

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Development and  
Implementation of a Remedial Program  
for an Inactive Hazardous Waste Disposal Site  
Under Article 27, Title 13, and Article 71, Title 27  
of the Environmental Conservation Law  
of the State of New York by:

ORDER ON CONSENT  
AND SETTLEMENT  
AGREEMENT

Index # B8-0449-03-07  
Site # 8-28-021

Chevron Environmental Management Company, and  
Chevron U.S.A. Inc., as Respondents; and  
Pneumo Abex LLC, successor by merger to Pneumo Abex Corporation, and  
United States of America, as Settling Parties.

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WHEREAS,

1. Jurisdiction

A. 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." The Department asserts that any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the Inactive Hazardous Waste Disposal Site Remedial Program committed to under order. The Department asserts that ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative, and/or criminal sanctions.

B. The Department also asserts that it has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

C. The Department also has authority to enter into a settlement agreement with persons to resolve liability to the Department under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, and the ECL.

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

## 2. Site Background

A. The Golden Road Disposal Site (the "Site") is located in the Town of Chili, Monroe County. The 19-acre Site is divided into two parcels, referred to as the north and south parcels. The Site was privately run by Howard Fitzsimons from 1955 through 1976. In addition to landfilling activity at the Site, the former Chili Fuels was operated from the north parcel of the property.

B. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 8-28-021 with a Classification "2" pursuant to ECL 27-1305. Exhibit A of this Order and Agreement is a map of the Site showing its general location. The Site consists of only the South Parcel.

C. The Department alleges that the Site was the subject of a Record of Decision ("ROD"), dated October 2002, prepared by the Department; that the ROD presents the selected remedy for the Site that was chosen in accordance with the ECL; that the remedial program selected is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40 C.F.R. Part 300); and that the decision in the ROD was based on the Administrative Record of the Department for the Site and upon public input to the Proposed Remedial Action Plan presented by the Department. The Department further alleges that the selected remedy for the north parcel is "no further action." A copy of the ROD dated October 10, 2002 is attached to this Order and Agreement as Exhibit B.

D. The Department further alleges that the Site is a facility as defined at 42 U.S.C. § 9601(9); that hazardous substances as defined at 42 U.S.C. § 9601(14) have been released at the Site; that such release has caused the incurrence of response costs; that Respondents and Settling Parties all arranged for the disposal of hazardous substances at the site or a portion of the Site; and that, therefore, Respondents and Settling Parties are strictly, jointly and severally liable for all costs of response related to the Site pursuant to 42 U.S.C. § 9607(a).

## 3. Parties

A. Chevron U.S.A. Inc. ("CUSA") is a "Respondent" under this Order and Agreement. Respondent CUSA is a corporation organized in accordance with the laws of the Commonwealth of Pennsylvania. The Department alleges that Respondent CUSA has conducted business in New York State, including the operations of Independent Gasoline and Oil Company which maintained an operations center in the City of Rochester. The Department also alleges that waste materials from that operations center, including tank sludges, soils stained from spills, drums containing antifreeze and/or other miscellaneous wastes were disposed of at the Site. The Department further alleges that such wastes contained constituents which may cause a threat to human health or the environment. Chevron Environmental Management Company ("CEMC") is a "Respondent" under this Order and Agreement. CEMC is a corporation organized under the laws of the State of

California, is an affiliate of Chevron U.S. A. Inc., and is authorized to act on CUSA's behalf in this matter. Respondents CUSA and CEMS are sometimes hereinafter referred to jointly as "Respondents."

B. Pneumo Abex LLC ("Pneumo Abex"), successor by merger to Pneumo Abex Corporation, is a "Settling Party" under this Order and Agreement and is not a Respondent. Pneumo Abex is a limited liability company organized in accordance with the laws of the State of Delaware. The Department alleges that Pneumo Abex has conducted business in the State of New York, including the operation of foundries in Rochester, New York, and Medina, New York. The Department also alleges that sands used for forming molds for the foundries have been disposed of at the Site, and that such sands contain elevated levels of certain metals which may cause a threat to public health and the environment.

C. The "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities. The United States is a "Settling Party" under this Order and Agreement and is not a Respondent. The United States, through the Department of the Army, oversees military operations, including the operations of the 98th Support Battalion of the 98th Division (IT) of the United States Army Reserves. The Department alleges that the 98th Support Battalion of the 98th Division (IT) disposed of wastes from its Reserve Center and motor pool at the Site, including miscellaneous trash, empty drums, and drums containing used motor oil. The Department further alleges that such wastes contained constituents which may cause a threat to public health and the environment.

4. The Department, Respondents, and Settling Parties agree that the goals of this Order and Agreement are: (i) to protect the public health or welfare or the environment at the Site by the design and implementation by Respondents of the remedial alternative selected in the ROD; (ii) to reimburse response costs incurred by Respondents; (iii) to reimburse the State's future costs; and (iv) to resolve the claims of the State against Respondents and the Settling Parties and the claims of the Respondents and the Settling Parties against one another which have or could have been asserted with regard to the Site as provided in this Order and Agreement.

