYPICAL DETAIL

NOT TO SCALE

FIGURE 1



ELEVATION



PLAN

- NOTE: 1) CENTER LINE OF PIPE SLEEVE SHALL PENETRATE AT CENTER LINE OF SHEET PILE WALL INTERLOCK JOINT
 2) THE WELD BETWEEN THE PIPE SLEEVE AND SHEET PILE SHALL BE A CONTINUOUS FILLET WELD

**SUGGESTED SCHEMATIC DETAIL OF SHEET PILE WALL
 STIFFNER AT OPENING/PENETRATION**

NOT TO SCALE

FIGURE 2

**DESIGN BASIS FOR STORM WATER PIPE
PENETRATIONS TO THE BARRIER WALL
PHELPS DODGE (LAUREL HILL) SITE
MASPETH, QUEENS COUNTY, NEW YORK
SITE NUMBER 2-41-002**

Prepared For:

**Sagres Partners, LLC
15-24 132nd Street
College Point, NY 11356-2440**

April 19, 2004

Prepared By:

**LEGGETTE, BRASHEARS & GRAHAM, INC.
Professional Ground-Water and Environmental Engineering Services
110 Corporate Park Drive, Suite 112
White Plains, NY 10604
(914) 694-5711**

**DESIGN BASIS FOR STORM WATER PIPE
PENETRATIONS TO THE BARRIER WALL
PHELPS DODGE (LAUREL HILL) SITE
MASPETH, QUEENS COUNTY, NEW YORK
SITE NUMBER 2-41-002**

1. GENERAL

The New York State Department of Environmental Conservation (NYSDEC), Division of Environmental Remediation, issued a Record of Decision (ROD) in January 2003 for the Phelps Dodge Refining Corporation for the Laurel Hill Site (Site) located in Maspeth, Queens County, New York, Site Number 2-41-002. The ROD identified "Alternate 5: Physical Containment of Soils/Hot Spot Removal/Disposal/Ground Water Containment/Extraction and Treatment of Ground Water and Institutional Controls" as the approach for remediation at the Site. The Alternate 5 includes the installation of steel sheet piles along the Newtown and Maspeth Creeks as a barrier wall to ground water migration into the creeks.

These design basis specifications are intended to show the storm water pipe penetrations to the barrier wall. The final issued for construction design documents for the storm water penetration shall address the following factors and items.

2. SEQUENCE AND COORDINATION

- 2.1 The design documents shall account for and describe coordination required with the plans for development of the property, including the location and size of buildings and utilities.
- 2.2 The design documents must identify and make allowance for ground water remediation work that shall be done prior to or concurrent with the construction and installation of the storm water discharge pipes. This work includes, but not limited to, construction of the groundwater system and installation of the barrier wall.

3. LOCATION OF STORM WATER PIPE PENETRATIONS

- 3.1 The location and size of the storm water pipe penetrations will be determined based on future development.

4. STORM WATER PIPE DESIGN REQUIREMENTS

- 4.1 The components of the storm water pipe penetrations through the barrier wall are illustrated in Figures 1 and 2.
- 4.2 Pipe loads:
 - 1. The pipe penetrations through the barrier wall shall be designed so that no loads from the storm water pipe are transferred to the sheet pile barrier wall. Engineering calculations shall be generated to confirm this requirement.
 - 2. There shall be no supports anchored between the storm water pipe and the sheet pile wall

B. Pipe Sub-Grade:

1. Grading and elevations of the sub-grade are to be specified.
2. Compaction requirements for the sub-grade are to be specified.

C. Pipe Bedding:

1. The bedding course is to consist of 6 inches of a dense graded stone blend.
2. Compaction requirements for the bedding are to be specified.

5. STORM WATER PIPE SYSTEM

- A. Penetrations:** Penetrations are defined as any breaks or holes in the barrier wall through which storm water piping may be constructed. All penetrations through the steel sheet pile barrier wall will be made on the centerline of the barrier wall interlocking joint with the centerline of the pipe sleeve.

- 5.2 Pipe sleeves are to be of galvanized steel pipe nominal inside diameter ranging between 12 inches and 16 inches.

- 5.3 The discharge pipe will be installed inside minimum 1-foot long galvanized steel schedule 80 sleeve with internal diameter 2-inches larger than the discharge storm water pipe outer diameter. The sleeve will be continuously welded to the barrier wall.

