

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a **Voluntary Cleanup Agreement**

for: Former Steel and Coke Plant Site, the Marilla Street Landfill and the "August Feine Property"

by: Steelfields, LTD., "Volunteer"

Site #: V00133-9

Index #: B9-0525-97-11

WHEREAS, the Department is responsible for the enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Agreement;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal, and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, Volunteer represents, and the Department relied upon such representations in entering into this Agreement, that Volunteer's involvement with the Site is limited to the following: Steelfields, LTD., as part of a transaction which includes entering into the Voluntary Cleanup Agreement, will take title to the Site and is not otherwise a PRP for the Site's contamination;

WHEREAS, the Site was previously owned and operated by LTV Steel Company, Inc. ("LTV") and The Hanna Furnace Corporation ("HFC");

WHEREAS, on December 29, 2000, LTV filed a petition for bankruptcy;

WHEREAS, on March 6, 2002, HFC filed a petition for bankruptcy;

WHEREAS, LTV and HFC have entered into a consent order which was lodged with the United States District Court for the Western District of New York on July 16, 2002 ("W.D.N.Y. Order"), which is attached to this Agreement in Exhibit "F", In Re: Chateaugay Corporation, Romar, Inc., The LTV Corporation, et al., Debtors, LTV Steel Company, Inc. and Hanna Furnace Corporation v. The City of Buffalo, New York, The City of Buffalo Urban Renewal Agency and John Does Nos. 1-10, 99-CV-0624E(F);

WHEREAS, LTV and HFC will enter into an Order on Consent with the Department ("NYSDEC Order") which will provide that LTV and HFC will contribute and/or assign funds to an escrow account which will be used to fund a remedial program and OM&M at this Site. The NYSDEC Order will be attached to this Agreement in Exhibit "G";

WHEREAS, the escrow account will be established pursuant to an Escrow Agreement, which will be signed concurrently with the execution of the NYSDEC Order, which will provide funds to be used for implementation of a remedial program at the Site;

WHEREAS, concurrently with execution of the NYSDEC Order LTV and HFC will enter into a Property Transfer Agreement with Steelfields providing for transfer of title to the Site;

WHEREAS, the Department entered into orders on consent with LTV Steel Company, Inc., on October 19, 1992 and September 30, 1997 pursuant to which LTV agreed to closure, post-closure maintenance and monitoring, and to remediation of the Marilla Street Landfill, and post-closure maintenance and monitoring continues to be required for the Marilla Street Landfill;

WHEREAS, Volunteer has agreed to assume the responsibility for post-closure maintenance and monitoring for the Marilla Street Landfill;

WHEREAS, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and

WHEREAS, the Department has determined that it is in the public interest to enter into this Agreement as a means to address environmental issues at the Site with private funds while ensuring the protection of human health and the environment;

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. A. Site Specific Definitions

For purposes of this Agreement, the terms set forth in the Glossary attached to, and made a part of, this Agreement shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

1. "Contemplated Use": restricted industrial use and restricted commercial use excluding day care, child care and medical care uses.
2. "Escrow Agreement": the Escrow Agreement to be entered into by LTV, HFC, Steelfields LTD., Travelers Indemnity Company and Travelers Casualty and Surety Company, the Department and Key Bank, N.A., as Escrow Agent, establishing the Escrow Account. The Escrow Agreement will be attached to and incorporated into this Agreement as Exhibit "H."
3. "Existing Contamination": includes volatile organic compounds (VOC's, e.g. benzene, toluene, xylenes), semi-volatile organic compounds, metals, and cyanide as described in the following reports:

- a. Voluntary Cleanup Site Assessment Report by Malcolm-Pirnie, Inc., dated September 1997 (Volumes I-IV), and all investigative reports and items referenced therein.
- b. Phase I/Phase II Investigative Report by RECRA Environmental, Inc., as agents of N.Y.S. DEC, dated July 1990.
- c. Phase I/Phase II Environmental Site Assessment, Former Republic Steel Plant Area "Steel Manufacturing Site" by Malcolm-Pirnie, Inc., dated September 1997.
- d. Final Phase II Site Investigations by Malcolm-Pirnie, Inc. and ICF Kaiser, July 9, 1997.
- e. Voluntary Cleanup Site Assessment Report Area I & Addendum Republic Steel Parcel, Former Steel Manufacturing Site, Buffalo, New York (Rev. January 2000) by TurnKey Environmental Restoration.
- f. Voluntary Cleanup Site Assessment Report - Addendum Area II - Donner Hanna Coke Plant Parcel, Area III - Republic Steel Warehouse Parcel, Area IV - Donner Hanna Coke Yard Parcel, Former Steel Manufacturing Site, Buffalo, New York (Rev. January 2000) by TurnKey Environmental Restoration.
- g. Voluntary Cleanup Site Assessment Report, Addendum I Area I - Republic Steel Plant Parcel and Gas Holder Subarea of Area II by Turnkey Environmental Restoration, October 1999.

The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which were unknown or insufficiently characterized as of the effective date of this Agreement, but which shall have been fully characterized and addressed to the Department's satisfaction. The documentation of such previously unknown contamination shall be provided in the Construction Closeout Report required by Section II.D.1 of this Agreement.

4. "Site": that parcel of real property known as "Former Steel and Coke Plant Areas", City of Buffalo Tax Map Parcel Numbers 122.16-1-8.1, 122.16-1-8.1A, 122.20-1-3.1, 123.17-1-11, 122.20-1-5.1, 122.20-1-21, 132.08-1-6, 132.08-1-6A, 132.08-1-7, 132.12-1-9.1, 132.12-1-10.1, which consists of four parcels of land set forth below ("Areas"), located in South Buffalo, New York. Areas which comprise the Site are generally bounded on the north by the Buffalo River and South Park Avenue, on the east by Abby Street, on the south by Tifft Street and Hood Industries, and on the west by current or former ConRail property and railroad tracks.

The Site includes the Areas identified as Areas I through IV, from north to south in Exhibit "A":

1. Area I: an approximately 91 acre parcel bounded on the north by the Buffalo River and South Park Avenue, on the east by Abby Street, on the south by property currently or formerly owned by ConRail, and on the west by current or former ConRail property and railroad tracks.

2. Area II: an approximately 53 acre parcel bounded on the north by Baraga Street, property currently or formerly owned by ConRail, and property owned by Feine Realty Co., Inc., on the east by Abby Street, on the south by Area III, and on the west by current or former ConRail property and railroad tracks. Area II also includes a small parcel located north of Baraga Street, which parcel is bounded on the north by current or former ConRail property, on the east by Abby Street, and on the west by property owned by Feine Realty Co., Inc.

3. Area III: an approximately 43 acre parcel bounded on the north by Area II, on the east by Abby Street, on the south by Area IV, and on the west by current or former ConRail property and railroad tracks.

4. Area IV: an approximately 31 acre parcel, bounded on the north by Area III, on the east by Abby Street, on the south by Tiff Street and Hood Industries, and on the west by current or former ConRail property and railroad tracks.

"Site" also includes the property known as the "Marilla Street Landfill", City of Buffalo Tax Map Parcel Numbers 132.12-1-7.1, 132.12-1-23, 132.16-1-9, 132.16-1-11.2, 132.20-1-2.2, 132.20-1-9, 133.13-1-8, 133.17-1-1, 133.17-1-2, 133.17-1-6, 133.17-1-9, and the property known as the "August Feine Property", which is an approximately 4.2 acre parcel located at 364 Baraga Street, City of Buffalo Tax Map Parcel Number 122.20-1-22.