5. The parties recognize that implementation of this Order and Agreement will expedite the cleanup of the Site and may avoid prolonged and complicated litigation between the parties, and that this Order and Agreement is mutually acceptable, fair, reasonable, and in the public interest.

6. Respondents, without admitting any liability or responsibility whatsoever, having waived their rights to a hearing as provided by law, and having consented to the issuance and entry of this Order and Agreement, agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order and Agreement, and agree not to contest the validity of this Order and Agreement or its terms. Nothing contained in this Order and Agreement shall be

construed as or constitute an admission as to liability or as to any finding of fact or conclusion of law by Respondents in any action or proceeding other than an action or proceeding brought solely to enforce this Order and Agreement.

7. Settling Parties, without admitting any liability or responsibility whatsoever, consent and agree not to contest the authority or jurisdiction of the Department to enter into a settlement agreement with the Settling Parties and agree not to contest the validity of this Order and Agreement or its terms. Nothing contained in this Order and Agreement shall be construed as, or constitute an admission as to liability or as to any finding of fact or conclusion of law by either Settling Party in any action or proceeding other than an action or proceeding brought solely to enforce a Settling Party's obligations under this Order and Agreement. Nothing contained in this Order and Agreement shall be construed as, or constitute, any waiver of the sovereign immunity of the United States.

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

I. Remedial Design

A. Submission of Work Plan

1. Respondents shall submit the Remedial Design/Remedial Action ("RD/RA") Work Plan to the Department within ninety (90) Days after the effective date of this Order and Agreement. The objective of the RD/RA Work Plan is to provide for the development and implementation of the final plans and specifications for implementing the remedial alternative set forth in the ROD. The RD/RA Work Plan shall be developed in accordance with Exhibit C to this Order and Agreement.

2. A Professional Engineer must prepare, sign, and seal the RD/RA Work Plan.

B. Revisions to Work Plan

The Department shall notify Respondents in writing if the Department determines that any element of the Department-approved RD/RA Work Plan needs to be modified in order to achieve the objective of the Work Plan as set forth in Subparagraph I.A or to ensure that the Remedial Action otherwise protects human health and the environment. Upon receipt of such notification, Respondents shall, subject to Respondents' right to invoke dispute resolution pursuant to Paragraph XV, submit a revised Work Plan for such requested work to the Department within sixty (60) Days after the date of the Department's written notice pursuant to this Subparagraph.

II. Remedial Action

A. Within such period of time as provided in the RD/RA Work Plan, Respondents shall commence implementation and construction of the Department-approved Remedial Design.

B. Respondents shall implement and construct the Remedial Design in accordance with the RD/RA Work Plan and any modifications thereto submitted in accordance with Subparagraph I.B and approved by the Department.

C. During all field activities, Respondents shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondents to perform such supervision.

D. Respondents also shall allow the Department to attend, and shall provide the Department at least three (3) Days advance notice of, any of the following: pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

### III. Progress Reports

Respondents shall submit written progress reports to the parties identified in Subparagraph XIV.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the RD/RA Work Plan and ending with the Termination Date, unless a different frequency is set forth in the RD/RA Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order and Agreement 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 Respondents in connection with the Site, whether under this Order and Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays.

### IV. Final Engineering Report and Certification

A. Within ninety (90) Days after completion of Remedial Action, Respondents shall submit to the Department a Final Engineering Report that includes the caption of the RD/RA Work Plan on the cover page and "as-built" drawings (each including all written and agreed to changes made to the Remedial Design during remediation), and a certification that the Remedial Action was implemented and constructed in accordance with the Remedial Design as described in the Department-approved RD/RA Work Plan and was personally witnessed by him or her or by a person under his direct supervision. The Final Engineering Report, "as-built" drawings, and certification must be prepared under the direction of, signed, and sealed by a Professional Engineer.

B. After receipt of the Final Engineering Report, "as-built" drawings, and certification, the Department shall notify Respondents in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design as described in the RD/RA Work Plan.

C. If the Department concludes that any element of the Department-approved Remedial Design fails to achieve its objectives as set forth in the ROD or otherwise fails to protect human health or the environment, Respondents shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Design otherwise protects human health and the environment. Should the Department require Respondents to take any such action, Respondents shall be in violation of this Order and Agreement and the ECL if they fail to take such action unless, within fifteen (15) Days of receipt of the Department's request or determination, Respondents invoke the dispute resolution proceedings pursuant to Paragraph XV of this Order and Agreement.

V. Review of Submittals other than Progress Reports and Health and Safety Plans

A. The Department shall make a good faith effort to review and respond to each of the submittals Respondents make pursuant to this Order and Agreement within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part, and notification to Respondents of the Department's determination. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order and Agreement.

B. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within thirty (30) Days after the date of the Department's written notice that Respondents' submittal has been disapproved or rejected, Respondents shall elect in writing to either (i) modify the submittal to address the Department's comments, or (ii) invoke dispute resolution pursuant to Paragraph XV. If Respondents elect to modify the submittal, Respondent shall, within sixty (60) Days after such election, make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondents' revised submittal is disapproved, Respondents shall be in violation of this Order and Agreement unless they invoke dispute resolution pursuant to Paragraph XV and their position prevails. Failure to make an election or failure to comply with the election is a violation of this Order and Agreement.

