

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the

ORDER ON CONSENT

Development and Implementation

and

of a Remedial Program for an

ADMINISTRATIVE

Inactive Hazardous Waste Disposal

SETTLEMENT

Site under Article 27, Title 13

of the Environmental Conservation Law

Index# B8-0483-95-10A

by Mallinckrodt Baker, Inc.

Site# 8-62-001

and

Friends of the Outlet, Inc.,

Respondents

WHEREAS,

1. A. The New York State Department of Environmental Conservation (“Department”) is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law (“ECL”) and may issue orders consistent with the authority granted to the Commissioner by such statute.

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

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA) 42 U.S.C. § 960 et seq., to the extent set forth herein. Accordingly, pursuant to CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), Respondent may seek contribution from persons not parties to this Order to the extent set forth in Subparagraph XI.J.

1. Mallinckrodt Baker, Inc., formerly known as J.T. Baker, Inc. ("Baker") owned and operated a carbon disulfide production facility located on the border between the towns of Milo and Torrey, Yates County, New York (the "Site"). The Site is now owned by Friends of the Outlet, Inc. ("FOO"). A map of the Site showing its general location and legal description of the real property constituting the Site are attached to and made a part of this Order as Exhibit A.

2. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as Site Number 8-62-001 with a Classification "2A" pursuant to ECL 27-1305.

3. Both "Baker" and FOO are "Respondents" under this Order. However, the Order imposes certain obligations on Baker and other, more limited, obligations on FOO. Therefore, when the Order uses the term "Baker" or "FOO", the corresponding obligation shall be borne only by the party specifically named. When the Order uses the term "Respondent", it shall have the meaning and be given the effect provided for in Paragraph XIII, I. of this Order.

4. Baker performed certain Interim Remedial Measures ("IRMs") at the Site pursuant to an Order on Consent issued and entered into by the Department (Index No. B8-483-95-10, dated February 1999). Baker and FOO are performing operation, maintenance and monitoring ("OM&M") tasks with respect to those IRMs. The earlier IRMs and the associated OM&M tasks are not the subject of this Order.

5. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

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

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

I. A. Submission/Implementation of Work Plans

1. (a) Baker has submitted and the Department has approved an IRM Work Plan to address specific conditions at the Site. The approved IRM Work Plan is

attached to and made a part of this Order as Exhibit B. Baker shall perform the approved IRM Work Plan in accordance with the associated schedule.

(b) The Department may request that Baker submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department's written request, Baker shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan or whether it elects to terminate this Order pursuant to Paragraph XII. If Respondent elects to submit and implement such Work Plan, Baker shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order or fails to make a timely election, this Order shall terminate pursuant to Paragraph XII.

(c) Baker may, at Baker's option, propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(d) Any request made by the Department under Subparagraph I.A.1.(b) shall be subject to dispute resolution pursuant to Paragraph XI.

2. A Professional Engineer must stamp and sign all Work Plans other than a Work Plan for an RI/FS or an SC.

3. During all field activities, Baker 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 Baker to perform such supervision.

B. Modifications to Work Plans

The Department shall notify Baker in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan or to ensure that the Remedial Program protects human health and the environment. Upon receipt of such notification, Baker shall, subject to Baker's right to invoke dispute resolution pursuant to Paragraph XI or Respondent's right to terminate pursuant to Paragraph XII, submit a revised Work Plan to the Department within sixty (60) Days after the date of the Department's written notice pursuant to this Subparagraph.

C. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Baker shall submit a final report that includes the caption of that Work Plan on the cover page and a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with such Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order and, except for RI and SC final reports, shall be by a Professional Engineer.

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

3. In the event that any ROD or Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the OM&M. Such annual report shall be signed by a Professional Engineer or by such other expert as the Department may find acceptable and shall contain a certification under penalty of perjury that any institutional and/or engineering controls

required by this Order are unchanged from the previous certification and that nothing has occurred that would impair the effectiveness of such control or constitute a violation of or failure to comply with the approved OM& M Plan. Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

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

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

2. 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 Baker's submittal has been disapproved, Baker shall elect, in writing, to either (i) modify the submittal to address the Department's comments, (ii) invoke dispute resolution pursuant to Paragraph XI, or (iii) in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, terminate this Order pursuant to Paragraph XII. If Respondent elects to modify the submittal, Respondent shall, within sixty (60) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Baker's revised submittal is

disapproved, the Department shall set forth its reasons for such disapproval in writing and Baker shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XI and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

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

E. Release and Covenant Not to Sue

Upon (i) the Department's approval of either the RD/RA Work Plan final report or an IRM Work Plan final report evidencing that no further remedial action (other than OM&M activities) is required to meet the goals of the Remedial Program, and (ii) the Department's acceptance of any environmental easement required pursuant to Paragraph IX, then, except for the provisions of Paragraph V and VII, and except for the future OM&M of the Site and any Natural Resource Damage claims, such acceptance shall constitute a release and covenant not to sue for each and every claim, demand, remedy, or action whatsoever against Respondent, its 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 or pursuant to any other provision of State or

Federal statutory or common law, including but not limited to section 9607(a) of CERCLA, 42 U.S.C. § 9607(a), involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Baker to the Department's satisfaction pursuant to the ROD or Work Plans) at the Site; 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 that the Remedial Program is not protective of public health and/or the environment. The Department shall notify Respondent in writing of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of public health and/or the environment.

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 Baker's 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 Baker has committed fraud or has materially failed to comply with this Order shall be subject to dispute resolution pursuant to Paragraph XI.

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 (i) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), and (ii) the Department may have against anyone other than Respondent, its

directors, officers, employees, agents, and servants, and those successors and assigns of Respondent that were not 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.

II. Progress Reports

Baker shall submit written progress reports to the parties identified in Subparagraph X.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Baker in connection with the Site, during the 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 and information regarding activities undertaken in support of any Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

III. Penalties

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

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

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

2. Respondent shall notify the Department in writing within seven (7) Days after it obtains knowledge of any Force Majeure Event. Respondent 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. 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. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

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

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

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

IV. Entry upon Site

A. FOO hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of FOO) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities

necessary to ensure Respondent's compliance with this Order. Upon request, FOO shall provide the Department with suitable office space at the Site, including access to a telephone, to the extent available. Respondent shall permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Baker is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

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

V. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Order, Baker shall pay to the Department the sum of \$16,196.05 which shall represent reimbursement for State Costs as set forth on the cost summary attached as Exhibit "C." Baker acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Order.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Baker shall pay to the Department a sum of money which shall represent

reimbursement for State Costs, other than those identified in Subparagraph V.A, for work performed at or in connection with the Site through and including the Termination Date.

C. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Baker at the following address:

Rick W. Kennedy, Esq.
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202-4040

Steven L. Dishion
Beckett Ridge Technical Center
Box LP 319
8256 Union Center Boulevard
West Chester, OH 45069

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7010

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Baker may contest, in writing, invoiced costs under Subparagraph V.B if it believes that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the Remedial Program for the Site; or (iii) the Department is not otherwise legally entitled to such costs. If Baker objects to an invoiced cost, Baker shall pay all costs not objected to within the time frame set forth in Subparagraph V.B and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the BPM Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Baker of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department's determination of the objection, Baker shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Baker is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

H. If any negotiable instrument submitted to the Department pursuant to this Order is not honored when presented for payment, Baker shall be in violation of this Order, provided that (i) the Department gives Baker written notice of same, and (ii) the Department does not receive a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department's written notification.

VI. Reservation of Rights

A. Except as provided in Subparagraph I.E, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

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

VII. Indemnification

A. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all third-party 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 by Respondent and/or any of Respondent's 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. The Department shall provide Respondent with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

VIII. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall cause to be filed a Department-approved Notice of Order, which Notice shall be substantially similar to the Notice of Order attached to this Order as Exhibit "D," with the recording officer of the county wherein the Site is to give all parties who may acquire any interest in the Site notice of this Order. Within sixty (60) Days of such filing, Respondent shall also provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If FOO proposes to convey the whole or any part of FOO's ownership interest in the Site, or becomes aware of such conveyance, FOO 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 FOO to secure the repayment of money or the performance of a duty or obligation.

IX. Environmental Easement

A. (1) If a Department-approved Work Plan or the ROD for the Site, if any, relies upon one or more institutional and/or engineering controls, FOO (or the owner of the Site) shall execute an environmental easement pursuant to ECL Article 71, Title 13 which shall be substantially similar to Exhibit "E." FOO shall cause such instrument to be recorded with the recording officer of the county wherein the Site is located within thirty (30) Days of the Department's approval of such instrument. FOO shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within sixty (60) Days after such recording.

B. If the ROD provides for "no action" other than implementation of one or more institutional controls, FOO shall cause an environmental easement to be recorded under the provisions of Subparagraph IX.A.I. If FOO does not cause such environmental easement to be recorded, FOO cannot obtain a release and covenant not to sue pursuant to Subparagraph. I.E.

X. Communications

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

1. Communication from Respondent shall be sent to:

Bartholemew Putzig
Regional Hazardous Waste Remediation Engineer
New York State Department of Environmental Conservation
Region 8
6274 East Avon - Lima Road
Avon, NY 14414

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

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

Joseph Hausbeck, Esq.
Senior Attorney
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

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

Friends of the Outlet
c/o Daniel T. Spence
1743 Log Cabin Road
Penn Yan, NY 14527

Rick W. Kennedy, Esq.
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, NY 14202-4040

Steven L. Dishion
Beckett Ridge Technical Center - CETL
Box LP 319
8256 Union Center Boulevard
West Chester, OH 45069

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

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

XI. Dispute Resolution

A. If Baker disagrees with the Department's notice under (i) Subparagraph I.A.1.(b) requesting additional or supplemental Work Plans; (ii) Subparagraph I.B. requesting modification of a Department-approved Work Plan; (iii) Subparagraph I.D.2. disapproving a submittal, a proposed Work Plan, or a final report; (iv) Subparagraph I.E. finding that Baker materially failed to comply with the Order; (v) Subparagraph III.B. rejecting Baker's assertion of a Force Majeure Event; or (vi) Subparagraph XIII.H.2.iii requesting modification of a time frame, Baker may, within thirty (30) Days of its receipt of such notice, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Baker to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Baker shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XI.B. The period for informal negotiations shall not exceed thirty (30) Days from the date of the Department's initial response to Baker's 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 Baker notifies 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 XI.B.

B. 1. Baker shall file with the Office of Hearings and Mediation 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 Respondent relies (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 X.A.1.

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

3. Baker 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 Office of Hearings and Mediation 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 Office of Hearings and Mediation shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision in a timely manner. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Baker notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Baker shall be in violation of this Order if it fails 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 it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Baker seeks judicial review, Baker shall be in violation of this Order if it fails to comply with the final Court Order or any settlement within thirty (30) Days after the effective date of such 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 Baker's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a Court orders otherwise. Except as otherwise provided in this Order, the invocation of the procedures set forth in this Paragraph XI. 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 Baker regarding the issue in dispute.

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

7. Nothing in this Paragraph XI 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 Part 375.

8. Nothing contained in this Order shall be construed to authorize Baker 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 Baker to seek judicial review of the Department's selection of any remedy.

XII. Termination of Order

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

1. Respondent's election to terminate pursuant to Subparagraphs I.A.1.b., I.B. or I.D.2. so long as such election is made prior to the Department's approval of the RD/RA Work Plan. In the event of termination in accordance with this Subparagraph XII.A.1, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification terminating this Order or the 5th Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order pursuant to Subparagraphs 1.A.1.b. or I.D.2. or its failure to timely make such an election pursuant to Subparagraphs 1.A.1.b. or I.D.2., Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. the Department's written determination that Respondent has completed all phases of the Remedial Program (including OM&M, if any), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs V and VII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR Part 375, subjecting Respondent to penalties as provided under Paragraph III so long as such obligations accrued on or prior to the Termination Date.

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

D. If the Order is terminated pursuant to Subparagraph XII by FOO, Baker may, by written notice sent to the Department in accordance with Subparagraph X.A.1, elect to continue to be bound by the Order subject to:

1. FOO granting to Baker, on terms acceptable to Baker, all of the rights necessary for Baker to carry out its obligations under the Order; and

2. the Department acknowledging in writing that it continues to be bound by the Order as to Baker.

XIII. Miscellaneous

A. Baker shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Baker's Contractors") acceptable to the Department to perform its obligations under this Order. If the Department has not previously approved Baker's Contractors for the work required by this Order, Baker shall submit the Contractors' qualifications to the Department a minimum of thirty (30) Days before the start of any activities for which each such Contractor will be responsible. The Department's approval of each such Contractor shall be obtained prior to the start of work by that Contractor. The responsibility for the performance of all Contractors retained by Baker shall rest solely with Respondent. Subject to the requirements of this Subparagraph, Baker retains the right to select or change firms or individuals in its sole discretion.

B. Baker shall allow the Department to attend and shall notify the Department at least seven (7) 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 shall be construed to require Baker to allow the Department to attend portions of meetings where privileged matters are discussed.

C. FOO hereby consents to access to and the entry upon the Site or areas in the vicinity of the Site which may be under the control of FOO by any duly designated employee, consultant, contractor or agent of Baker, for the purposes of carrying out any of the tasks, obligations and/or responsibilities contemplated by this Order.

1. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity on the Site needed to implement this Order that the Department determines is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

2. If, despite Baker's best efforts, any necessary Site access, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order are not obtained within forty-five (45) Days after the effective date of this Order, or within forty-five (45) Days after the date the Department notifies Baker in writing that additional access beyond that previously secured is necessary, Baker shall promptly notify the Department, and shall include in that notification a summary of the steps Baker has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Baker in obtaining access. If any interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Baker to modify the Work Plan pursuant to Subparagraph I.B. of this Order to reflect changes necessitated by the lack of access and/or approvals.

D. FOO agrees to cooperate with Baker and the Department in all respects necessary for Baker and the Department to carry-out their respective responsibilities and satisfy their respective obligations under this Order.

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

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

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

H. 1. The terms of this Order constitute the entire agreement between the Department and Respondent concerning implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s) attached as Exhibit "B."

2 i. Except as set forth herein, if Baker desires that any provision of this Order be changed, other than a provision of a Work Plan or a time frame, Baker shall make timely written application to the Commissioner with copies to the parties listed in

Subparagraph X.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a Work Plan shall be accomplished as set forth in Subparagraph I of this Order.

iii. Changes to a time frame set forth in this Order shall be sought 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 XI.

I. 1. If multiple parties sign this Order, the term "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of such Respondents under this Order are joint and several and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s).

2. If Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and to pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall implement all such requirements.

3. Notwithstanding the foregoing Subparagraphs XIII.I. 1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect,

pursuant to Subparagraph I.A., to implement a Work Plan, then all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of the activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue provided under Subparagraph I.E.

J. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for “matters addressed” pursuant to and in accordance with this Order. “Matters addressed” in this Order shall mean all response actions taken by Respondent to implement this Order for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by Respondent, including reimbursement of State Costs pursuant to this Order. Furthermore, to the extent authorized under 42 U.S.C., Section 9613(f)(3)(B), by entering into this administrative settlement of liability; if any, for some or all of the response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution under CERCLA from any person except those who are entitled to contribution protection under 42 U.S.C. Section 9613(f)(2).

K. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13, ECL Article 71, Title 36, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Order or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

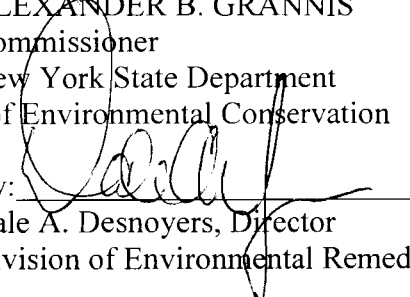
L. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

M. This Order 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.

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

DATED: MAY 25 2007

ALEXANDER B. GRANNIS
Commissioner
New York State Department
of Environmental Conservation

By: 
Dale A. Desnoyers, Director
Division of Environmental Remediation

WHEREFORE, the undersigned has signed this Order on Consent and Administrative Settlement.

Mallinckrodt Baker, Inc.:

By:

Title:

Date:

Missouri
STATE OF ~~NEW YORK~~)
) ss.:
COUNTY OF ST. LOUIS)

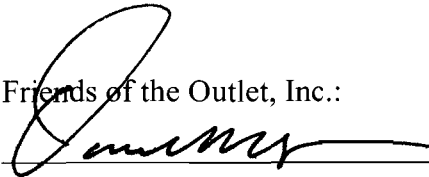
On the 17 day of APRIL in the year 2007 before me, the undersigned, a notary public in and for said State, personally appeared ROBERT T. BUDENHOLZER personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument 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.



STEPHANIE KARDASZ
My Commission Expires
October 16, 2009
St. Louis County
Commission #05505725

Notary Public

WHEREFORE, the undersigned has signed this Order on Consent and Administrative Settlement.

Friends of the Outlet, Inc.:


By: DANIEL T. SPENCE

Title: PRESIDENT

Date: 5/7/07

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

On the 7th day of May in the year 2007 before me, the undersigned, a notary public in and for said State, personally appeared Daniel T. Spence 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.

Patricia A. Stells

Notary Public

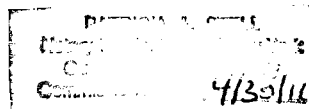
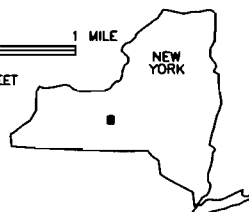
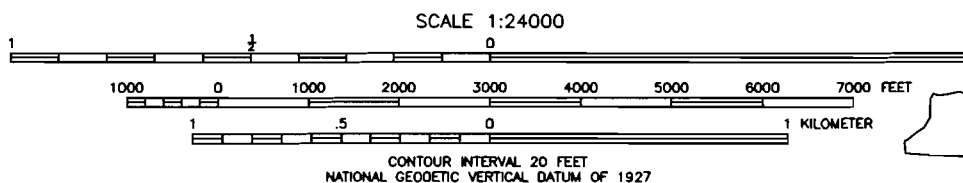
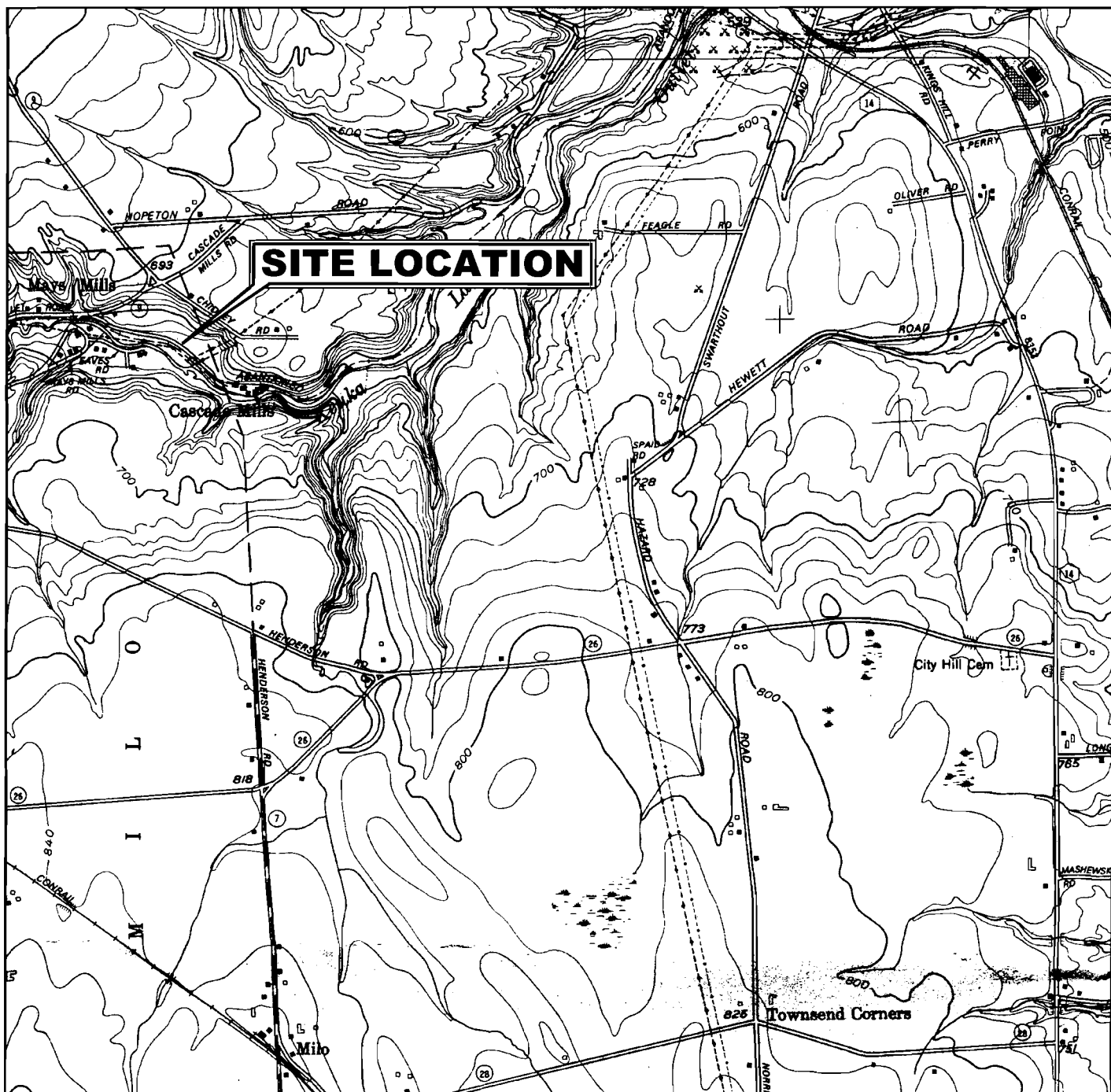