Maps of the "Site" are attached to this Agreement in Exhibit "A". Exhibit "A" will also include surveys of the properties comprising the Site which are being prepared for Volunteer by Wendel Duchscherer and which will verify the information presented in this definition of the "Site".

"Site" does not include soil previously placed above grade along the Abbey Street corridor which is known as the "berm."

Exhibit "A" of this Agreement includes maps of the Site as described above. For purposes of Subparagraph II.H the term "Site" shall be construed to mean (a) the entire Site or (b) an Area of the Site.

5. "Subparcel" means a portion of an Area of the Site.

6. "Volunteer": Steelfields LTD. is a corporation organized and existing under the laws of New York State.

B. Volunteer shall implement a remedial program at the Site in accordance with the Department-approved Work Plan(s) and shall comply with the Escrow Agreement which will be attached to this Agreement as Exhibit "H".

II. Development, Performance and Reporting of Work Plans

A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;

2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;

3. "Remedial Action Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow for the Contemplated Use of the Site; The Remedial Action Work Plan to be implemented at the Site is titled: Work Plan for Voluntary Cleanup Program Remedial Design/Remedial Action Former Steel Manufacturing Site, Buffalo, New York, Revised September 2002, and any further revisions thereto. This Work Plan is attached to and incorporated into this Agreement in Exhibit "B".

4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, maintenance, and/or monitoring, including the Department approved OM&M Work Plan for the Marilla Street Landfill, Post Closure Monitoring and Maintenance Plan for Republic Steel/LTV Marilla Street Landfill, Site No. 915047, Revised May 2001, with Department letter of July 3, 2002, are attached to and incorporated into this Agreement in Exhibit "B".

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be performed under this Agreement is attached to this Agreement. Thereafter, the Volunteer can submit such other and additional work plans it deems appropriate.

2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an

enforceable part of this Agreement and shall be implemented in accordance with the schedule contained therein. If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) Days after receiving written notice of such disapproval, Volunteer shall elect in writing to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Subparagraph XII.A.

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

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes dispute resolution pursuant to Paragraph XIII, either party may terminate this Agreement pursuant to Subparagraph XII.A.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report which includes the caption of that Work Plan on the cover page. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report for an Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan, and all other Work Plan final reports must contain such certification made by a Professional Engineer with primary responsibility for the day to day performance of the activities under this Agreement that all such activities were performed in full accordance with the Department approved Work Plan.

2. An OM&M Work Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Action Work Plan.

E. Review of Submittals other than Work Plans

1. The Department shall timely notify Volunteer in writing of its approval or disapproval of each submittal other than a Work Plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this subparagraph, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall elect in writing to either (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Subparagraph XII.A. If Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

3. Within sixty (60) Days of the Department's approval of a final report, Volunteer shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Volunteer, result in the termination of this Agreement pursuant to Subparagraph XII.B.

4. All approved final reports shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) Days of approval of such final report. If any document cannot be converted into electronic format, Volunteer shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

F. Department's Determination of Need for Remediation

The Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. The Department shall timely notify Volunteer if it determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Volunteer shall cause to be filed a Declaration of Covenants and Restrictions in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination. Upon receipt of a copy of such instrument, the Department will provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that remediation, or additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may elect to submit for review and approval a proposed Work Plan (or a revision to an existing Remedial Action Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c)(1) through (c)(6), excluding consideration of cost-effectiveness. At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health and/or the environment and must result in the Site being protective of public health and the environment for the Contemplated Use. The Department will notice a proposed Work Plan addressing the

Site's remediation for public comment in accordance with Subparagraph II.G of this Agreement. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XII.A

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than an IRM Work Plan) is proposed, the Department will timely publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within sixty (60) Days after the date of the issue in which the notice appears. The Department shall timely mail an equivalent notice to the City of Buffalo and County of Erie. The Department shall timely notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary for Site conditions to be protective of the public health or the environment based upon the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If either party concludes that such revisions cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XII. If the Department determines that no revisions are required, then the Work Plan shall be attached hereto as Exhibit "B."

H. Release and Covenant Not to Sue

1. Upon the Department's determination that (i) Volunteer is in compliance with the Agreement; (ii) no requirements other than those remedial actions, exclusive of OM&M activities, already conducted at the Site, if any, are necessary to assure that Site conditions are protective of the public health and the environment based upon the Contemplated Use; and (iii) Volunteer has complied, if required, with Paragraph X, the Department shall timely provide Volunteer with the Release and Covenant Not to Sue attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

2. When Volunteers implement to the Department's satisfaction all requirements of the Remedial Action Work Plan relating to an Area or subparcel of the Site with the exception of the Soil Fill Management Plan or other OM&M activities for that Area or subparcel, upon request the Department shall provide Volunteer with a written letter of forbearance for that Area or subparcel.

I. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Volunteer shall cause the filing of an annual report by the 1st Day of the month following the anniversary of the start of the OM&M. Volunteer shall file such annual report until the Department determines that the Site can be closed out and so notifies Volunteer in writing. Such annual report shall be signed by a Professional Engineer and shall contain a certification that any institutional and engineering controls put in place pursuant to this Agreement are still in place, have not been materially altered, and are still effective in achieving

their objectives. Volunteer shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Volunteer shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the annual report required by this Subparagraph as well as in any progress reports required by Paragraph III. Volunteer can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer stating 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.

III. Progress Reports

Volunteer shall submit a written and/or electronic progress report of its actions under this Agreement to the parties identified in Subparagraph XI.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 relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Volunteer in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; 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 the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

IV. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) Working Days of when it obtains knowledge of any such event. Volunteer 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 Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

V. Entry upon Site

A. Volunteer 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 Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and by any agent, consultant, contractor or other person so authorized by the

Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for (i) inspecting, sampling, and copying records related to the contamination at the Site; (ii) implementing the activities under this Agreement; and (iii) testing and any other activities necessary to ensure Volunteer's compliance with this Agreement. Volunteer shall (i) provide the Department with suitable office space at the Site, including access to a telephone, to the extent available; and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department.

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

VI. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money not to exceed \$400,000.00 which shall represent reimbursement for State Costs for negotiating this Agreement, and all costs associated with this Agreement, through and including the Termination Date. The amount to be paid by Volunteer shall not exceed \$100,000 in any given calendar year. If State costs in any given calendar year exceed \$100,000 such costs shall be eligible for payment in subsequent years until the amount of \$400,000 has been paid.

B. 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.

C. Such invoice shall be sent to Volunteer at the following address:

Paul H. Werthman, P. E.
Steelfields, LTD.
Key Tower, Suite 1350
50 Fountain Plaza
Buffalo, New York 14202

D. 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, NY 12233-7012.

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

F. Volunteer may contest, in writing, invoiced costs under Subparagraph VI.A if it believes (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities reimbursable under this Agreement; or (iii) the Department is not otherwise legally entitled to such costs. If Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to within the time frame set forth in Subparagraph VI.A and shall, within thirty (30) Days of receipt of an invoice, identify in writing all costs objected to and identify 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 Volunteer of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Volunteer shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Volunteer is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. In the event any instrument for the payment of any money due under this Agreement fails of collection, such failure of collection shall constitute a violation of this Agreement, provided (i) the Department gives Volunteer written notice of such failure of collection, and (ii) the Department does not receive from Volunteer a certified check or bank check within fourteen (14) Days after the date of the Department's written notification.