C. Within thirty (30) Days after the Department's approval of any work plan or final report, Respondents shall submit such document to the Department, as well as all data gathered and drawings and submittals made pursuant to such document, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondents shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

VI. Penalties

A. 1. Failure by Respondents to comply with any term of this Order and Agreement constitutes a violation of this Order and Agreement, the ECL, and 6 NYCRR Section 375-1.2(d). Nothing herein abridges Respondents' right to contest, defend against, dispute, or disprove any such claim, assertion, or allegation that it has violated this Order and Agreement.

2. Within thirty (30) Days after the effective date of this Order and Agreement, Respondents may elect, in writing, addressed to the Department's project attorney with a copy to the Department's project manager, to opt out of the application of statutory penalties and, in lieu thereof, to have the following stipulated penalties apply in the event of Respondents' failure to comply with this Order and Agreement:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
1st through 15th Day	\$ 500.00
16th through 30th Day	\$ 1,000.00
31st Day and thereafter	\$ 1,500.00

3. Payment of the penalties shall not in any way alter Respondents' obligation to complete performance under the terms of this Order and Agreement.

B. Force Majeure

1. Respondents shall not suffer any penalty or be subject to any proceeding or action in the event they cannot comply with any requirement of this Order and Agreement as a result of any event arising from causes beyond the reasonable control of Respondents, of any entity controlled by Respondents, and of Respondents' contractors, that delays or prevents the performance of any obligation under this Order and Agreement despite Respondents' best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Respondents exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address the effects of any such event as it is occurring, and best efforts following the Force Majeure Event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include Respondents' economic inability to comply with any obligation, the failure of Respondents to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order and Agreement.

2. Respondents shall notify the Department in writing within seven (7) Days after they obtain knowledge of any Force Majeure Event. Respondents shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order and Agreement. Failure to give such notice within such seven (7) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall be deemed to know of any circumstance which they, any entity controlled by them, or their contractors knew or should have known.

3. Respondents 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 was or will be warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondents complied with the requirements of Subparagraph VI.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 under this Order and Agreement that are affected by the Force Majeure Event shall be extended by the Department for such time as is reasonably necessary to complete those obligations.

5. If Respondents assert that an event provides a defense to non-compliance with this Order and Agreement pursuant to Subparagraph VI.B and the Department rejects such assertion, Respondents shall be in violation of this Order and Agreement unless they invoke dispute resolution pursuant to Paragraph XV and Respondents' position prevails.

#### VII. Site Access and Entry by the Department

A. Respondents shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondents' obligations under this Order and Agreement, except that the Department may exempt Respondents from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If, despite Respondents' best efforts, any necessary Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order and Agreement are not obtained within sixty (60) Days after the effective date of this Order and Agreement, or within sixty (60) Days after the date the Department notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify the Department, and shall include in that notification a summary of the steps Respondents have taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Respondents in obtaining access. If any interest in property is needed to implement an institutional control required by the RD/RA Work Plan and such interest cannot be obtained, the Department may require Respondents to modify the Work Plan pursuant to Subparagraph I.B of this Order and Agreement to reflect changes necessitated by the lack of access or approvals.

B. Respondents hereby consent, 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 Respondents) 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 Agreement, 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 (i) inspecting, sampling, and copying records related to the contamination at the Site; (ii) implementing this Order and Agreement; and (iii) testing and any other activities necessary to ensure Respondents' compliance with this Order and Agreement. Upon request, Respondents shall (i) provide the Department with suitable office 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 and Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department.

C. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondents shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of all sampling and scientific measurements taken under this Subparagraph available to Respondents.

#### VIII. Payments of Response Costs

A. Payments by Settling Party Pneumo Abex. Within forty-five (45) Days after the effective date of this Agreement, Pneumo Abex shall:

1. Pay to Respondent CEMC \$261,620.00 as full reimbursement of Respondents' undertaking the Remedial Design and Remedial Action, by Electronic Funds Transfer to Citibank NY, Chevron Environmental Management Company, Account: 40777703, New York, NY, ABA#: 021000089 with reference to matter 0810/NWSFD 14958.

2. Pay to the State of New York \$46,666.67 as full reimbursement for its share of all future costs including, but not limited to, operation, maintenance and monitoring activities ("OM&M"), by Electronic Funds Transfer to M&T Bank (Routing Transit #022000046), One M&T Plaza, Buffalo NY 14203, NYS DEC (Taxpayer ID #14-6013200) Revenue Account #6050090742 and send confirmation of such transfer to James Charles, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 270 Michigan Avenue, Buffalo, New York 14203.

B. Payments by Settling Party United States. As soon as reasonably practicable after the effective date of this Agreement, the United States shall:

1. Pay to Respondent CEMC \$261,620.00 as full reimbursement of Respondents' undertaking the Remedial Design and Remedial Action, by Electronic Funds Transfer to Citibank NY, Chevron Environmental Management Company, Account: 40777703, New York, NY, ABA#: 021000089.