- 5.4 Surface and subsurface features are to be designed in such a manner that their construction and utilization will not penetrate or otherwise damage the wall. Care and effort must be taken during the installation as to not disturb or damage the groundwater extraction system (trenching, piping, wells, pumps, backfill, etc.).

- 5.5 The weld between the pipe sleeve and barrier wall shall be waterproof. The seal between the pipe sleeve and stormwater pipe shall be water tight and designed to last at least 10 years. Silicone weatherproof sealant manufactured by Dow Corning will be used as a seal between the sleeve and the discharge pipe.

6. CONSTRUCTION DOCUMENTS

- 6.1 Technical specifications for the barrier wall penetrations are to be prepared in accordance with standard engineering practice. The specifications will describe materials to be used in construction of the discharge piping and provide information to supplement the construction drawings.

- 6.2 Construction drawings are to be prepared in accordance with standard engineering practice. The construction drawings will illustrate the work to be completed and provide relevant details. The drawings are to show where the groundwater extraction system is located so that the contractor is aware of it's location and can prevent any interference with it when installing the pipe penetrations.

- 6.3 Future work and penetrations of the wall shall be evaluated and performed under the direction of

a New York State licensed Professional Engineer.

6.4 The drawings shall note that the sheet pile barrier wall is the property of Phelps Dodge Refining Corporation and is functioning as part a groundwater water treatment system that is being administrated under a New York State Order of Consent.

7. QUALITY CONTROL

- 7.1. The methods and procedures to be used to ensure that the materials and construction work meet the technical specifications and construction drawings are to be described.

8. STORMWATER RUNOFF MANAGEMENT DURING CONSTRUCTION

- 8.1 The plan for managing runoff and control of erosion and sedimentation during construction are to be described.

