

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
Of a Work Plan for an Interim
Remedial Measure and Remedial
Design and Construction of a Final
Remedial Program for an Inactive,
Hazardous Waste Disposal Site,
and Off-Site Treatment Area
Under Article 27, Title 13, of
the Environmental Conservation
Law of the State of New York by:

AGREEMENT
AND
DETERMINATION

INDEX # A-7-0224-90-02

CONKLIN, LTD.

Respondent

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites."

2. Conklin, Ltd. ("Respondent") a corporation duly organized and existing under the laws of New York State, with offices for the transaction of business at Shanley, Sweeney & Reilly, P.C., The Castle at Ten Thurlow Terrace, Albany, New York 12203, proposes to develop and construct a shopping center on property generally located south of Onondaga Lake and north of Hiawatha Boulevard West between the New York State Barge Canal and Interstate 81 in the City of Syracuse known as the Carousel Site. The proposed shopping center may include all or part of a parcel of property formerly owned by Clark Concrete

Co., Inc. Environmental sampling and analyses establish that there are elevated concentrations of certain contaminants in the soil and groundwater under a portion of the Clark Property ("the Clark Site") (Appendix A).

3. The Department has determined that the Clark Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and has listed the Clark Site in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 734048. The Department has classified the Clark Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b).

4. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

5. On June 27, 1989 the parties to this Agreement and Determination executed an Agreement and Determination ("Agreement-1") which provided for the development and implementation of a Remedial Investigation and Feasibility Study for the Clark Site. Among other things, Agreement-1 authorizes

the Department to select a final remedial program for the Clark Site in a Record of Decision ("ROD") after the Feasibility Study has been approved by the Department.

Respondent agrees that it will undertake (i) the implementation of the interim remedial measure defined in the Approved Work Plan ("IRM Approved Work Plan") at the Clark Site; and (ii) the development and implementation of a final Remedial Program for the Clark Site, all areas impacted by the migration of hazardous wastes from the Clark Site, and the contiguous treatment area located at the southwest corner of the Carousel Site (Appendix "B"). For purposes of this Agreement and Determination, the "contiguous treatment area" shall include, but not be limited to, the treatment structure depicted in Appendix "B", along with any other areas contaminated as a result of Respondent's implementation of the IRM Approved Work Plan provided for in this Agreement and Determination.

6. The Department and the Respondent, in its capacity as the owner of the Clark Site, agree that the goals of this Agreement and Determination shall be (i) the implementation of the IRM Approved Work Plan as an interim remedial measure for the Clark Site by Respondent, and (ii) the development and implementation of a Remedial Program within 90 days after the Department has selected the final remedial program for the Clark Site and the contiguous treatment area, in a Record of Decision ("ROD") pursuant to Agreement-1.

7. The Department shall follow the ROD process pursuant to Commissioner Jorling's Organization and Delegation Memorandum #89-05 and Respondent shall be afforded the rights authorized by that document in addition to any other rights it derives under the law after it has exhausted its administrative remedies.

8. Respondent, without admitting any violation of laws and having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Agreement and Determination, agrees to be bound by its terms.

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

I. Nothing contained in this Agreement and Determination shall be construed as barring, diminishing, adjudicating, or in any way affecting Respondent's duties to fulfill all of its obligations to perform all of its responsibilities under Agreement-1.

In addition to Respondent's duty under Agreement-1, to perform an RI/FS for the Clark Site, the Respondent is further obligated to include in its Feasibility Study for Agreement-1, an analysis of alternatives for the permanent remediation of the contaminated soils removed from the Clark Site to the contiguous treatment area.

II. As used herein, for purposes of ECL Article 27, Title 13, the term "hazardous waste" shall mean hazardous wastes, as

defined at 6 NYCRR Part 371 and any constituents, as defined in 6 NYCRR Part 371, Appendix 23, or degradation products of such wastes.