2. Pay to the State of New York \$46,666.67 as full reimbursement for its share of all future costs, including, but not limited to OM&M activities, by Electronic

Funds Transfer to M&T Bank (Routing Transit #022000046), One M&T Plaza, Buffalo NY 14203, NYS DEC (Taxpayer ID #14-6013200) Revenue Account #6050090742 and send confirmation of such transfer to James Charles, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 270 Michigan Avenue, Buffalo, New York 14203.

3. The parties to this Order and Agreement recognize and acknowledge that the payment obligations of the Settling Party United States under this Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Order and Agreement shall be interpreted or construed as a commitment or requirement that Settling Party United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

C. Payment by Respondent Chevron Environmental Management Company. Within forty-five (45) Days after the effective date of this Agreement, Respondent CEMC shall pay to the Department \$46,666.67 as full reimbursement for its share of all future costs, including, but not limited to OM&M activities, by Electronic Funds Transfer to M&T Bank (Routing Transit #022000046), One M&T Plaza, Buffalo NY 14203, NYS DEC (Taxpayer ID #14-6013200) Revenue Account #6050090742 and send confirmation of such transfer to James Charles, Esq., New York State Department of Environmental Conservation, Division of Environmental Enforcement, 270 Michigan Avenue, Buffalo, New York 14203.

D. Late Payment In the event that payments required by Subparagraphs VIII.A.1 and VIII.A.2 and VIII.C are not made within forty-five (45) Days of the effective date of this Agreement, interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 7607(a), commencing on the 46th Day after the effective date of this Order and Agreement.

#### IX. Reservations of Rights

A. Except as otherwise provided in this Order and Agreement's Paragraph X, nothing contained in this Order and Agreement 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) and the right to recover natural resource damages with respect to any person, including the Respondents and Settling Parties.

B. Nothing contained in this Order and Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers against Respondents.

C. Nothing contained in this Order and Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any rights, authorities, or claims the United States may have on behalf of the United States Environmental Protection Agency or any federal natural resource trustee.

D. Except as otherwise provided in this Order and Agreement, Respondents and Settling Parties reserve any and all rights, defenses, actions, claims, demands and causes of action which they have with respect to any matter concerning the Site. Respondents and Settling Parties further reserve all rights respecting the enforcement of this Order and Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order and Agreement or compliance with it by Respondents or Settling Parties shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondents or Settling Parties, 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, Respondents and Settling Parties reserve such rights as each may have to seek and obtain contribution, indemnification, and 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.

X. Releases and Covenants Not to Sue

A. Releases and Covenants by the Department.

1. To Respondents. Upon the Department's approval of the Final Engineering Report to be submitted in accordance with Paragraph IV evidencing that no further remedial action (other than OM&M activities) is required to meet the goals of the Remedial Design, and Respondent's payment of the Department's future costs in accordance with Subparagraph VIII.C, then, except for the provisions of Subparagraphs IX.A through IX.C, X.A.3, and Paragraph XI, such approval and acceptance and receipt of payment by the Department shall constitute a release and covenant not to sue for each and every claim, demand, remedy, or action whatsoever against Respondents, their directors, officers, employees, agents, servants, successors, and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order), and their respective secured creditors, which the Department has or may have pursuant to Article 27, Title 13 of the ECL, Title 42 U.S.C. § 9607, and § 9613, and any other provision of State or Federal statutory or common law involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Respondents to the Department's satisfaction pursuant to the ROD and the RD/RA Work Plan) at the Site.

This release and covenant not to sue shall be null and void, ab initio, in the event of fraud relating to the execution or implementation of this Order or in the event of Respondents' failure to materially comply with any provision of this Order subsequent to issuance of a release and covenant not to sue. The Department's determination that Respondent has committed fraud or has materially failed to comply with this Order shall be subject to dispute resolution pursuant to Paragraph XV.

2. To Settling Parties. Except for the provisions of Paragraph IX and Subparagraph X.A.3, the Department's acceptance and receipt of each Settling Party's payment of the Department's future costs in accordance with Subparagraphs VIII.A.2 and VIII.B.2, shall constitute a release and covenant not to sue for each and every claim, demand, remedy, or action whatsoever against that party, which the Department has or may have pursuant to Article 27, Title 13 of the ECL, Title 42 U.S.C. § 9607, and § 9613, and any other state or federal statute, regulation and theory of common law involving or relating to investigative or remedial activities relative to or arising from the release of or the disposal of hazardous wastes at the Site.

3. Provided, however, that the Department specifically reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to any further investigation or remediation the Department deems necessary due to newly discovered environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and which indicate(s) that the Remedial Program, including the ROD, as implemented by the Remedial Design and Remedial Action, and OM&M, is not protective of public health or the environment. The Department shall notify Respondents and Settling Parties of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of public health or the environment. Any such determination shall constitute a final agency action under Article 78 of the CPLR.

4. The releases and covenants not to sue in Subparagraphs X.A.1 and 2 shall inure only to the benefit of Respondents and Settling Parties, respectively, their directors, officers, employees, agents, successors, and assigns.

5. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that the Department may have against anyone other than Respondents or Settling Parties, their directors, officers, employees, agents, and servants, and those successors and assigns of Respondents that were not responsible under law for the development and implementation of a Remedial Program at the Site, and their respective secured creditors, prior to the effective date of this Order and Agreement.