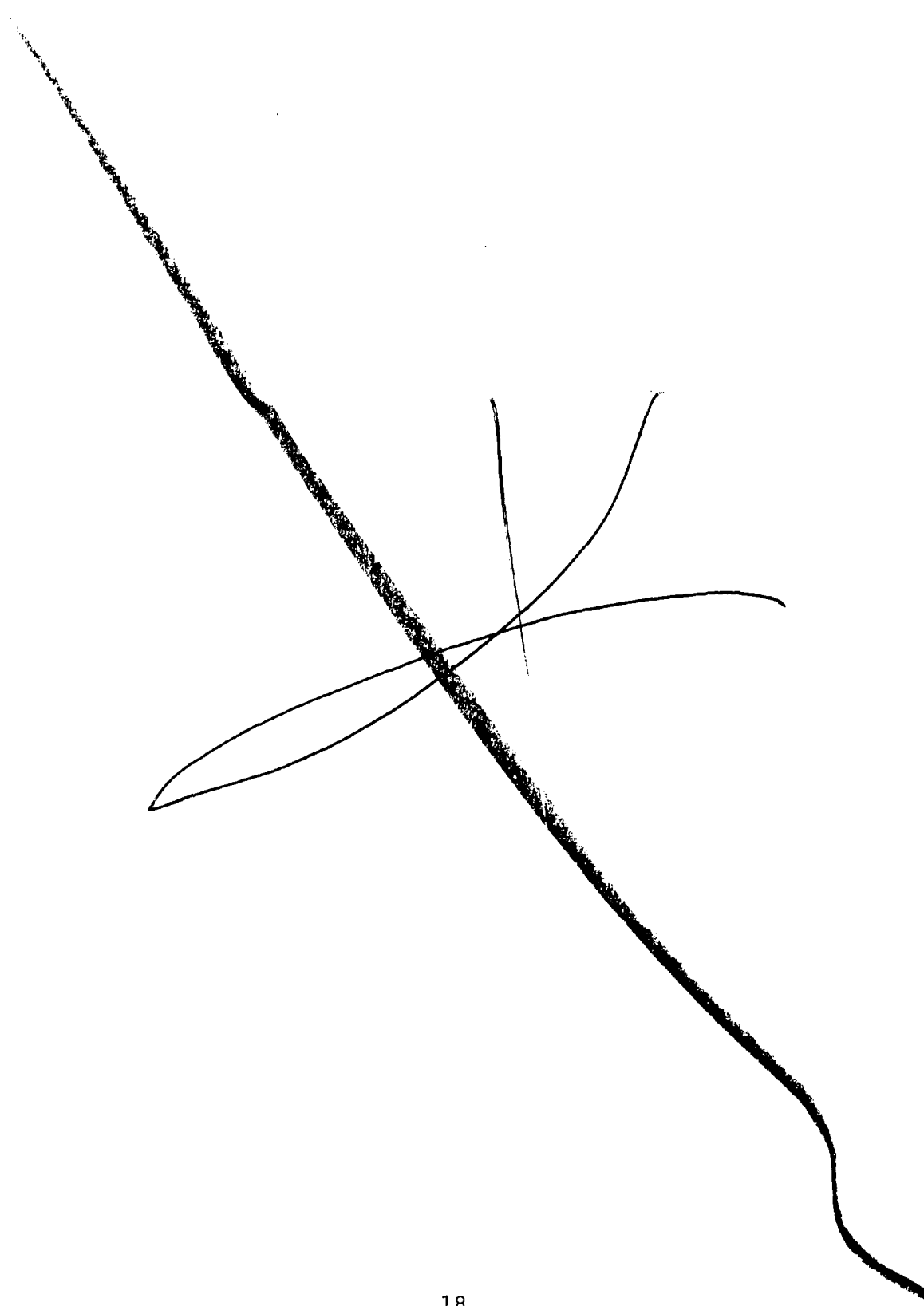
9. MISCELLANEOUS

- 9.1. ~~Health and Safety Plan:~~ A Health & Safety Plan is to be prepared to address the potential for exposure to contaminated soil during installation of the pipe penetration. If the penetration is to take place more than three feet below surface grade the engineer is to design a shoring protection system to protect all personnel that may need to work in the open pit area to install the penetration and make provisions to pump out the groundwater that may enter the work area.
- 9.2 Certifications and Approvals: The design documents are to be certified by a New York State licensed Professional Engineer. The requirements for obtaining the permits and approvals necessary for implementing the proposed work shall be identified.
- 9.3 Contingencies: The design documents are to identify reasonable situations which may affect the construction of the pipe penetration. In each case, a general response is to be described

END OF SECTION

EXHIBIT D

Form of Release



RELEASE

The undersigned ("Releasor") has requested the opportunity to enter, visit and view the Laurel Hill Site ("Site") located in Maspeth, New York, owned by Phelps Dodge Refining Corporation ("PDRC").

Releasor hereby expressly acknowledges and agrees that it has been advised of, and understands, the following:

1. That the Site is and has been listed by the New York Department of Conservation on the New York State Registry of Inactive Hazardous Waste Sites.

2. That the Site contains PCB and other hazardous substance contamination and also includes unstable areas, areas with unmarked excavations and hazards, hazardous substances, and other hazardous conditions.

3. That the Site is currently undergoing active remediation and it is possible that air borne contaminants are present at the Site. Further, heavy machinery and trucks are expected to be entering and exiting the Site at various hours of the day and night.

4. THAT RELEASOR'S ENTRY ON THE SITE IS AT RELEASOR'S OWN RISK, WITH FULL ACKNOWLEDGMENT OF THE FOREGOING.

Releasor, in consideration of being allowed to enter, visit and view the Site, hereby (A) releases and discharges PDRC, its past, present and future affiliates, parents and subsidiaries and each of their officers, directors, shareholders, employees, agents and representatives and respective successor and assigns from any and all claims, actions, causes of actions, suits, liabilities, demands, and damages associated with, related to, arising from, or resulting, directly or indirectly, from Releasor's entry onto or into the Site; (B) warrants and represents that he/she will not be performing or engaging in any activity which involves the disturbance, removal, or disruption of any surface area located within the Site; and (C) agrees that he/she will not approach and/or enter any area where active remediation is being conducted and agrees to be accompanied around the Site by a PDRC site representative.

