

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation
of a Response Program for
the Chase Interiors Site
by:

AGREEMENT
Index Number: B9-0514-97-04

JAMESTOWN DEVELOPMENT COMPANY, LLC
Volunteer

Site # 9-07-013

CONSIDERING,

1. The New York State Department of Environmental Conservation ("the Department") is responsible for the enforcement the Environmental Conservation Law of the State of New York ("ECL"). This Agreement is entered into pursuant to the State's authority under that law.

2. A. The Site consists of an area of approximately 7 acres, located at 205-247 West Lister Street in the Village of Falconer, Chautauqua County, identified as parcel numbered Section 105, Block 20 and Lot 1 the Tax Map from the Village of Falconer attached to this Agreement as Exhibit "A." Portions of these properties have had various uses, including the facility for Chase Interiors, Inc., a former display cabinet manufacturer, and Niagara Crescent Corporation, a tool manufacturer.

B. Environmental assessments of the Site have determined that existing contamination consists variously of detectable levels of volatile organic compounds ("VOCs") including toluene, methyl isobutyl ketone, and xylenes, along

with metals contamination including lead and chromium, and various other halogenated hydrocarbons, phenols, aromatics and pesticides (the "Existing Contamination").

3. A. The Jamestown Development Company, LLC ("Volunteer") is a limited liability corporation incorporated in accordance with the laws of the State of New York, with an office address at 333 Ganson Street, Buffalo, New York 14201.

B. Volunteer proposes to demolish, excavate and remove areas of contamination at the Site and, if appropriate and viable, to address the environmental conditions at the Site to facilitate remodeling, construction, and additional development consistent with the use of the Site as an area for light industrial and commercial application (the "Contemplated Use").

C. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site is limited to the following: Volunteer has acquired the property in its current condition from the prior property owner, and has not previously owned or operated the Site but, as such, may be deemed to be a current owner and operator; and is not otherwise responsible under law to remediate the Existing Contamination.

4. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

5. A. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a provides that whenever the Commissioner of Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of the site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order.

B. The regulations implementing ECL Article 27, Title 13 authorize at 6 NYCRR 375-1.2(e)(2)(ii) the proponents of any activity to demonstrate to the Department that such activity will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i) by such demonstration as the Department may find acceptable.

C. Volunteer wishes to enter into this Agreement to ensure, and the Department hereby determines that, this Agreement constitutes a demonstration, that the investigations and response actions undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any

proposed, ongoing or completed remedial program at the Site, or

2. expose the public health or the environment to a significantly increased threat of harm or damage.

6. A. Volunteer wishes to enter into this Agreement to resolve its potential liability for remediation of the Existing Contamination as an owner and operator under ECL Article 27, Title 13. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

B. Volunteer, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteer to proceed with its plans to use the Site for the Contemplated Use, consents to the terms and conditions of this Agreement.

7. The Department and Volunteer agree that the goals of this Agreement are:

A. for Volunteer to (i) implement the Department-approved remediation work plan for the Site as set forth in Exhibit "B" and attached hereto and made part hereof, and (ii) reimburse the State's administrative costs as provided in this Agreement, and

B. for the Department to release Volunteer and its successors and assigns from any and all claims, actions, suits, and proceedings (including but not limited to any claims for State administrative costs) by the Department which may arise

under any applicable law as a result of the Existing Contamination.

8. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Work Plan

A. 1. The Department has published a notice in the Environmental Notice Bulletin to inform the public of this Agreement and of the public's opportunity to submit comments to the Department on the remedial work plan (the "Work Plan") attached to this Agreement and made part of it as Exhibit "B" by no later than 30 days after the issue of the Environmental Notice Bulletin in which such notice has appeared, and shall mail an equivalent notice to the County of Chautauqua, and the Village of Falconer.

2. If, as a result of its review of the comments received, the Department determines that the Work Plan must be revised, then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to

revise the Work Plan and, if necessary, other components of this Agreement accordingly. If both parties agree to a revised Work Plan, the revised Work Plan shall be attached to this Agreement as Exhibit "B-1;" Volunteer shall implement that Work Plan instead of the one contained in Exhibit "B;" and all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1."

B. Volunteer shall commence the implementation of the Work Plan as approved by the Department and attached to this Agreement and shall implement it in accordance with its terms.

C. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, or any Department-approved modification to it, and shall not modify any obligations unless first approved by the Department.

D. In accordance with the schedule contained in the Work Plan, as may be modified by agreement between the parties, Volunteer shall submit to the Department a final engineering report. The final engineering report shall include a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer

pursuant thereto, and this Agreement. The O&M Plan, "as-built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan.

F. 1. Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the referenced Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

2. Upon being satisfied that all the work required by the Work Plan has been completed in accordance with the Work Plan, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department shall forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation and remediation of the Site based upon the release or threatened release of any Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the

Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or its lessees, sublessees, successors or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

- i. due to offsite migration of contaminants resulting in impacts to environmental resources, to human health, or to other biota which impacts are not inconsequential;

- ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

- iii. due to information received after the Department's approval of the final engineering report and certification, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

- iv. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

v. due to fraud committed or mistake made by Volunteer in demonstrating that the Site-specific clean-up levels identified in the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to, any further investigation or abatement the Department deems necessary to be undertaken in the event that Volunteer causes or suffers the release or threat of release of any hazardous substance (as that term is defined at 42 U.S.C. 9601[14]) or petroleum (as that term is defined in Navigation Law 172[15]) after the effective date of this Agreement; or Volunteer causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

3. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

G. If the Department is satisfied with the implementation of the Work Plan and Department-approved design, and with the provisions for implementation of the O&M Plan, then

the Department shall provide Volunteer with a separate written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "C."

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in the "no further action" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the "no further action" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.F and in the "no further action" letter issued under Subparagraph I.G of this Agreement shall not extend to

parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XI.A.1 in the numbers specified therein copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;

2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;

3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;

4. describe all actions, including but not limited to, data collection and implementation of the Work Plan that are scheduled for the next month and provide other information relating to the progress at the Site;

5. include information regarding percentage of completion, unresolved delays encountered or anticipated that

may affect the future schedule for implementation of Volunteer's obligations under this Agreement, and efforts made to mitigate those delays or anticipated delays;

6. include any modifications to any work plans, including the Work Plan, that Volunteer has proposed to the Department or that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement, and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written notification identified in Subparagraph I.F of this Agreement. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

III. Review of Submittals

A. 1. Except for the monthly progress reports as required pursuant to Paragraph II of this Agreement, the Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared,

and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, the Department shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days after its receipt of the submittal, except with respect to the final engineering report and certificate (in which case the period shall be 60 days); and it may request Volunteer to modify or expand the submittal, provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. Within 30 days after receipt of the revised submittal, the Department shall notify Volunteer in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into

and become an enforceable part of this Agreement. If the Department disapproves the revised submittal such disapproval shall constitute a final agency action for the purposes of the State Administrative Procedures Act and Article 78 of the Civil Practice Laws and Rules, and the Department and Volunteer may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same.

B. Within 30 days after the Department's approval of the final engineering report and certification, Volunteer shall submit to the Department such copies of that report and all other Department-approved drawings and submittals as may be directed by the project manager for the Department.

IV. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because 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 Volunteer's reasonable control ("force majeure event"). Volunteer shall, within five working days of when it obtains knowledge of any such force majeure event,

notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry Upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or of any State agency having jurisdiction with respect to the Response Program for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work being performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to attend job meetings.

VI. Payment of State Costs

Within 30 days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum

of money to reimburse the State for the State's expenses, 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 this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.F of this Agreement of its approval of the final engineering report and certification pertaining to the implementation of the Work Plan, or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by certified check 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
50 Wolf Road
Albany, New York 12233-7010

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.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.F of this Agreement and in any "no further action" letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any party other than Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take or require the undertaking of any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or contamination other than Existing Contamination is encountered at the Site.