B. Release and Covenant by Respondents. Subject to the reservations in Paragraph IX and Subparagraph X.A.3, upon each Settling Party's payment pursuant to Subparagraphs VIII.A.1 and VIII.B.1, Respondent CEMC's acceptance and receipt of payment shall constitute a release and covenant not to assert each and every claim, demand, remedy, or cause of action whatsoever against that Settling Party, that Respondents CEMC and CUSA have or may have pursuant to Title 42 U.S.C. § 9607, and § 9613, and any other state or federal statute, regulation and theory of common law involving or relating to investigative or remedial activities relative to or arising from the release of or the disposal of hazardous wastes at the Site.

#### XI. Indemnification

A. Respondents shall indemnify and hold harmless the State of New York, the Department, and their officials, agents, employees, and representatives for and from all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order and Agreement by Respondents and/or any of Respondents' directors, officers, employees, servants, agents, successors, and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Order and Agreement. The Department shall provide Respondents with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

B. Respondents shall indemnify and hold harmless the Settling Parties and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order and Agreement. The Settling Parties shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Order and Agreement. Neither the Respondents nor any such contractor shall be considered an agent of the Settling Parties.

## XII. Contribution Protection and Matters Addressed

The parties agree that each Respondent and each Settling Party is entitled to protection from contribution actions or claims to the fullest extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and other applicable federal or state law, for "Matters Addressed" in this Order and Agreement. "Matters Addressed" in this Order and Agreement shall mean all response actions and all costs incurred or to be incurred by any person or party, in connection with the Remedial Design, the Remedial Action, OM&M activities, and reimbursement of costs that are the subject of this Order and Agreement. Matters Addressed shall not include costs incurred or to be incurred by United States Environmental Protection Agency or any federal natural resource trustee.

## XIII. Public Notice

A. Within thirty (30) Days after the effective date of this Order and Agreement, Respondents shall cause to be filed a Department-approved Notice of Order and Agreement, which Notice shall be substantially similar to the Notice of Order and Agreement attached to this Order and Agreement as Exhibit D with the Clerk of the County wherein the Site is located to give all parties who may acquire any interest in the Site notice of this Order and Agreement. Within thirty (30) Days of such filing (or such longer period of time as may be required to obtain a certified copy, provided Respondents advise the Department of the status of its efforts to obtain same within such thirty (30)

Days), Respondents shall also provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy.

B. If Respondents' become aware of a conveyance of the whole or any part of the ownership interest in the Site, Respondents shall, not fewer than forty-five (45) Days before the date of conveyance, 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.

#### XIV. Communications

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

1. Communication to the Department shall be sent to:

A. Joseph White, P.E.  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, New York 12233-7017

Note: four copies (one unbound) of work plans are required to be sent.

with copies to:

Gary Litwin  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216

to: James Charles, Esq.  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
270 Michigan Avenue  
Buffalo, New York 14203-2999

2. Communication to Respondents shall be sent to:

For Chevron:

Mark Stella  
Chevron Environmental Management Company  
4800 Fournace Place, E530C  
Bellaire, TX 77401

and to:

Richard T. Hughes  
Chevron U.S.A. Inc., Law Department  
1500 Louisiana, 36<sup>th</sup> Floor  
Houston, TX 77002

3. Communication to the United States shall be sent to:

Chief, Environmental Defense Section  
U.S. Department of Justice  
Environment & Natural Resources Division  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Re: DJ #90-11-6-17313

4. Communication to the Pneumo Abex shall be sent to:

President  
Pneumo Abex LLC  
35 East 62nd Street  
New York, NY 10021

and to:

Thomas A. Larson  
Briggs and Morgan  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minn 55402

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

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

XV. Dispute Resolution

A. If Respondents disagree with the Department's notice under (i) Subparagraph I.B requesting modification of a Department-approved Work Plan; (ii) Subparagraph V.B disapproving a submittal, a proposed Work Plan, or the Final Engineering Report; (iii) Paragraph VI finding that Respondent materially failed to comply with the Order and Agreement; (iv) Subparagraph VI.B rejecting Respondents' assertion of a Force Majeure Event; or (v) Subparagraph XVII.G.2.iii requesting modification of a time frame, Respondents may, within thirty (30) Days of receipt of such notice, request, in writing, informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondents to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Respondents shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XV.B. The period for informal negotiations shall not exceed thirty (30) Days from Respondents' request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondents notify the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XV.B.

B. 1. Respondents shall file with the Office of Hearings and Mediation Services ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondents rely (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director and to the parties listed under Subparagraph XIV.A.1.

2. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Respondents' Statement of Position.

3. Respondents shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Respondents shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Respondents notify the Department within thirty (30) Days after receipt of a copy of the final decision of their intent to commence an Article 78 proceeding and commence such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Respondents shall be in violation of this Order and Agreement if they fail to comply with the final decision resolving this dispute within forty-five (45) Days after



the date of such final decision, or such other time period as may be provided in the final decision, unless they seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Respondents seek judicial review, Respondents shall be in violation of this Order and Agreement if they fail to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Court Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Respondents' obligations under this Order and Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XV shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondents regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XV which shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph XV shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or Section 375-2.1.