EXHIBIT “A”

Map of Site



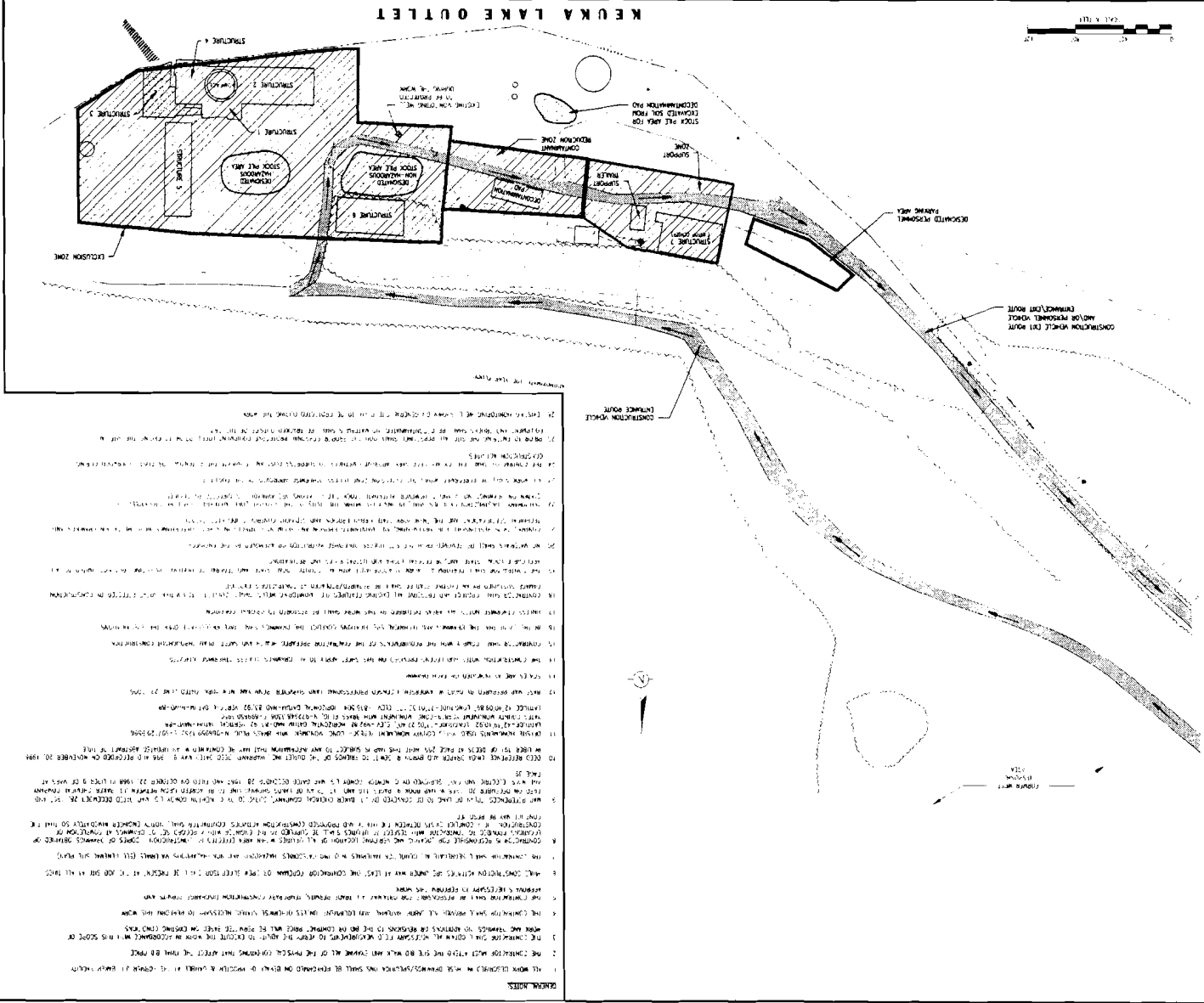
QUADRANGLE LOCATION

copyright © 2006	<p>Two Huntington Quadrangle Suite 1510 Middletown, NY 11747 Tel: 831-249-7800 Fax: 831-249-7810 www.arcadis-us.com</p>	PROJECT MANAGER M. WOLFERT	DEPARTMENT MANAGER N. VALKENBURG	LEAD DESIGN PROF. C. TUOHY	CHECKED BY K. ZEGEL
		SHEET TITLE SITE LOCATION FORMER J.T. BAKER SITE PENN YAN, NEW YORK		TASK/PHASE NUMBER 00002	DRAWN BY A. SANCHEZ
				PROJECT NUMBER NY001447.0001	DRAWING NUMBER 1

ARCADIS

GENERAL SITE PLAN

231645
2 Nov
17532



of land, according to a survey by C. Newton Gowdy, L.S., on December 28, 1967. Said lands being a portion of the premises conveyed to J.T. Baker Chemical Company as recorded in Liber 156 of Deeds, at Page 598.