VII. Reservation of Rights

A. 1. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance and except as provided in Subparagraph VII.A.2, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights or authorities, including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Volunteer.

2. Except for the Department's right to take any investigatory or remedial action deemed necessary as a result of a significant threat resulting from the Existing Contamination or to exercise summary abatement powers, the Department shall not take any enforcement action under ECL Article 27, Title 13, under CERCLA, under the NL, or under comparable statutory or common law theories of remedial liability with respect to the Existing Contamination, to the extent that such contamination is being addressed under the Agreement, against Volunteer or Volunteer's grantees, successors, or assigns during the implementation of this Agreement, provided such party is in compliance with the terms and provisions of this Agreement, including, without limitation, the requirements of all Work Plans and amendments thereto.

B. Except as otherwise provided in this Agreement, Volunteer specifically reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any actions, proceedings, allegations, assertions, determination, or order of the Department, including

any assertion of remedial liability by the Department against Volunteer, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

C. Except as provided in Subparagraph XIV.O, Volunteer 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 contamination at the Site as provided under applicable law.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, 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 prior to the Termination Date except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) from willful, wanton, or malicious acts or omissions, or 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 Agreement. The Department shall provide Volunteer with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Agreement, Volunteer shall cause to be filed a Department-approved Notice of Agreement, which Notice shall be substantially similar to the Notice of Agreement attached to this Agreement as Exhibit "D," with the County Clerk in the county in which the Site is located (or the City Register if the Site is located in Manhattan, Bronx, Kings or Queens County) to give all parties who may acquire any interest in the Site notice of this Agreement. Within thirty (30) Days of such filing (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within thirty (30) Days), Volunteer shall provide the Department with a copy of such instrument certified by such County Clerk (or the City Register) to be a true and faithful copy. Volunteer may terminate such Notice on or after the Termination Date of this Agreement.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, or becomes aware of such conveyance, Volunteer 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 date of the conveyance, and shall notify the transferee in writing, with

a copy to the Department, of the applicability of this Agreement. However, such obligation shall not extend to 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 Volunteer to secure the repayment of money or the performance of a duty or obligation.

X. Declaration of Covenants and Restrictions

A. Within thirty (30) Days after the Department's approval of a Work Plan which relies upon one or more institutional controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.F.1 that additional remediation is not needed based upon use restrictions, Volunteer shall submit to the Department for approval a Declaration of Covenants and Restrictions to run with the land which provides for covenants and restrictions consistent with the Work Plan. The submittal shall be substantially similar to Exhibit "E." Volunteer shall cause such instrument to be recorded with the County Clerk (or the City Register) in the county in which the Site is located within thirty (30) Days after the Department's approval of such instrument. Volunteer shall provide the Department with a copy of such instrument certified by the County Clerk (or the City Register) to be a true and faithful copy within thirty (30) Days of such recording (or such longer period of time as may be required to obtain a certified copy provided Volunteer advises the Department of the status of its efforts to obtain same within such 30 Day period).

B. Volunteer or the owner of the Site may petition the Department to modify or terminate the Declaration of Covenants and Restrictions filed pursuant to this Paragraph at such time as it can certify that the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, hand delivered, or electronic copy unless otherwise requested by a party.

1. Communication from Volunteer shall be sent to:

Peter J. Buechi, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203

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

Joseph P. Ryan, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203

Andrew English
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7017

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

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

- Three copies to Mr. Buechi
- One copy to Mr. Litwin
- One copy to Mr. Ryan
- One copy to Mr. English
- One copy to Mr. O'Connor

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

Paul H. Werthman, P. E.
Steelfields, LTD.
Key Tower, Suite 1350
50 Fountain Plaza
Buffalo, New York 14202

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

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

XII. Termination of Agreement

A. 1. Volunteer may elect in writing to terminate this Agreement without cause while the Department may only elect to terminate this Agreement for cause, which shall be established so long as the Department's stated reason is not arbitrary and capricious. The Department shall include in its notice of termination the basis for its election to terminate this Agreement.

2. In the event of either party's election to terminate this Agreement, this Agreement shall terminate effective the 5th Day after the non-terminating party's receipt of the written notification terminating this Agreement, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.O, nor Volunteer's obligation to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities were commenced under this Agreement, which provisions and obligation shall survive the termination of this Agreement.

B. Notwithstanding Subparagraph XII.A, this Agreement shall terminate without notice in the event that Volunteer fails to submit additional Work Plans in accordance with Subparagraph II.E, unless other Work Plans are under review by the Department or being implemented by Volunteer.

C. Should this Agreement be terminated or the Volunteer in any way fail to fully implement any Work Plan under this Agreement, the Volunteer, its successor or assigns hereby consents, upon reasonable notice under the circumstances presented, to continued entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed in a Department-approved Work Plan, and by any agent, consultant, contractor or other persons so authorized by the Commissioner, for the purposes of conducting any investigative or remedial activities the Department deems necessary.

D. Should this Agreement be terminated, the Volunteer, its successors or assigns shall, should the Department determine one or more institutional controls or use restrictions be necessary at the Site or any portion of the Site, file any necessary Declaration of Covenants and Restrictions as set forth in Paragraph X and Exhibit "E" of this Agreement.

XIII. Dispute Resolution

A. If Volunteer disagrees with the Department's notice of disapproval of a submittal or a proposed Work Plan, disapproval of a final report, nullification of this Agreement pursuant to Subparagraph XIV.A.2, or rejection of Volunteer's assertion of a Force Majeure Event, Volunteer may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall

be sent by Volunteer to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Volunteer shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIII.B. The period for informal negotiations shall not exceed thirty (30) Days from Volunteer'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 Volunteer 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 XIII.B.

B. 1. Volunteer shall file with the "OH&M" a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Volunteer 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 XI.A.1.

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

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

4. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Volunteer 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. Volunteer shall be in violation of this Agreement 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 forty-five (45) Day period provided. In the event that Volunteer seeks judicial review, Volunteer shall be in violation of this Agreement if it fails to comply with the final Court Order or 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 Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XIII shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Volunteer regarding the issue in dispute.

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

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

XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement, and 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, has been fully and accurately disclosed to the Department in conjunction with the Volunteer's application for the Voluntary Cleanup Program.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.O, at the sole discretion of the Department, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete.

B. Volunteer shall allow the Department to attend, and shall notify the Department at least seven (7) Working Days in advance of, any field activities to be conducted pursuant to this Agreement, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; nothing in this Agreement shall be construed to require Volunteer to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Volunteer shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Volunteer's obligations under this Agreement, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If, despite Volunteer's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained within forty-five (45) Days after the effective date of this Agreement or within forty-five (45) Days after the date the Department notifies Volunteer in writing that additional access beyond that previously secured is necessary, Volunteer shall promptly notify the Department,

and shall include in that notification a summary of the steps Volunteer has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Volunteer in obtaining access. If an 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 Volunteer to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

D. Volunteer shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

E. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement 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 its contractor(s) 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.