8. Nothing contained in this Order and Agreement shall be construed to authorize Respondents 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 Respondents or Settling Parties to seek judicial review of the Department's selection of any remedy, including the remedy selected in the ROD.

#### XVI. Termination of Order and Agreement

A. This Order and Agreement will terminate upon the Department's written determination that Respondents have completed the Remedial Design and Remedial Action, as described in the RD/RA Work Plan, in which event the termination shall be effective on the 5th Day after the Department issues its approval of the Final Engineering Report relating to the Remedial Action.

B. Notwithstanding the foregoing, the provisions contained in Paragraph XI shall survive the termination of this Order and Agreement and any violation of such surviving Paragraphs shall be a violation of this Order and Agreement, the ECL, and 6 NYCRR Section 375-1.2(d), subjecting Respondents to penalties as provided under Paragraph VI so long as such obligations accrued on or prior to the Termination Date.

#### XVII. Miscellaneous

A. The activities and submittals under this Order and Agreement shall address both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

B. Respondents shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Respondents' Contractors") acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order and Agreement. To the extent that the Department has not previously approved Respondents' Contractors for the work contemplated by this Order and Agreement, Respondents shall submit the experience, capabilities, and qualifications of Respondents' Contractors to the Department within ten (10) Days after the effective date of this Order and Agreement or at least thirty (30) Days before the start of any activities for which Respondents and such firms or individuals will be responsible. The Department's approval of these firms or individuals shall be obtained prior to the start of any activities for which such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondents shall rest solely with Respondents. Subject to the requirements of this Subparagraph, Respondents retain the right to select or change firms or individuals in their sole discretion.

C. Respondents shall allow the Department to attend and shall notify the Department at least three (3) Days in advance of any field activities as well as any pre-bid meetings, job progress meetings, the substantial completion meeting and inspection, and the final inspection and meeting; nothing in this Order and Agreement shall be construed to require Respondents to allow the Department to attend portions of meetings where privileged matters are discussed.

D. Respondents and Settling Parties and their successors and assigns shall be bound by this Order and Agreement. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondents' responsibilities under this Order and Agreement.

E. Respondents shall provide a copy of this Order and Agreement to each contractor hired to perform work required by this Order and Agreement and shall condition all contracts entered into pursuant to this Order and Agreement upon performance in conformity with the terms of this Order and Agreement. Respondents or their contractor(s) shall provide written notice of this Order and Agreement to all subcontractors hired to perform any portion of the work required by this Order and Agreement. Respondents shall nonetheless be responsible for ensuring that Respondents' contractors and subcontractors perform the work in satisfaction of the requirements of this Order and Agreement.

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

G. 1. The terms of this Order and Agreement shall constitute the complete and entire agreement between the parties concerning implementation of the activities required by this Order and Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order and Agreement 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 Respondents of their obligation to obtain such formal approvals as may be required by this Order and Agreement. In the event of a conflict between the terms of this Order and Agreement and any Work Plan submitted pursuant to this Order and Agreement, the terms of this Order and Agreement shall control over the terms of the Work Plan.

2. (i) Except as set forth in herein, if Respondents or a Settling Party desires that any provision of this Order and Agreement be changed, other than a provision of a Work Plan or a time frame, Respondents or Settling Party shall make timely written application to the Commissioner and the parties to this Order and Agreement at the addresses listed in Subparagraph XIV.A. The Commissioner or the Commissioner's designee and the parties shall timely respond.

(ii) Changes to a Work Plan shall be accomplished as set forth in Subparagraph I.B of this Order and Agreement.

(iii) Changes to a time frame set forth in this Order and Agreement shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing. The Department's decision relative to the request for a time frame change shall be subject to dispute resolution pursuant to Paragraph XV.

H. The term "Respondent" shall be read in the plural where required to give meaning to this Order and Agreement. Further, the obligations of Respondents under this Order and Agreement are joint and several and the insolvency of or failure by any Respondent to implement any obligations under this Order and Agreement shall not affect the obligations of the remaining Respondent(s) to carry out the obligations under this Order and Agreement. The obligations of the Settling Parties are several.

I. All activities undertaken by Respondents pursuant to this Order and Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations, and guidance documents.

J. Unless otherwise expressly provided herein, whenever terms listed in the Glossary attached as Exhibit E are used in this Order and Agreement or in the attached Exhibits, the definitions set forth in the Glossary shall apply.

K. Respondents' and Settling Parties' obligations under this Order and Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

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

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

DATED: OCT - 6 2006

DENISE M. SHEEHAN  
Commissioner  
New York State Department  
of Environmental Conservation

By:

  
Dale Desnoyers  
Director  
Division of Environmental Remediation

CONSENT BY RESPONDENTS

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

FOR RESPONDENT CHEVRON  
ENVIRONMENTAL MANAGEMENT COMPANY

By: [Signature]

Title: Assistant Secretary

Date: September 07, 2006

FOR RESPONDENT CHEVRON U.S.A. INC.