ALSO, Quit-Claiming to Grantee herein all water and riparian rights in common with New York State Electric and Gas Corporation in and to Keuka Lake Outlet appurtenant to lands above conveyed, being the same rights that Farnan has under Quit-Claim Deed from the New York State Electric and Gas Corporation, said Deed dated March 4, 1969, and recorded on March 11, 1969, in the Yates County Clerk's Office, in Liber 228 of Deeds, at Page 468.

ALSO, assigning hereunder all right, title and interest in and to a certain agreement made between the New York Central Railroad and J.T. Baker Chemical Company, said agreement dated September 30, 1959, and covering a pipe crossing through the lands and under and across the roadway and tracks of the railroad at a point sixteen one-hundredths (0.16) of a mile east of the station of Cascade Mills, in the Town of Torrey, County of Yates, and State of New York, as set forth in an assignment to Gerard W. Farnan from the J.T. Baker Chemical Company, said assignment dated November 27, 1968, and filed in the Yates County Clerk's Office, on July 30, 1974, and later assigned to the Everett J. Jensen from Gerard W. Farnan and recorded in the Yates County Clerk's Office on July 30, 1974, in Liber 260 of Deeds, at Page 183.

The above conveyances are made subject to highway rights and utility easements of record and also, agreements set forth at Liber 172 of Deeds, at Pages 682 and 683, respectively.

EXHIBIT "B"

Department-Approved Work Plan(s)

New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 8
6274 East Avon-Lima Road, Avon, New York 14414-9519
Phone: (585) 226-2466 • **FAX:** (585) 226-8696
Website: www.dec.state.ny.us



March 21, 2007

Mr. Steven L. Dishion
The Procter & Gamble Company
Beckett Ridge Technical Center - CETL
Box LP319
8256 Union Centre Boulevard
West Chester, OH 45069

Re: Furnace Removal Work Plan, July 24, 2006 (and subsequent revisions),
Former J. T. Baker Site, Site No. 862001, Yates County, New York

Dear Mr. Dishion:

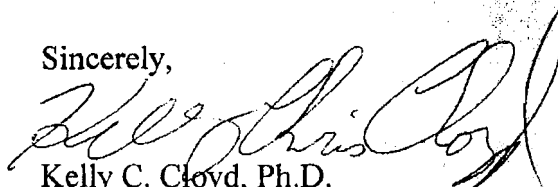
The New York State Department of Environmental Conservation (NYSDEC) and the New York State Department of Health (NYSDOH) have reviewed the above-referenced work plan. Arcadis's letter of September 25, 2007 and the subsequent revision submitted electronically by Mr. Ken Zegel on March 5, 2007 address the Department's concerns. The Department, therefore, approves the plan with these revisions, provided the plan is implemented under a signed Order on Consent with the Department.

Please provide an updated schedule at your earliest convenience for the field activities so that the Department can plan for project oversight.

Mr Steven L. Dishion
March 21, 2007
Page 2

If you have any questions regarding this matter, or if you wish to discuss any aspect of the project, please contact me at (585)-226-5351.

Sincerely,

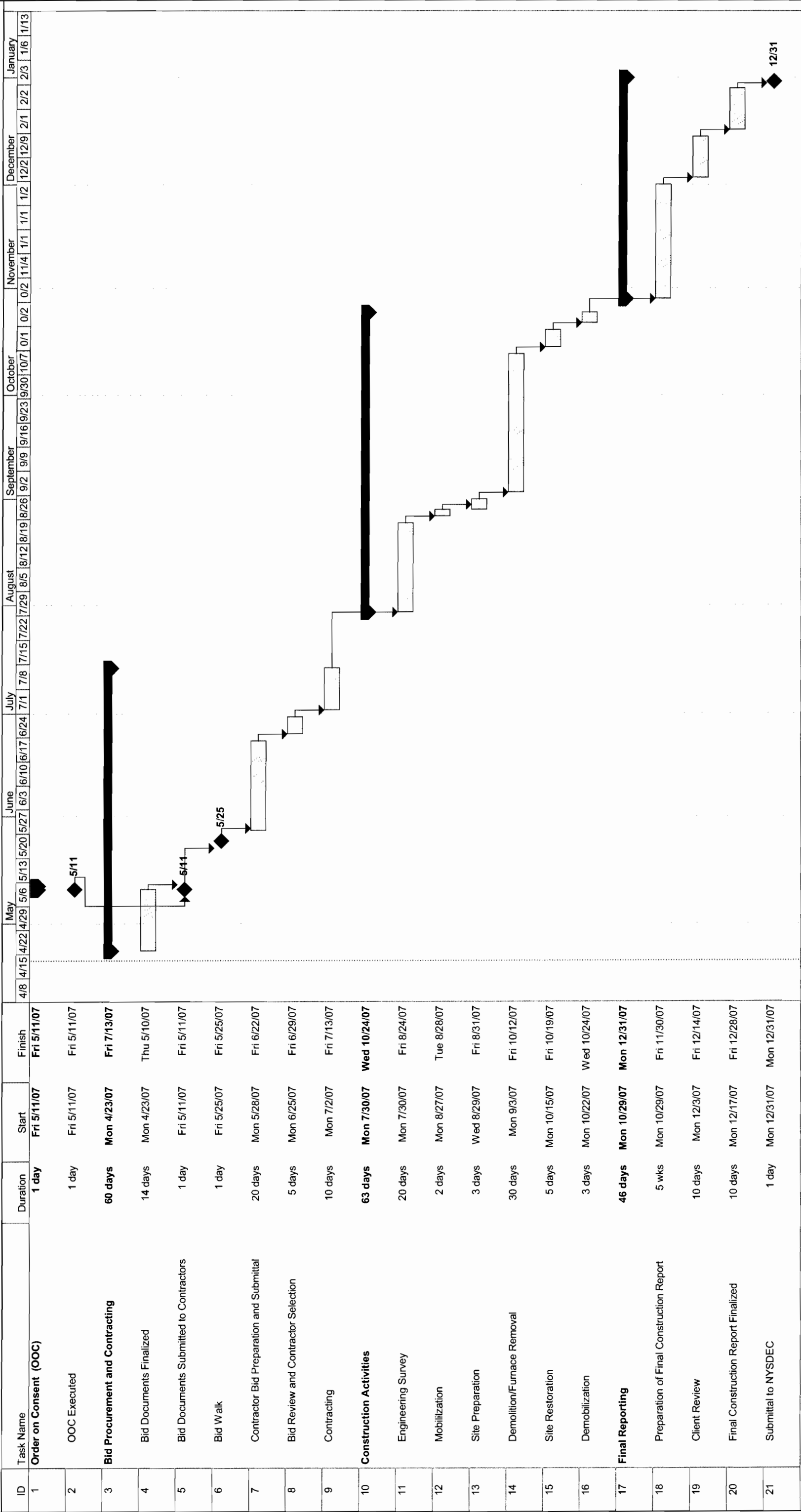
A handwritten signature in black ink, appearing to read 'Kelly C. Cloyd', written over a horizontal line.