F. 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 provisions of this Agreement.

G. 1. Except for the Escrow Agreement, the terms of this Agreement shall constitute the complete and entire agreement between the Department and Volunteer concerning the implementation of the activities required by this Agreement. 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 shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Volunteer desires that any provision of this Agreement be changed, other than a provision of a Work Plan or a time frame, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement.

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

H. 1. If there are multiple parties signing this Agreement, the term "Volunteer" shall be read in the plural where required to give meaning to this Agreement. Further, the obligations of Volunteers under this Agreement are joint and several and the insolvency of or failure by any Volunteer to implement any obligations under this Agreement shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

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

3. Notwithstanding the foregoing Subparagraphs XIV.H.1 and 2, if multiple parties sign this Agreement as Volunteers but not all of the signing parties elect, pursuant to Subparagraph II.F.2, to implement a Work Plan, then all Volunteers are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Volunteers electing to perform additional work shall be jointly and severally liable under this Agreement 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 Agreement relative to the activities set forth in such Work Plan(s). Further, only those Volunteers electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue as provided under Subparagraph II.H.

I. Except as provided in Subparagraph XIV.O, and to the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law Section 15-108, and any other applicable law, Volunteer 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 Agreement. "Matters addressed" in this Agreement shall mean all response actions taken to implement this Agreement 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 Agreement, which costs have been paid by Volunteer, including reimbursement of State Costs pursuant to this Agreement.

J. Volunteer, Volunteer's grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership 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.

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

L. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27, Title 13 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 Agreement 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.

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

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

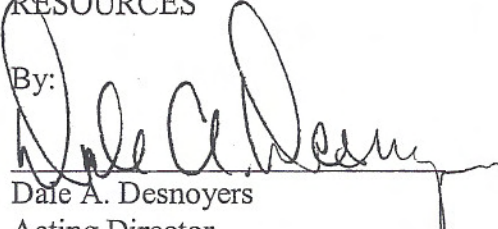
O. Volunteer and Volunteer's partners, officers, shareholders, directors, employees, agents, lessees, sub-lessees, grantees, successors and assigns hereby waive any right to pursue reimbursement of monies expended as against the State or the Spill Fund, and agree to indemnify and hold harmless the Spill Fund from any and all legal and/or equitable claims, suits, causes of action, or demands whatsoever that same has or may have with respect to the Site and with respect to petroleum contamination on the Site and/or having migrated or migrating from the Site.

P. The effective date of this Agreement is the 10th Day after the date it is signed by the Commissioner or the Commissioner's designee.

DATED: OCT 10 2002

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF THE STATE'S NATURAL
RESOURCES

By:



Dale A. Desnoyers

Acting Director

Division of Environmental Remediation

CONSENT BY VOLUNTEER

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

Steelfields, LTD.

By: Richard A. Paluso

Title: Secretary

Date: Oct 15th, 2002

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

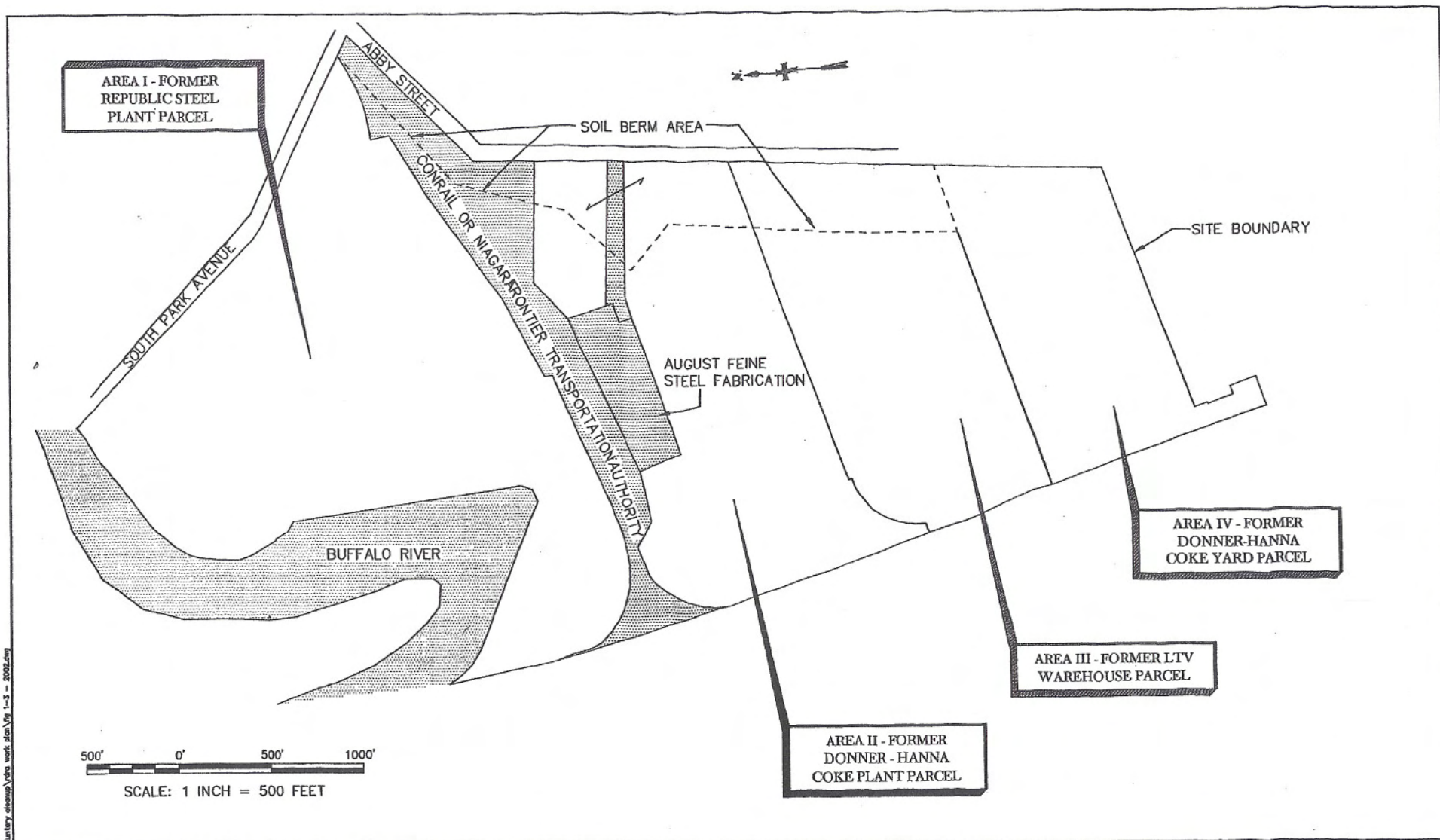
On the 15 day of October, in the year 2002, before me, the undersigned, personally appeared LICHTER & HARRIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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.