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

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with this Agreement's terms and conditions.

VIII. Indemnification

Volunteer shall indemnify and hold the Department and

the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, Volunteer shall file the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Chautauqua County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement.

B. If the owner or Volunteer proposes to convey the whole or any part of its ownership interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. Deed Restriction

A. Within 30 days of its receipt of the Department's notification pursuant to Subparagraph I.F of this Agreement approving Volunteer's final engineering report and certification for the Work Plan, Volunteer shall record an instrument with the Chautauqua County Clerk, to run with the land, that shall

prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau or other entity replacing the Department.

B. Such instrument shall also include

1. a provision prohibiting the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department; and,

2. a provision requiring Volunteer and its successors, including its successors in title, and assigns to continue in full force and effect the O&M Plan approved by the Department pursuant to Subparagraph I.E of this Agreement.

C. Volunteer shall provide the Department with a copy of such instrument certified by the Chautauqua County Clerk to be a true and faithful copy of such instrument as recorded in the Office of the Chautauqua County Clerk.

D. Volunteer, on behalf of itself and its successors, including its successors in title, and assigns, consents to the Department's enforcement of the prohibitions and restrictions that this Paragraph X requires to be recorded, and

covenants not to contest such enforcement.

XI. Communications

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

1. Communication from Volunteer shall be sent to:

Martin L. Doster, P.E.
New York State Department of Environmental
Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203-2999

with copies to:

G. Anders Carlson, Ph. D.
Director, Bureau of Environmental Exposure
Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

and to: Cameron O'Connor
New York State Department of Health
584 Delaware Avenue
Buffalo, New York 14202

and to: Glen R. Bailey, Esq.
New York State Department of Environmental
Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

Three copies (one unbound) to Martin Doster

One copy to G. Anders Carlson

One copy to Cameron O'Connor

One copy to Glen R. Bailey

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

David P. Flynn, Esq.
Phillips, Lytle, Hitchcock, Blaine & Huber
3400 Marine Midland Center
Buffalo, New York 14203

and to:

Gregory L. Davis, Esq.
Davis Augello Matteliano & Gersten, LLP
17 Court Street
Buffalo, New York 14202-3204

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that it has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement or to any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to its application for this Agreement. Volunteer also certifies that it has not caused or contributed to a release or threat of release of hazardous

substances or pollutants or contaminants at or from the Site.

2. If the Department determines that information Volunteer provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void ab initio, and the Department shall preserve and be restored to all rights that it may have.

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least 5 working days in advance of the commencement of any field activities to be conducted pursuant to this Agreement.

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, right-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteer from the requirement to obtain any Department permit for any activity that is conducted on the Site and that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, successors and assigns shall be bound by this Agreement. Any change in ownership of the Site or status of Volunteer including, but not limited to, any transfer of assets or real or personal property shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into to

carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. All references to "professional engineer" in this Agreement are to 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.

I. All references to "days" in this Agreement are to calendar days unless otherwise specified.

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

K. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this 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 regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Martin Doster and to Glen R. Bailey.

L. In undertaking the work required under this Agreement, Volunteer and its officers, directors, employees, representatives, agents, contractors and subcontractors are deemed for the purpose of ECL 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work which is conducted pursuant to a contract with the Department.

M. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 U.S.C. 9613 and any other applicable law,

Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the Existing Contamination. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 U.S.C. 9613(f)(3) shall apply.

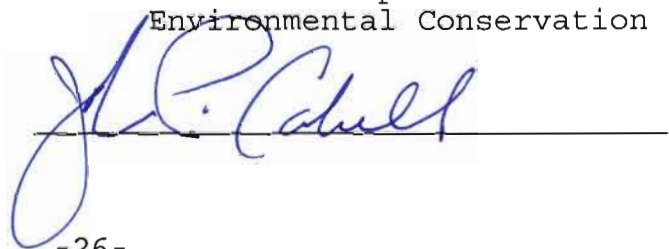
N. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

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

DATED:

11/29/97

JOHN P. CAHILL
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in blue ink, appearing to read "J.P. Cahill", is written over a horizontal line.

CONSENT BY VOLUNTEER

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

JAMESTOWN DEVELOPMENT COMPANY, LLC

By: _____

Jon M. Williams, President
Type Name and Title of the signatory

Date: _____

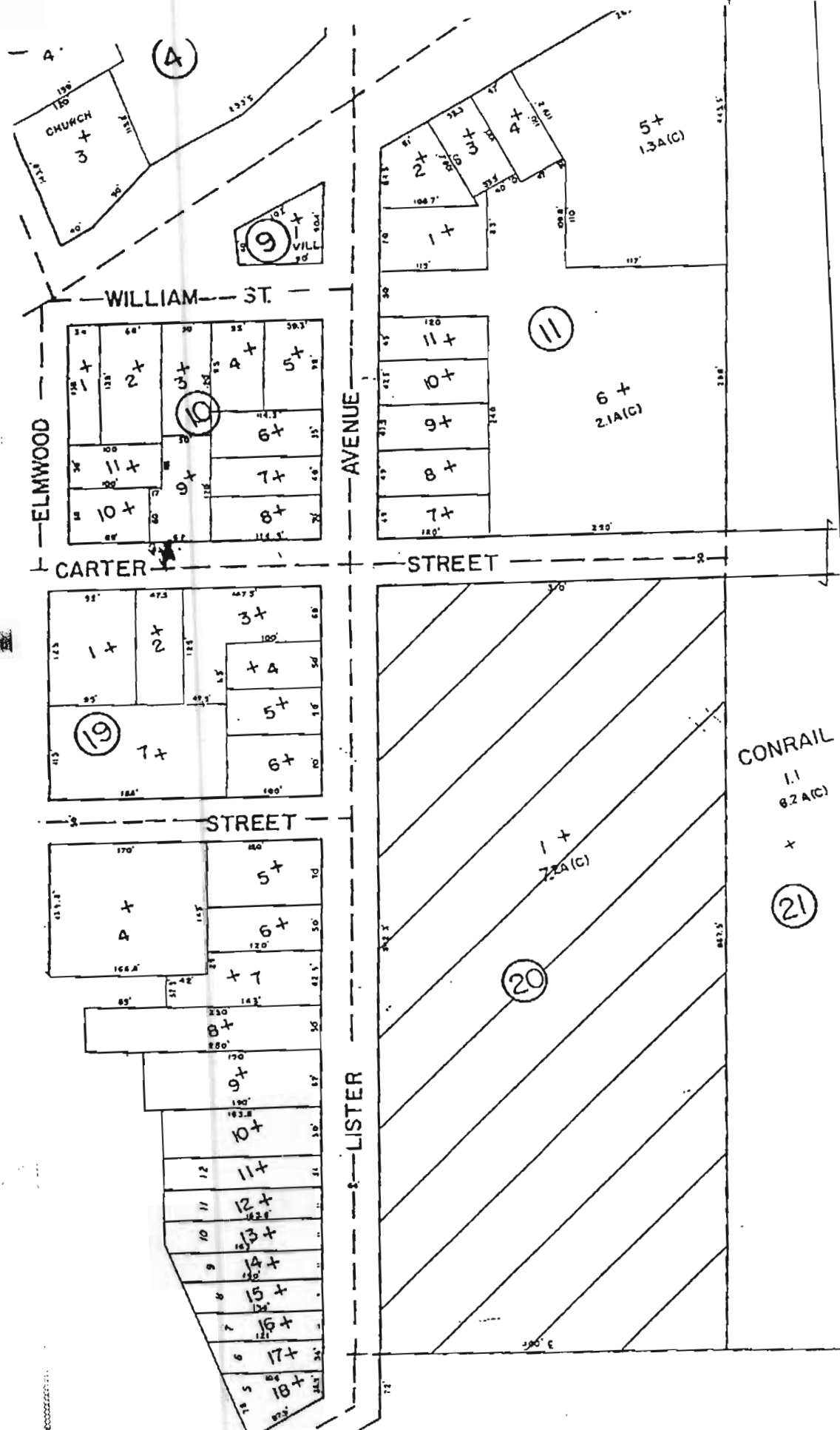
10/15/17

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

On this 15th day of October, 1997,
before me personally came Jon M. Williams, to me
known, who being duly sworn, did depose and say that he resides
in Amherst, that he is the
President of the Jamestown
Development Company, LLC the entity described in and which
executed the foregoing instrument; and that he signed h/s name
on behalf of said corporation and was authorized to do so.