III. All activities and submittals required by this Agreement and Determination shall address both on-Site and off-Site contamination caused by the disposal of hazardous waste at the Clark Site and the contiguous treatment area and shall be in accordance with Requisite Technology. As used in this Agreement and Determination, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, and (b) will identify, mitigate and eliminate, to the maximum extent practicable, in a cost effective manner, any present or potential threat to the public health or environment posed by the presence of hazardous waste at the Clark Site and the contiguous treatment area and any release or threatened release of hazardous waste at or from the Clark Site and the contiguous treatment area.

IV. The IRM Approved Work Plan is an integral part of this Agreement and Determination and is hereby incorporated by reference as though it were set forth verbatim herein. A copy of the IRM Approved Work Plan is attached hereto as Appendix C. Subject to public review and comment on the IRM Approved Work Plan as deemed appropriate by the Department and upon Respondent's receipt of the Department's written authorization to proceed with the IRM Approved Work Plan, Respondent shall

commence the implementation and performance of the IRM Approved Work Plan.

V. Respondent shall implement and perform the IRM Approved Work Plan in accordance with the terms, conditions, and time schedule contained in the IRM Approved Work Plan. The Department reserves the right, at any time, to add further terms and conditions for the IRM Approved Work Plan. The Respondent shall immediately cease and discontinue operation of the interim remedial measure upon receiving notice to do so from the Department. Within 30 days of the completion of the IRM Approved Work Plan, Respondent shall submit a Report to the Department, which shall be attached as Appendix "D" and incorporated into this Agreement making it an enforceable part hereof. The Report shall include a certification by Respondent's consultant that all activities that comprised the IRM Approved Work Plan were performed in accordance with the IRM Approved Work Plan. The Department reserves the right to require a clarification, modification, and/or amplification and expansion of the Report by Respondent if the Department determines, as a result of reviewing data generated by the IRM Approved Work Plan and Report or as a result of reviewing any other data or facts, that further information is required. During the performance of the IRM Approved Work Plan, Respondent shall have a full time representative who is qualified to inspect the work at the location of any field activities.

VI. Pursuant to Agreement-1, Respondent is in the process of conducting a Remedial Investigation and on February 9, 1990, submitted a "Supplemental Feasibility Study for Site #734048", which is presently under review by the Department. The Department will provide comments regarding the Feasibility Study to the Respondent within the time constraints of Agreement-1.

VII. Pursuant to Paragraph X of Agreement-1, after the close of the public comment period on the RI/FS, the Department shall select a final remedial program for the Clark Site and the contiguous treatment area in a Record of Decision ("ROD").

VIII. Unless the ROD recommends the "no action" alternative, Respondent shall submit a Remedial Design within 60 days after a copy of the ROD is served on Respondent. The Remedial Design shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Remedial Design shall include the following:

a. A detailed description of the means by which each essential element of the Remedial Program will be performed, to include but not be limited to:

1. the collection, destruction, treatment, and/or disposal of hazardous wastes, and their constituents and degradation products, and any soil or other materials contaminated thereby at the Clark Site, the contiguous treatment

area, and at any other treatment and storage areas used during the implementation of the IRM Approved Work Plan and areas affected by contaminants released from the Clark Site;

2. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

3. physical security and posting of the Clark Site, the contiguous treatment area, and at any other treatment and storage areas used during the implementation of the IRM Approved Work Plan and areas affected by contaminants released from the Clark Site, if needed;

4. health and safety of persons living and/or working at or in the vicinity of the Clark Site, the contiguous treatment area, and at any other treatment and storage areas used during the implementation of the IRM Approved Work Plan and areas affected by contaminants released from the Clark Site;

5. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program; and

6. monitoring that integrates needs which are present both on-Site and off-Site during implementation of the Remedial Program.

b. "Biddable Quality" documents for the Remedial Program, including plans and specifications prepared and certified by an engineer licensed to practice by the State of New York who may be an employee of the Respondent, or an individual who, or a member of a firm that, is authorized to

offer engineering services in accordance with Article 145 of the New York State Education Law. These plans shall satisfy all applicable local, state, and federal laws, rules, and regulations;

c. A time schedule for the Remedial Program and provisions for periodic work-in-progress reports during the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

e. A description of operation, maintenance, and monitoring activities to be undertaken following completion of the Remedial Program, including the number of years during which such activities will be performed;

f. A contingency plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment; and

g. A health and safety plan during construction and after completion of the Remedial Program. The plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional for the protection of persons at and in the vicinity of the Clark Site, the contiguous treatment area, and at any other treatment and storage areas used during the implementation of the IRM Approved Work Plan and areas affected

by contaminants released from the Clark Site.