Ms. Mica
Signature and Office of individual
taking acknowledgment

LOUIS J. MICCA
Notary Public, State of New York
Qualified in Monroe County
Reg. No. 4947196
Commission Expires February 13, 2013

EXHIBIT "A"

Maps of Site



SITE MAP

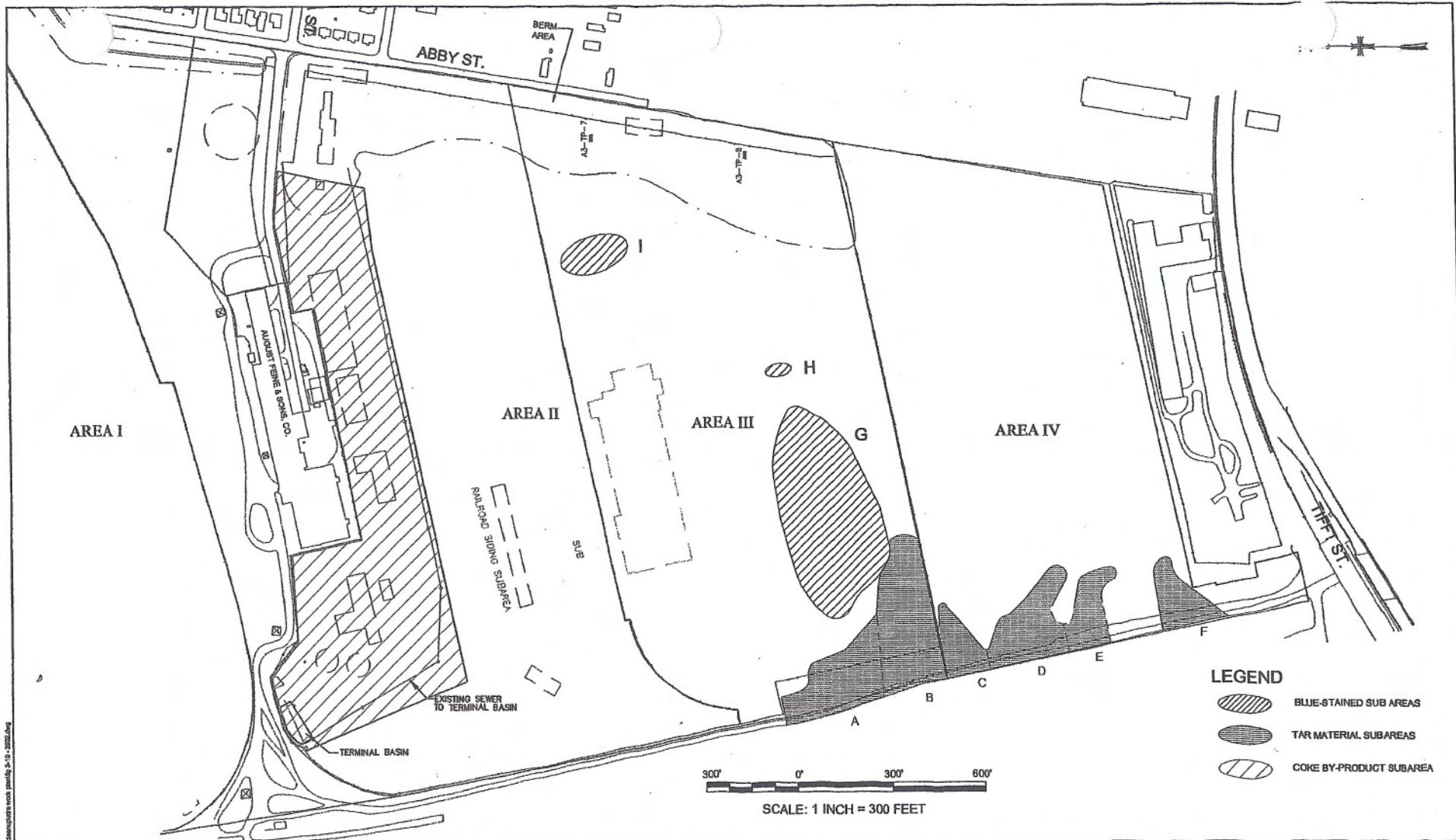
RD/RA WORK PLAN
STEELFIELDS LLC

FIGURE 1-3

PROJECT NO.: 0062-001-100
PROJECT LOCATION: BUFFALO, NEW YORK



DATE: SEPTEMBER 2002
DRAWN BY: BCB
CHECKED BY: BCB
PROJECT: Buffalo Creek Voluntary Cleanup Work Plan, S-15-2002.dwg



SUBAREAS OF ENVIRONMENTAL CONCERN
IN AREAS II, III, AND IV
RD/RA WORK PLAN
STEELFIELDS LLC

FIGURE 3-10

PROJECT NO.: 0062-001-100
PROJECT LOCATION: BUFFALO, NEW YORK

EXHIBIT "B"

Department-Approved Work Plan(s)

**WORK PLAN
for
VOLUNTARY CLEANUP PROGRAM
REMEDIAL DESIGN/REMEDIAL
ACTION**

**FORMER STEEL MANUFACTURING SITE
BUFFALO, NY**

Revised September 2002

0062-001-100

Prepared for:

**Steelfields LLC
Buffalo, NY**

Prepared by:



**POST-CLOSURE MONITORING AND
MAINTENANCE PLAN FOR**

**REPUBLIC STEEL/LTV
MARILLA STREET LANDFILL
SITE I.D. NO. 915047**

RECEIVED

MAY 15 2001

**NYSDEC - REG. 9
FOIL
REL UNREL**

**LTV Steel Company
Cleveland, Ohio**

**Date: October 1999
Revised: January 2000
Revised May 2001**

Project No.: 0002-010-100

Prepared by:



RECEIVED

MAY 22 2001

**NYSDEC - REG. 9
FOIL
REL UNREL**

**New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 9**

270 Michigan Avenue, Buffalo, New York, 14203-2999

Phone: (716) 851-7220 • FAX: (716) 851-7226

website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

July 3, 2002

Paul H. Werthman, P.E.
Steelfields, LLC
50 Fountain Plaza, Suite 1350
Buffalo, New York 14202

Dear Mr. Werthman:

Proposed Revisions to Marilla Street Landfill
Post-Closure Monitoring Plan
(Site I.D. # 915047)
Buffalo, New York

This is in response to your letters dated June 26, 2002 and July 2, 2002 wherein you proposed some revisions to the May 2001 Post-Closure Monitoring and Maintenance Plan for the Republic Steel/LTV/Marilla Street Landfill. Our response to the revisions is as follows:

Surface Water Monitoring Location Revisions:

1. The proposal to consolidate surface water monitoring locations SW-3, SW-4, and SW-6 to a new location SW-3A is acceptable.
2. The proposal to relocate surface water monitoring location SW-2 to SED-1 location is acceptable.
3. The Department believes that collection of surface water data from location SW-5 is necessary as some of the contaminated sediment underneath the Tiftt Street bridge was capped in place.

Paul H. Werthman, P.E.

July 3, 2002

Page 2

Monitoring Frequency and Parameter Revision

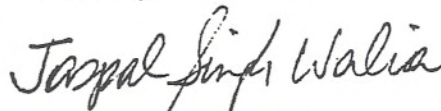
1. Our review of the data submitted with your letter indicates that some volatile organics (VOCs) have been detected in some of the monitoring wells. Acetone was found above the Guidance Value in 3B and 7B. Dichloroethene and TCE were found above the Groundwater Standards in 16B. Since the VOCs data presented is from one year sampling only, testing for VOCs cannot be eliminated at this time. After reviewing two additional sets of data for VOCs, NYSDEC would reconsider your request to eliminate VOCs from the test parameters list for some monitoring wells.

Elimination of chloride, sulfate, potassium, sodium, antimony, and mercury from the test parameters list is acceptable. Cadmium should be tested for along with other parameters.

2. The proposed monitoring frequency of groundwater and surface water to annual, is acceptable.

If you have any questions related to this matter, please feel free to call me at (716) 851-7220.