Heather T. Swenson
Notary Public

EXHIBIT
"A"



ENVIRONMENTAL ASSESSMENT FORM
CHASE INTERIORS, INC.
205-247 W. LISTER AVE.
FALCONER, NY

CHA
CLOUGH, HARBOUR & ASSOCIATES
ENGINEERS, SURVEYORS, PLANNERS
& LANDSCAPE ARCHITECTS
1000 YORK ST. SUITE 1200
ALBANY, NY 12206

TAX MAP

FIGURE NO. 2 SCALE: AS SHOWN

EXHIBIT
"B"

NYSDEC SITE No. 907013

ENVIRONMENTAL REMEDIATION
WORK PLAN
(Final Version 7/28/97)

CHASE INTERIORS SITE
205-207 WEST LISTER AVENUE
FALCONER, NEW YORK

DATE ISSUED: JUNE 28, 1997



PREPARED BY:
JACK EISENBACH ENGINEERING, P.C.
291 GENESEE STREET
UTICA, NEW YORK 13501

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WORK PLAN

FIGURE 1

Site Locus Map

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Well Location Map

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Post Remedial Monitoring Well Location Map

TABLE 1

Remedial Action- Summary of Contaminant Levels and Proposed Actions

TABLE 2

Remedial Action - Specific Compounds List

ATTACHMENT #1

New York State DEC Correspondence

ATTACHMENT #2

New York State Department of Labor Petition for Variance ICR 56

ATTACHMENT #3

Preliminary Excavation Plan

ATTACHMENT #4

Site Health and Safety Plan

SECTION 1.0 - INTRODUCTION

1.1 PURPOSE

The purpose of this Work Plan is to document the objectives and procedures to be used during the remedial action at the Chase Interiors, Inc. site (Chase Site). The Chase site is located in the Village of Falconer, Chautauqua County, New York (see Figure 1 "Site Location Map") and occupies the 7-acre parcel located at 205-247 West Lister Avenue. The Jamestown Development Corporation, LLC ("JDC") is proposing to demolish the site's existing building structures and all site improvements such as the water tower and pavement and construct a manufacturing facility. As part of the demolition and construction efforts, environmental concerns identified by NYSDEC (Attachment #1) at the site will be managed and/or removed. This remedial action will be completed under a voluntary cleanup agreement between JDC and the New York State Department of Environmental Conservation (NYSDEC).

1.2 PROJECT ORGANIZATION AND RESPONSIBILITY

The Remedial Action project shall be under the control of JDC and shall be administered by the Project Manager who shall be designated by JDC.

1.3 WORK PLAN ORGANIZATION

The *Chase Site Work Plan* consists of the following elements:

Section 1.0	Introduction
Section 2.0	Site History and Existing Information
Section 3.0	Remedial/Restoration Action
Section 4.0	Health and Safety Plan
Section 5.0	Project Final Report
Section 6.0	Citizen Participation Activities
Section 7.0	Project Schedule

1.4 REMEDIAL ACTION ACTIVITIES

The *Chase Site Work Plan* identifies and addresses the following six items for remediation:

1. Abatement of friable asbestos containing material (when accessible), as per the variance submitted, from the building structure prior to demolition, and removal of the main building debris in accordance with NYSDOL approvals.
2. Demolition and removal of the main 120,000-square foot, three-story wood frame/brick veneer building on the property, the water tower, and other site improvements.
3. Removal of the existing storm drain system and any associated sediments and storm sewer bedding up to the property line. No work extends beyond the property line.

4. Excavation and removal of soils as needed to facilitate the demolition of the existing facility and the construction of the new building, and/or managing to limit exposure of contaminated soils. Particular attention will be paid to the soils in the vicinity of monitoring well #6 (MW-6).
5. Installation of an asphaltic paved parking facility and/or building structures that will effectively act as an impervious cap over most of the site.
6. Groundwater monitoring to determine groundwater quality and trends in contaminant movement.

SECTION 2.0 - SITE HISTORY AND EXISTING INFORMATION

This section provides a summary of existing information, including a description of the site location, a historical perspective of operations conducted at the facility, and the general environmental condition of the site.

2.1 OVERVIEW - EXISTING INFORMATION

Our understanding of the Case Site, its history and existing conditions was formed from information and data collected, and reported in the following documents:

- "Conveyance of H.B.S.A. Property," letter dated January 23, 1997 L. Albano (Assistant County Attorney, Chautauqua County) to J. Donogher (Davis, *et al*)
- "Chase Interiors Site No. 907013, March 3, 1995 Sampling Event report," dated June 2, 1995, M. Emery (NYSDEC) to M. Doster (NYSDEC).
- "(Attachment) Scope of work for Voluntary Agreement - Chase Interiors Site #907013," letter dated July 31, 1995, M. Doster (NYSDEC) to A. Goodell.
- "Chase Interiors, Inc. Site, Preliminary Site Assessment, Division of Hazardous Waste Remediation, NYSDEC," dated May, 1994, Prepared by Engineering Science, Inc.
- "Organization and Delegation Memorandum #94-32 Policy: Voluntary Cleanup Program," dated December, 1994, L. Marsh (NYSDEC) to Executive Staff, Division of Regional Directors.
- Memorandum "Assessment Needs for Chase Interior," dated May 20, 1988, J. Sciascia (NYSDEC) to J. Ryan (NYSDEC).
- Memorandum "Chase Interiors Site... Proposed Sampling Event," dated January 25, 1995, M. Emery (NYSDEC) to M. Doster (NYSDEC).

2.2 SITE DESCRIPTION AND LOCATION

The Chase Interiors, Inc. Site (NYSDEC No. 907013) is a Class 3 inactive hazardous waste site and is a former inactive manufacturing facility located in the Village of Falconer, which is at the northeastern boundary of the City of Jamestown, Chautauqua County, New York (Figure 1). The site occupies a 7-acre parcel located at 205-247 West Lister Avenue, and is bordered by the Erie Railroad main tracks; a rail yard and several commercial facilities to the south; a wooded area to the west; Lister Street, residences, two baseball fields, and Chadakoin River to the north; and Carter Street, residences, and several commercial structures to the east. The main structure on the property is a 120,000-square foot, three-story wood frame/brick veneer building.

2.3 SITE VICINITY

Chautauqua County is in the extreme southwestern corner of New York State. The Pennsylvania-New York State line forms its southern and western boundaries, and Lake Erie forms the northern boundary of the county.

The City of Jamestown and surrounding communities are the most populated areas of the county. Jamestown is located approximately 60 miles southwest of Buffalo. The most important industries, primarily concentrated around Jamestown, are engaged in the manufacturing of finished wood and metal products. Proximity to extensive hardwood forests makes Jamestown a center of furniture manufacturing. Tourism is also an important industry, including summer visitors to Chautauqua Lake north of Jamestown.

2.4 SITE TOPOGRAPHY

The topography of the site is relatively flat with a downward slope of less than one percent to the north. The site is accessible from both Lister Street on the north and Carter Street on the east. A cistern with two pumping stations positioned on top is located on the east side of the building. The north portion of the property is primarily comprised of grass covered areas and blacktop parking area. A fenced area around a concrete pad, adjacent to the northeast portion of the building (north exterior wall), appears to have been a former transformer pad. A water tower, a small fire equipment shack, and a pump house are located along the west boundary of the site. Existing fencing provides a limited deterrent to site access, but entrance ways do not have gates, and the west site boundary is not fenced.