Kelly C. Cloyd, Ph.D.
Engineering Geologist 2

KC

cc: E. Belmore
J. Hausbeck
R. Kennedy
S. Purdy
J. Ryan
D. Spence
M. VanValkenburg

Drawing 5. Revised Design and Construction Schedule for Furnace Removal, Former J.T. Baker Site, Penn Yan, New York.



External Tasks

External Milestone

Deadline

Page 1

EXHIBIT “C”


Cost Summary

New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Program Management, 12th Floor
625 Broadway, Albany, New York 12233-7012
Phone: (518) 402-9764 • FAX: (518) 402-9722
Website: www.dec.state.ny.us



MEMORANDUM

TO: Joseph Hausbeck, DEE - Region 9

FROM: Laura Zeppetelli, Bureau of Program Management, DER 

SUBJECT: Cost Summary - J.T. Baker, 8-62-001

DATE: APR 6 2007

This cost recovery summary has been prepared in response to your March 27, 2007 request. The following summarizes costs incurred by the Department of Environmental Conservation (the "Department") to date. There may be additional future costs associated with this site that are not included in this summary. Please contact the project manager to determine if additional future costs are anticipated.

The total unreimbursed costs incurred by the Department in association with the J.T. Baker site, for the requested time period, are \$16,196.05. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. Please note that if the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the State Comptroller and would not be included in this summary. Direct personal and non-personal service costs for this site have been included from October 1, 2005 through February 21, 2007 (the latest available data). Department of Health costs are included from October 1, 2005 through April 5, 2006, as they were readily available. Please note that there are no open contracts for this site for which we have outstanding obligations.

Please note this summary only includes costs after October 1, 2005. Costs through September 30, 2005 were previously recovered under the 1999 IRM Consent Order.

Please contact Len Zinoman at (518) 402-9716, if you have any questions on this summary.

Attachments

cc: K. Cloyd
B. Putzig

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: J.T. BAKER
SITE NO.: 8-62-001

COST CATEGORY	AMOUNTS	EXHIBIT NO.
DIRECT PERSONAL SERVICES	\$8,471.86	
FRINGE	\$3,863.90	
INDIRECT	<u>\$3,845.99</u>	
PERSONAL SERVICES SUBTOTAL	\$16,181.75	II
CONTRACTUAL	\$0.00	
TRAVEL	\$0.00	
OTHER NPS	<u>\$0.00</u>	
NON-PERSONAL SERVICES SUBTOTAL	\$0.00	
DEC TOTAL	\$16,181.75	
DOH PS AND NPS SUBTOTAL	\$14.30	III
MINUS DOH CREDIT FROM PREVIOUS BILL (IF APPLICABLE)	N/A	
DOH TOTAL	\$14.30	
MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE)	<u>N/A</u>	
DEC & DOH TOTAL	\$16,196.05	
COST CAP (IF APPLICABLE)	<u>N/A</u>	
GRANDTOTAL	\$16,196.05	

Cost Query - Ad Hoc

Criteria: Timecard Begin Date >= 10/1/05 And Timecard End Date <= 2/21/07 And Task Code = A4B9

Leave Charges: Included

Cost Indicator: Direct

Rate Type: Non-Federal

Print

EXHIBIT II

Pay Period	Pay Period Dates	Check Date	Cost Center	Variable	Budget Year	Employee	Title Description	Work Location Code	Work Location Description	Billable Hourly Rate	State Fringe	State Indirect	Hours	Cost
Task: A4B9 - 001001 JTBANK JMC														
2005/18	12/01/2005 - 12/01/2005	12/28/2005	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	168.51	174.31	8.00	371.48
2005/19	12/01/2005 - 12/28/2005	01/11/2006	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	326.49	337.72	15.50	721.68
2005/20	12/29/2005 - 01/11/2006	01/25/2006	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	63.19	65.36	3.00	139.68
2005/21	01/12/2006 - 01/25/2006	02/08/2006	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	21.06	21.79	1.00	46.56
2005/22	01/26/2006 - 02/08/2006	02/22/2006	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	98.74	102.14	4.75	218.26
2005/23	02/09/2006 - 02/22/2006	03/08/2006	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	261.60	270.60	12.50	578.25
2005/24	02/23/2006 - 03/08/2006	03/22/2006	430386	L6	2005	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	138.91	141.62	6.50	302.64
2005/25	03/09/2006 - 03/22/2006	04/05/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	93.24	96.45	4.50	206.10
2005/26	03/23/2006 - 04/05/2006	04/19/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.56	42.13	43.58	2.00	93.12
2006/1	04/10/2006 - 04/19/2006	05/03/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	43.41	44.29	2.00	94.76
2006/2	04/20/2006 - 05/03/2006	05/17/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	238.75	242.61	11.00	521.18
2006/3	05/04/2006 - 05/17/2006	05/31/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	86.82	88.59	4.00	189.52
2006/4	05/18/2006 - 05/31/2006	06/14/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	21.70	21.35	1.00	47.38
2006/5	06/01/2006 - 06/14/2006	06/28/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	32.56	31.72	1.50	71.07
2006/6	06/15/2006 - 06/28/2006	07/13/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	66.82	66.82	3.00	142.14
2006/7	06/29/2006 - 07/13/2006	08/09/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	119.38	116.31	5.50	260.59
2006/8	07/14/2006 - 07/28/2006	08/21/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	282.16	274.91	13.00	615.94
2006/9	07/29/2006 - 08/09/2006	08/21/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	65.11	63.44	3.00	142.14
2006/10	08/10/2006 - 08/21/2006	09/06/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	108.52	105.73	5.00	236.90
2006/11	08/22/2006 - 09/06/2006	09/20/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	43.41	42.29	2.00	94.76
2006/12	09/07/2006 - 09/20/2006	10/04/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	43.41	42.29	2.00	94.76
2006/13	09/21/2006 - 10/04/2006	10/18/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	173.64	169.18	8.00	379.04
2006/14	10/05/2006 - 10/18/2006	11/01/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	54.08	52.89	2.50	118.05
2006/15	10/19/2006 - 11/01/2006	11/29/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	75.97	74.01	3.50	165.83
2006/16	11/02/2006 - 11/29/2006	12/13/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	119.38	116.31	5.50	260.59
2006/17	11/30/2006 - 12/13/2006	12/27/2006	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	108.52	105.73	5.00	236.90
2006/18	12/14/2006 - 12/27/2006	01/10/2007	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	54.26	52.87	2.50	118.45
2006/19	12/28/2006 - 01/10/2007	01/24/2007	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	65.11	63.44	3.00	142.14
2006/20	01/11/2007 - 01/24/2007	02/07/2007	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	46.75	117.79	114.76	5.50	257.13
2006/21	01/25/2007 - 02/07/2007	02/21/2007	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	65.11	63.44	3.00	142.14
2006/22	02/08/2007 - 02/21/2007	03/07/2007	430386	L6	2006	Cloyd, Kelly	ENGRG GEOLOGIST 2	24164	R8 - Avon - Regional HQ	47.38	54.43	52.9	2.25	11.85
2006/23	02/22/2007 - 03/07/2007	03/21/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	51.20	12.37	12.97	0.75	38.40
2006/24	03/08/2007 - 03/21/2007	04/05/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.77	22.52	22.52	1.00	49.77
2006/25	03/22/2007 - 04/05/2007	04/19/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	51.53	17.49	18.09	0.75	36.65
2006/26	04/06/2007 - 04/19/2007	05/03/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.47	5.60	5.79	0.25	12.37
2006/27	04/20/2007 - 05/03/2007	05/17/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.77	22.52	23.29	1.00	49.77
2006/28	05/04/2007 - 05/17/2007	05/31/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	51.04	23.09	23.88	1.00	51.04
2006/29	05/18/2007 - 05/31/2007	06/14/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.77	23.09	23.88	1.00	51.04
2006/30	06/01/2007 - 06/14/2007	06/28/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.77	23.09	23.88	1.00	51.04
2006/31	06/15/2007 - 06/28/2007	07/12/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.77	23.09	23.88	1.00	51.04
2006/32	06/29/2007 - 07/12/2007	07/26/2007	430386	L6	2005	Puzko, Bartholomew	ENVIRNL ENGINEER 3	24164	R8 - Avon - Regional HQ	49.77	23.09	23.88	1.00	51.04