Sincerely,



Jaspal S. Walia, P.E.
Environmental Engineer

cc: Mr. Peter Buechi, NYSDEC
Mr. Martin Doster, NYSDEC
Mr. Cameron O' Connor, NYSDOH

EXHIBIT "C"

Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Cleanup Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and _____ ("Volunteer"), Index No. _____ (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan(s) relative to the Site, located at _____ has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release and covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, the NL or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against Volunteer and Volunteer's lessees and sublessees, grantees, successors, and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resource damages, based upon the release or threatened release of Covered 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, (b) appropriate deed restrictions remain recorded in accordance with Paragraph X of the Agreement, and (c) Volunteer and/or its' lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release and covenant not to sue shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;
- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant Not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction;
or
- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release and covenant not to sue shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or cause or allow 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 are otherwise responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- 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 letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement under the terms of the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

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 AND TRUSTEE OF NEW YORK STATE'S
NATURAL RESOURCES

By: _____

Date: _____

Appendix "A"

(to Exhibit "C")

Map of the Site

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 200__ by _____ regarding a parcel of real property located at _____ bearing Tax Map Number _____ (the "Property"); and

WHEREAS, _____ ("Volunteer"), entered into an agreement with the Department of Environmental Conservation, Index # _____ (the "Agreement"), concerning contamination which is or may be present on the Property, which Agreement was executed on behalf of the Department on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, grantees, successors, and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Volunteer agreed to cause the filing of a notice of the Agreement with the _____ County Clerk in accordance with Paragraph IX of the Agreement to give all parties who may acquire any interest in the Property notice of the Agreement.

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of Agreement is hereby given to all parties who may acquire any interest in the Property; and
2. This Notice shall terminate upon the filing of a Notice of Termination of this Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.

IN WITNESS WHEREOF, Volunteer has executed this Notice of Agreement by its duly authorized representative.

Dated:

By: _____

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.

Signature and Office of individual
taking acknowledgment

Appendix "A"

(to Exhibit "D")

Map of the Property

Exhibit "E"

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the ___ day of _____ 200__, by _____
a [natural person residing at _____/partnership organized and existing under
the laws of the State of _____ / corporation organized and existing under the
laws of the State of _____]and having an office for the transaction of business
at _____:

WHEREAS, _____ is the subject of a Voluntary Agreement
executed by _____ as part of the New York State Department of Environmental
Conservation's (the "Department's") Voluntary Cleanup Program, namely that parcel of real
property located on _____ in the _____ of _____, County of
_____, State of New York, which is part of lands conveyed
by _____ to _____ by deed dated _____ and recorded in the
_____ County Clerk's Office on _____ in Book _____ of Deeds at Page _____
and being more particularly described in Appendix "A," attached to this declaration and made a
part hereof, and hereinafter referred to as "the Property"; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all
significant threats to the environment presented by the contamination disposed at the Property
and such remedy requires that the Property be subject to restrictive covenants.

NOW, THEREFORE, _____, for itself and its successors and/or
assigns, covenants that:

First, the Property subject to this Declaration of Covenants and Restrictions, is as
shown on a map attached to this declaration as Appendix "B" and made a part hereof, and
consists of [insert metes and bounds description]

Second, unless prior written approval by the New York State Department of
Environmental Conservation or, if the Department shall no longer exist, any New York State
agency or agencies subsequently created to protect the environment of the State and the health of
the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, there shall
be no construction, use or occupancy of the Property that results in the disturbance or excavation
of the Property, which threatens the integrity of the soil cap, or which results in unacceptable
human exposure to contaminated soils.

Third, the owner of the Property shall maintain the cap covering the Property by
maintaining its grass cover or, after obtaining the written approval of the Relevant Agency, by
capping the Property with another material.

Fourth, the owner of the Property shall prohibit the Property from ever being used for purposes other than for restricted industrial and restricted commercial use excluding day care, child care and medical care uses without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Property shall prohibit the use of the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Relevant Agency.

Sixth, the owner of the Property shall continue in full force and effect any institutional and engineering controls required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property, and shall provide that the owner, and its successors and assigns, consents to enforcement by the Relevant Agency of the prohibitions and restrictions that Paragraph X of the Agreement requires to be recorded, and hereby covenants not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

[acknowledgment]

Exhibit "F"

**United States District Court
Western District of New York**

**Consent Order
99-CV-0624E(F)**

July 16, 2002

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In Re:

CHATEAUGAY CORPORATION,
ROMAR, INC.
THE LTV CORPORATION, et al.

Debtors.

Civil Action No. 99-CV-0624E(F)

CONSENT ORDER

LTV STEEL COMPANY, INC. and
HANNA FURNACE CORPORATION,

Plaintiffs,

-VS-

THE CITY OF BUFFALO, NEW YORK
THE CITY OF BUFFALO URBAN
RENEWAL AGENCY and
JOHN DOES NOS. 1-10,

Defendants.

The Parties to this proceeding, Plaintiff LTV Steel Company, Inc. ("LTV"), Plaintiff Hanna Furnace Corporation ("Hanna"), Defendant City of Buffalo, New York ("City"), and Defendant the City of Buffalo Urban Renewal Agency ("BURA") (hereinafter, collectively, the "Parties" and individually, the "Party"), hereby respectfully lodge this proposed Consent Order providing for the full and final resolution of claims as provided herein on the following terms and conditions, contingent upon: (1) the fulfillment of certain specified Conditions Precedent set forth herein; (2) the filing of a Motion for Entry of this Consent Order; and (3) approval and entry of this Consent Order by this Court:

WHEREAS, LTV and Hanna filed a Complaint in this matter against the City and BURA on September 2, 1999 asserting claims relating to a berm allegedly constructed by Defendants on a portion of an approximately 220-acre parcel containing a former steel plant and a former coke manufacturing facility owned by Plaintiffs in South Buffalo (the "Plant Site");

WHEREAS, the City and BURA filed their Answers and Counterclaims on December 13, 1999, and the City filed an Amended Answer and Counterclaims on October 6, 2000, asserting legal and equitable claims for injunctive relief relating to conditions at or from the Plant Site and adjacent residential areas known as the Hickory Woods Neighborhood (the "Residential Properties") and also seeking reimbursement for certain costs and expenses incurred by the City and BURA related thereto;

WHEREAS, LTV filed a separate adversary proceeding against the City and BURA in the U.S. Bankruptcy Court for the Southern District of New York on September 2, 1999 styled LTV Steel Company, Inc., et al. v. The City of Buffalo (In re Chateaguay Corp.), Case No 86 B 11270 (Jointly Administered), Adv. Proc. No.: 998585A (BRL), which, by motion of the City and BURA, was subsequently transferred to the Western District of New York by Opinion and Order issued by the Bankruptcy Court on March 29, 2002;

WHEREAS, the adversary proceeding transferred to this Court by the U.S. Bankruptcy Court for the Southern District of New York was consolidated with the instant proceeding by Memorandum and Order of this Court dated May 9, 2002;

WHEREAS, LTV filed a petition for bankruptcy and is currently operating pursuant to an Asset Protection Plan approved by U.S. Bankruptcy Judge William T. Bodoh of the Northern District of Ohio;

WHEREAS, Hanna filed a petition for bankruptcy and is currently operating under U.S. Bankruptcy Court protection in the Northern District of Illinois;