2.5 SITE MONITORING

Five monitoring wells (MW-1 through MW-5) were installed prior to the Preliminary Site Assessment conducted in 1994. These wells include three along the northern boundary (MW-1, MW-2, and MW-5), one along the east side of the building (MW-4), and one in the southeast portion (interior) of the building (MW-3). Four additional wells were installed in 1994 for a total of nine (9) (See Figure- 2 for location of the wells).

The following is a listing of recorded groundwater sampling events reviewed for the site (NYSDEC Records):

<u>Date</u>	<u>Completed by</u>	<u>Monitoring wells sampled</u>
April 6, 1993	Engineering Science, Inc.	1,6,7,8,9,10
June 17, 1994	NYSDEC Region 9	1,5,6,7,8,9
March 3, 1995	NYSDEC Region 9	6,8

2.6 SITE HISTORY

Niagara Crescent owned and operated the site from 1892 to 1934. Although manufacturing processes were not identified, construction prints showed a forge room indicating some metal work was conducted on the site during this time period.

The site was purchased by National Worsted Mills in 1934 and was utilized for the manufacturing of woolen thread and fabric. On-site activities included processing raw wool, washing and dyeing the wool, and carding and spinning thread.

Ownership was transferred back to Niagara Crescent Corporation (a.k.a. Crescent Tools) in 1969 and the site was utilized for tool manufacturing processes including forging, assembly, polishing and plating.

The site was purchased by H.B.S.A. Industries, Inc. in 1975 and used by Chase Interiors, Inc. (a subsidiary of H.B.S.A.) for metal and wood display cabinet manufacturing until Chase's bankruptcy filing in 1991. On-site processes during Chase Interior's occupancy included welding, polishing, wood millwork, assembly and finishing. Primary raw materials included wood, steel, lacquer, solvents, and adhesives. Disposal practices included shipment to landfills (paint filters) and incinerators (still bottoms and adhesive), and material recovery (waste oil).

NYSDEC records from the Divisions of Hazardous Waste Remediation (DHWR) and Environmental Enforcement (DEE) contain several investigations of alleged on-site chemical waste disposal activities between 1982 and 1985 (USDC, 1987). As a result, Chase Interiors, Inc. and the plant manager were indicted by a federal grand jury for illegal methods of hazardous waste disposal. Chase entered a plea of guilty in the U.S. District Court and was required as part of the plea agreement to enter into a Consent Order for a Phase II investigation (NYSDEC, 1989). This investigation was not conducted by Chase, due to the subsequent bankruptcy proceedings.

SECTION 3.0 - REMEDIAL/RESTORATION ACTION

This section provides a summary of the cleanup objectives for the Chase Site in conjunction with the Voluntary Cleanup Agreement.

3.1 INTRODUCTION

The intent of the remedial action is to eliminate or reduce contaminants at the site whenever economically feasible, or to manage the contaminants on-site. On the basis of the reports listed above, (*Section 2.1 Overview - Existing Information*) the following six areas have been identified which require remedial action and are addressed in this Work Plan:

1. Abatement of the asbestos containing materials identified in the asbestos survey conducted by Jack Eisenbach (NYS Inspector #AH 88-07060) and Jerry Milne prior to demolition and removal of the main building and site improvements in accordance with NYSDOL approvals. The application for a variance to conduct the asbestos abatement was submitted to the NYSDOL on June 18, 1997. A copy of the Application is in Attachment #2.
2. Demolition and removal of the main 120,000-square foot, three-story wood frame/brick veneer building, the water tower and other site improvements.
3. Removal of the existing storm drain system and associated sediments and bedding.
4. Excavation and removal of soils only that will be disturbed by construction activities. Disturbed soils with contaminant levels in excess of the concentrations defined in Table 1. will be handled at Jamestown Development Corporation's discretion in one of the two following ways:
 - a. Providing on site containment of soils and prevent leaching to groundwater either by capping soils with an impermeable asphalt cover or locating these soils under the building (Note: if soil contain concentrations exceeding the limits in Table-1, additional soil sampling may need to be completed to further classify the soils as hazardous, see section 3.3.8) ;
 - b. Removal of soils off site for disposal at permitted disposal facility.
5. Installation of an asphaltic paved parking facility and/or building structures that will effectively act as an impervious cap over most of the site.
6. Groundwater monitoring to determine groundwater quality and trends in contaminant movement.

3.2 SITE CONTAMINATION ASSESSMENT

Data collected to date does not indicate the presence of a significant health threat. Accordingly, NYSDEC has classified the Site as a Class 3 inactive hazardous waste site. The existence of a public water supply in the vicinity of the Site makes it unlikely that impacted shallow groundwater will be used for domestic supply in the future. Therefore, a significant threat has not been identified based on information collected to date.

Previous investigations reveal that toluene and several other contaminants detected in on-site media are attributable to documented on-site disposal (and with unknown sources). These contaminants shall be addressed as part of the remediation effort.

There are two issues that must be addressed as part of the remediation plan. The first is the disposition of the soils which must be excavated to facilitate the demolition. The second is the disposition of the soils which must be excavated to facilitate the construction of the new facility.

3.2.1 Potential Areas of Concern

From the existing available data one can divide the site into several areas of concern which, because of contaminant levels and contaminant mobility, require remedial action. These areas, as identified by NYSDEC, include:

- friable asbestos containing material from the existing building structure
- the storm drain system and bedding traversing the site in a south to north direction from which detected toluene and lead in site media may have been sourced.
- the soil to be excavated throughout the project.
- there was a minor detection of dieldren at two of the wells during the 1994 sampling.

3.2.2 Underground Storage Tanks

There is no evidence of current USTs or ASTs present at the Site. In the event a UST is uncovered during the remediation activity, the NYSDEC will be contacted and the UST will be remediated in accordance with the NYSDEC Petroleum Bulk Storage Regulations and EPA Underground Storage Tank Closure Regulations.

If a UST is discovered at the site remedial work will be stopped in that area until the NYSDEC is notified and the tank has been properly assessed. The UST will then be removed and closed according to regulatory requirements. If, during the removal, a chemical or petroleum spill is discovered, remedial action will be completed to remove all free-product, non aqueous phase liquids (NAPL), from the subsurface. This soil will then be treated or disposed of off site. Remediation of remaining soils will then be accordance with remedial objectives and concentrations outlined in Section 3.0 (Table 1).

3.3 CLEANUP OBJECTIVES

The cleanup objectives, as suggested by NYSDEC, for the Site are as follows:

3.3.1 Asbestos Abatement

Prior to the start of asbestos abatement and demolition of the existing building, the following procedures and safety precautions will be taken:

- Proper NYSDOL and USEPA notifications will be established as required. A copy of a variance application is in Attachment 2. Because of delays in obtaining variances, the asbestos abatement will be done under Applicable Variances 100, 107 and 87.
- The asbestos survey was conducted by Jack Eisenbach and Jerry Milne, NYS Certified Asbestos Inspectors. Jack Eisenbach is a Professional Engineer and he determined that the building's condition would only allow partial abatement of the materials identified prior to the building demolition. The building is partially collapsed and is condemned.
- Installation of temporary barricades to prevent unauthorized personnel into the asbestos abatement and demolition areas,
- Adherence to all OSHA, NYSDEC, NYSDOL, and NYSDOH requirements, including but not limited to determination of worker protection, personnel hygiene, waste disposal, engineering and work practice controls, and housekeeping.
- A copy of the notification to the NYSDOL of the project is in Attachment 2.

The asbestos containing materials which can be safely abated prior to demolition are identified in Attachment 2.

Amended water will be used as appropriate to thoroughly wet the asbestos containing material during the abatement process. Materials removed will be containerized prior to transportation to a fully permitted waste disposal facility.