IX. After receipt of the Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the Remedial Design. If the Department approves the Remedial Design, the Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the Remedial Design, the Department shall notify Respondent in writing of the Department's objections. Within 45 days after receipt of notice of disapproval, Respondent shall revise the Remedial Design in accordance with the Department's specific comments and submit a revised Remedial Design.

After receipt of the revised Remedial Design, the Department shall notify Respondent in writing of its approval or disapproval of the revised Remedial Design. If the Department approves the revised Remedial Design, Respondent shall implement the Remedial Program in accordance with it.

If the Department disapproves the revised Remedial Design, the Respondent shall be deemed to be in violation of this Agreement and Determination and the ECL.

The approved Remedial Design shall be attached as Appendix "E" and incorporated into this Agreement and Determination.

X. Respondent shall implement the Remedial Program in accordance with the approved Remedial Design. Respondent must obtain prior written approval from the Department prior to

deviating from the approved Remedial Design in any way. During implementation of the Remedial Program, Respondent shall have a full-time representative who is qualified to inspect the work at the location of any field activities.

Within 60 days after completion of the Remedial Program, Respondent shall submit as-built drawings, a final engineering report, final operation, maintenance and monitoring report reflecting all changes made during construction and a certification that the Remedial Program was completed in accordance with the approved Remedial Design, all by an engineer licensed to practice by the State of New York who may be an employee of the Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

XI. Within 30 days after receipt of the as-built drawings, final engineering report and certification, the Department shall notify Respondent in writing whether it accepts as complete the Remedial Program as being protective of human health and the environment.

If the Department concludes that any element of the Remedial Program fails to operate in accordance with the Remedial Design or otherwise fails to protect human health or the environment, the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law.

XII. Respondent shall operate, maintain, and monitor all

elements of the Remedial Program for the period of years set forth in the approved Remedial Design, implement the contingency plan contained in the approved Remedial Design in the event any element of the Remedial Program fails after completion or otherwise fails to protect human health or the environment, and implement the health and safety plan contained in the approved Remedial Design after completion.

XIII. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent and the Department shall also have the right to take its own samples.

XIV. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations as are necessary to perform Respondent's obligations under this Agreement and Determination. In the event that access is denied to the Respondent, in the performance of this Agreement and Determination, the Department may seek to enforce its authority to obtain access. Respondent's failure to obtain access, despite its best efforts, will suspend its obligations under this Agreement and Determination that are contingent upon such access.

XV. Respondent shall permit any duly designated officer, employee, consultant, contractor, or agent of the Department to enter the Clark Site or areas in the vicinity of the Clark Site which may be under the control of Respondent and any areas necessary to gain access thereto, for purposes of inspection and

of making or causing to be made such sampling and tests as the Department deems necessary, and for assurance of Respondent's compliance with the terms of this Agreement. During implementation of the Remedial Program, Respondent shall provide the Department with suitable office space at the site, including access to a telephone, and shall permit the Department full access to all records and job meetings relating to the implementation of the terms and conditions of this Agreement and Determination.

XVI. Respondent shall retain qualified and reputable professional consultants, contractors and laboratories acceptable to the Department to perform the technical, engineering and analytical obligations required by this Agreement and Determination. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department for approval prior to the initiation of any activities for which they will be responsible.

XVII. Respondent shall not suffer any penalty under this Agreement and Determination, or be subject to any proceeding or action for any remedy or relief, if it cannot comply with any requirements hereof because of an Act of God, war or riot or other circumstances beyond its control, provided, however, that Respondent shall promptly notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Agreement and

Determination.