2006/9	07/27/2006 - 08/09/2006	08/23/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	47.97	21.98	21.41	1.00	47.97
2006/10	08/10/2006 - 08/23/2006	09/06/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	52.09	41.26	40.69	1.75	91.16
2006/11	08/24/2006 - 09/06/2006	09/20/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	50.96	31.57	31.37	0.50	25.48
2006/12	09/07/2006 - 09/20/2006	10/04/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	50.33	11.53	11.23	0.50	25.17
2006/13	10/19/2006 - 11/01/2006	11/15/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	52.51	12.03	11.72	0.50	26.26
2006/16	11/02/2006 - 11/15/2006	11/29/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	51.85	5.94	5.79	0.25	12.96
2006/17	11/16/2006 - 11/29/2006	12/13/2006	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	51.69	23.68	23.07	1.00	51.69
2006/19	12/14/2006 - 12/27/2006	01/10/2007	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	50.43	26.88	26.14	1.25	63.04
2006/21	01/11/2007 - 01/24/2007	02/07/2007	430386	L6	2006	Pulsig, Bartholomew	ENVIRONL ENGINEER 3	24164	R8 - Avon - Regional HQ	45.21	5.18	5.04	0.25	11.30
2006/2	04/20/2006 - 05/03/2006	05/17/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	62.28	57.06	55.59	2.00	124.56
2006/7	06/29/2006 - 07/12/2006	07/26/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	63.10	14.45	14.08	0.50	31.55
2006/8	07/13/2006 - 07/26/2006	08/09/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	63.10	28.91	28.16	1.00	63.10
2006/11	08/24/2006 - 09/06/2006	09/20/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	63.52	72.75	70.88	2.50	158.80
2006/13	09/21/2006 - 10/04/2006	10/18/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	62.69	14.36	13.99	0.50	31.35
2006/15	10/19/2006 - 11/01/2006	11/15/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	62.69	14.36	13.99	0.50	31.35
2006/16	11/02/2006 - 11/15/2006	11/29/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	63.10	14.45	14.08	0.50	31.55
2006/18	11/10/2006 - 12/13/2006	12/27/2006	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	63.10	14.45	14.08	0.50	31.55
2006/19	12/14/2006 - 12/27/2006	01/10/2007	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	63.52	43.65	42.53	1.50	95.28
2006/20	12/28/2006 - 01/10/2007	01/24/2007	430116	L6	2006	Ryan, Joseph	ASSTT COUNSL	634406	R9 - Buffalo - Regional HQ	62.69	14.36	13.99	0.50	31.35
Task A480 Sub Total:										3,845.99	3,845.99	3,845.99	176.25	8,471.86

Report Total: 3,845.99 176.25 8,471.86

Jump to Employee: A|B|C|D|E|F|G|H|I|J|K|L|M|N|O|P|Q|R|S|T|U|V|W|X|Y|Z

Close

EXHIBIT III

**New York State Department of Health
Cost Recovery
JT Baker
(862001)**

Fiscal Year 03/04	Personal Services	\$9.18	} Billed under 1999 I R M order
	Fringe @ 38.24%	\$3.33	
	Indirect*	\$2.26	
Fiscal Year 04/05	Personal Services	\$0.00	
	Fringe @ 41.98%	\$0.00	
	Indirect*	\$0.00	
Fiscal Year 05/06	Personal Services	\$294.25 8.20	
	Fringe @ 45.24%	\$130.12 3.11	
	Indirect*	\$85.78 2.39	
Travel Costs		\$59.60	} Billed under 1999 I R M order
Laboratory Costs		\$0.00	
Total:		\$587.52	
		\$ 14.30	

12/23/05 FRI 10:48 FAX 518 4027859

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* Indirect amount is calculated per DOH policy as follows:

(Personal Services +(Personal Services x Federal Fringe rate)) x Indirect rate

Rates are as follows:

	Federal fringe rate	Indirect rate
FY 90/91	21.94%	18.10%
FY 91/92	19.14%	18.10%
FY 92/93	27.18%	28.60%
FY 93/94	30.04%	25.70%
FY 94/95	27.41%	25.70%
FY 95/96	28.08%	24.60%
FY 96/97	29.21%	25.00%
FY 97/98	31.00%	24.20%
FY 98/99	25.67%	25.60%
FY 99/00	29.18%	27.40%
FY 00/01	30.60%	21.60%
FY 01/02	31.61%	20.90%
FY 02/03	34.37%	18.70%
FY 03/04	35.94%	18.10%
FY 04/05	40.31%	19.30%
FY 05/06	45.03%	20.10%

06/20/06 TUE 09:32 FAX 518 4027859

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June 9, 2006
12:50 PM

**New York State Department of Environment and Conservation
CEH Leave and Accrual Tracking Report
Site Cost Recovery Report Ordered by Pay End Date
(862001) JT BAKER**