A remote decontamination unit (decon), as defined in NYSDOL ICR 56, will be employed at the Site. This remote decon will be located on the northeast corner of the property along Carter Street. The decontamination unit will be comprised of a clean room, shower area and work/equipment room. Its location will be near the trailer but inside the fence line on Carter Street. Asbestos contaminated equipment, and bagged waste, will be decontaminated by utilizing the remote decontamination facility. Air monitoring within the work areas will be conducted daily.

3.3.2 Surficial soil excavation

The plans for the site show that most of the site will become paved or be covered by the proposed building. This will necessitate the removal of surface soils throughout the site for grading. This is required so that new sub-base material can be installed and the grade maintained. The demolition of the existing building and the excavation of all site utilities, improvements, footers and foundations will probably disturb some contaminated soils. The soils will be stockpiled on polyethylene and covered with polyethylene (see Appendix-4, Figure 8.1 for location of suspect contaminated soils and proposed stockpile areas). The stockpile areas shown are the only ones available without interfering with the construction. In addition, there is a significant amount of excavation required to facilitate the construction of the new facility.

The limited available groundwater and soil sampling data for the site indicates, except near Monitoring Well #6, that surficial soils are not severely impacted (This limited data is noted not to be comprehensive of all site conditions). To avoid contaminating the clean surficial soils with known sub-grade contaminated soils during the demolition and excavation process, the surficial soils will be excavated for grading, prior to the demolition of the building below grade line (foundation and footer removal) and during the asbestos abatement.

3.3.3 Demolition

Following the asbestos abatement, demolition and removal of the main 120,000-square foot, three-story wood frame/brick veneer building on the property will commence in accordance with the NYSDOL Code Rule 56 Regulations. The building section that is to be demolished on any particular day will be wetted sufficiently to prevent dusting and the release of windblown fines. Caution will be used to minimize application of water in order to prevent runoff while keeping the materials wet.

After the building above grade level is demolished in accordance with the NYSDOL regulations, the other site improvements including the on-grade slabs, foundations and footers, the water tank, pavement, pumphouse and the transformer pad will be removed. All wastes will be disposed of accordingly:

<u>Material</u>	<u>Waste Classification</u>
Friable Asbestos:	Regulated Asbestos Containing Material
Non-Friable Asbestos:	Construction and Demolition Debris
Sized Concrete/Brick:	Hard Fill Material
Wood/Plaster:	Construction and Demolition Debris
Metals:	Recyclable Materials

Hydraulic excavator equipment with demolition attachments will be utilized to mechanically demolish the building and load building debris into lined containers. Demolition debris will be wetted as required. All demolition debris will be removed to a fully permitted waste disposal facility.

3.3.4 Storm Drain System Removal

Prior to the start of storm drain system removal, the following procedures and safety precautions will be taken (Refer to Appendix-4, Figure 8.1, Site Map Work Zones):

- Proper permits, variances and notifications will be established as required,
- conduct an engineering survey to investigate any safety precautions that must be performed prior to the start of the removal,
- maintenance of the temporary barricades installed around the perimeter of the site prior to the start of project to prevent unauthorized personnel into the Exclusion Zone area.
- adherence to all OSHA requirements including but not limited to; determination of worker protection, personnel hygiene, waste disposal, engineering and work practice controls, and general housekeeping.

The storm drain system (including bedding material) traversing the Chase Site will be removed to the Site property line. At the property line, any observed sediment will be removed and a plugging device and/or grouting shall be installed in the drain pipe opening at the property line. No soils beyond the property line will be removed by JDC. The storm drain pipe will be identified and located on a plan in the final report. No testing will be done beyond the property line.

Hydraulic excavator equipment with demolition attachments will be utilized to mechanically excavate and remove the sewer line system. Excavated debris will be stockpiled, sampled in accordance with the sampling plan and removed to a fully permitted waste disposal facility.

A remote decontamination unit will be employed at the site. Equipment engaging in the removal of the storm drain system and associated sediments will be decontaminated following completion of this task by utilizing the remote decontamination facility.

3.3.5 Contaminated Soils

After the completion of the demolition work, the site will be prepared for the construction of the new building. As the site may have some contaminated soils, all excavation for the new footers, foundations, utilities and subgrade slabs will be done by workers trained in accordance with OSHA 1910.120.

Soil disturbed for new construction will be inspected by the on-site engineer and, or, the NYSDEC on-site representative. The soils will be inspected for staining and discoloration, and will be field screened for the presence of volatile organic compounds (VOC's). VOC's in soils will be field screened with a photoionization detector (PID). Excavated soils that are visually stained or determined to contain

VOC's will be stockpiled on polyethylene sheeting and then sampled for reuse or disposal. The soil will be separated as deemed necessary to accurately characterize the soils and avoid disposing of too much material as hazardous. Sampling will be in accordance with the sampling plan and disposed of following appropriate regulations. The drawing in Attachment 3 shows a preliminary excavation plan for the construction of the new building.

Many of the nine wells on the site will be in the footprint of the new building. As the wells should not be inside the new building, all wells which will be located in the final building footprint will be removed and closed. All wells to be decommissioned in accordance with NYSDEC's Groundwater Monitoring Well Decommissioning Procedure, October 1996. New wells will be established outside the building after the construction has progressed to the point where the wells will not be damaged by the construction. A final well placement plan is presented as Figure-3. A minimum of six wells will be maintained for post remedial monitoring.

There is no reason to believe that the presence of semivolatile organic compounds will be an issue at this site after the project is complete because if they exist at the site, they are typically immobile in the environment. In addition, the mobility of any remaining contaminants will be further mitigated with the construction of a new building and an asphaltic parking lot causing the areas of concern to be effectively mitigated with an impervious cap. Detectable chromium or other contaminants in site media at MW-6 will cease to be an issue once the building and parking lot are installed since this will effectively cap this area. If contaminated soil remains on the property, appropriate deed restrictions will be placed on the subject property until such time as these contaminated soils are removed from the premises.

The depth of soil removal will also be limited by the following criteria:

- to the depth of groundwater;
- to a depth where the excavation threatens the stability of adjacent structures;
or,
- to the surface of clayey soil or till.

Soils and sediments destined for off-site disposal shall be removed and placed on polyethylene sheeting and covered with polyethylene sheeting at the end of the work day. These types of materials will be stockpiled as waste for analysis and off-site disposal/reuse. In the case of disposal, these materials shall be removed to a fully permitted waste disposal facility.

The Contractor shall not demobilize until cleanup objectives have been achieved.

3.3.6 Barrier Cap

The mobility of any remaining contaminants will be further mitigated with the construction of new building structure(s) and an asphaltic paved parking lot causing the areas of concern to be effectively mitigated with an impervious cap.

3.3.7 Groundwater Monitoring

A baseline sampling will be completed from the existing monitoring wells located on site (during the month of July '97). Once the remedial actions are complete, new wells will be installed (see Figure -3) and the baseline sampling will be extended to include the new monitoring wells. All monitoring wells to be installed on site shall be installed according to *EPA/600/4-89/034 Handbook of Suggested Practices for the Design and Installation of Ground-Water Monitoring Wells*.

Post remedial action monitoring will be completed using proposed monitoring wells MW-6 (existing), MW-11, 12, 13, 14, 15, and will be used to determine groundwater quality and contaminant movement trends. Groundwater will be evaluated for volatile organic compounds, semi-volatile organics, and total metals. The monitoring program will begin after baseline is established and remedial action completed. Monitoring will include semi-annual sampling for at least three years and annually thereafter beginning with the first quarter after remedial construction. The monitoring program will be evaluated after five years to determine whether it needs to be continued.

3.3.7.1 Sampling and Analysis

Groundwater sampling will be completed using the following procedures:

- The monitoring well will be opened and the groundwater level measured and recorded;
- The water column will be checked for light and dense non-aqueous phase layers (NAPLs) using a clear Teflon bailer dedicated to the monitoring well.
- If NAPLs are present, a sample of the NAPL and the dissolve phased liquid will be collected.
- If NAPL's are not present, the monitoring well will be sounded to determine the actual depth, and the depth will be compared to the monitoring well construction records. If the well depth has changed by more than 1 foot, as a result of the well screen, the well will be cleaned.