WHEREAS, the U.S. Bankruptcy Court of the Northern District of Ohio and the U.S. Bankruptcy Court of the Northern District of Illinois shall be known herein collectively as "the Bankruptcy Courts";

WHEREAS, the Parties agree and submit that resolution of this proceeding upon the terms of this Consent Order is in the public interest;

WHEREAS, the May 9, 2002 Memorandum and Order of this Court denied the motions of LTV and Hanna to stay the Counterclaims of the City and BURA to the extent that the City and BURA seek to require LTV and Hanna to abate alleged public nuisance conditions and alleged liability under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq. ("RCRA") at or from the Plant Site but granted Plaintiffs' motion to stay Defendants' Counterclaims to the extent that they sought financial relief in the form of a fair market value protection plan and other monetary relief;

WHEREAS, Plaintiffs believe that they have reached conceptual agreement with the New York State Department of Environmental Conservation ("DEC") for the funding of certain remediation activities at the Plant Site and other properties to be undertaken by an entity known as "Steelfields LLC" ("Steelfields") pursuant to DEC-approved plans;

WHEREAS, Plaintiffs and Steelfields have reached agreement upon, and Plaintiffs believe that DEC is in conceptual agreement with, the terms of an Escrow Agreement establishing an Escrow Account into which Plaintiffs shall contribute specified assets and assign certain insurance rights to fund implementation of the DEC-approved plans by Steelfields, and which escrowed funds will be distributed to DEC in the event of material and final default by Steelfields;

WHEREAS, Steelfields and DEC anticipate entering into a Voluntary Cleanup Agreement (the "VCA") shortly to provide for implementation of the DEC-approved plans at the Plant Site and at other properties by Steelfields;

WHEREAS, Plaintiffs and Steelfields anticipate entering into a Property Transfer Agreement shortly providing for the transfer of title to the Plant Site and other properties from Plaintiffs to Steelfields;

WHEREAS, the Parties to this proceeding wish to fully and finally resolve claims between them as provided herein, based upon the terms of this Consent Order, without trial, admission or further adjudication of any liability, fact or issue of law;

WHEREAS, there are pending causes of action filed by certain private residents against LTV, Hanna, the City, and BURA under captions Acoff et al. v. The Hanna Furnace Corporation et al. (State of New York Supreme Court, Erie County, Index No. I2001-3942); Andriaccio et al. v. The Hanna Furnace Corporation et al. (State of New York Supreme Court, Erie County, Index No. I2000-10578); Blake et al. v. The Hanna Furnace Corporation et al. (State of New York Supreme Court, Erie County, Index No. I2000-006347); and Gilmour v. The Hanna Furnace Corporation et al. (State of New York Supreme Court, Erie County, Index No. I2000-10579) (hereinafter collectively the "Residents' Lawsuits"), which seek relief from the Parties pursuant to claims of property damage and personal injury;

WHEREAS, LTV is advised that its insurance carrier, the Travelers Indemnity Company and Travelers Casualty and Surety Company ("Travelers"), is in conceptual agreement with the partial assignment of LTV's rights to insurance proceeds to the Escrow Account subject to satisfaction of the Conditions Precedent set forth herein and provided that the assignment shall not enlarge Travelers' obligations under its settlement with LTV;

WHEREAS, the Parties represent and warrant that they have the authority to execute this Consent Order and, subject to the terms hereof, have the authority to consummate the transactions contemplated herein;

NOW, WHEREFORE, based upon the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound, the Parties hereby agree as follows:

1. Plaintiffs' Obligations. After the entry and effective date of this Consent Order and no later than August 31, 2002, a closing will be held at which:

A. LTV and Hanna shall transfer title to the Plant Site and other specified properties to Steelfields in accordance with the terms of the Property Transfer Agreement;

B. In accordance with the terms of an Administrative Order on Consent with DEC ("AOC"), LTV and Hanna shall deposit the following sums into the Escrow Account established by the Escrow Agreement:

LTV: Two Million, One Hundred Eighty-Seven Thousand, Five Hundred Dollars (\$2,187,500.00)

Hanna: Seven Million, Seven Hundred Fifty Thousand Dollars (\$7,750,000.00)

C. In accordance with the terms of the AOC, LTV shall assign the specified portion of its rights to insurance proceeds in the amount of Six Million, Five Hundred Sixty-Two Thousand, Five Hundred Dollars (\$6,562,500.00) to the Escrow Account established by the Escrow Agreement.

D. Provided, however, that Plaintiffs' obligations under this Paragraph 1 are expressly contingent upon: (a) Steelfields closing in accordance with the terms of the Property Transfer Agreement; and (b) Steelfields entering into a final VCA with DEC

providing for remediation of the Plant Site and other properties in accordance with DEC-approved plans.

E. In the event that these obligations are not satisfied on or prior to August 31, 2002, whether due to default of the Plaintiffs or failure of the conditions in Paragraph 1.D, this Consent Order shall be null and void, whether proposed or entered, and the Parties shall appear before this Court at ___ on September 3, 2002 to report that the obligations have not been satisfied and a trial shall commence on September ___, 2002 in accordance with the May 9, 2002 Memorandum and Order and the Joint Stipulation of May 22, 2002.

2. Defendants' Obligations. Within seven (7) days following the fulfillment of LTV's and Hanna's obligations in Paragraph 1, the Parties shall file with this Court a Joint Voluntary Dismissal of all claims and counterclaims in this proceeding with prejudice and Defendants shall withdraw all of their notices of claims currently pending in the respective bankruptcy proceedings of LTV and Hanna.

3. Conditions Precedent. The consents of the Parties to the terms of this Consent Order are subject to all of the following Conditions Precedent, and each of the Parties shall use its best efforts commencing upon execution of this Consent Order by all Parties to fulfill all such Conditions Precedent to the extent any such condition is in such Party's control:

A. Administrative Order on Consent Between LTV, Hanna and DEC and/or the State of New York. Agreement upon and execution of a final AOC between LTV, Hanna and the DEC and/or the State of New York providing for (1) funding of the Escrow Agreement by LTV and Hanna to fund Steelfields' implementation of the Remedial Work Plan and its other obligations under the Voluntary Cleanup Agreement; and (2) issuances of releases and contribution protection from DEC and/or the State of New York to LTV, including its insurer Travelers, and Hanna;

B. Escrow Agreement Between LTV, Hanna, Steelfields, DEC and Escrow Agent. Agreement upon and execution of a final Escrow Agreement establishing: (1) an

Escrow Account to be funded by LTV and Hanna for the funding of Steelfields' implementation of the DEC-approved plans and its other obligations under the VCA; and (2) in the event of Steelfields' material and final default on its obligations under the VCA, disbursement of the escrowed funds in the Escrow Account to DEC pursuant to the terms of the Escrow Agreement for remediation activities at the Plant Site;

C. Property Transfer Agreement Between Steelfields, LTV, and Hanna. Agreement upon and execution of a final Property Transfer Agreement providing for transfer of title to the Plant Site and other properties from LTV and Hanna to Steelfields;

D. Approval of LTV's and Hanna's obligations under this Consent Order by Their Respective Bankruptcy Courts. The Parties understand that LTV's and Hanna's consents to the terms to this Consent Order are subject to approval by their respective Bankruptcy Courts and shall as soon as reasonably possible seek prompt approval of this Consent Order from the Bankruptcy Courts and approval from LTV's Bankruptcy Court authorizing Travelers to make payments to the Escrow Account pursuant to the terms of the Escrow Agreement. Within five (5) days after the granting or denial of such approval by its respective Bankruptcy Court, LTV and Hanna each shall file a notice of such Bankruptcy Court action with this Court and serve such notice upon all other Parties to this proceeding.