By: [Signature]

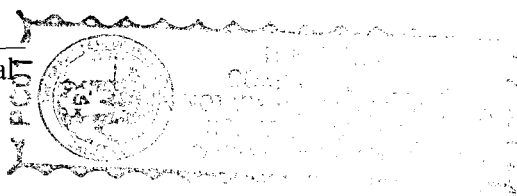
Title: Assistant Secretary

Date: September 07, 2006

STATE OF California )  
 ) s.s.:  
COUNTY OF Contra Costa )

On the 7<sup>th</sup> day of September, in the year 2006, before me, the undersigned, personally appeared Kathryn L. Beck, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

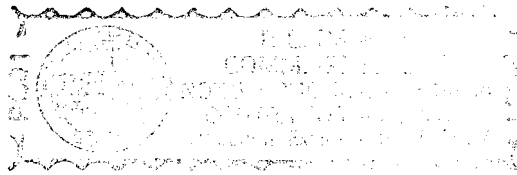
[Signature]  
Signature and Office of individual  
taking acknowledgment



STATE OF California )  
COUNTY OF Contra Costa ) s.s.:

On the 7<sup>th</sup> day of September, in the year 2006, before me, the undersigned, personally appeared Frank G. Soler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual  
taking acknowledgment



CONSENT BY SETTLING PARTY

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

FOR SETTLING PARTY Pneumo Abex LLC,  
successor by merger to PNEUMO ABEX  
CORPORATION

By: 

Title: VICE PRESIDENT

Date: 9/21/06

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

On the 21<sup>st</sup> day of September, in the year 2006, before me, the undersigned, personally appeared Dexter Kenfield, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Signature and Office of individual  
taking acknowledgment

GINA KNIGHT  
Notary Public, State of New York  
No. 01KN6142608  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 20, 2010

CONSENT BY SETTLING PARTY

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

FOR THE UNITED STATES OF AMERICA

Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division

By: [Signature]  
Title: Attorney  
Date: 9/19/06

STATE OF District of Columbia )  
COUNTY OF ) s.s.:  
)

On the 19<sup>th</sup> day of September, in the year 2006, before me, the undersigned, personally appeared [Signature], personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Signature and Office of individual  
taking acknowledgment

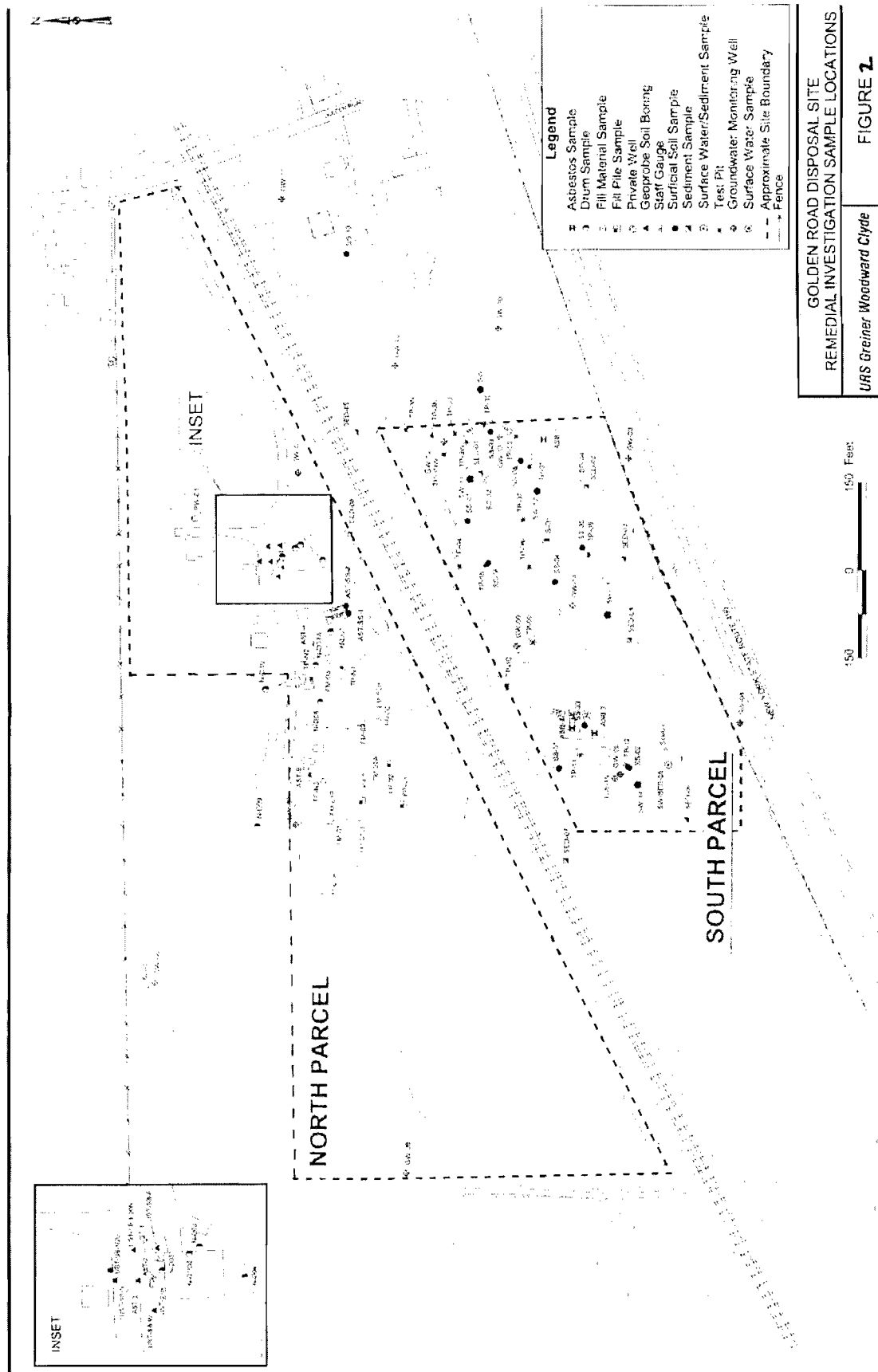
Valencia R. D'Haiti  
Notary Public, District of Columbia  
My Commission Expires 07-31-2009