- If the monitoring well depth is consistent with well construction records, water be checked for pH, specific conductivity, turbidity, and temperature. Three well volumes of groundwater will be purged from the monitoring well. The water level will be allowed to recover for a period of no more than 12 hours or until the water level has recovered to at least 90-percent of its pre-purged volume before sampling, whichever is shorter.
- Sampling will be completed with the monitoring well's dedicated bailer which will be kept inside the monitoring well.
- Groundwater samples will be collected and samples will be checked for pH, specific conductivity, turbidity, and temperature to determine aquifer stabilization since purging. Samples will be analyzed by a NYSDOH ELAP Certified Laboratory for volatile organic compounds using USEPA Method 8260 and total metals using USEPA 6000 and 7000 Series methods. In addition to the groundwater samples, a trip blank and duplicate sample will be collected for analysis.

3.3.7.2 Reporting

After groundwater sample results are received, JDC will prepare an annual report for the NYSDEC and the NYSDOH. The report will include a summary table of results, copies of the actual laboratory report of analysis, water level measurements, and notes indicating the presence, if any, of NAPLs. The report will discuss any changes in the data from the previous sampling event. The report will detail the routine maintenance completed on the wells.

3.3.8 Soil Sampling and Analysis Protocol

Excavated Soils

All excavated and stockpiled soil will be sampled and classified for reuse or disposal. Initially, one composite soil sample (with recording of PID reading from each composite location), and one grab sample (taken from area displaying most elevated PID reading from composite), will be collected from each 50 cubic yards of stockpiled soil. The composite sample will be analyzed for total metals (RCRA metals), and the grab sample will be analyzed for total volatile organic compounds (EPA 8240) and total semi-volatile compounds (EPA 8270 Base Neutrals). The specific compounds to be tested for are listed in Table-2.

If the analysis of the soil samples reveals unacceptably high levels of total metals or total organics, then a second duplicate soil sample will be analyzed by TCLP method for the particular metal or compound in question. This additional analysis can be completed to further classify the soils for hazardous TCLP characteristics.

Additional analysis for hazardous characteristics (ignitability, reactivity, pH, corrosivity), may need to be completed depending on reuse or disposal.

Composite samples will be collected from piles by procedures recommended for soil sampling as outlined in NYSDEC Spill Technology And Remediation Series Memo #1, August 1992, Section VI Sampling. Sampling methods and quantities may vary pending on disposal or reuse locations and options.

Residual Materials

Upon completion of excavations, composite soil samples and groundwater samples, when applicable, will be collected from side walls and bottoms of excavations. Upon completion of the removal of surface soils, surface soil samples will be collected from the cut surface. The following guideline for collecting samples will be used to determine the number of samples needed for collection:

- 1 composite soil sample each acre of graded surface.
- 1 composite soil sample from each side wall of excavation, including bottom.
- 1 water sample from each excavation encountering water.

All samples will be analyzed for RCRA metals, volatile organic compounds and semi-volatile compounds, using methods, respectively: Total RCRA metals, EPA8021 or EPA8240, EPA8270. Additional sampling methods and quantities may be required pending on disposal or reuse locations.

The actual number of samples taken will be determined by on-site engineers in agreement with on-site representatives from the NYSDEC.

Sampling parameters can be modified (PCBs, Pesticides, etc.) once work begins, if needed, to properly classify site conditions.

3.3.9 Community Air Monitoring Program

Real-time air monitoring, for volatile compounds and particulate levels at the perimeter of the work area will be completed as follows:

Volatile organic compounds will be monitored at the downwind perimeter of the work area on a continuous basis. If total organic vapor levels exceed 5 ppm above background, work activities will be halted and monitoring continued under the provisions of a Vapor Emission Response Plan. All readings will be recorded and will be available for State (DEC & DOH) personnel to review.

Particulate will be continuously monitored upwind, downwind and within the work area at temporary particulate monitoring stations. If the downwind particulate level is 150 $\mu\text{g}/\text{m}^3$ greater than the upwind particulate level, then dust suppression techniques will be employed. All readings will be recorded and be available for State (DEC & DOH) personnel to review.

3.3.9.1 Vapor Emission Response Plan

If the ambient air concentration of organic vapors exceed 5 ppm above background at the perimeter of the work area, activities will be halted and monitoring continued. If the organic vapor level decreases below 5 ppm above background work activities can resume. If the organic vapor levels are greater than 5 ppm over background but less than 25 ppm over background at the perimeter of the work area, activities can resume provided:

The organic vapor level 200 ft. downwind of the work area or half the distance to the nearest residential or commercial structure, whichever is less, is below 5 ppm over background.

If the organic vapor level is above 25 ppm at the perimeter of the work area, activities will be shutdown. When work shutdown occurs, downwind air monitoring as directed by the Safety Officer will be implemented to ensure that vapor emission does not impact the nearest residential or commercial structure at levels exceeding those specified in the Major Vapor Emission section.

3.3.9.2 Major Vapor Emission

If any organic levels greater than 5 ppm over background are identified 200 feet downwind from the work area or half the distance to the nearest residential or commercial property, whichever is less, all work activities will be halted.

If, following the cessation of the work activities, or as the result of an emergency, organic levels persist above 5 ppm above background 200 feet downwind or half the distance to the nearest residential or commercial property from the work area, then the air quality will be monitored within 20 feet of the perimeter of the nearest residential or commercial structure (20 Foot Zone).

If efforts to abate the emission source are unsuccessful and if the following levels persist for more than 30 minutes in the 20 Foot Zone, then the Major Vapor Emission Response Plan shall automatically be placed into effect:

If organic vapor levels are approaching 5 ppm above background.

However, the Major Vapor Emission Response Plan shall be immediately placed into effect if organic vapor levels are greater than 10 ppm above background.

3.3.9.3 Major Vapor Emission Response Plan

Upon activation, the following activities will be undertaken:

1. All Emergency Response Contacts as listed in the Health and Safety Plan of the work Plan will go into effect
2. The local police authorities will immediately be contacted by the Safety Officer and advised of the situation.
3. Frequent air monitoring will be conducted at 30 minutes intervals within the 20 Foot Zone. If two successive readings below action levels are measured, air monitoring may be halted or modified by the Safety Officer.

Air sampling will be completed at the site to determine airborne contaminant concentrations. The contaminants to be monitored will be dust concentrations, and total airborne volatile organic concentrations. Dust samples will be analyzed for total suspended dust, and total metals concentrations. The concentrations of volatile organic compounds will be measured with real time measuring devices and logged into site monitoring records. The following table outlines the methods of collection and analysis of sampling.

Sample Matrix	Method	Analysis Action Level (TWA $\mu\text{g}/\text{m}^3$)	
Airborne Dust	Aerosol Monitor	Real time monitoring of airborne dust concentrations	150
Volatile organics	photo ionization detector	Real time measurement of airborne VOC concentrations	5ppm

All samples will be collected on property using a pattern of two down-gradient one up-gradient, and one in work area. Sample locations will be determined based on wind conditions.

SECTION 4.0 - SITE SPECIFIC HEALTH AND SAFETY PLAN

The Health and Safety Plan is located as Attachment 4.

SECTION 5.0 - PROJECT FINAL REPORT

At the conclusion of the remediation activities, a final report will be prepared documenting all activities and the analytical results.

SECTION 6.0 - CITIZENS PARTICIPATION ACTIVITIES

The NYSDEC is preparing a notice for the residents in the area and the media about the project explaining the work to be done.

SECTION 7.0 - SITE DEMOLITION & REMEDIATION SCHEDULE

July- August 1997 - Asbestos abatement, demolition work on site, grading of site, baseline sampling of groundwater from existing monitoring wells.