4. Motion for Entry of Consent Order. Upon fulfillment of all Conditions Precedent set forth in the preceding paragraph, any Party may file and serve a Motion for Entry of this Consent Order for this Court's consideration. Non-moving Parties, if any, shall file and serve written objections to said motion, if any, with this Court within five (5) days of service of said motion.

5. Failure of Conditions Precedent or Disapproval by This Court. In the event that any of the Conditions Precedent cannot be fulfilled, then the Parties' consents to the terms of this proposed Consent Order shall be considered withdrawn. In such event, one or more of the Parties shall so advise this Court by filing and serving a Motion of Withdrawal of

Proposed Consent Order within five (5) days following knowledge of the final failure of any Condition Precedent. Non-moving Parties, if any, shall file and serve written objections to said motion, if any, with this Court within five (5) days of service of said motion. Upon the granting of any such Motion of Withdrawal of Proposed Consent Order, or upon this Court's disapproval of a Motion for Entry of the Proposed Consent Order, this proposed Consent Order shall be considered withdrawn from this Court's consideration, null and void, and neither its terms nor the proposed Consent Order itself shall be admissible against any of the Parties to this action.

6. Effect of Consent Order.

A. Upon the entry of this Consent Order, BURA and the City, including without limitation all of the City's other related Public Benefit Corporations, fully and forever discharge, satisfy, and requit any and all claims, demands, actions, proceedings, suits, orders and directives that any of them may have under any federal law or statute, including without limitation CERCLA and RCRA, any laws or statutes of the State of New York, any and all local or municipal ordinances, regulations or rules, any police powers, and any theory of common law, known or unknown, foreseen or unforeseen, against LTV or Hanna, or either of their directors, officers, employees, agents, affiliates, parent companies, subsidiaries, secured creditors, insurers (including Travelers), or successors and assigns, for any liabilities, response costs, response actions, property damage, damages, losses, injuries, injunctive relief, remedies, oversight or administrative costs, fines, penalties, or other costs and expenses previously incurred or which may be incurred in the future, with regard to the Plant Site or the Residential Properties and related impacts or conditions arising therefrom.

B. Upon the entry of this Consent Order, LTV and Hanna fully and forever discharge, satisfy, and requit any and all claims, demands, actions, proceedings, suits, orders and directives that any of them may have under any federal law or statute, including without limitation CERCLA and RCRA, any laws or statutes of the State of New York, any and all local or municipal ordinances, regulations or rules, any police powers, and any theory of common law, known or unknown, foreseen or unforeseen, against the City or BURA, or either of

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their directors, officers, employees, agents, affiliates, secured creditors, insurers, successors and assigns, for any liabilities, response costs, response actions, property damage, damages, losses, injuries, injunctive relief, remedies, oversight or administrative costs, fines, penalties, or other costs or expenses previously incurred or which may be incurred in the future, with regard to the Plant Site or the Residential Properties and related impacts or conditions arising therefrom.

C. Nothing in any part of this Consent Order shall release any Party from its apportionable share of liability, if any, in the Residents' Lawsuits under Gen. Oblig. Law § 15-108 or otherwise; however, the Parties agree not to affirmatively assert any claim for such apportionable share against one another.

D. After the full performance of LTV and Hanna of their respective obligations under this Consent Order, the City and BURA shall withdraw any and all objections and claims against LTV, including against its insurer Travelers, and Hanna in their respective bankruptcy proceedings pertaining to conditions at the Plant Site or at the Residential Properties with prejudice, whether known or unknown, contingent or liquidated, existing or that may arise in the future, and shall not institute or re-institute any claims or objections with regard to the Plant Site or the Residential Properties in the future;

E. The Parties agree that this Consent Order shall be given the fullest and broadest possible *res judicata* effect. The Parties' obligations under this Paragraph 6 shall survive the voluntary dismissal of this action.

7. This Court shall maintain continuing jurisdiction to enforce the terms of this Consent Order until dismissal of this action with prejudice upon the Parties' filing of a Joint Voluntary Dismissal of all claims and counterclaims in this proceeding.

8. Nothing in this Consent Order shall affect any party's rights and obligations under the EPA Administrative Order on Consent for Removal Action, Index No. CERCLA-02-2000-2020.

9. Each Party shall bear its own costs and attorney's fees in this action.

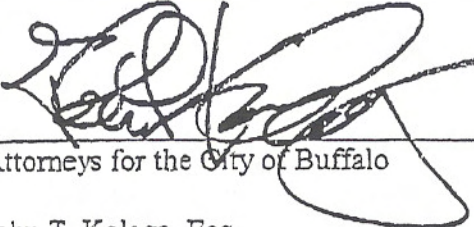
10. The Parties agree that this Consent Order is not an executory contract or an unexpired lease within the meaning of 11 U.S.C. Section 365. Both LTV and Hanna each warrant and represent that each and its directors, officers, employees, agents, affiliates, successors and assigns shall not seek to reject this Consent Order pursuant to any provision of the U.S. Bankruptcy Code or pursuant to LTV's Asset Protection Plan Order entered on December 7, 2001 in the Northern District of Ohio.

11. This Consent Order may be amended prior to entry by the Court by Joint Motion of the Parties. Such Amendment may include, but shall not be limited to, a contingency plan involving DEC to facilitate remediation of the Plant Site.

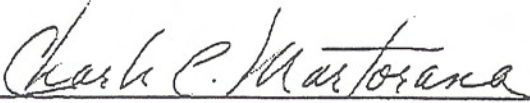
Dated: Buffalo, New York
July 15, 2002

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THE HANNA FURNACE CORPORATION

By: Ronald J. Werhuysh
Its: Vice President and General Counsel

SO ORDERED:

HON. JOHN T. ELFVIN
SENIOR U.S. DISTRICT JUDGE

DATED:

Exhibit "G"

Order on Consent

Index Number

B9-0525-97-11

Site No. V00133-9

Exhibit "H"

Escrow Agreement

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.

"Covered Contamination": the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C."

"CPLR": the Civil Practice Law and Rules, as amended.

"Day": a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday or State holiday. In computing any period of time under this Agreement, 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.

"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 Volunteer's reasonable control.

"Interim Remedial Measure" or "IRM": an interim remedial measure which is 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 a Site.

"NL": the Navigation Law, as amended.

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

"OM&M": post-construction operation, maintenance, and monitoring; the and the soil/fill management plan; last phase of a remedial program, which continues until the remedial action objectives for the Site are met.

"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.

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund as established by Article 12, Part 3 of the NL.

"State Costs": all the State's response expenses related to the 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, and administering this Agreement, and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date upon which (i) the Release (Exhibit "C") is issued or the Department approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Agreement terminates pursuant to Paragraph XII or is nullified pursuant to Subparagraph XIV.A.2.

"Trustee": the Trustee of New York State's natural resources.

"USEPA": the United States Environmental Protection Agency.

"Work Plan": a Department-approved work plan, as may be modified, pertaining to the Site, that Volunteer shall implement and that is attached to this Agreement.