XVIII. The unexcused failure of the Respondent to comply with any term of this Agreement and Determination shall be a violation of this Agreement and Determination and the ECL. The term "Agreement and Determination", as used in this document, shall have the same meaning and the same force and effect as an "Order on Consent" entered into between the Department and Respondent, and shall be enforceable pursuant to all of the provisions of law applicable to the enforcement of an Order on Consent.

XIX. Nothing contained in this Agreement and Determination shall be construed as barring, diminishing, adjudicating, or in any way affecting:

a. the Department's right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce this Agreement and Determination against Respondent, its successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action or proceeding against Respondent, its successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or threatened release of hazardous wastes or constituents at or from the Clark Site, the contiguous treatment area, and at or from any other

treatment and storage areas used during the implementation of the IRM Approved Work Plan and areas affected by contaminants released from the Clark Site or areas in the vicinity of the Clark Site, including but not limited to claims for natural resources damages; and

d. the Department's right to bring any action or proceeding against any responsible party to compel implementation of an inactive hazardous waste disposal site remedial program for the Clark Site and/or the contiguous treatment area, and to obtain recovery of its costs in connection with the Site and/or the contiguous treatment area.

XX. This Agreement and Determination shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XXI. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of the fulfillment or attempted fulfillment of this Agreement and Determination by Respondent, its directors, officer, employees, servants, agents, successors or assigns, or resulting from the fulfillment or attempted fulfillment of this Agreement and Determination by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XXIII. The effective date of this Agreement and Determination shall be the date it is signed by the Commissioner or his designee.

XXIII. In the event Respondent proposes to convey the whole or a majority share of its ownership interest in the Clark Site or in the event that there has been a transfer of any ownership interest which would result in a greater than 50% aggregate and/or cumulative transfer of Respondents's ownership interest in the Clark Site, Respondent agrees to provide the Department, not fewer than 24 hours prior to the conveyance, with financial assurance, acceptable to the Department, establishing that the terms, conditions and obligations of the Respondent under this Agreement and Determination will be carried out and completely fulfilled, and Respondent shall, not fewer than 24 hours prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall within 10 days of the commitment to make the proposed conveyance notify the transferee in writing of the applicability of this Agreement and Determination. Upon notifying the Department as required by this paragraph, Respondent shall provide the Department with the identity of all of the Conklin Ltd. shareholders and their respective interests, as of the date of Respondent's execution of this Agreement and Determination.

XXIV. Failure to provide ownership interest information, notification of conveyance, financial assurance acceptable to

the Department as required by Paragraph XXIII and/or failure to notify the transferee of this Agreement and Determination shall be deemed to be a violation of this Agreement and Determination and the Environmental Conservation Law and shall require Respondent to remit the sum of \$100,000 per day for every day the violation has occurred.

The Pyramid Company of Onondaga, a partnership, is the owner and developer of the Carousel Center Mall. Provided that Pyramid Company of Onondaga continues to be the owner and developer of the Carousel Center Mall, its commitment to fulfill Respondent's obligations under this Agreement and Determination shall constitute adequate financial assurance to the Department required by this Agreement and Determination. The obligations pursuant to Paragraphs XXIII and XXIV shall cease upon the fulfillment of the terms and conditions of this Agreement and Determination.

XXV. If Respondent desires that any provision of this Agreement and Determination be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed pursuant to Paragraph XXVI.