September 1997 - Excavation of new building, removal of storm drain system, stockpiling of contaminated soils.

Oct-Nov 1997 - Construction of new building, Capping of site soils, installation of new monitoring wells, baseline sampling of post remedial monitoring wells.

May 1998 - First quarter of semi-annual groundwater sampling.

SECTION 8.0 - EMERGENCY EVACUATION PLAN

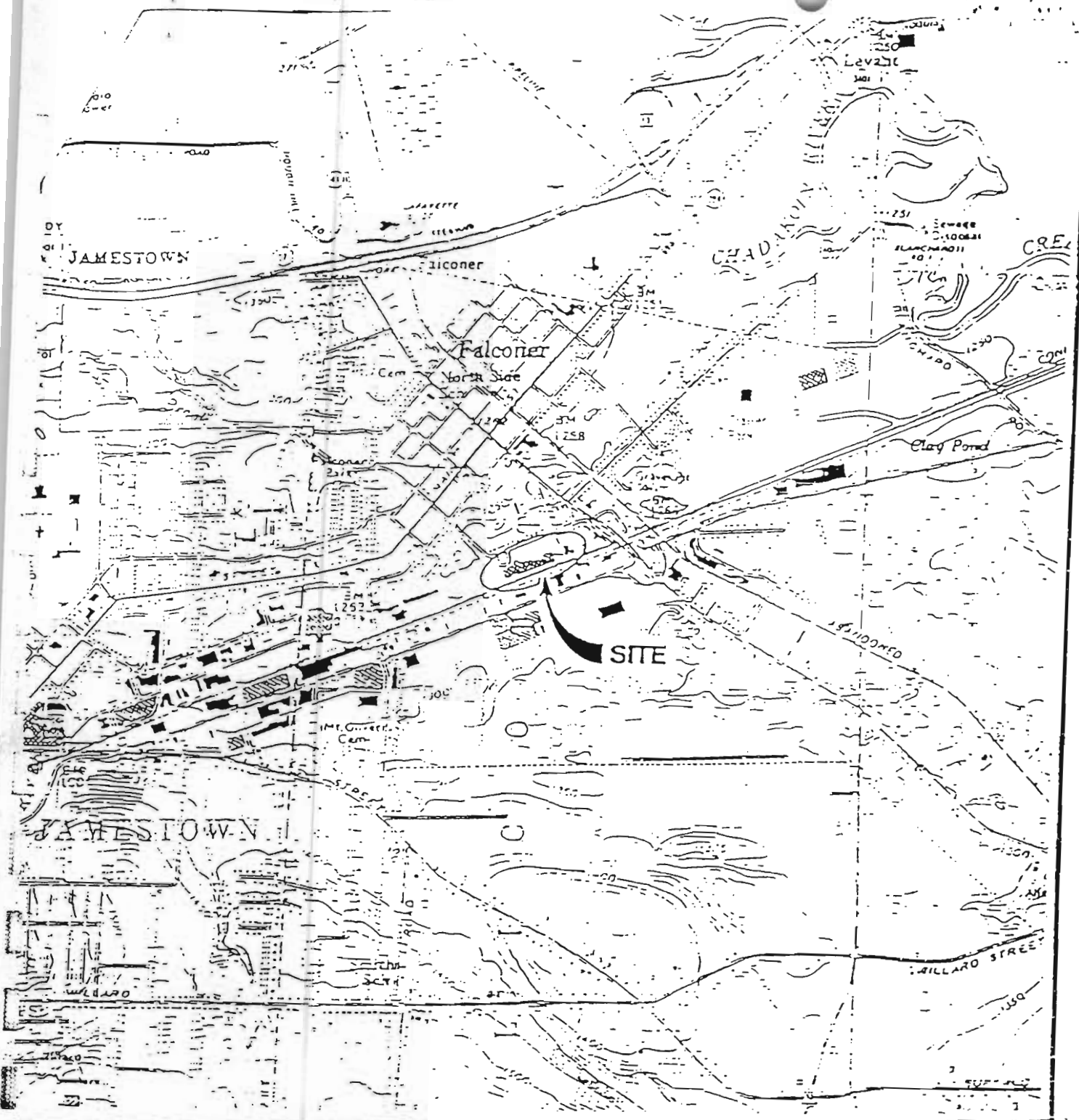
In the event there is an incident when the levels of airborne contaminants exceed acceptable levels of VOC, metals or other contaminants as defined in this document, the Hazardous Materials Response plan for the Town of Ellicott will be implemented. The project manager will call 911 and notify them of the emergency. The emergency operator will be directed to activate the cable override system for the Jamestown areas and read the text below asking the potentially affected residents in the area shown on the map attached to evacuate their residences. They will be directed to proceed to the fire station shown on the map. The emergency operator will notify the appropriate police, fire and other emergency response agencies. A copy of the Town of Ellicott plan is in Attachment 5.

In the event, a problem occurs with a truck off-site during the project, the Chautauqua County Emergency Response plan will be activated. A copy of this plan is in Attachment 6.

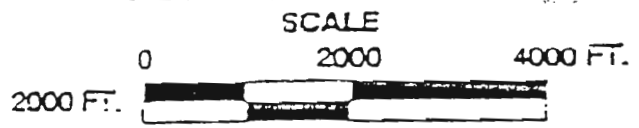
TEXT TO BE READ ON THE TELEVISION AND RADIO

The Town of Ellicott and Chautauqua County have been informed that a problem has arisen during the remediation work at the Chase Interior site on Lister Avenue. The residents of Lister Avenue, W Elmwood, South Avenue, Carter Street. and William Street are asked to evacuate their residences immediately and proceed on either South Work Street or Phette Place to the fire station at Davis Street and Everett Street. Take with you medications, special supplies such as diapers and a change of clothing. The emergency personnel will meet you at the fire station.

FIGURE 1
SITE LOCUS MAP



SOURCE:
 U.S.G.S. 7.5 MINUTE SERIES TOPOGRAPHIC MAP:
 JAMESTOWN, NY (1954) PHOTOREVISED 1979.
 GERRY, NY (1976).



ENGINEERING - SCIENCE

SITE LOCATION MAP
 CHASE INTERIORS
 FALCONER, NEW YORK



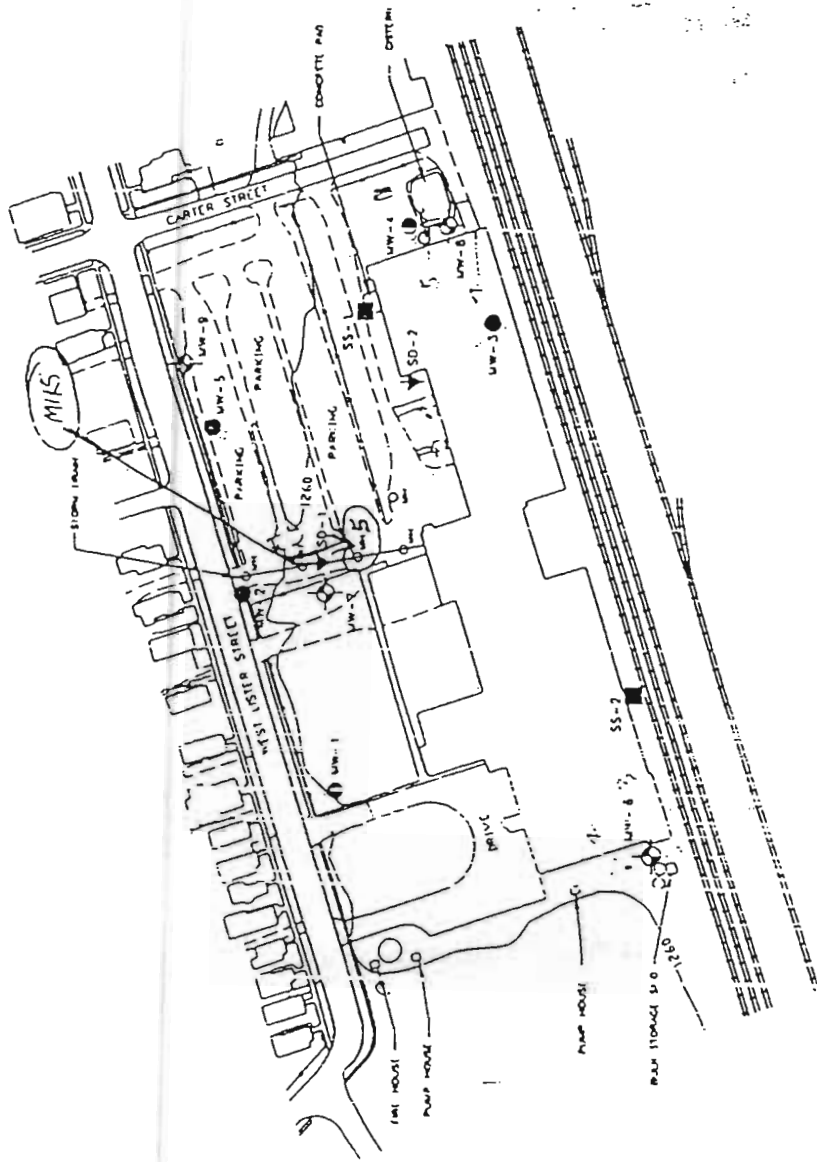
LONGITUDE: 79°12'00"
 LATITUDE: 42°05'46"