Page 1 of 1

For the period October 1, 2003 thru April 5, 2006

Fiscal Year	Pay End Date	Hours	Rate	Amount Employee
2003	01/14/2004	.50	\$18.36	\$9.18 Vartigian, Lori
Total Hours and Cost		0.50		\$9.18
2005	06/01/2005	6.00	\$33.47	\$200.82 Bethoney, Charlotte M
2005	06/01/2005	3.50	\$24.35	\$85.23 Girard, Tamara
2005	12/28/2005	.25	\$32.80	\$8.20 Bethoney, Charlotte M
Total Hours and Cost		0.75 0.25		\$204.25 8.20
Total For Entire Period		10.25 0.25		\$309.43 8.20

*Billed Under
1999 I RM Order*

**New York State Department of Health
Bi-weekly Salary Report
(862001) JT Baker
For the period October 1, 2003 thru April 5, 2006**

12/28/2005	\$2,216.06	Bethoney Charlotte	M	PUBLIC H SP 3 ENVIRM
6/1/2005	\$2,145.17	Bethoney Charlotte	M	PUBLIC H SP 3 ENVIRM
6/1/2005	\$1,650.19	Girard Tamara		PUBLIC H SP 2 ENVIRM
1/14/2004	\$1,129.32	Vertigian Lori		CLERK 2

EXHIBIT “D”

NOTICE OF ORDER

Mallinckrodt Baker, Inc. and Friends of the Outlet, Inc. ("Respondents") are subject to an Order On Consent (Index # _____) (the "Order") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL") for a site located on the borders of the Towns of Milo and Torrey, Yates 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 #8-62-001. The Department has classified the Site as a Class "___" site pursuant to ECL Section 27-1305.4.b. This classification means that the Department has determined that the Site [add text]. The Site is more particularly described in the legal description that is attached hereto as Schedule "A."

The purpose of the Order is to provide for the performance of certain interim remedial measures at the Site. The effective date of the Order was _____. A copy of the Order, as well as any and all Department-approved Work Plans under this Order can be reviewed at the Department's _____ offices located at _____ by contacting _____.

This Notice of Order is being filed with the _____ recording officer in accordance with Paragraph VIII of the Order to give all parties who may acquire any interest in the Site notice of this Order.

Appendix “A”

(to Exhibit “D”)

Map of the Property

EXHIBIT “E”

ENVIRONMENTAL EASEMENT

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this ___ day _____, 200_, between Owner(s)
_____ residing at (or having an office at) _____ (the “Grantor”),
and The People of the State of New York (the “Grantee”), acting through their
Commissioner of the Department of Environmental Conservation (the “Commissioner”,
or “NYSDEC” or “Department” as the context requires) with its headquarters located at
625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public
interest to encourage the remediation of abandoned and likely contaminated properties
(“brownfield sites”) that threaten the health and vitality of the communities they burden
while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public
interest to establish within the Department a statutory environmental remediation
program that includes the use of environmental easements as an enforceable means of
ensuring the performance of operation, maintenance, and/or monitoring requirements and
of ensuring the potential restriction of future uses of the land, when an environmental
remediation project leaves residual contamination at levels that have been determined to
be safe for a specific use, but not all uses, or which includes engineered structures that
must be maintained or protected against damage to perform properly and be effective, or
which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental
easement shall mean an interest in real property, created under and subject to the

provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located in the City/Town/Village of _____, _____ County, New York known and designated on the tax map of the _____ of _____ as tax map parcel number _____, section _____, block _____, lot _____, being the same as that property conveyed to Grantor by deed on _____, and recorded in the Land Records of the _____ County Clerk at page __, liber __ of Deeds, comprised of approximately ____ acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the" Controlled Property"); and;

Attach an adequate legal description of the property subject to the easement, or reference a recorded map. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description needs to be created by a survey bearing the seal and signature of a licensed land surveyor with reference to a metes and bounds description.

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this

Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Number**

_____/ **State Assistance Contract Number**

_____/ **Order on Consent Number** _____, Grantor grants,

conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein (“Environmental Easement”).

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.
2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor’s successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

- A. The Controlled Property may be used for

residential

commercial

industrial

use as long as the following long-term engineering controls are employed:

B. The Controlled Property may not be used for a higher level of use such as **unrestricted/residential/commercial** use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an environmental
easement held by the New York State
Department of Environmental Conservation
pursuant of Title 36 to Article 71 of the
Environmental Conservation Law.**

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement.

A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or the Satisfactory Completion of Project provided under ECL Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in

accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/identification number and address correspondence to:

Division of Environmental Enforcement

Office of General Counsel

New York State Department of Environmental Conservation

625 Broadway

Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in

the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name

By: _____

Title: _____

Date: _____

THIS ENVIRONMENTAL EASEMENT IS HEREBY
ACCEPTED BY THE PEOPLE OF THE STATE OF NEW
YORK, By and Through the Department of Environmental
Conservation

By: _____

Alexander B. Grannis, Commissioner

Grantor's Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the _____ day of _____, in the year 200__, before me, the undersigned, personally appeared _____, 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.

DRAFT

Notary Public - State of New York

Grantee's Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, 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.

Notary Public - State of New York

Glossary of Terms

The following terms shall have the following meanings:

“BPM Director”: the Director of the Bureau of Program Management within the Division of Environmental Remediation.

“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, where the last day would 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.

“Feasibility study”: a study undertaken to develop and evaluate options for remedial action. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation, using data gathered during the remedial investigation. The term also refers to a report that describes the results of the study, (See 6 NYCRR Part 375)

“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.

“inactive Hazardous Waste Disposal Site Remedial Program” or “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) and 6 NYCRR Part 375)

“Interim Remedial Measure” or “IRM”: a discrete set of activities, including removal activities, to address both emergency and non-emergency Site conditions, which can be undertaken without extensive investigation or evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to the Site, (See 6 NYCRR Part 375)

“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.

“NL”: the Navigation Law, Chapter 37 of the Consolidated Laws of New York, as amended.

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

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

“Order”: this Order 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 as Exhibit “L.”

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

“Remedial Investigation” or “RI”: a process undertaken to determine the nature and extent of contamination. The remedial investigation emphasizes data collection and site characterization and generally is performed concurrently with the feasibility study. It includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and the proposed extent of the program and to support the evaluation of proposed alternatives. (See 6 NYCRR Part 375).

“Site Characterization” or “SC”: a process undertaken to allow the Department to determine whether a consequential amount of hazardous waste has been disposed at a Site and, if so, whether the contamination presents a significant threat to public health and/or the environment.

“Spill Fund”: the New York State Environmental Protection and Spill Compensation Fund as established by Article 12, Part Three of the NL.

“State Costs”: all the State’s response expenses related to this Site, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, overseeing, administering, or enforcing this Order, and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

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

“USEPA”: the United States Environmental Protection Agency.