**EXHIBIT A**

**Map of Site**

Exhibit A



GOLDEN ROAD DISPOSAL SITE  
REMEDIAL INVESTIGATION SAMPLE LOCATIONS  
UFS Greiner Woodward Clyde **FIGURE 2**

**EXHIBIT B**

**Record of Decision, October 2002**

## **Exhibit C**

### **Remedial Design / Remedial Action ("RD/RA") Work Plan Requirements**

The Remedial Design / Remedial Action ("RD/RA") Work Plan shall include the following:

1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- (i) the construction and operation of any structures;
- (ii) the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- (iii) the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- (iv) physical security and posting of the Site;
- (v) quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Action; and
- (vi) monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design and Remedial Action including, but not limited to, documents and specifications prepared, signed, and sealed by a Professional Engineer. These plans shall satisfy all applicable local, state, and federal laws, rules, and regulations;

3. A time schedule to implement the Remedial Design;

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

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) and a specific description of the criteria to be used to decide when operation of such activities may be discontinued.

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during and after construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375.

## Exhibit D

### NOTICE OF ORDER

Chevron Environmental Management Company and Chevron U.S.A. Inc. ("Respondents") have entered into an Order on Consent and Settlement Agreement (Index # B8-0449-03-07) (the "Order and Agreement") with the New York State Department of Environmental Conservation (the "Department") relative to an Inactive Hazardous Waste Disposal Site under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL") known as the Golden Road Disposal Site located at 227 Golden Road, Town of Chili, Monroe County, New York (the "Site").

The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site # 8-28-021. The Department has classified the Site as a Class "2" site pursuant to ECL Section 27-1305.4.b. This classification means that the Department has determined that the Site presents a significant threat to the public health or environment. The Site is more particularly described in the legal description that is attached hereto as Schedule "A."

The purpose of the Order and Agreement is to address the environmental conditions at or migrating from the Site. The effective date of the Order and Agreement was \_\_\_\_\_. A copy of the Order and Agreement, as well as any and all Department-approved Work Plans under this Order and Agreement can be reviewed at the Department's Region offices located at 6274 East Avon-Lima Road, Avon, New York 14304 by contacting .

This Notice of Order and Agreement is being filed with the Monroe County Clerk (or City Register) in accordance with Paragraph XIII of the Order and Agreement to give all parties who may acquire any interest in the Site notice of this Order and Agreement.

**WHEREFORE**, the undersigned has signed this Notice of Order and Agreement in compliance with the terms of the Order and Agreement.

Respondent

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2006, before me, the undersigned, a notary public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed this instrument.

\_\_\_\_\_  
Notary Public

**Appendix A**

(to Exhibit D)

Map of the Property



## **Exhibit E**

### **Glossary of Terms**

The following terms shall have the following meanings:

“CERCLA”: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

“Day”: a calendar day. In computing any period of time under this Order and Agreement, where the last day would otherwise fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

“Department”: the New York State Department of Environmental Conservation.

“Director”: the Division Director, Division of Environmental Remediation.

“ECL”: the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended.

“Force Majeure Event”: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent’s reasonable control.

“National Contingency Plan” or “NCP”: the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, and codified at 40 C.F.R. Part 300, and any amendments thereto.

“OH&M”: the New York Office of Hearings and Mediation Services.

“OM&M”: post-construction operation, maintenance, and monitoring; the last phase of a remedial program, which continues until the remedial action objectives for the Site are met.

“Order and Agreement”: this Order and Agreement on Consent and Settlement Agreement and all exhibits attached hereto.

“Professional Engineer”: an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

“Record of Decision” or “ROD”: the document reflecting the Department’s selection of a remedy relative to the Site or any Operable Unit thereof. The ROD shall be attached to and made enforceable under this Order and Agreement as Exhibit B.

“Remedial Action”: those activities, except for OM&M, to be undertaken under this Order and Agreement to implement the ROD.

“Remedial Program”: activities undertaken to eliminate, remove, abate, control, or monitor existing health hazards, existing environmental hazards, potential health hazards, and/or potential environmental hazards in connection with the Site and all activities to manage wastes and contaminated materials at or removed from the Site. See ECL 27-1301(3), 6 NYCRR 375-1.3(m).

“Termination Date”: the date that this Order and Agreement is terminated pursuant to Paragraph XVI.