FIGURE 2
WELL LOCATION MAP

Fig 2

FIGURE 2

G-2 Site Map + Sample Locations
6/17/94



- LEGEND
- MW-1 PREVIOUS MONITORING WELL
 - MW-2 MONITORING WELL
 - SS-1 SOIL SAMPLE
 - SD-1 SEDIMENT SAMPLE
 - MANHOLE
 - FORMER PIT LOCATIONS
 - 1260 GROUND SURFACE ELEVATIONS IN FEET ABOVE MEAN SEA LEVEL



NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
PRELIMINARY SITE INVESTIGATION
CHASE INTERIORS
SITE PLAN

ENGINEERING-SCIENCE
DESIGN • RESEARCH • PLANNING
170 DUNDAS STREET, 17TH FLOOR, NEW YORK, N.Y. 10036 • 212/313-1200
E.S.

TABLE 1

**REMEDIAL ACTION- SUMMARY OF CONTAMINANT LEVELS
AND PROPOSED ACTIONS**

Table 1 Remedial Action- Summary of Contaminant Levels and Proposed Actions
(7/14/97)

<u>Compound</u> <u>/Characteristic</u>	<u>Action Level (AL) (mg/kg)</u>	<u>Above AL</u>	<u>Below AL</u>
Total VOC's	10	1	2
Total Semi-Volatile Compounds	500	1	2
Arsenic	50	1	2
Barium	600	1	2
Cadmium	50	1	2
Chromium	100	1	2
Lead	1000	1	2
Nickel	100	1	2
Zinc	1000	1	2

1- Off-site disposal or approved on-site treatment

2 - On-site capping

TABLE 2

REMEDIAL ACTION-SPECIFIC COMPOUND LIST

Chase Interiors Site No. 907013
 Soil Compound List July 22,
 1997
 (f/7026/NYSDEC SCL)

CAS NO	VOLATILES ORGANIC COMPOUNDS
75-09-2	Methylene chloride
67-64-1	Acetone
75-34-3	1,1 - Dichloroethane
67-66-3	Chloroform
71-55-6	1,1,1 - Trichloroethane
127-18-4	Tetrachloroethene
108-88-3	Toluene
	SEMI-VOLATILE ORGANIC COMPOUNDS
85-01-8	Phenanthrene
206-44-0	Fluoranthene
129-00-0	Pyrene
56-55-3	Benzo(a)anthracene
117-81-7	Bis(2-ethylphenyl) phthalate
117-84-0	Di -n-octyl phthalate
205-90-2	Benzo(b)fluoranthene
207-08-9	Benzo(k)fluoranthene
50-32-8	Benzo(a)pyrene
	METALS (Total)
7440-38-2	Arsenic - Total
7440-39-3	Barium - Total
7440-43-9	Cadmium - Total
7440-47-3	Chromium - Total
7439-92-1	Lead - Total
7440-02-0	Nickel - Total
7440-66-6	Zinc - Total

APPENDIX "A"

EXHIBIT

"C"

Assignable Release and Covenant Not to Sue

[On Department Letterhead]

[Date]

To Whom It May Concern:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Jamestown Development Corp., ("Volunteer"), Index # B9-0514-97-04 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan to implement a response program at the parcel of land located at 205-247 West Lister Street in the Village of Falconer, designated at Parcel No. 20, on the Tax Map from the Village as reproduced by Clough, Harbour & Associates, and a general map and description which is attached hereto as Appendix "A" (the "Site") has been successfully implemented. So long as no information has been withheld from the Department or mistake made as to the hazard posed by the Site-related compounds or analytes of concern, the Department believes that no further investigation or response will be required at the Site respecting the Existing Contamination to render the Site safe for the Contemplated Use.

Assignable Release and Covenant Not To Sue By the Department

The Department, therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation or remediation of the Site based upon the release or threatened release of any Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be, or have been, made to the Department, and (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of the Agreement, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, any further investigation or

remedial action the Department deems necessary:

due to offsite migration of contaminants resulting in impacts to environmental resources, human health, or to other biota which impacts are not inconsequential;

due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that the Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or

due to fraud committed or mistake made by Volunteer in demonstrating that the Site-specific clean-up levels identified in, or identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

Volunteer, if it causes a, or suffers the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 U.S.C. 9601[14]) or petroleum (as that term is defined in Navigation Law 172[15]), other than Existing contamination, after the effective date of the Agreement; or if it causes a, or suffers the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

any of Volunteer's lessees, sublessees, successors or assigns who causes a, or suffers the, release or threat of release at the Site of any such hazardous substance or petroleum, other than Existing Contamination, after the effective date of the Agreement; or who causes a, or suffers the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party

responsible under law for the remediation of the Existing Contamination independent of any obligation resulting solely from the Agreement.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if, with respect to the Site, there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed or deemed to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____

Its: _____

EXHIBIT

"D"

NOTICE OF AGREEMENT

This Notice is made as of this _____ day of _____, 1997, by **Jamestown Development Company, LLC**, the legal owner of a parcel of real property located at 205 to 247 West Lister Street in the Village of Falconer, Chautauqua County, as more particularly described in Appendix "A" attached hereto (the "Property"); and

Whereas, there is presently located on the Property "Existing Contamination"; and

Whereas, Jamestown Development Company, by authorized signature, entered into an administrative agreement with the Department bearing Index Number B9-0514-97-04 ("the Agreement"), concerning the remediation of the Property, which agreement was signed by the Commissioner of Environmental Conservation on _____; and

Whereas, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department has provided the Jamestown Development Company and its lessees, sublessees, successors and assigns, including their respective secured creditors, with a promise or a release and covenant not to sue or bring any action, proceeding, or suit related to the further investigation or remediation based upon the release or threatened release of any hazardous substances, pollutants, wastes, and/or contaminants present or existing in, on, at or under the Property as of the date of the Agreement, and

Whereas, pursuant to the Agreement, the Jamestown Development Company agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Chautauqua County Clerk;

NOW, THEREFORE, Jamestown Development Company, for itself, its successors and its assigns declares that:

1. Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property.

2. This Notice shall terminate only upon the filing by Jamestown Development Company, or its successors and assigns, of a termination of Notice of Agreement.

IN WITNESS WHEREOF, the Jamestown Development Company has executed this Notice of Agreement by its duly authorized representative.

Dated: _____ By: _____

[Acknowledgment]