XXVI. All written communications required by this Agreement and Determination shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

A. Communication from Respondent shall be made as follows:

1. David Markell, Esq.
Director, Division of Environmental
Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
2. Michael O'Toole, P.E.
Director, Division of Hazardous Waste
Remediation
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
3. Ronald Tramontano
Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
4. Frank Bifera, Esq.
Assistant Counsel
Division of Environmental
Enforcement - Albany Field Unit
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233
5. Charles Branagh, P.E.
New York State Department of
Environmental Conservation
615 Erie Boulevard
Syracuse, New York 13204

B. Copies of work plans and reports shall be submitted as follows:

1. Six copies to the Michael O'Toole.
2. Two copies to the Ronald Tramontano.
3. One copy to Frank V. Bifera.

4. One copy to Charles Branagh.

C. Communication to be made from the Department to the Respondent shall be made as follows:

c/o Michael P. Shanley, Esq.
The Clinton Exchange
4 Clinton Square
Syracuse, New York

c/o Thomas M. Johnson
Dunn Geoscience Corporation
24 Aviation Road
Albany, New York 12205

c/o Bruce Kenan
The Clinton Exchange
4 Clinton Square
Syracuse, New York

c/o Shanley, Sweeney & Reilly
The Castle at Ten Thurlow Terrace
Albany, New York 12203

XXVII. Respondent, its successors and assigns shall be bound by this Agreement and Determination. Nothing in this Agreement and Determination shall be construed to bind any other party.

XXVIII. The terms hereof shall constitute the complete and entire Agreement and Determination between Respondent and the Department concerning the Clark Site and the contiguous treatment area. No term, condition, understanding or agreement purporting to modify or vary the terms hereof 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 regarding reports, proposals, plans, specifications, schedules or any other submittal shall be construed as relieving

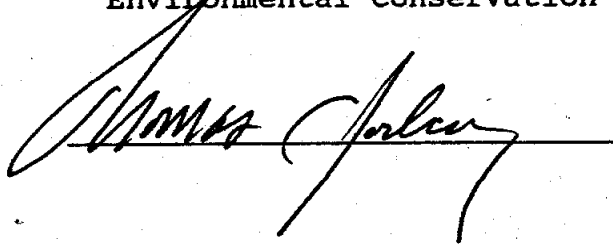
Respondent of its obligations to obtain such formal approvals as may be required by this Agreement and Determination.

XXIX. This Agreement and Determination shall be sufficient authorization and approval under State law for the implementation of the IRM Approved Work Plan and the Remedial Program once the Remedial Program has been approved pursuant to the terms and conditions of this Agreement and Determination and Respondent complies with the terms and conditions of paragraph XIV.

XXX. The Department will not be arbitrary and/or capricious in performing its duties pursuant to this Agreement and Determination and Respondent shall perform all of its obligations and duties under the Agreement and Determination.

DATED: *Albany*, New York
May 25, 1990

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in dark ink, appearing to read "Thomas Jorling", is written over a horizontal line.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Agreement and Determination, waives its right to a hearing herein as provided by law, and agrees to be bound by this Agreement and Determination.

By:

Title:

Date:

Michael P. Shanley
V. Pres.
3/2/90

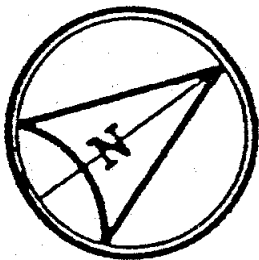
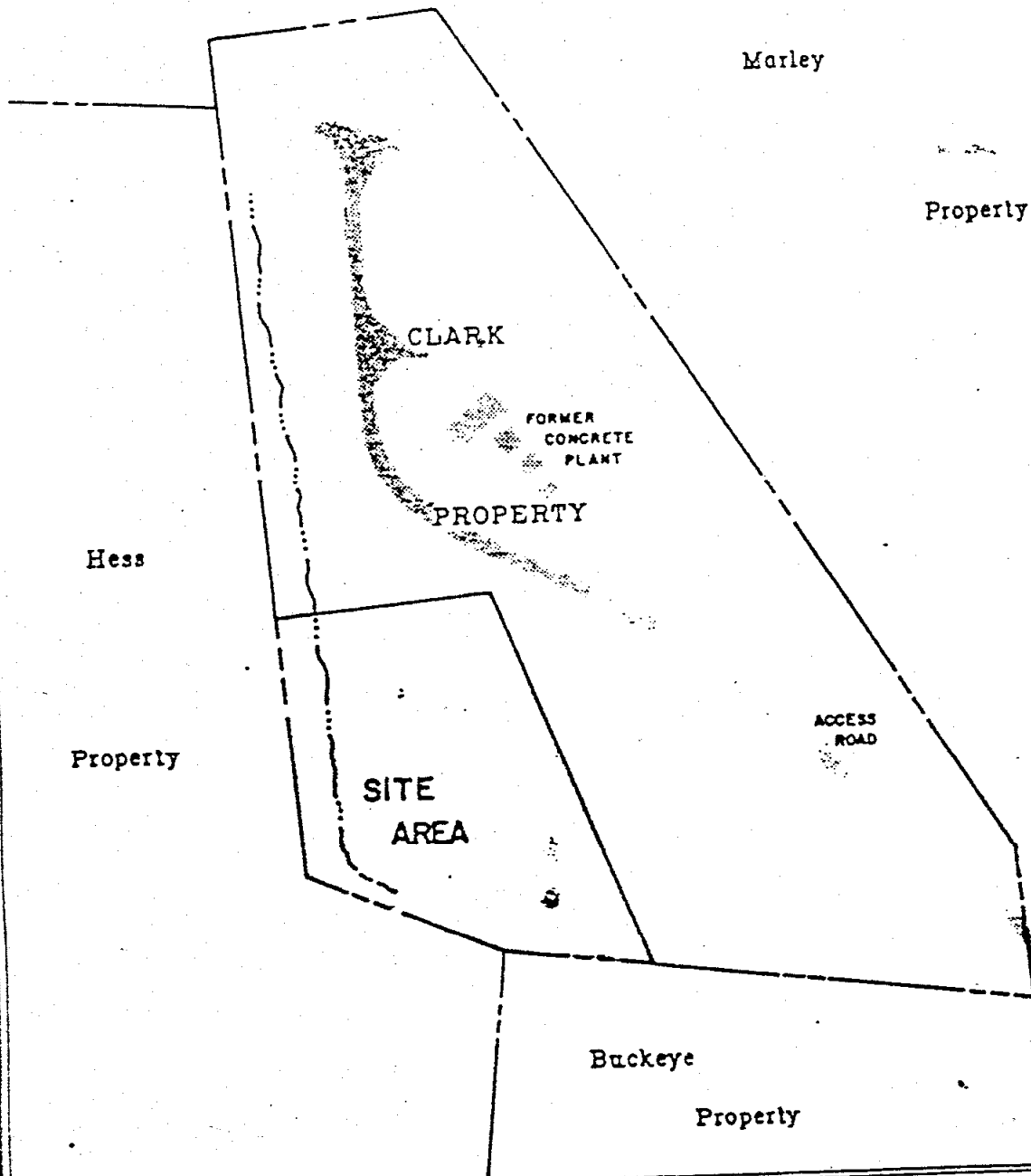
STATE OF NEW YORK)
) s.s.:
 COUNTY OF ALBANY)

On this 2ND day of MARCH, 1990,
 before me personally came MICHAEL P. SHANLEY, to me
 known, who being duly sworn, did depose and say that he resides
 in City of Albany; that he is the
VICE President of the CONKLIN LTD.
 corporation described in and which executed the foregoing
 instrument; that he knew the seal of said corporation; that the
 seal affixed to said instrument was such corporate seal; that
 it was so affixed by the order of the Board of Directors of said
 corporation, and that he signed his name thereto by like order.

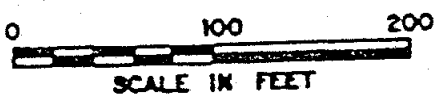
Frank V. Bifera
 Notary Public

FRANK V. BIFERA
 NOTARY PUBLIC, State of New York
 No. 4625305
 Qualified in Albany County
 Commission Expires March 31 1990

APPENDIX A



Site of Identified VOC
Source Area



NOTES

1987 Monitoring Wells and Soil Samples are taken from C.T. Mole Associates, P.C. Drawing # 87-875 R, dated 11/30/87



The location, size, and configuration shown hereon are approximate only and the actual location, size, and configuration may vary from that shown.