Dated: _____, 200__

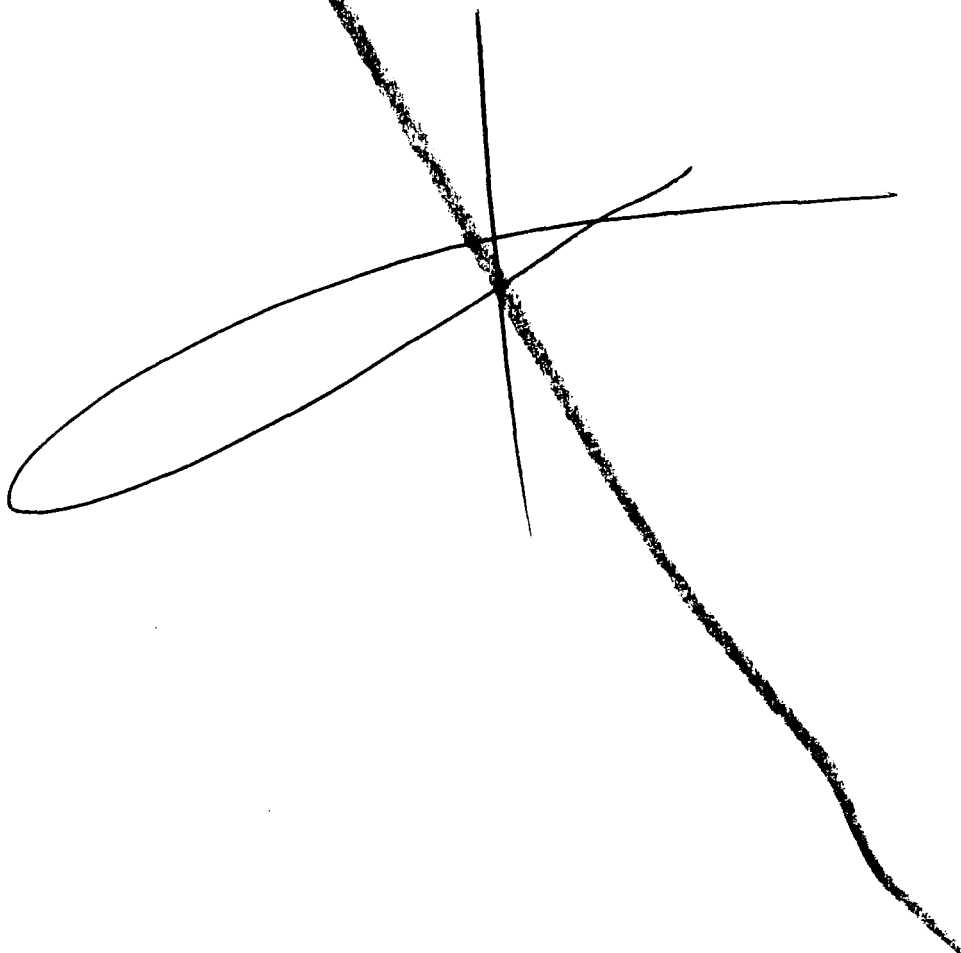
Releasor Signature

Print Name

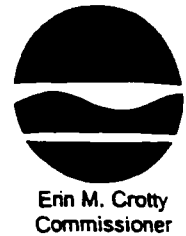
Company Name

EXHIBIT E

Copy of Remedial Certification



New York State Department of Environmental Conservation
Division of Environmental Enforcement
Superfund and Brownfield Restoration Bureau
625 Broadway, Albany, New York 12233-5500
Phone: (518) 402-9507 • FAX: (518) 402-9019
Website: www.dec.state.ny.us



April 23, 2004

Via Fax and Regular Mail

Michael B. Wood, Esq.
Senior Counsel
Phelps Dodge Corporation
One North Central Avenue
Phoenix, AZ 85004

Re: Phelps-Dodge property, Maspeth, NY.
Inactive Hazardous Waste Site # 241002

Dear Mr. Wood,

This letter will confirm that the Soil Removal Remedial Action has been completed at the above-referenced Phelps Dodge Site for OUIAa, OUIAb, OUIAd, OUIAe, OU2, OU4, OU4a and OU5, in accordance with the January 2003 Record of Decision and the "Remedial Design Remedial Action Work Plan - Hot Spot Removal" dated May 2003. The remaining items required to complete the remedy selected by the ROD are: design and implementation of the groundwater extraction, containment and treatment system; design and implementation of a site specific cap; institutional controls and a long term cap inspection/maintenance program and groundwater monitoring program.

Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Anthony B. Quartararo".

Anthony B. Quartararo
Bureau Chief

Superfund and Brownfield Restoration Bureau

cc: D. Walsh (e-mail)
S. Singh (e-mail)
J. Hamula, Esq. (e-mail)
M. Bogin, Esq. (e-mail)